

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Mental Health (Treatment and Care) Amendment Bill 2014

Contents

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

Contents

		Page
10	Section 4A, note 1	3
11	Sections 5, 6 and parts 2 and 4	4
12	Part 5 heading and sections 37 to 41	76
13	Notification of Magistrates Court about emergency detention or release from emergency detention Section 41A	83
14	Section 41A	83
15	New section 41A (2)	83
16	Section 42	84
17	Medical examination Section 43	85
18	Treatment during detention Section 44 (1)	85
19	Section 44 (1), note	85
20	Section 44 (as amended)	86
21	Section 45 heading	86
22	Section 45	86
23	Section 45	86
24	Section 45	86
25	Orders for release Section 46 (1)	87
26	Section 46 (2)	87
27	Approved facilities Section 48	87
28	Divisions 5A.1 to 5A.5	87
29	Section 48A heading	87
30	Section 48A	88
31	Section 48B heading	88
32	Section 48B	88
33	Authority to enter into agreements Section 48C	88
34	Recognition of interstate laws and orders Section 48D	89
35	Transfer of custodial patients from ACT Section 48G (1) (b) (i) and (ii)	89

Contents

	Page
36	New section 48G (4) 89
37	Psychiatric treatment orders relating to interstate people Section 48M (1) 90
38	Section 48M (2) 90
39	Apprehension of interstate persons absent without leave or in breach of orders Section 48Q (3) 90
40	Regulations relating to apprehension of persons Section 48R 91
41	Sections 48A to 48R (as amended) 91
42	Interstate application of mental health laws Part 5A (as amended) 91
43	New chapters 7 and 8 91
44	Rights of mentally dysfunctional or mentally ill persons Part 6 151
45	Informed consent Section 54 151
46	Section 62 152
47	Consent of Supreme Court Section 65 (b) 153
48	Refusal of surgery Section 66 (3) 154
49	Committees New section 67 (6) 154
50	Electroconvulsive therapy and psychiatric surgery Part 7 154
51	Divisions 7.1 to 7.3 154
52	Subdivisions 7.2.1 to 7.2.6 154
53	Part 8 heading 155
54	Review of certain people found unfit to plead Section 68 (8) 155
55	Recommendations about people with mental illness or mental dysfunction Section 70A 155
56	Sections 72 to 74 155
57	Part 9 heading 158

Contents

	Page	
58	Section 76 heading	158
59	Section 76	158
60	Sections 77 to 79	159
61	Appearance	
	Section 80 (1) (b) to (d)	164
62	Section 80 (1) (g)	165
63	Section 81	165
64	Directions to registrar	
	Section 84 (2)	166
65	Section 84 (as amended)	166
66	Notice of hearing	
	Section 85	166
67	Section 86	166
68	Who is given a copy of the order?	
	Section 87 (1) (c)	167
69	Section 87 (1) (g)	167
70	Section 87 (1) (i)	167
71	New section 87 (1) (k)	168
72	New section 87 (2) (ba)	168
73	New section 87 (3) (c)	168
74	Part 10 heading	168
75	Functions	
	Section 113	168
76	New section 113 (c)	169
77	New section 114	169
78	Section 116	169
79	Delegation by chief psychiatrist	
	New section 118 (2)	170
80	Mental health officers	
	Section 119 (3), new definitions	170
81	Chief psychiatrist's annual report	
	Section 120 (b)	170
82	Care coordinator	
	Part 10A	171
83	Sections 120B and 120C	171

Contents

	Page	
84	Delegation by care coordinator Section 120D (2)	172
85	Care coordinator's annual report Section 120E	172
86	Official visitors Part 11	173
87	Meaning of <i>official visitor</i> etc Section 121	173
88	Section 121	173
89	Appointment of official visitors—additional suitability requirement Section 122 (d)	173
90	New section 122AA	174
91	Official visitor's functions Section 122A	174
92	Section 122A	174
93	New section 122A (d)	174
94	New section 122BB	175
95	Notice to official visitor of detainee receiving mental health treatment or care in correctional centre Section 122B	175
96	Section 122B	175
97	Complaint about treatment or care provided at a place other than visitable place Section 122C	176
98	Section 122C	176
99	New parts 12.4 and 12.5	176
100	Part 12 heading	180
101	Section 123	180
102	Owner or manager to be licensed Section 124	181
103	Issue of licence Section 125 (3) (a)	181
104	Section 125 (4)	181
105	Section 125 (5) (e)	181
106	Effect of cancellation Section 131	182

Contents

	Page	
107	Appointment of inspectors Section 132	182
108	Powers of inspection Section 134 (1) (a)	182
109	Section 134 (1) (b) and (c)	182
110	Divisions 12.1 to 12.3	183
111	Section 136 heading	183
112	Section 136	183
113	Sections 136 to 137A	183
114	Notification and review of decisions Division 12.4 (as amended)	183
115	Unauthorised treatment Section 138	183
116	Section 138	184
117	Miscellaneous Division 12.5 (as amended)	184
118	New chapter 14	184
119	Section 140	186
120	Relationship with Guardianship and Management of Property Act Section 142 (1) (a)	190
121	Section 142 (2) (a)	191
122	Section 142, new note	191
123	Relationship with Powers of Attorney Act Section 143 (a)	191
124	Section 143, new note	191
125	Certain rights unaffected Section 145 (a)	191
126	New section 145A	192
127	Miscellaneous Part 13 (as amended)	193
128	Reviewable decisions Schedule 1 heading, reference	193
129	Schedule 1, new items 1A to 1E	193
130	Dictionary, note 2	193
131	Dictionary, new definitions	194

Contents

		Page
132	Dictionary, definition of <i>agreement</i>	194
133	Dictionary, definitions of <i>applicant</i> and <i>application</i>	194
134	Dictionary, new definition of <i>approved community care facility</i>	194
135	Dictionary, definition of <i>approved health facility</i>	195
136	Dictionary, definitions of <i>approved mental health facility</i> and <i>assessment order</i>	195
137	Dictionary, new definitions	195
138	Dictionary, definition of <i>community care facility</i>	196
139	Dictionary, new definitions	196
140	Dictionary, definition of <i>corresponding law</i>	196
141	Dictionary, new definitions	197
142	Dictionary, definitions of <i>information statement</i> etc	197
143	Dictionary, new definition of <i>mental disorder</i>	198
144	Dictionary, definition of <i>mental dysfunction</i>	198
145	Dictionary, definitions of <i>mental health facility</i> , <i>mental health professional</i> and <i>mental illness</i>	198
146	Dictionary, new definition of <i>nominated person</i>	199
147	Dictionary, definition of <i>offender with a mental impairment</i>	199
148	Dictionary, definition of <i>official visitor</i>	199
149	Dictionary, new definitions	199
150	Dictionary, definition of <i>private psychiatric institution</i>	199
151	Dictionary, definition of <i>proceeding</i>	199
152	Dictionary, new definition of <i>psychiatric facility</i>	200
153	Dictionary, definition of <i>psychiatric institution</i>	200
154	Dictionary, new definitions	200
155	Dictionary, definitions of <i>responsible person</i> etc	201
156	Dictionary, new definitions	201
Schedule 1	Other amendments	203
Part 1.1	Children and Young People Act 2008	203
Part 1.2	Corrections Management Act 2007	204
Part 1.3	Crimes Act 1900	205

Contents

		Page
Part 1.4	Crimes (Child Sex Offenders) Regulation 2005	215
Part 1.5	Crimes (Sentence Administration) Act 2005	215
Part 1.6	Criminal Code 2002	216
Part 1.7	Guardianship and Management of Property Act 1991	216
Part 1.8	Mental Health (Treatment and Care) Regulation 2003	223
Part 1.9	Powers of Attorney Act 2006	225
Part 1.10	Public Advocate Act 2005	228
Part 1.11	Victims of Crime Act 1994	228

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Mental Health (Treatment and Care) Amendment Bill 2014

A Bill for

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

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

1 **1 Name of Act**

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

4 **2 Commencement**

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

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

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

12 (2) If this Act has not commenced within 12 months beginning on its
13 notification day, it automatically commences on the first day after
14 that period.

15 (3) The [Legislation Act](#), section 79 (Automatic commencement of
16 postponed law) does not apply to this Act.

17 **3 Legislation amended**

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

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

20 **4 Long title**

21 *substitute*

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

1	5	Part 1 heading
2		<i>renumber as chapter 1</i>
3	6	Section 1
4		<i>substitute</i>
5	1	Name of Act
6		This Act is the <i>Mental Health (Treatment and Care) Act 1994</i> .
7	7	Offences against Act—application of Criminal Code etc
8		Section 4A, note 1
9		<i>insert</i>
10		<ul style="list-style-type: none">• s 18 (Failure by owner of facility to comply with pt 3.1)
11	8	Section 4A, note 1
12		<i>insert</i>
13		<ul style="list-style-type: none">• s 36ZM (Offence—limits on communication—mental health order)
14		
15		<ul style="list-style-type: none">• s 42 (Notification of certain people about detention)
16	9	Section 4A, note 1
17		<i>omit</i>
18		<ul style="list-style-type: none">• s 45 (Communication during detention)
19		<i>substitute</i>
20		<ul style="list-style-type: none">• s 45 (Offence—communication during detention)
21	10	Section 4A, note 1
22		<i>insert</i>
23		<ul style="list-style-type: none">• s 48ZP (Offence—limits on communication—forensic mental health order)
24		

1 **11 Sections 5, 6 and parts 2 and 4**

2 *substitute*

3 **Chapter 2 Objects and important**
4 **concepts**

5 **5 Objects of Act**

6 The objects of this Act are to—

- 7 (a) promote the recovery of people with a mental disorder or
8 mental illness; and
- 9 (b) promote the capacity of people with a mental disorder or
10 mental illness to determine, and participate in, their assessment
11 and treatment, care or support, taking into account their rights
12 in relation to mental health under territory law; and
- 13 (c) ensure that people with a mental disorder or mental illness
14 receive assessment and treatment, care or support in a way that
15 is least restrictive or intrusive to them; and
- 16 (d) facilitate access by people with a mental disorder or mental
17 illness to services provided in a way that recognises and
18 respects their rights, inherent dignity and needs; and
- 19 (e) promote the inclusion of, and participation by, people with a
20 mental disorder or mental illness in communities of their
21 choice; and
- 22 (f) facilitate access by people with a mental disorder or mental
23 illness to assessment and treatment, care or support as far as
24 practicable in communities of their choice; and
- 25 (g) support improvements in mental health through mental health
26 promotion, illness prevention and early intervention.

1 **6 Principles applying to Act**

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

- 4 (a) a person with a mental disorder or mental illness has the same
5 rights and responsibilities as other members of the community
6 and is to be supported to exercise those rights and
7 responsibilities without discrimination;
- 8 (b) a person with a mental disorder or mental illness has the right
9 to—
- 10 (i) consent to, refuse or stop treatment, care or support; and
- 11 (ii) be told about the consequences of consenting to, refusing
12 or stopping treatment, care or support;
- 13 (c) a person with a mental disorder or mental illness has the right
14 to determine the person's own recovery;
- 15 (d) a person with a mental disorder or mental illness has the right
16 to have the person's will and preferences, to the extent that
17 they are known or able to be known, taken into account in
18 decisions made about treatment, care or support;
- 19 (e) a person with a mental disorder or mental illness has the right
20 to access the best available treatment, care or support relating
21 to the person's individual needs;
- 22 (f) a person with a mental disorder or mental illness has the right
23 to be able to access services that—
- 24 (i) are sensitive and responsive to the person's individual
25 needs, including in relation to age, gender, culture,
26 language, religion, sexuality, trauma and other life
27 experiences; and
- 28 (ii) observe, respect and promote the person's rights, liberty,
29 dignity, autonomy and self-respect;

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

6 (h) a person with a mental disorder or mental illness has the right
7 to communicate, and be supported in communicating, in a way
8 appropriate to the person;

9 **Examples**

10 1 aided augmentative and alternative communication including
11 teletypewriter services, communication boards and communication
12 books

13 2 unaided augmentative and alternative communication including sign
14 language and facial expression

15 3 use of an interpreter or translation service

16 4 use of an independent advocacy service

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

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

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

25 (j) services provided to a person with a mental disorder or mental
26 illness should—

27 (i) respect the informed consent of the person to the person's
28 assessment and treatment, care or support including
29 consent as expressed in an advance consent direction; and

30 (ii) support and allow the person to make the person's own
31 decisions; and

- 1 (iii) be provided in a way that considers and respects the
2 preferences of the person, including those expressed in an
3 advance agreement; and
- 4 (iv) promote a person's capacity to determine the person's
5 recovery from mental disorder or mental illness; and
- 6 (v) seek to bring about the best therapeutic outcomes for the
7 person and promote the person's recovery; and
- 8 (vi) be therapeutic or diagnostic in nature for the benefit of
9 the person, and never administered as punishment or for
10 the benefit of someone other than the person; and
- 11 (vii) be delivered in a way that takes account of, and continues
12 to build on, evidence of effective assessment and
13 treatment, care or support; and
- 14 (viii) be provided in a way that ensures that the person is aware
15 of the person's rights; and
- 16 (ix) facilitate appropriate involvement of close relatives, close
17 friends and carers in treatment, care or support decisions
18 in partnership with medical professionals; and
- 19 (x) acknowledge the impact of mental disorder and mental
20 illness on the close relatives, close friends and carers of
21 people with a mental disorder or mental illness; and
- 22 (xi) recognise the experience and knowledge of close
23 relatives, close friends and carers about a person's mental
24 disorder or mental illness; and
- 25 (xii) promote inclusive practices in treatment, care or support
26 to engage families and carers in responding to a person's
27 mental disorder or mental illness; and
- 28 (xiii) promote a high standard of skill and training for the
29 people providing treatment, care or support.

1 **7 Meaning of *decision-making capacity***

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

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

15 **8 Principles of decision-making capacity**

16 (1) In considering a person’s decision-making capacity under this Act,
17 the following principles must be taken into account:

- 18 (a) a person’s decision-making capacity is particular to the
19 decision that the person is to make;
- 20 (b) a person must be assumed to have decision-making capacity,
21 unless it is established that the person does not have
22 decision-making capacity;
- 23 (c) a person who does not have decision-making capacity must
24 always be supported to make decisions about the person’s
25 treatment, care or support to the best of the person’s ability;
- 26 (d) a person must not be treated as not having decision-making
27 capacity unless all practicable steps to assist the person to
28 make decisions have been taken;

- 1 (e) a person must not be treated as not having decision-making
2 capacity only because—
- 3 (i) the person makes an unwise decision; or
- 4 (ii) the person has impaired decision-making capacity under
5 another Act, or in relation to another decision;
- 6 (f) a person must not be treated as having decision-making
7 capacity to consent to the provision of treatment, care or
8 support only because the person complies with the provision of
9 the treatment, care or support;
- 10 (g) a person who moves between having and not having
11 decision-making capacity must, if reasonably practicable, be
12 given the opportunity to consider matters requiring a decision
13 at a time when the person has decision-making capacity.
- 14 (2) A person's decision-making capacity must always be taken into
15 account in deciding treatment, care or support, unless this Act
16 expressly provides otherwise.
- 17 (3) An act done, or decision made, under this Act for a person who does
18 not have decision-making capacity must be done in the person's best
19 interests.
- 20 (4) In considering a person's decision-making capacity under this Act,
21 any approved code of practice under section 114 must be taken into
22 account.

23 **9 Meaning of *mental disorder***

24 In this Act:

25 ***mental disorder***—

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

1 **10 Meaning of *mental illness***

2 In this Act:

3 *mental illness* means a condition that seriously impairs (either
4 temporarily or permanently) the mental functioning of a person in
5 1 or more areas of thought, mood, volition, perception, orientation
6 or memory, and is characterised by—

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

16 **11 People not to be regarded as having mental disorder or**
17 **mental illness**

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

- 20 (a) the person expresses or refuses or fails to express, or has
21 expressed or has refused or failed to express, a particular
22 political opinion or belief;
- 23 (b) the person expresses or refuses or fails to express, or has
24 expressed or has refused or failed to express, a particular
25 religious opinion or belief;
- 26 (c) the person expresses or refuses or fails to express, or has
27 expressed or has refused or failed to express, a particular
28 philosophy;

- 1 (d) the person expresses or refuses or fails to express, or has
2 expressed or has refused or failed to express, a particular
3 sexual preference or sexual orientation;
- 4 (e) the person engages in or refuses or fails to engage in, or has
5 engaged in or has refused or failed to engage in, a particular
6 political activity;
- 7 (f) the person engages in or refuses or fails to engage in, or has
8 engaged in or has refused or failed to engage in, a particular
9 religious activity;
- 10 (g) the person engages in or has engaged in sexual promiscuity;
- 11 (h) the person engages in or has engaged in immoral conduct;
- 12 (i) the person engages in or has engaged in illegal conduct;
- 13 (j) the person takes or has taken alcohol or any other drug;
- 14 (k) the person engages in or has engaged in antisocial behaviour.

15 **12 Meaning of *carer***

- 16 (1) For this Act, a person is a *carer* if the person provides personal care,
17 support or assistance to a person who has a mental disorder or
18 mental illness.
- 19 (2) However, a person is not a *carer* for another person—
- 20 (a) in relation to care, support or assistance that is provided—
- 21 (i) under a commercial arrangement, or an arrangement that
22 is substantially commercial; or
- 23 (ii) in the course of doing voluntary work for a charitable,
24 welfare or community organisation; or
- 25 (iii) as part of a course of education or training; or
- 26 (b) just because the person is the domestic partner, parent, child or
27 other relative, or guardian of the other person; or

1 (c) just because the person lives with the other person.

2 **13 Proceedings relating to children**

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

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

7 **Part 3.1 Rights in relation to information
8 and communication**

9 **14 Meaning of *responsible person*—pt 3.1**

10 In this part:

11 *responsible person* means—

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

19 **15 Information to be given to people**

20 (1) The responsible person for a mental health facility or community
21 care facility must ensure that, as soon as practicable after it is
22 decided to give treatment, care or support to a person at the facility,
23 the person—

24 (a) is orally advised of their rights under this Act; and

-
- 1 (b) is given a written information statement including—
- 2 (i) a statement of the right to obtain a second opinion from
- 3 an appropriate mental health professional; and
- 4 (ii) a statement of the right to obtain legal advice; and
- 5 (iii) a statement that, if the person has decision-making
- 6 capacity, the person has the right to—
- 7 (A) nominate someone else to be the person's
- 8 nominated person; and
- 9 (B) enter into an advance agreement; and
- 10 (C) make an advance consent direction; and
- 11 (iv) information about the role of a nominated person under
- 12 this Act; and
- 13 (v) the location of the information required to be available at
- 14 the facility under section 16; and
- 15 (vi) any other information relating to the treatment, care or
- 16 support of the person that the director-general considers
- 17 relevant; and
- 18 (vii) anything else prescribed by regulation.
- 19 (2) A mental health professional giving treatment, care or support in the
- 20 community to a person with a mental disorder or mental illness must
- 21 ensure that the advice and information mentioned in
- 22 subsection (1) (a) and (b) is given to the person as soon as
- 23 practicable after it is decided to give the person treatment, care or
- 24 support in the community.
- 25 (3) The responsible person or mental health professional must ensure
- 26 that the advice and information—
- 27 (a) is provided in a way that the person is most likely to
- 28 understand; and

- 1 (b) if the person appears to be unable to understand the advice or
2 information, the public advocate is told of that fact.
- 3 (4) The responsible person or mental health professional must also take
4 reasonable steps to give a copy of the information to—
- 5 (a) if the person has a nominated person—the nominated person;
6 and
- 7 (b) if the person has a guardian under the *Guardianship and*
8 *Management of Property Act 1991*—the guardian; and
- 9 (c) if the person has an attorney under the *Powers of Attorney*
10 *Act 2006*—the attorney; and
- 11 (d) if a health attorney is involved in the treatment, care or support
12 of the person—the health attorney; and
- 13 (e) if the person is a child—each person with parental
14 responsibility for the child under the *Children and Young*
15 *People Act 2008*, division 1.3.2 (Parental responsibility); and
- 16 (f) if the person has a legal representative—the legal
17 representative.

18 **16 Information to be available at facilities**

- 19 (1) The responsible person for a mental health facility or community
20 care facility must ensure that the following information is available
21 at the facility in a place readily accessible to people admitted to or
22 receiving treatment, care or support at the facility:
- 23 (a) copies of this Act, the *Guardianship and Management of*
24 *Property Act 1991* and any other relevant legislation;
- 25 (b) copies of any publications prepared by the administrative unit
26 responsible for that legislation for the purpose of explaining
27 the legislation;
- 28 (c) copies of information statements printed in different languages;

- 1 (d) a list of the address and telephone number and relevant
2 functions of the following:
- 3 (i) community sector advocacy organisations for people with
4 disabilities;
 - 5 (ii) community sector advocacy organisations for people with
6 mental illness;
 - 7 (iii) teletypewriter services (TTY);
 - 8 (iv) the ACAT;
 - 9 (v) the care coordinator;
 - 10 (vi) the chief psychiatrist;
 - 11 (vii) the children and young person commissioner;
 - 12 (viii) the disability and community services commissioner;
 - 13 (ix) the discrimination commissioner;
 - 14 (x) the health services commissioner;
 - 15 (xi) the human rights commissioner;
 - 16 (xii) the legal aid commission;
 - 17 (xiii) the Magistrates Court;
 - 18 (xiv) the ombudsman;
 - 19 (xv) the public advocate;
 - 20 (xvi) the Supreme Court;
 - 21 (xvii) translating and interpreting services.
- 22 (2) The responsible person must also ensure that a notice indicating
23 where the information is available is displayed in a prominent
24 position at the facility.

- 1 **17 Communication**
- 2 (1) The responsible person for a mental health facility or community
3 care facility must ensure that a person admitted to or receiving
4 treatment, care or support at the facility—
- 5 (a) is given reasonable opportunities and facilities to communicate
6 with people of the person’s choice by means other than written
7 communication; and
- 8 (b) is given, on request, reasonable opportunities and facilities for
9 preparing written communications and for enclosing the
10 communications in sealed envelopes.
- 11 (2) The responsible person for a mental health facility or community
12 care facility must ensure that any written communication addressed
13 to or written by a person admitted to or receiving treatment, care or
14 support at the facility is forwarded, without being opened and
15 without delay, to the person to whom it is addressed.
- 16 (3) Subsection (2) does not apply if the responsible person is complying
17 with a limit imposed on communication between the admitted
18 person and other people under section 48ZO (Limits on
19 communication—forensic mental health order).
- 20 **18 Failure by owner of facility to comply with pt 3.1**
- 21 (1) The owner of a mental health facility that is not conducted by the
22 Territory commits an offence if the owner fails to comply with this
23 part.
- 24 Maximum penalty: 20 penalty units.
- 25 (2) Subsection (1) does not apply if the owner has a reasonable excuse.
- 26 (3) An offence against this section is a strict liability offence.

1 Part 3.2 Nominated people

2 19 Nominated person

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

6 Examples

- 7 1 a close relative or close friend
8 2 a carer
9 3 the person's neighbour

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

12 *Note 2* If a form is approved under s 146A for this provision, the form must be
13 used.

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

- 17 (2) However, a person cannot be nominated under subsection (1) unless
18 the person—

- 19 (a) is an adult; and
20 (b) is able to undertake the functions of a nominated person; and
21 (c) is readily available; and
22 (d) agrees to the nomination.

23 20 Nominated person—functions

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

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

6 **21 Nominated person—obligations of person in charge of**
7 **facility**

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

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

21 **22 Nominated person—end of nomination**

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

- 1 (2) A nominated person may end their nomination by telling a member
2 of the person's treating team, orally or in writing, that they are not
3 able to continue to perform the functions of a nominated person.
- 4 *Note* If a form is approved under s 146A for this provision, the form must be
5 used.
- 6 (3) A nomination ended by a person under subsection (1) or (2) ends
7 on—
- 8 (a) the day the person tells the member of the treating team; or
9 (b) if the person tells the member of the treating team in writing
10 that the nomination ends on a later day—the later day.
- 11 (4) The chief psychiatrist may end the nomination of a nominated
12 person if—
- 13 (a) the chief psychiatrist is satisfied on reasonable grounds that—
- 14 (i) the nominated person is not able to continue to perform
15 the functions of a nominated person under section 20
16 (Nominated person—functions); or
- 17 (ii) the nominated person no longer satisfies the criteria
18 mentioned in section 19 (2) (Nominated person); or
- 19 (iii) it is in the best interest of the person who made the
20 nomination that the nomination ends; and
- 21 (b) the chief psychiatrist consults with the person who made the
22 nomination about the reasonable grounds for ending the
23 nomination.
- 24 (5) If the chief psychiatrist ends a nomination under subsection (4), the
25 chief psychiatrist—
- 26 (a) must make a record about the reason for ending the
27 nomination; and
- 28 (b) must give written notice of the day that the nomination is to
29 end to the following:

- 1 (i) the person who made the nomination;
2 (ii) the nominated person;
3 (iii) a member of the persons' treating team; and
4 *Note* If a form is approved under s 146A for this provision, the form
5 must be used.
- 6 (c) may, if the person who made the nomination has
7 decision-making capacity, ask the person whether there is
8 someone else who can be nominated; and
- 9 (d) must advise the person who made the nomination about
10 advocacy services that may be available to provide assistance
11 to the person.
- 12 **Examples—par (d)**
13 1 the public advocate
14 2 ACT Disability, Aged and Carer Advocacy Service
- 15 *Note* An example is part of the Act, is not exhaustive and may extend,
16 but does not limit, the meaning of the provision in which it
17 appears (see [Legislation Act](#), s 126 and s 132).
- 18 (6) A member of a person's treating team who is told about a
19 nomination ending under subsection (1), (2) or (4) must ensure
20 that—
21 (a) information about the nomination ending is entered in the
22 person's record as soon as practicable; and
23 (b) the person is told in a way that the person is most likely to
24 understand that the information has been entered in the
25 person's record; and
26 (c) the person is given a copy of the information entered in the
27 person's record.
- 28 *Note* If a form is approved under s 146A for this provision, the form must be
29 used.

- 1 (7) In this section:
2 *treating team*, for a person with a mental disorder or mental
3 illness—see section 24.

4 **23 Nominated person—protection from liability**

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

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

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

15 **Part 3.3 Advance agreements and**
16 **advance consent directions**

17 **24 Definitions—pt 3.3**

18 In this part:

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

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

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

7 **25 Rights in relation to advance agreements and advance**
8 **consent directions**

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

- 12 (a) is told that the person may enter into an advance agreement;
13 and
- 14 (b) is given the opportunity to enter into an advance agreement;
15 and
- 16 (c) is told that the person may make an advance consent direction;
17 and
- 18 (d) is given the opportunity to make an advance consent direction;
19 and
- 20 (e) is told that the person may have someone with them to assist in
21 entering into an advance agreement or making an advance
22 consent direction.

23 **Example—par (e)**

24 a nominated person could assist the person

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

1 **26 Entering into advance agreement**

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

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

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

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

13 **Examples—practical help**

14 1 arranging for the payment of bills

15 2 arranging care or providing care for a close relative or close friend
16 usually cared for by the person with the mental disorder or mental
17 illness

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

21 (2) An advance agreement for a person may also set out the following:

22 (a) if the person has an advance consent direction—a copy of the
23 advance consent direction;

24 (b) if the person has a nominated person—contact details for the
25 nominated person;

26 (c) if there is a person who is likely to provide practical help under
27 the agreement—contact details for the person;

28 (d) if the person has a carer—contact details for the carer;

- 1 (e) if the person has a guardian under the *Guardianship and*
2 *Management of Property Act 1991*—contact details for the
3 guardian;
- 4 (f) if the person has an attorney under the *Powers of Attorney*
5 *Act 2006*—contact details for the attorney;
- 6 (g) any other relevant details.
- 7 **Examples—par (g)**
- 8 1 that the person cannot speak, read or write English, but is fluent in
9 another stated language (for example, AUSLAN or Italian)
- 10 2 that the person cannot speak but can communicate using a stated
11 communication device (for example, a communication book or board)
- 12 (3) An advance agreement for a person must be—
- 13 (a) in writing; and
- 14 (b) signed by—
- 15 (i) the person; and
- 16 (ii) the representative of the person’s treating team; and
- 17 (iii) if the person has a nominated person—the nominated
18 person.
- 19 *Note* If a form is approved under s 146A for this provision, the form must be
20 used.
- 21 (4) If there is a person who is likely to provide practical help under the
22 advance agreement, the agreement may also be signed by that
23 person.
- 24 (5) The representative of the person’s treating team must ensure that—
- 25 (a) the advance agreement is entered in the person’s record; and
- 26 (b) a copy of the advance agreement is given to—
- 27 (i) the person; and

- 1 (ii) if the person has a nominated person—the nominated
2 person; and
- 3 (iii) any member of the person’s treating team who does not
4 have access to the person’s record.

5 **27 Making advance consent direction**

- 6 (1) A person with a mental disorder or mental illness may make a
7 direction (an *advance consent direction*) about 1 or more of the
8 following:
- 9 (a) the treatment, care or support that the person consents to
10 receiving if the mental disorder or mental illness results in the
11 person not having decision-making capacity;
- 12 (b) particular medications or procedures that the person consents
13 to receiving if the mental disorder or mental illness results in
14 the person not having decision-making capacity;
- 15 (c) particular medications or procedures that the person does not
16 consent to receiving if the mental disorder or mental illness
17 results in the person not having decision-making capacity;
- 18 (d) the people who may be provided with information about the
19 treatment, care or support the person requires for a mental
20 disorder or mental illness;
- 21 (e) the people who are not to be provided with information about
22 the treatment, care or support the person requires for a mental
23 disorder or mental illness.

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

- 26 (2) A person with a mental disorder or mental illness may make an
27 advance consent direction only if the person—
- 28 (a) is an adult; and
- 29 (b) has decision-making capacity; and

- 1 (c) has consulted with the person's treating team about options for
2 treatment care and support in relation to the mental disorder or
3 mental illness.
- 4 (3) An advance consent direction that does not include advance consent
5 for electroconvulsive therapy must be—
- 6 (a) in writing; and
- 7 (b) signed by the person in the presence of a witness who is not a
8 treating health professional for the person, and by the witness
9 in the presence of the person; and
- 10 (c) signed by the representative of the person's treating team in the
11 presence of a witness who is not a treating health professional
12 for the person, and by the witness in the presence of the
13 representative.
- 14 *Note* If a form is approved under s 146A for this provision, the form must be
15 used.
- 16 (4) An advance consent direction that includes advance consent for
17 electroconvulsive therapy must be—
- 18 (a) in writing; and
- 19 (b) signed by the person in the presence of 2 witnesses who are not
20 treating health professionals for the person, and by each
21 witness in the presence of the other witness and the person; and
- 22 (c) signed by the representative of the person's treating team in the
23 presence of 2 witnesses who are not treating health
24 professionals for the person, and by each witness in the
25 presence of the other witness and the representative.
- 26 *Note* If a form is approved under s 146A for this provision, the form must be
27 used.
- 28 (5) The representative of the person's treating team must ensure that—
- 29 (a) the advance consent direction is entered in the person's record;
30 and

- 1 (b) a copy of the advance consent direction is given to—
- 2 (i) the person; and
- 3 (ii) if the person has a nominated person—the nominated
- 4 person; and
- 5 (iii) if the person has a guardian under the *Guardianship and*
- 6 *Management of Property Act 1991*—the guardian and the
- 7 ACAT; and
- 8 (iv) if the person has an attorney under the *Powers of*
- 9 *Attorney Act 2006*—the attorney; and
- 10 (v) any member of the person’s treating team who does not
- 11 have access to the person’s record.

12 **28 Giving treatment etc under advance agreement or**

13 **advance consent direction**

- 14 (1) A mental health professional must, before giving treatment, care or
- 15 support to a person with a mental disorder or mental illness, take
- 16 reasonable steps to find out whether an advance agreement or
- 17 advance consent direction is in force in relation to the person.
- 18 (2) If an advance agreement is in force and the person does not have
- 19 decision-making capacity, a mental health professional—
- 20 (a) must, if reasonably practicable, give treatment, care or support
- 21 to the person in accordance with the preferences expressed in
- 22 the agreement; and
- 23 (b) must not apprehend, detain, restrain or use force to give effect
- 24 to the agreement.
- 25 (3) If an advance consent direction is in force and the person does not
- 26 have decision-making capacity, a mental health professional—
- 27 (a) may give the person the treatment, care or support if the
- 28 direction gives consent for the treatment, care or support; and

- 1 (b) may give a particular medication or procedure if the direction
2 indicates that the person consents to the medication or
3 procedure; and
- 4 (c) must not give a particular medication or procedure if the
5 direction indicates that the person does not consent to the
6 medication or procedure; and
- 7 (d) must not apprehend, detain, restrain or use force to give effect
8 to the direction.
- 9 (4) If an advance consent direction is in force in relation to a person but
10 the person resists being given treatment, care or support to which
11 they have consented under the direction, a mental health
12 professional may give the treatment, care or support to the person
13 only if the ACAT, on application by the mental health professional,
14 orders that the treatment, care or support may be given.
- 15 (5) If a mental health professional believes on reasonable grounds that
16 giving treatment, care or support to a person with impaired
17 decision-making capacity in accordance with an advance consent
18 direction is unsafe or inappropriate, the mental health professional
19 may give the person other treatment, care or support only if—
- 20 (a) both of the following apply:
- 21 (i) the person is willing to receive the treatment, care or
22 support;
- 23 (ii) the person has a guardian or health attorney under the
24 *Guardianship and Management of Property Act 1991*, or
25 attorney under the *Powers of Attorney Act 2006*, and the
26 guardian, health attorney or attorney gives consent to the
27 treatment, care or support in accordance with the
28 guardian, health attorney or attorney's appointment; or
- 29 (b) the ACAT, on application by the mental health professional,
30 orders that the treatment, care or support may be given.

- 1 (6) The mental health professional must enter in the person's record the
2 reasons for the treatment, care or support given under
3 subsection (5).

4 **29 Ending advance agreement or advance consent direction**

- 5 (1) A person who has decision-making capacity may end the person's
6 advance agreement by—
7 (a) telling a member of the person's treating team, orally or in
8 writing, that the person wants to end the agreement; or
9 (b) entering into another advance agreement.
- 10 (2) A person who has decision-making capacity may end the person's
11 advance consent direction by—
12 (a) telling a member of the person's treating team, orally or in
13 writing, that the person wants to end the direction; or
14 (b) making another advance consent direction.
- 15 (3) An advance agreement ended under subsection (1) (a) or an advance
16 consent direction ended under subsection (2) (a) ends on—
17 (a) the day the person tells the member of the persons' treating
18 team; or
19 (b) if the person tells the member of the persons' treating team in
20 writing that agreement or direction ends on a later day—the
21 later day.
- 22 (4) A member of a person's treating team who is told about an advance
23 agreement ending under subsection (1) (a) or an advance consent
24 direction ending under subsection (2) (a) must ensure that—
25 (a) information about the end of the agreement or direction—
26 (i) is entered in the person's record as soon as practicable;
27 and

- 1 (ii) is given to any member of the person's treating team who
2 does not have access to the person's record; and
- 3 (iii) if the person has a nominated person—is given to the
4 nominated person; and
- 5 (b) the person is told in a way that the person is most likely to
6 understand that the information has been entered in the
7 person's record; and
- 8 (c) the person is given a copy of the information entered in the
9 person's record.

10 **30 Effect of advance agreement and advance consent**
11 **direction on guardian with authority to give consent for**
12 **treatment, care or support**

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

1 **31 Effect of advance agreement and advance consent**
2 **direction on attorney with power to deal with health care**
3 **matters**

- 4 (1) This section applies if—
- 5 (a) an advance agreement or an advance consent direction is in
6 force in relation to a person; and
- 7 (b) the person has an enduring power of attorney under the *Powers*
8 *of Attorney Act 2006* that deals with health care matters under
9 that Act.
- 10 (2) The advance agreement or advance consent direction may be used
11 by the attorney to work out a person’s wishes or needs under the
12 *Powers of Attorney Act 2006*, schedule 1, section 1.6 (Participation
13 in decision making).
- 14 (3) Any power of the attorney to consent to treatment, care or support
15 for the person must be exercised taking into account the advance
16 agreement or advance consent direction.
- 17 (4) However, the attorney’s consent is not required for any treatment,
18 care or support for which consent is provided under the advance
19 consent direction.

20 **32 Effect of health direction on previous advance consent**
21 **direction**

- 22 (1) This section applies if—
- 23 (a) a person makes an advance consent direction; and
- 24 (b) after the direction is made the person makes a health direction
25 under the *Medical Treatment (Health Directions) Act 2006*;
26 and
- 27 (c) the health direction deals with a matter mentioned in the
28 advance consent direction.

- 1 (2) The advance consent direction has no effect to the extent that is
2 inconsistent with the health direction.

3 **Chapter 4 Assessments**

4 **Part 4.1 Applications for assessment 5 orders**

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

9 **33 Applications by people with mental disorder or mental 10 illness—assessment order**

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

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

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

1 **34 Applications by other people—assessment order**

2 (1) This section applies if a person (the *applicant*) believes on
3 reasonable grounds that—

4 (a) the health or safety of another person (the *subject person*) is, or
5 is likely to be, substantially at risk because the subject person
6 is unable, because of mental disorder or mental illness—

7 (i) to make reasonable judgments about matters relating to
8 the subject person’s health or safety; or

9 (ii) to do something necessary for the subject person’s health
10 or safety; or

11 (b) another person (the *subject person*) is doing, or is likely to do,
12 because of mental disorder or mental illness, serious harm to
13 others.

14 (2) The applicant may apply to the ACAT for an assessment order in
15 relation to the subject person.

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

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

20 **35 Applications by referring officers—assessment order**

21 (1) This section applies if a referring officer believes on reasonable
22 grounds that—

23 (a) a person alleged to have committed an offence has a mental
24 disorder or mental illness; and

25 (b) because of the mental disorder or mental illness—

26 (i) the person’s health or safety is, or is likely to be,
27 substantially at risk; or

- 1 (ii) the person is doing, or is likely to do, serious harm to
2 others; and
- 3 (c) it may not be appropriate to prosecute, or to continue to
4 prosecute, the person considering—
- 5 (i) the nature and circumstances of the alleged offence; and
6 (ii) the person's apparent mental disorder or mental illness.
- 7 (2) The referring officer may apply to the ACAT for an assessment
8 order in relation to the person.
- 9 *Note* After an assessment is made, the ACAT may decide to make a mental
10 health order in relation to a person (see pt 5.2). The ACAT is not able
11 to make a forensic mental health order for a person unless the person is
12 otherwise a person for whom a forensic mental health order can be
13 made (see ch 7).
- 14 (3) A referring officer who applies under subsection (2) and believes on
15 reasonable grounds that there is a risk of serious danger to public
16 safety from the person, must tell the ACAT, in writing, about the
17 risk and the basis for the belief about the risk.
- 18 (4) In this section:
- 19 ***alleged to have committed an offence***—a person is ***alleged to have***
20 ***committed an offence*** if—
- 21 (a) the person is arrested in connection with an offence; or
22 (b) a police officer believes on reasonable grounds that there are
23 sufficient grounds on which to charge the person in connection
24 with an offence; or
25 (c) the person is charged in connection with an offence.

- 1 **36 Applicant and referring officer to tell ACAT of risks—**
2 **assessment order**
- 3 (1) This section applies if—
- 4 (a) a person (the *applicant*) applies under section 34 (Applications
5 by other people—assessment order), or a referring officer
6 applies under section 35, for an assessment order in relation to
7 someone else; and
- 8 (b) the applicant or referring officer believes on reasonable
9 grounds that anything to do with the application process is
10 likely to substantially increase—
- 11 (i) the risk to the other person’s health or safety; or
12 (ii) the risk of serious harm to others.
- 13 (2) The application must state—
- 14 (a) the applicant’s or referring officer’s belief about the
15 substantially increased risk; and
- 16 (b) the basis for the belief.
- 17 (3) The ACAT must give the chief psychiatrist a copy of the
18 application.

19 **Part 4.2 Assessment orders**

20 **36A Assessment order**

- 21 The ACAT may order an assessment of a person if—
- 22 (a) an application for an assessment order is made under part 4.1
23 and the ACAT is satisfied on the face of the application that—
- 24 (i) the person appears to have a mental disorder or mental
25 illness; and

- 1 (ii) either—
- 2 (A) the person's health or safety is, or is likely to be,
- 3 substantially at risk; or
- 4 (B) the person is doing, or is likely to do, serious harm
- 5 to others; or
- 6 (b) the ACAT reviews a mental health order in force in relation to
- 7 the person under section 36ZQ (Review, amendment or
- 8 revocation of mental health order); or
- 9 (c) the person is required to submit to the jurisdiction of the
- 10 ACAT under—
- 11 (i) an ACAT mental health provision in a care and
- 12 protection order or interim care and protection order; or
- 13 (ii) an interim therapeutic protection order; or
- 14 (d) the person is required by a court to submit to the jurisdiction of
- 15 the ACAT under the [Crimes Act](#), part 13 or the [Crimes Act](#)
- 16 [1914](#) (Cwlth), part 1B; or
- 17 (e) the ACAT reviews an order for detention in force in relation to
- 18 the person under section 72 (Review of detention under court
- 19 order).

20 *Note* If a person is assessed under an assessment order as having a mental

21 disorder or mental illness, the ACAT may make a mental health order or

22 forensic mental health order in relation to the person (see s 36V,

23 s 36ZD, s 48ZA and s 48ZH).

24 **36B Consent for assessment order**

- 25 (1) If the ACAT is considering ordering an assessment of a person
- 26 under section 36A (a), (b) or (c), the ACAT must take reasonable
- 27 steps to—
- 28 (a) tell the person in writing that—
- 29 (i) the ACAT is considering ordering an assessment; and

-
- 1 (ii) an assessment may lead to an order for treatment; and
2 (iii) if an order for treatment is made at a later time the
3 person's rights in relation to treatment will be explained
4 to the person at that time; and
5 (b) find out the person's opinion in relation to the assessment; and
6 (c) obtain the person's consent to the assessment.
7 (2) However, subsection (1) does not prevent the ACAT from ordering
8 an assessment without the person's consent.

9 **36C Emergency assessment order**

- 10 (1) This section applies if—
11 (a) the ACAT is considering ordering an assessment of a person
12 under section 36A (a), (b) or (c); and
13 (b) a presidential member of the ACAT has a serious concern
14 about the immediate safety of the person, the applicant for the
15 order or another person arising out of the application process.
16 (2) The presidential member of the ACAT—
17 (a) must give the chief psychiatrist written notice of the serious
18 concern; and
19 (b) may if necessary and reasonable order an assessment without
20 complying with section 36B (Consent for assessment order).

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

23 *Note 2* Section 79A (Notice of hearing) does not apply in relation to the
24 making of an emergency assessment order (see s 79A (3)).

- 1 **36D Content and effect of assessment order**
- 2 (1) An assessment order (including an emergency assessment order)
- 3 must—
- 4 (a) state the nature of the assessment to be conducted; and
- 5 (b) state the mental health facility at which the assessment is to be
- 6 conducted and, if appropriate, the person who is to conduct the
- 7 assessment; and
- 8 (c) direct the person to be assessed to attend the mental health
- 9 facility and, if necessary and reasonable, stay at the facility
- 10 until the assessment has been conducted; and
- 11 (d) direct the person in charge of the mental health facility to—
- 12 (i) if appropriate, admit the person to be assessed to the
- 13 facility to conduct the assessment; and
- 14 (ii) if necessary and reasonable, detain the person at the
- 15 facility until the assessment has been conducted; and
- 16 (iii) provide the assistance that is necessary and reasonable to
- 17 conduct the assessment.
- 18 (2) An assessment order (including an emergency assessment order)
- 19 authorises—
- 20 (a) the conduct of the assessment stated in the order; and
- 21 (b) anything necessary and reasonable to be done to conduct the
- 22 assessment.
- 23 (3) Before making an assessment order (including an emergency
- 24 assessment order) for an assessment at a stated mental health facility
- 25 or by a stated person, the ACAT must be satisfied that the
- 26 assessment can be provided or performed at the facility or by the
- 27 person.

- 1 (4) In making an assessment order (other than an emergency assessment
2 order), the ACAT must explain the effect of section 36V
3 (Psychiatric treatment order) or section 36ZD (Community care
4 order) to the person in relation to whom the order is to be made, in a
5 way that the person is most likely to understand.

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

10 **36E Public advocate to be told about assessment order**

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

14 **36F Time for conducting assessment**

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

1 **36G Removal order to conduct assessment**

- 2 (1) This section applies if the ACAT makes—
- 3 (a) an assessment order in relation to a person under
- 4 section 36A (a), (b) or (c) (Assessment order) who—
- 5 (i) has not been served with a subpoena under the *ACT Civil*
- 6 *and Administrative Tribunal Act 2008*, section 41
- 7 (Powers in relation to witnesses etc) for a reason stated in
- 8 section 82 (3) (Subpoena to appear in person); or
- 9 (ii) does not appear at a proceeding in relation to the order
- 10 under a subpoena given under the *ACT Civil and*
- 11 *Administrative Tribunal Act 2008*, section 41; or
- 12 (iii) does not comply with the assessment order; or
- 13 (b) an assessment order in relation to a person under
- 14 section 36A (d) or (e); or
- 15 (c) an emergency assessment order in relation to a person.
- 16 (2) The ACAT may order (a **removal order**) the removal of the person
- 17 to an approved mental health facility to conduct the assessment if
- 18 satisfied that—
- 19 (a) the person has been made aware of the assessment order; and
- 20 (b) either—
- 21 (i) if the person does not comply with the assessment
- 22 order—the person does not have a reasonable excuse for
- 23 failing to comply with the order; or
- 24 (ii) in any other case—the ACAT is satisfied that it is
- 25 appropriate in the circumstances.
- 26 (3) The removal order must state—
- 27 (a) the day (not later than 1 month after the day the order is made)
- 28 when the order stops having effect; and

- 1 (b) the mental health facility to which the person is to be removed;
2 and
3 (c) the nature of the assessment to be conducted in relation to the
4 person.
- 5 (4) A removal order authorises—
6 (a) the apprehension of the person named in the order; and
7 (b) the removal of the person to the mental health facility stated in
8 the order.

9 **36H Executing removal order**

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

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

16 **36I Contact with others**

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

1 (d) if the person has a nominated person—the nominated person.

2 **36J Public advocate and lawyer to have access**

3 (1) This section applies if a person is admitted to a mental health
4 facility under an assessment order.

5 (2) The public advocate and the person’s lawyer are entitled to have
6 access to the person at any time.

7 (3) The person in charge of the mental health facility must, if asked by
8 the public advocate or the person’s lawyer, give the reasonable
9 assistance necessary to allow the public advocate or lawyer to have
10 access to the person.

11 **36K Person to be assessed to be told about order**

12 (1) This section applies if a person is admitted to a mental health
13 facility under an assessment order.

14 (2) The person in charge of the mental health facility must, before an
15 assessment is conducted, ensure that the person to be assessed is
16 told about the assessment order, including the process of assessment
17 and possible outcome of an assessment, in a language and way of
18 communicating that the person is likely to understand.

19 (3) This section applies even if the person to be assessed was present
20 when the order was made.

21 **36L Copy of assessment**

22 (1) This section applies if an assessment is conducted at a mental health
23 facility under an assessment order.

24 (2) The person in charge of the mental health facility must, as soon as
25 practicable, but not later than 7 days after completing the
26 assessment—

27 (a) give a copy of the assessment to—

28 (i) the person assessed; and

- 1 (ii) the ACAT; and
2 (iii) the public advocate; and
3 (iv) if the person is a child—each person with parental
4 responsibility for the child under the *Children and Young*
5 *People Act 2008*, division 1.3.2 (Parental responsibility);
6 and
7 (v) if the person was assessed as a result of an application
8 under section 35 (Applications by referring officers—
9 assessment order)—the referring officer; and
10 (b) tell the following people in writing about the outcome of the
11 assessment:
12 (i) if the person has a nominated person—the nominated
13 person;
14 (ii) if the person has a guardian under the *Guardianship and*
15 *Management of Property Act 1991*—the guardian;
16 (iii) if the person has an attorney under the *Powers of*
17 *Attorney Act 2006*—the attorney.

18 **36M Notice of outcome of assessment**

- 19 (1) This section applies if an assessment is conducted as a result of an
20 application under section 34 (Applications by other people—
21 assessment order) or section 35 (Applications by referring
22 officers—assessment order).
23 (2) The ACAT, must as soon as practicable after it is given a copy of
24 the assessment under section 36L (2), give written notice to the
25 applicant or the referring officer of any recommendations made by
26 the assessment.

- 1 (3) An applicant or referring officer who receives notice under
2 subsection (2) may, within 48 hours of receiving the notice, give the
3 following to the ACAT:
- 4 (a) further information about the person’s mental disorder or
5 mental illness;
- 6 (b) concerns about the implications for the person or for other
7 people of not considering a mental health order in relation to
8 the person.
- 9 (4) In deciding whether to hold a hearing to consider making a mental
10 health order in relation to a person, the ACAT must take into
11 account the information provided under subsection (3).

12 **Chapter 5 Mental health orders**

13 **Part 5.1 Preliminary**

14 **36N Definitions—ch 5**

15 In this chapter:

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

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

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

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

1 **Part 5.2** **Applications for mental health** 2 **orders**

3 **36O** **Applications for mental health orders**

4 (1) This section applies if a relevant person believes on reasonable
5 grounds that a person (the *subject person*) is a person in relation to
6 whom the ACAT could reasonably make an order under
7 section 36V (Psychiatric treatment order) or section 36ZD
8 (Community care order).

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

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

14 *Note 2* Requirements for applications to the ACAT are set out in the *ACT Civil*
15 *and Administrative Tribunal Act 2008*, s 10.

16 *Note 3* If a form is approved under the *ACT Civil and Administrative Tribunal*
17 *Act 2008*, s 117 for the application, the form must be used.

18 (3) The application must include—

19 (a) a written statement by the relevant person addressing the
20 criteria the ACAT must consider in making an order under
21 section 36V (Psychiatric treatment order) or
22 section 36ZD (Community care order); and

23 (b) a plan setting out the proposed treatment, care or support of the
24 subject person.

25 **36P** **Applicant to tell ACAT of risks**

26 (1) This section applies if—

27 (a) a person (the *applicant*) applies under section 36O for a mental
28 health order in relation to someone else (the *subject person*);
29 and

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

9 **Part 5.3 Making of mental health orders—**
10 **preliminary matters**

11 **36Q ACAT must consider assessment—mental health order**

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

1 **36R Consultation by ACAT—mental health order**

- 2 (1) Before making a mental health order in relation to a person, the
3 ACAT must, as far as practicable, consult—
- 4 (a) if the person is a child—each person with parental
5 responsibility for the child under the *Children and Young*
6 *People Act 2008*, division 1.3.2 (Parental responsibility); and
- 7 (b) if the person has a guardian under the *Guardianship and*
8 *Management of Property Act 1991*—the guardian; and
- 9 (c) if the person has an attorney under the *Powers of Attorney*
10 *Act 2006*—the attorney; and
- 11 (d) if the person has a nominated person—the nominated person;
12 and
- 13 (e) if a health attorney is involved in the treatment, care or support
14 of the person—the health attorney; and
- 15 (f) if the chief psychiatrist or care-coordinator is likely to be
16 responsible for providing the treatment, care or support
17 proposed to be ordered—the chief psychiatrist or
18 care-coordinator; and
- 19 (g) if the person is a detainee, a person released on licence, or a
20 person serving a community-based sentence—the corrections
21 director-general; and
- 22 (h) if the person is a covered by a bail order that includes a
23 condition that the person accept supervision under the *Bail*
24 *Act 1992*, section 25 (4) (e) or section 25A—the
25 director-general responsible for the supervision of the person
26 under the *Bail Act 1992*; and
- 27 (i) if the person is a child covered by a bail order that includes a
28 condition that the child accept supervision under the *Bail*
29 *Act 1992*, section 26 (2)—the CYP director-general; and

- 1 (j) if the person is a young detainee or a young offender serving a
2 community-based sentence—the CYP director-general; and
- 3 (k) if an assessment order under part 4.1 (Applications for
4 assessment orders) gave rise to the ACAT consideration of the
5 making of the mental health order—the applicant for the
6 assessment order.
- 7 (2) Before making a mental health order in relation to a person who has
8 a carer, the ACAT must, if the ACAT has contact details for the
9 carer, tell the carer in writing that—
- 10 (a) a hearing will be held in relation to making a mental health
11 order for the person; and
- 12 (b) the carer may do either or both of the following:
- 13 (i) make a submission to the ACAT in relation to making a
14 mental health order for the person;
- 15 (ii) apply to the ACAT to attend the hearing.

16 **36S ACAT must hold hearing—mental health order**

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

19 **36T What ACAT must take into account—mental health order**

- 20 (1) In making a mental health order in relation to a person, the ACAT
21 must take into account the following:
- 22 (a) for a person the subject of an application under section 36O
23 (Applications for mental health orders)—a plan for the
24 proposed treatment, care or support of the person, mentioned in
25 section 36O (3) (b);
- 26 (b) whether the person consents, refuses to consent or has the
27 decision-making capacity to consent, to a proposed course of
28 treatment, care or support;

- 1 (c) the views and wishes of the person, so far as they can be found
2 out, including in—
- 3 (i) an advance agreement; and
4 (ii) an advance consent direction;
- 5 (d) the views and wishes of the people responsible for the
6 day-to-day care of the person, so far as those views and wishes
7 are made known to the ACAT;
- 8 (e) the views of the people appearing at the proceeding;
- 9 (f) the views of the people consulted under section 36R
10 (Consultation by ACAT—mental health order);
- 11 (g) that any restrictions placed on the person should be the
12 minimum necessary for the safe and effective care of the
13 person;
- 14 (h) any alternative treatment, care or support available,
15 including—
- 16 (i) the purpose of the treatment, care or support; and
17 (ii) the benefits likely to be derived by the person from the
18 treatment, care or support; and
19 (iii) the distress, discomfort, risks, side effects or other
20 disadvantages associated with the treatment, care or
21 support;
- 22 (i) any relevant medical history of the person;
- 23 (j) for a person required by a court to submit to the jurisdiction of
24 the ACAT under the [Crimes Act](#), part 13 or the [Crimes Act](#)
25 [1914](#) (Cwlth), part 1B—
- 26 (i) the nature and circumstances of the alleged offence or the
27 offence in relation to which the person is charged; and

- 1 (ii) the nature and extent of the person's mental illness or
2 mental disorder and the effect it is likely to have on the
3 person's behaviour in the future; and
- 4 (iii) whether, if the person is not detained—
- 5 (A) the person's health or safety is, or is likely to be,
6 substantially at risk; or
- 7 (B) the person is likely to do serious harm to others;
- 8 (k) anything else prescribed by regulation.
- 9 *Note* For principles that must be taken into account when exercising a
10 function under this Act, see s 6.
- 11 (2) Before the ACAT makes a mental health order for the provision of
12 particular treatment, care or support at a stated facility or by a stated
13 person, the relevant official for the order must, in writing, tell the
14 ACAT that the treatment, care or support can be performed at the
15 stated facility or by the stated person.

16 **36U ACAT must not order particular treatment, care or**
17 **support—mental health order**

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

20 **Part 5.4 Psychiatric treatment orders**

21 **36V Psychiatric treatment order**

- 22 (1) This section applies to—
- 23 (a) a person assessed under an assessment order; or
- 24 (b) a person in relation to whom an application for a mental health
25 order has been made under part 5.2; or
- 26 (c) a person in relation to whom an application for a forensic
27 mental health order has been made under division 7.1.2; or

-
- 1 (d) a person required by a court to submit to the jurisdiction of the
2 ACAT under the [Crimes Act](#), part 13 or the [Crimes Act 1914](#)
3 (Cwlth), part 1B.
- 4 (2) The ACAT may make a psychiatric treatment order in relation to the
5 person if—
- 6 (a) the person has a mental illness; and
- 7 (b) either—
- 8 (i) the person does not have decision-making capacity to
9 consent to the treatment, care or support and refuses to
10 receive the treatment; or
- 11 (ii) the person has decision-making capacity to consent to the
12 treatment, care or support, but refuses to consent; and
- 13 (c) the ACAT believes on reasonable grounds that, because of the
14 mental illness, the person—
- 15 (i) is doing, or is likely to do, serious harm to themselves or
16 someone else; or
- 17 (ii) is suffering, or is likely to suffer, serious mental or
18 physical deterioration; and
- 19 (d) in relation to a person mentioned in paragraph (b) (ii)—the
20 ACAT is satisfied that the harm or deterioration, or likely harm
21 or deterioration, mentioned in paragraph (c) is of such a serious
22 nature that it outweighs the person's right to refuse to consent;
23 and
- 24 (e) the ACAT is satisfied that psychiatric treatment, care or
25 support is likely to—
- 26 (i) reduce the harm or deterioration, or the likelihood of the
27 harm or deterioration, mentioned in paragraph (c); or
- 28 (ii) result in an improvement in the person's psychiatric
29 condition; and

- 1 (f) if an application has been made for a forensic mental health
2 order—the ACAT is satisfied that a psychiatric treatment order
3 should be made instead; and
- 4 (g) the ACAT is satisfied that the treatment, care or support to be
5 provided under the psychiatric treatment order cannot be
6 adequately provided in another way that would involve less
7 restriction of the freedom of choice and movement of the
8 person.

9 **36W Content of psychiatric treatment order**

- 10 (1) A psychiatric treatment order made in relation to a person may state
11 1 or more of the following:
- 12 (a) an approved mental health facility to which the person may be
13 admitted;
- 14 (b) that the person must do either or both of the following:
- 15 (i) undergo psychiatric treatment, other than
16 electroconvulsive therapy or psychiatric surgery;
- 17 (ii) undertake a counselling, training, therapeutic or
18 rehabilitation program;
- 19 (c) that limits may be imposed on communication between the
20 person and other people.
- 21 (2) A psychiatric treatment order made in relation to a person must—
- 22 (a) state that the person must comply with any determination made
23 under section 36Z (Role of chief psychiatrist—psychiatric
24 treatment order); and
- 25 (b) be accompanied by a statement about how the person meets the
26 criteria under section 36V (2) (Psychiatric treatment order).
- 27 (3) A psychiatric treatment order must not include any requirement
28 mentioned in section 36Y (1) (Content of restriction order made
29 with psychiatric treatment order).

- 1 **36X Criteria for making restriction order with psychiatric**
2 **treatment order**
- 3 In addition to making a psychiatric treatment order in relation to a
4 person, the ACAT may make a restriction order in relation to the
5 person if satisfied that—
- 6 (a) it is in the interests of the person’s health or safety or the safety
7 of someone else or the public to do so; and
- 8 (b) the treatment, care or support to be provided under the
9 psychiatric treatment order cannot be adequately provided in
10 another way that would involve less restriction of the freedom
11 of choice and movement of the person.
- 12 **36Y Content of restriction order made with psychiatric**
13 **treatment order**
- 14 (1) A restriction order made under section 36X in relation to a person
15 may state either or both of the following:
- 16 (a) that the person must—
- 17 (i) live (but not be detained) at a stated place; or
- 18 (ii) be detained at a stated place;
- 19 (b) that the person must not approach a stated person or stated
20 place or undertake stated activities.
- 21 (2) A restriction order does not prevent the chief psychiatrist from
22 granting leave to a person detained at a stated place.
- 23 **36Z Role of chief psychiatrist—psychiatric treatment order**
- 24 (1) The chief psychiatrist is responsible for the treatment, care or
25 support of a person to whom a psychiatric treatment order applies.
- 26 (2) Within 5 working days after the day the order is made, the chief
27 psychiatrist must determine, in writing—

- 1 (a) whether the person requires admission to an approved mental
2 health facility to receive treatment, care or support under the
3 order and, if so, whether the person can be given leave from
4 the facility; and
- 5 (b) for a person living in the community—the times when and the
6 place where the person is required to attend to receive
7 treatment, care or support, in accordance with the order; and
- 8 (c) the nature of the psychiatric treatment to be given to the
9 person.
- 10 *Note* If a form is approved under s 146A for a determination, the form must
11 be used.
- 12 (3) If the chief psychiatrist forms a belief on reasonable grounds that a
13 person subject to a psychiatric treatment order who is living in the
14 community requires admission to an approved mental health facility
15 to receive treatment, care or support under the order, the chief
16 psychiatrist may determine, in writing—
- 17 (a) the approved mental health facility that the person is to be
18 admitted to; and
- 19 (b) the nature of the psychiatric treatment to be given to the
20 person; and
- 21 (c) whether the person can be given leave from the facility.
- 22 *Note* If a form is approved under s 146A for a determination, the form must
23 be used.
- 24 (4) For subsection (2) (c) or (3) (b), the chief psychiatrist must not
25 determine treatment that has, or is likely to have, the effect of
26 subjecting the person to whom it is given to undue stress or
27 deprivation, having regard to the benefit likely to result from the
28 treatment.

- 1 (5) Before making a determination in relation to a person, the chief
2 psychiatrist must—
- 3 (a) take all reasonable steps to consult the following:
- 4 (i) the person;
- 5 (ii) if the person is a child—each person with parental
6 responsibility for the child under the *Children and Young
7 People Act 2008*, division 1.3.2 (Parental responsibility);
- 8 (iii) if the person has a guardian under the *Guardianship and
9 Management of Property Act 1991*—the guardian;
- 10 (iv) if the person has an attorney under the *Powers of
11 Attorney Act 2006*—the attorney;
- 12 (v) if the person has a carer—the carer;
- 13 (vi) if the person has a nominated person—the nominated
14 person;
- 15 (vii) if a health attorney is involved in the treatment, care or
16 support of the person—the health attorney; and
- 17 (b) take into account the views of the people consulted under this
18 section.
- 19 (6) After making a determination in relation to a person, the chief
20 psychiatrist must record whether the person was consulted and—
- 21 (a) if the person was consulted—what the person’s views were; or
22 (b) if the person was not consulted—the reasons why.
- 23 (7) The chief psychiatrist must, as soon as practicable after making a
24 determination, give a copy of the determination to—
- 25 (a) the person; and
- 26 (b) if the person is a child—each person with parental
27 responsibility for the child under the *Children and Young
28 People Act 2008*, division 1.3.2 (Parental responsibility); and

- 1 (c) the ACAT; and
2 (d) the public advocate; and
3 (e) if the person has a guardian under the *Guardianship and*
4 *Management of Property Act 1991*—the guardian; and
5 (f) if the person has an attorney under the *Powers of Attorney*
6 *Act 2006*—the attorney; and
7 (g) if the person has a nominated person—the nominated person;
8 and
9 (h) if a health attorney is involved in the treatment, care or support
10 of the person—the health attorney.

11 **36ZA Treatment etc to be explained—psychiatric treatment**
12 **order**

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

19 **36ZB Action if psychiatric treatment order no longer**
20 **appropriate—no longer person in relation to whom ACAT**
21 **could make order**

- 22 (1) This section applies if—
23 (a) a psychiatric treatment order is in force in relation to a person;
24 and
25 (b) the chief psychiatrist is satisfied that—
26 (i) the person is no longer a person in relation to whom the
27 ACAT could make a psychiatric treatment order; or

- 1 (ii) if a restriction order is also in force in relation to the
2 person—it is no longer necessary for the restriction order
3 to be in force.

4 *Note 1* For the criteria for making a psychiatric treatment order, see s 36V. For
5 the criteria for making a restriction order with a psychiatric treatment
6 order, see s 36X.

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

9 (2) The chief psychiatrist must take all reasonable steps to give notice
10 to—

11 (a) if the person has a carer—the carer; and

12 (b) if the person has a nominated person—the nominated person.

13 (3) The notice must—

14 (a) include the reasons why the chief psychiatrist is satisfied of the
15 matter mentioned in subsection (1) (b); and

16 (b) ask whether the carer or nominated person is aware of any
17 other information that may be relevant to whether the
18 psychiatric treatment order or restriction order continues to be
19 appropriate for the person; and

20 (c) state that, subject to consideration of any information given
21 under paragraph (b), the chief psychiatrist must tell the ACAT
22 and public advocate of the matter mentioned in
23 subsection (1) (b) and the ACAT must review the psychiatric
24 treatment order or restriction order; and

25 (d) tell the carer or nominated person that they are entitled to make
26 a submission to the ACAT review of the psychiatric treatment
27 order or restriction order.

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

- 1 (4) If, having taken into account any information given under
2 subsection (3) (b), the chief psychiatrist is still satisfied of the matter
3 mentioned in subsection (1) (b), the chief psychiatrist must tell the
4 ACAT and the public advocate in writing about—
- 5 (a) the chief psychiatrist’s opinion, including the reasons for the
6 opinion; and
- 7 (b) the details of any information given under subsection (3) (b).
- 8 *Note* The ACAT must review the order within 72 hours after being notified
9 under this section (see s 36ZQ (3)).

10 **36ZC Powers in relation to psychiatric treatment order**

- 11 (1) This section applies if a psychiatric treatment order has been made
12 in relation to a person and—
- 13 (a) a restriction order has also been made in relation to the person
14 requiring the person to be detained at a stated place; or
- 15 (b) the chief psychiatrist makes a determination under
16 section 36Z (Role of chief psychiatrist—psychiatric treatment
17 order) requiring the person to be admitted to an approved
18 mental health facility; or
- 19 (c) the person is detained at an approved mental health facility
20 under section 36ZO (Contravention of mental health order).
- 21 (2) The chief psychiatrist may—
- 22 (a) detain the person at an approved mental health facility; and
- 23 *Note* See s 140 (Powers of search and seizure).
- 24 (b) subject the person to the minimum confinement or restraint
25 that is necessary and reasonable to—
- 26 (i) prevent the person from causing harm to themselves or
27 someone else; or

- 1 (ii) ensure that the person remains in custody under the order;
2 and
- 3 (c) subject the person to involuntary seclusion if satisfied that it is
4 the only way in the circumstances to prevent the person from
5 causing harm to themselves or someone else; and
- 6 (d) determine that the person can be given leave from the facility.
- 7 *Note* For principles that must be taken into account when exercising a
8 function under this Act, see s 6.
- 9 (3) If the chief psychiatrist subjects a person to involuntary seclusion,
10 the chief psychiatrist must ensure that the person is examined by a
11 relevant doctor of the relevant place at least once in each 4-hour
12 period for which the person is in seclusion.
- 13 (4) If the chief psychiatrist determines that a person be given
14 medication for the treatment of the person's mental illness, the chief
15 psychiatrist may—
- 16 (a) approve the giving by appropriately trained people of
17 medication prescribed by a doctor in accordance with the chief
18 psychiatrist's determination; and
- 19 (b) use, or authorise someone else to use, the force and assistance
20 that is necessary and reasonable to give the medication
21 (*forcible giving of medication*).
- 22 (5) If the chief psychiatrist subjects a person to confinement or restraint,
23 involuntary seclusion or forcible giving of medication, the chief
24 psychiatrist must—
- 25 (a) enter in the person's record the fact of and the reasons for the
26 confinement or restraint, involuntary seclusion or forcible
27 giving of medication; and
- 28 (b) tell the public advocate in writing within 12 hours after the
29 person is subjected to the confinement or restraint, involuntary
30 seclusion or forcible giving of medication; and

1 (c) keep a register of the confinement or restraint, involuntary
2 seclusion or forcible giving of medication.

3 (6) In this section:

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

8 **Part 5.5 Community care orders**

9 **36ZD Community care order**

10 (1) This section applies to—

11 (a) a person assessed under an assessment order; or

12 (b) a person in relation to whom an application for a mental health
13 order has been made under part 5.2; or

14 (c) a person in relation to whom an application for a forensic
15 mental health order has been made under division 7.1.2; or

16 (d) a person required by a court to submit to the jurisdiction of the
17 ACAT under the [Crimes Act](#), part 13 or the [Crimes Act 1914](#)
18 (Cwlth), part 1B.

19 (2) The ACAT may make a community care order in relation to the
20 person if—

21 (a) the person has a mental disorder; and

22 (b) either—

23 (i) the person does not have decision-making capacity to
24 consent to the treatment, care or support and refuses to
25 receive the treatment, care or support; or

26 (ii) the person has decision-making capacity to consent to the
27 treatment, care or support, but refuses to consent; and

- 1 (c) the ACAT believes on reasonable grounds that, because of the
2 mental disorder, the person—
- 3 (i) is doing, or is likely to do, serious harm to themselves or
4 someone else; or
- 5 (ii) is suffering, or is likely to suffer, serious mental or
6 physical deterioration; and
- 7 (d) in relation to a person mentioned in paragraph (b) (ii)—the
8 ACAT is satisfied that the harm or deterioration, or likely harm
9 or deterioration, mentioned in paragraph (c) is of such a serious
10 nature that it outweighs the person's right to refuse to consent;
11 and
- 12 (e) the ACAT is satisfied that treatment, care or support is likely to
13 reduce the harm or deterioration, or likelihood of harm or
14 deterioration, mentioned in paragraph (c); and
- 15 (f) the ACAT is satisfied that, in the circumstances, a psychiatric
16 treatment order should not be made; and
- 17 (g) if an application has been made for a forensic community care
18 order—the ACAT is satisfied that a community care order
19 should be made instead; and
- 20 (h) the ACAT is satisfied that the treatment, care or support to be
21 provided under the community care order cannot be adequately
22 provided in another way that would involve less restriction of
23 the freedom of choice and movement of the person.

24 **36ZE Content of community care order**

- 25 (1) A community care order made in relation to a person may state 1 or
26 more of the following:
- 27 (a) that the person is to be given treatment, care or support;
- 28 (b) that the person may be given medication for the treatment of
29 the person's mental disorder that is prescribed by a doctor;

- 1 (c) that the person is to undertake a counselling, training,
2 therapeutic or rehabilitation program;
- 3 (d) that limits may be imposed on communication between the
4 person and other people.
- 5 (2) A community care order may not include any requirement
6 mentioned in section 36ZG (Content of restriction order made with
7 community care order etc).
- 8 (3) A community care order made in relation to a person must—
- 9 (a) state that the person must comply with any determination made
10 under section 36ZH (Role of care coordinator—community
11 care order); and
- 12 (b) be accompanied by a statement about how the person meets the
13 criteria under section 36ZD (2) (Community care order).

14 **36ZF Criteria for making restriction order with community care**
15 **order**

16 In addition to making a community care order in relation to a
17 person, the ACAT may make a restriction order in relation to the
18 person if satisfied that—

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

- 1 **36ZG Content of restriction order made with community care**
2 **order etc**
- 3 (1) A restriction order made under section 36ZF in relation to a person
4 may state either or both of the following:
- 5 (a) that the person must—
- 6 (i) live (but not be detained) at a stated approved community
7 care facility or another stated place; or
- 8 (ii) be detained at a stated community care facility;
- 9 (b) that the person must not approach a stated person or stated
10 place or undertake stated activities.
- 11 (2) If the restriction order states that the person must be detained at a
12 stated community care facility, the order may also state whether the
13 person may be granted leave from the facility.
- 14 (3) The ACAT may, on application, grant leave to a person detained at
15 a stated community care facility (whether or not the order includes a
16 statement about leave).
- 17 **36ZH Role of care coordinator—community care order**
- 18 (1) The care coordinator is responsible for coordinating the provision of
19 treatment, care or support for a person to whom a community care
20 order applies.
- 21 (2) Within 5 working days after the day the order is made, the care
22 coordinator must determine, in writing, the times when and the
23 place where the person is required to attend to receive treatment,
24 care or support, or undertake a counselling, training, therapeutic or
25 rehabilitation program, in accordance with the order.
- 26 *Note* If a form is approved under s 146A for a determination, the form must
27 be used.

- 1 (3) Before making a determination in relation to a person, the care
2 coordinator—
- 3 (a) must take all reasonable steps to consult the following:
- 4 (i) the person;
- 5 (ii) if the person is a child—each person with parental
6 responsibility for the child under the *Children and Young
7 People Act 2008*, division 1.3.2 (Parental responsibility);
- 8 (iii) if the person has a guardian under the *Guardianship and
9 Management of Property Act 1991*—the guardian;
- 10 (iv) if the person has an attorney under the *Powers of
11 Attorney Act 2006*—the attorney;
- 12 (v) if the person has a carer—the carer;
- 13 (vi) if the person has a nominated person—the nominated
14 person;
- 15 (vii) if a health attorney is involved in the treatment, care or
16 support of the person—the health attorney; and
- 17 (b) may consult any other service provider the care coordinator
18 considers relevant; and
- 19 (c) must take into account the views of the people consulted under
20 this section.
- 21 (4) After making a determination in relation to a person, the care
22 coordinator must record whether the person was consulted and—
- 23 (a) if the person was consulted—what the person’s views were; or
24 (b) if the person was not consulted—the reasons why.
- 25 (5) The care coordinator must, as soon as practicable after making a
26 determination, give a copy of the determination to—
- 27 (a) the person; and

- 1 (b) if the person is a child—each person with parental
2 responsibility for the child under the *Children and Young*
3 *People Act 2008*, division 1.3.2 (Parental responsibility); and
4 (c) the ACAT; and
5 (d) the public advocate; and
6 (e) if the person has a guardian under the *Guardianship and*
7 *Management of Property Act 1991*—the guardian; and
8 (f) if the person has an attorney under the *Powers of Attorney*
9 *Act 2006*—the attorney; and
10 (g) if the person has a nominated person—the nominated person;
11 and
12 (h) if a health attorney is involved in the treatment, care or support
13 of the person—the health attorney.

14 **36ZI Treatment etc to be explained—community care order**

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

21 **36ZJ Action if community care order no longer appropriate—**
22 **no longer person in relation to whom ACAT could make**
23 **order**

- 24 (1) This section applies if—
25 (a) a community care order is in force in relation to a person; and
26 (b) the care coordinator forms the opinion that—

- 1 (i) the person is no longer a person in relation to whom the
2 ACAT could make a community care order; or
- 3 (ii) if a restriction order is also in force in relation to the
4 person—it is no longer necessary for the restriction order
5 to be in force.

6 *Note 1* For the criteria for making a community care order, see s 36ZD. For the
7 criteria for making a restriction order with a community care order, see
8 s 36ZF.

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

- 11 (2) The care coordinator must give written notice to—
- 12 (a) if the person has a carer—the carer; and
- 13 (b) if the person has a nominated person—the nominated person.
- 14 (3) The notice must—
- 15 (a) include the reasons why the care coordinator is satisfied of the
16 matter mentioned in subsection (1) (b); and
- 17 (b) ask whether the carer or nominated person is aware of any
18 other information that may be relevant to whether the
19 community care order or restriction order continues to be
20 appropriate for the person; and
- 21 (c) state that, subject to consideration of any information given
22 under paragraph (b), the care coordinator must tell the ACAT
23 and public advocate of the matter mentioned in
24 subsection (1) (b) and this will lead to an ACAT review of the
25 community care order or restriction order; and
- 26 (d) tell the carer or nominated person that they are entitled to make
27 a submission to the ACAT review of the community care order
28 or restriction order.

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

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

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

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

8 *Note* The ACAT must review the order within 72 hours after being notified
9 under this section (see s 36ZQ (3)).

10 **36ZK Powers in relation to community care order**

11 (1) This section applies if—

12 (a) a community care order has been made in relation to a person;
13 and

14 (b) either—

15 (i) a restriction order has also been made in relation to the
16 person requiring the person to be detained at an approved
17 community care facility; or

18 (ii) the care coordinator requires the person to be detained at
19 an approved community care facility under
20 section 36ZO (Contravention of mental health order).

21 (2) The care coordinator may—

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

24 *Note* See s 140 (Powers of search and seizure).

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

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

- 1 (ii) ensure that the person remains in custody under the order;
2 and
- 3 (c) subject the person to involuntary seclusion if satisfied that it is
4 the only way in the circumstances to prevent the person from
5 causing harm to themselves or someone else.
- 6 *Note* For principles that must be taken into account when exercising a
7 function under this Act, see s 6.
- 8 (3) If the care coordinator subjects a person to involuntary seclusion,
9 the care coordinator must ensure that the person is examined by a
10 relevant doctor of the approved community care facility at least
11 once in each 4-hour period for which the person is in seclusion.
- 12 (4) If a community care order made in relation to a person authorises
13 the giving of medication for the treatment of the person’s mental
14 disorder, the care coordinator may—
- 15 (a) approve the giving by appropriately trained people of
16 medication prescribed by a doctor in accordance with the
17 order; and
- 18 (b) use, or authorise someone else to use, the force and assistance
19 that is necessary and reasonable to give the medication
20 (*forcible giving of medication*).
- 21 (5) If the care coordinator subjects a person to confinement or restraint,
22 involuntary seclusion or the forcible giving of medication, the care
23 coordinator must—
- 24 (a) enter in the person’s record the fact of and reasons for the
25 confinement or restraint, involuntary seclusion or forcible
26 giving of medication; and
- 27 (b) tell the public advocate in writing within 12 hours after the
28 person is subjected to the confinement or restraint, involuntary
29 seclusion or forcible giving of medication; and

1 (c) keep a register of the confinement or restraint, involuntary
2 seclusion or forcible giving of medication.

3 (6) In this section:

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

8 **Part 5.6** **Limits on communication under** 9 **mental health orders**

10 **36ZL** **Limits on communication—mental health order**

11 (1) This section applies if—

12 (a) a mental health order is made in relation to a person; and

13 (b) the order states that a limit may be imposed on communication
14 between the person and other people.

15 (2) The relevant official for the order may impose a limit on
16 communication by the person with other people if—

17 (a) the limit is consistent with the order; and

18 (b) the relevant official believes on reasonable grounds that the
19 limit is necessary and reasonable to avoid prejudicing the
20 effectiveness of the person's treatment, care or support.

21 (3) The relevant official must not impose a limit on communication by
22 the person with someone authorised under a territory law to
23 communicate with the person.

24 (4) As soon as practicable after imposing a limit on communication by a
25 person, the relevant official must explain to the person, in a way the
26 person is most likely to understand—

27 (a) the nature of the limit; and

- 1 (b) the period for which the limit will be in effect; and
2 (c) the reason for imposing the limit.
- 3 (5) A limit must not be imposed for a period longer than 7 days.
- 4 (6) Subsection (5) does not prevent a further limit being imposed
5 immediately after the limit previously imposed ceases to be in
6 effect.
- 7 (7) This section has effect despite part 3.1 (Rights in relation to
8 information and communication) but subject to section 36ZM.

9 **36ZM Offence—limits on communication—mental health order**

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

16 Maximum penalty: 20 penalty units.

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

24 Maximum penalty: 50 penalty units.

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

1 **Part 5.7** **Duration, contravention and** 2 **review of mental health orders**

3 **36ZN Duration of mental health orders**

4 Unless sooner revoked—

5 (a) a psychiatric treatment order or community care order has
6 effect for—

7 (i) 6 months; or

8 (ii) if a shorter period is stated in the order—the shorter
9 period; and

10 (b) a restriction order has effect for—

11 (i) 3 months; or

12 (ii) if a shorter period is stated in the order—the shorter
13 period.

14 **36ZO Contravention of mental health order**

15 (1) This section applies if—

16 (a) a mental health order is in force in relation to a person; and

17 (b) the person contravenes the order; and

18 (c) section 36ZP (Contravention of mental health order—
19 absconding from facility) does not apply to the contravention.

20 **Examples—contravention**

21 1 failure to return from leave granted by chief psychiatrist

22 2 not attending mental health facility for treatment, care or support

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

- 1 (2) The relevant official for the order may—
- 2 (a) within 7 days of the contravention, orally tell the person that
- 3 failure to comply with the order may result in the person being
- 4 apprehended and taken to an approved mental health facility or
- 5 approved community care facility for treatment, care or
- 6 support; and
- 7 (b) if the noncompliance continues after the taking of action under
- 8 paragraph (a)—tell the person in writing that—
- 9 (i) failure to comply with a psychiatric treatment order will
- 10 result in the person being apprehended and taken to an
- 11 approved mental health facility; or
- 12 (ii) failure to comply with a community care order will result
- 13 in the person being apprehended and taken to an
- 14 approved community care facility for treatment, care or
- 15 support; and
- 16 *Note* If a form is approved under s 146A for this provision, the form
- 17 must be used.
- 18 (c) if the noncompliance continues after the taking of action under
- 19 paragraph (b)—require the person to be taken to an approved
- 20 mental health facility or approved community care facility to
- 21 ensure compliance with the order.
- 22 *Note* The chief psychiatrist may make a determination requiring a person to
- 23 be taken to a place for treatment, care or support—see s 36Z (Role of
- 24 chief psychiatrist—psychiatric treatment order).
- 25 (3) If a person is required to be detained under subsection (2) (c), a
- 26 police officer, authorised ambulance paramedic, mental health
- 27 officer or doctor may apprehend the person and take the person to
- 28 an approved mental health facility or approved community care
- 29 facility.
- 30 *Note* See s 139F (Powers of entry and apprehension) and s 140 (Powers of
- 31 search and seizure).

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

13 *Note* The ACAT must review the order within 72 hours after being notified
14 under this subsection (see s 36ZQ (3)).

15 **36ZP Contravention of mental health order—absconding from**
16 **facility**

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

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

- 1 (3) A police officer, authorised ambulance paramedic, mental health
2 officer or doctor who apprehends a person under this section must
3 tell the person the reason for the apprehension.
- 4 (4) If a person is detained under this section the relevant official for the
5 order must, within 12 hours of the person being detained, tell the
6 ACAT and the public advocate in writing—
- 7 (a) the name of the person detained; and
8 (b) the reasons for requiring the detention; and
9 (c) the name and address of the approved mental health facility or
10 approved community care facility where the person is detained.
- 11 *Note* The ACAT must review the order within 72 hours after being notified
12 under this subsection (see s 36ZQ (3)).

13 **36ZQ Review, amendment or revocation of mental health order**

- 14 (1) The ACAT may review a mental health order in force in relation to
15 a person on its own initiative.
- 16 *Note* For principles that must be taken into account when exercising a
17 function under this Act, see s 6.
- 18 (2) The ACAT must review a mental health order in force in relation to
19 a person if the person, or the person's representative, applies for the
20 review on the basis that the order, or part of the order, is no longer
21 required.
- 22 (3) The ACAT must review each mental health order in force in relation
23 to a person within 72 hours if the ACAT receives notice in relation
24 to the person under any of the following:
- 25 (a) section 36ZB (Action if psychiatric treatment order no longer
26 appropriate—no longer person in relation to whom ACAT
27 could make order);

-
- 1 (b) section 36ZJ (Action if community care order no longer
2 appropriate—no longer person in relation to whom ACAT
3 could make order);
- 4 (c) section 36ZO (4) (Contravention of mental health order) and
5 the notice indicates that a restriction order has been
6 contravened;
- 7 (d) section 36ZP (4) (Contravention of mental health order—
8 absconding from facility).
- 9 (4) A review required under subsection (3)—
- 10 (a) may be conducted without a hearing; and
- 11 (b) may include consulting a person mentioned in section 36R (1)
12 (Consultation by ACAT—mental health order).
- 13 *Note* If the ACAT holds a hearing for the review, s 79A (1) (Notice of
14 hearing) does not apply (see s 79A (3)).
- 15 (5) If the ACAT is satisfied that a person in relation to whom a
16 psychiatric treatment order or community care order is in force is no
17 longer a person in relation to whom the ACAT could make a
18 psychiatric treatment order or community care order, the ACAT
19 must revoke all the mental health orders in force in relation to the
20 person.
- 21 (6) In any other case, the ACAT may, if appropriate, do any of the
22 following:
- 23 (a) amend or revoke any of the mental health orders in force in
24 relation to the person;
- 25 (b) make additional mental health orders in relation to the person;
- 26 (c) make an assessment order in relation to the person.

- 1 (7) In this section:
2 **representative**, of a person, means any of the following:
3 (a) if the person has a guardian under the *Guardianship and*
4 *Management of Property Act 1991*—the guardian;
5 (b) if the person has an attorney under the *Powers of Attorney*
6 *Act 2006*—the attorney;
7 (c) if the person has a nominated person—the nominated person;
8 (d) a close relative or close friend of the person;
9 (e) a legal representative of the person.

10 **12 Part 5 heading and sections 37 to 41**

11 *substitute*

12 **Chapter 6 Emergency detention**

13 **37 Apprehension**

- 14 (1) A police officer or authorised ambulance paramedic may apprehend
15 a person and take the person to an approved mental health facility if
16 the police officer or paramedic believes on reasonable grounds
17 that—
18 (a) the person has a mental disorder or mental illness; and
19 (b) the person has attempted or is likely to attempt—
20 (i) suicide; or
21 (ii) to inflict serious harm on the person or another person.

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

- 1 (2) A doctor or mental health officer may apprehend a person and take
2 the person to an approved mental health facility if the doctor or
3 mental health officer believes on reasonable grounds that—
- 4 (a) the person has a mental disorder or mental illness; and
- 5 (b) either—
- 6 (i) the person requires immediate treatment, care or support;
7 or
- 8 (ii) the person's condition will deteriorate within 3 days to
9 such an extent that the person would require immediate
10 treatment, care or support; and
- 11 (c) the person has refused to receive that treatment, care or
12 support; and
- 13 (d) detention is necessary for the person's health or safety, social
14 or financial wellbeing, or for the protection of someone else or
15 the public; and
- 16 (e) adequate treatment, care or support cannot be provided in a
17 less restrictive environment.
- 18 *Note* See s 139F (Powers of entry and apprehension) and s 140 (Powers of
19 search and seizure).
- 20 (3) The ACAT must, on application, review the decision of a doctor or
21 mental health officer under subsection (2) (b) (ii) within 2 working
22 days after the day the application is made.

23 **38 Detention at approved mental health facility**

- 24 (1) If a person is taken to an approved mental health facility under
25 section 37 or the [Crimes Act](#), section 309 (1) (a) (Assessment
26 whether emergency detention required), the person in charge of the
27 facility must detain the person at the facility.

- 1 (2) If a doctor or mental health officer believes on reasonable grounds
2 that a person attending an approved mental health facility
3 (voluntarily or otherwise) is a person to whom section 37 (2) (a) to
4 (e) applies, the doctor or mental health officer may detain the person
5 at the facility.
- 6 (3) While a person is detained at a facility under subsection (1) or (2),
7 the person in charge of the facility may—
- 8 (a) keep the person in the custody that the person in charge
9 considers appropriate; and
- 10 (b) subject the person to the minimum confinement or restraint
11 that is necessary and reasonable to—
- 12 (i) prevent the person from causing harm to themselves or
13 someone else; or
- 14 (ii) ensure that the person remains in custody.

15 **38A Copy of court order**

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

20 **39 Statement of action taken**

- 21 (1) A police officer, authorised ambulance paramedic, doctor or mental
22 health officer who takes a person to an approved mental health
23 facility under section 37 must give the person in charge of the
24 facility a written statement containing a description of the action
25 taken under that section, including the following:
- 26 (a) the name and address (if known) of the person taken to the
27 facility;
- 28 (b) the date and time when the person was taken to the facility;

- 1 (c) detailed reasons for taking the action;
- 2 (d) the extent of the force or assistance used to enter any premises,
3 or to apprehend the person and take the person to the facility.
- 4 (2) The person in charge of the approved mental health facility must
5 enter the statement in the person's record.
- 6 **40 Initial examination at approved mental health facility**
- 7 (1) This section applies to a person (the *subject person*) detained at an
8 approved mental health facility under section 38.
- 9 (2) The person in charge of the approved mental health facility must
10 ensure that a relevant doctor conducts an initial examination of the
11 subject person within 4 hours after—
- 12 (a) for a person detained under section 38 (1)—arriving at the
13 facility; or
- 14 (b) for a person detained under section 38 (2)—being detained at
15 the facility.
- 16 (3) However, the person in charge of the facility may continue to detain
17 the subject person if the person believes on reasonable grounds that,
18 if the subject person is released without an initial examination—
- 19 (a) the subject person's health or safety would be, or be likely to
20 be, substantially at risk; or
- 21 (b) the subject person would do, or be likely to do, serious harm to
22 others; or
- 23 (c) the subject person would seriously endanger, or be likely to
24 seriously endanger, public safety.

- 1 (4) If the subject person continues to be detained under subsection (3)—
- 2 (a) the person in charge of the approved mental health facility
- 3 must immediately tell the chief psychiatrist that the subject
- 4 person has been at the facility for 4 hours without an initial
- 5 examination; and
- 6 (b) the chief psychiatrist must conduct an initial examination of
- 7 the subject person as soon as possible and within 2 hours of
- 8 being told about the detention.
- 9 (5) If the subject person is not given an initial examination within the
- 10 time required under subsection (4) (b), the person in charge of the
- 11 approved mental health facility must—
- 12 (a) release the subject person; or
- 13 (b) if the subject person was taken to the approved mental health
- 14 facility under the [Crimes Act](#), section 309 (1) (a) (Assessment
- 15 whether emergency detention required)—release the person
- 16 into the custody of a police officer; or
- 17 (c) if a court order requires the subject person to be detained at a
- 18 correctional centre—release the subject person into the custody
- 19 of the corrections director-general; or
- 20 (d) if a court order requires the subject person to be detained at a
- 21 detention place—release the subject person into the custody of
- 22 the CYP director-general.
- 23 (6) The person in charge of the approved mental health facility must tell
- 24 the public advocate, in writing, about any failure to give a subject
- 25 person an initial examination within the time required under
- 26 subsection (2) or (4) (b) and the reasons for the failure.

- 1 (7) In this section:
2 *initial examination* means—
3 (a) examining the subject person in person; and
4 (b) considering the observations arising from the examination; and
5 (c) considering any other reliable and relevant information about
6 the subject person's condition.
- 7 *relevant doctor*, of an approved mental health facility, means a
8 person employed at the facility as a consultant psychiatrist, a
9 psychiatric registrar in consultation with a consultant psychiatrist or
10 another doctor in consultation with a consultant psychiatrist.

11 **41 Authorisation of involuntary detention**

- 12 (1) A doctor may authorise the involuntary detention of a person at an
13 approved mental health facility for a period not exceeding 3 days
14 if—
15 (a) the doctor has conducted an initial examination of the person
16 under section 40 and, on the basis of that examination and any
17 other information the doctor is given, has reasonable grounds
18 for believing that—
19 (i) the person requires immediate treatment, care or support;
20 and
21 (ii) the person has refused to receive that treatment, care or
22 support; and
23 (iii) detention is necessary for the person's health or safety,
24 social or financial wellbeing, or for the protection of
25 someone else or the public; and
26 (iv) adequate treatment, care or support cannot be provided in
27 a less restrictive environment; and

- 1 (b) another doctor has also examined the person and, on the basis
2 of that examination and any other information the doctor is
3 given, also has reasonable grounds for believing the matters
4 mentioned in paragraph (a) (i) to (iv).
- 5 (2) Before the end of the 3-day period of detention, the chief
6 psychiatrist may apply to the ACAT to extend the period of
7 detention if the chief psychiatrist believes on reasonable grounds
8 that the person continues to meet the criteria mentioned in
9 subsection (1) (a) (i) to (iv).
- 10 (3) If an application is made under subsection (2), the ACAT may order
11 that the period of detention be extended by the period, not longer
12 than 11 days, stated in the order.
- 13 (4) A person may apply to the ACAT for the review of involuntary
14 detention under this section.
- 15 (5) If an application is made under subsection (4), the ACAT must
16 conduct the review within 2 working days after the day the
17 application is made.
- 18 (6) The ACAT may consider an application under subsection (2) or (4)
19 without holding a hearing.
- 20 *Note* If the ACAT holds a hearing for the application, s 79A (1) (Notice of
21 hearing) does not apply (see s 79A (3)).

22 **41AA Medical examination of detained person**

- 23 (1) The person in charge of an approved mental health facility must
24 ensure that a person detained at the facility under section 41 (1) is
25 given—
- 26 (a) a thorough physical examination by a doctor; and
- 27 (b) a thorough psychiatric examination by a person employed at
28 the facility as a consultant psychiatrist, a psychiatric registrar
29 in consultation with a consultant psychiatrist or another doctor
30 in consultation with a consultant psychiatrist.

- 1 (2) The examination must, as far as reasonably practicable, be
 2 conducted within 24 hours of the person being detained at the
 3 mental health facility.
- 4 (3) The examination must not be conducted by—
- 5 (a) a doctor who conducted the initial examination of the person
 6 under section 40; or
- 7 (b) if the person was apprehended by a doctor under
 8 section 37 (2)—that doctor.

9 **13 Notification of Magistrates Court about emergency**
 10 **detention or release from emergency detention**
 11 **Section 41A**

12 *omit*

13 approved health facility

14 *substitute*

15 approved mental health facility

16 **14 Section 41A**

17 *omit*

18 treatment or care

19 *substitute*

20 treatment, care or support

21 **15 New section 41A (2)**

22 *insert*

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

1 **16 Section 42**

2 *substitute*

3 **42 Notification of certain people about detention**

- 4 (1) A doctor must, within 12 hours after authorising the involuntary
5 detention of a person under section 41, give the required information
6 about the detention to the public advocate and the ACAT.

7 Maximum penalty: 5 penalty units.

- 8 (2) A doctor or mental health officer must also, as soon as practicable
9 after authorising the involuntary detention of a person under
10 section 38 or section 41, take all reasonable steps to give the
11 required information about the detention to at least 1 of the
12 following:

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

23 Maximum penalty: 5 penalty units.

- 24 (3) The person in charge of a mental health facility where a person is
25 detained under section 38 or section 41 must ensure that the person
26 has adequate opportunity to notify a relative or friend of the
27 person's detention.

- 1 (4) In this section:
- 2 *required information* about the detention of a person means—
- 3 (a) the person’s name; and
- 4 (b) the reasons for authorising the detention; and
- 5 (c) the name and address of the approved mental health facility
- 6 where the person is being detained.

7 **17 Medical examination**
8 **Section 43**

9 *omit*

10 **18 Treatment during detention**
11 **Section 44 (1)**

12 *after*

13 treatment

14 *insert*

15 , care or support

16 **19 Section 44 (1), note**

17 *omit*

18 (see subdiv 7.2.4)

19 *substitute*

20 (see div 9.2.4)

1	20	Section 44 (as amended)
2		<i>relocate as section 41AB</i>
3	21	Section 45 heading
4		<i>substitute</i>
5	45	Offence—communication during detention
6	22	Section 45
7		<i>omit</i>
8		(the <i>detainee</i>)
9		<i>substitute</i>
10		(the <i>detained person</i>)
11	23	Section 45
12		<i>omit</i>
13		detainee
14		<i>substitute</i>
15		detained person
16	24	Section 45
17		<i>omit</i>
18		detainee’s lawyer
19		<i>substitute</i>
20		detained person’s lawyer

- 1 **25 Orders for release**
2 **Section 46 (1)**
- 3 *omit*
4 may
5 *substitute*
6 must, as soon as practicable,
- 7 **26 Section 46 (2)**
- 8 *omit*
9 shall
10 *substitute*
11 must, as soon as practicable,
- 12 **27 Approved facilities**
13 **Section 48**
- 14 *omit*
- 15 **28 Divisions 5A.1 to 5A.5**
- 16 *renumber as parts 15.1 to 15.5*
- 17 **29 Section 48A heading**
- 18 *substitute*
- 19 **48A Object of ch 15**

1	30	Section 48A
2		<i>omit</i>
3		part
4		<i>substitute</i>
5		chapter
6	31	Section 48B heading
7		<i>substitute</i>
8	48B	Definitions—ch 15
9	32	Section 48B
10		<i>omit</i>
11		part
12		<i>substitute</i>
13		chapter
14	33	Authority to enter into agreements
15		Section 48C
16		<i>omit</i>
17		part
18		<i>substitute</i>
19		chapter

1 **34 Recognition of interstate laws and orders**
2 **Section 48D**

3 *omit*

4 part

5 *substitute*

6 chapter

7 **35 Transfer of custodial patients from ACT**
8 **Section 48G (1) (b) (i) and (ii)**

9 *substitute*

10 (i) a restriction order made under section 36X or
11 section 36ZF; or

12 (ii) action taken under a relevant provision;

13 **36 New section 48G (4)**

14 *insert*

15 (4) In this section:

16 *relevant provision* means—

17 (a) section 36ZC (Powers in relation to psychiatric treatment
18 order); or

19 (b) section 36ZO (Contravention of mental health order); or

20 (c) section 36ZP (Contravention of mental health order—
21 absconding from facility); or

22 (d) section 48ZG (Powers in relation to forensic psychiatric
23 treatment order); or

24 (e) section 48ZX (Contravention of forensic mental health order);
25 or

1 (f) section 48ZY (Contravention of forensic mental health order—
2 absconding from facility).

3 **37 Psychiatric treatment orders relating to interstate people**
4 **Section 48M (1)**

5 *omit*
6 division 4.4
7 *substitute*
8 part 5.4

9 **38 Section 48M (2)**

10 *omit*
11 section 31 (a) (ii)
12 *substitute*
13 section 36Y (1) (a) (ii) or section 36ZG (1) (a) (ii)

14 **39 Apprehension of interstate persons absent without leave**
15 **or in breach of orders**
16 **Section 48Q (3)**

17 *omit*
18 section 41
19 *substitute*
20 section 38

1	40	Regulations relating to apprehension of persons
2		Section 48R
3		<i>omit</i>
4		part
5		<i>substitute</i>
6		chapter
7	41	Sections 48A to 48R (as amended)
8		<i>renumber as sections 139CA to 139CQ</i>
9	42	Interstate application of mental health laws
10		Part 5A (as amended)
11		<i>relocate as chapter 15</i>
12	43	New chapters 7 and 8
13		<i>insert</i>
14	Chapter 7	Forensic mental health
15	Part 7.1	Forensic mental health orders
16	Division 7.1.1	Preliminary
17	48S	Definitions—pt 7.1
18		In this part:
19		<i>community-based sentence</i> —see the <i>Crimes (Sentence</i>
20		<i>Administration) Act 2005</i> , section 264.

- 1 **relevant official**, for a forensic mental health order, means—
- 2 (a) for a forensic psychiatric treatment order—the chief
- 3 psychiatrist; or
- 4 (b) for a forensic community care order—the care coordinator.
- 5 **relevant person**, for a forensic mental health order application
- 6 means—
- 7 (a) for a forensic psychiatric treatment order—the chief
- 8 psychiatrist; and
- 9 (b) for a forensic community care order—a person with authority
- 10 to give the treatment, care or support proposed to be given to
- 11 the subject person.

12 **Division 7.1.2 Application for forensic mental health**

13 **orders**

14 **48T Applications for forensic mental health orders—detainees**

15 **and people under community-based sentences**

- 16 (1) This section applies to a detainee or a person serving a
- 17 community-based sentence (the **subject person**) if a relevant person
- 18 believes on reasonable grounds that the subject person is a person in
- 19 relation to whom the ACAT could reasonably make an order under
- 20 section 48ZA (Forensic psychiatric treatment order) or
- 21 section 48ZH (Forensic community care order).
- 22 (2) The relevant person may apply to the ACAT for a forensic mental
- 23 health order in relation to the subject person.
- 24 (3) The application must include—
- 25 (a) a written statement by the relevant person addressing the
- 26 criteria the ACAT must consider in making an order under
- 27 section 48ZA (Forensic psychiatric treatment order) or
- 28 section 48ZH (Forensic community care order); and

- 1 (b) a plan setting out the proposed treatment, care or support of the
2 subject person.

3 **48U Relevant person to tell ACAT of risks**

- 4 (1) This section applies if—
- 5 (a) a relevant person applies to the ACAT for a forensic mental
6 health order for a person; and
- 7 (b) the relevant person believes on reasonable grounds that
8 anything to do with the application process is likely to
9 substantially increase—
- 10 (i) the risk to the person’s health or safety; or
11 (ii) the risk of serious harm to others.
- 12 (2) The application must state—
- 13 (a) the relevant person’s belief about the substantially increased
14 risk; and
- 15 (b) the basis for the belief.

16 **Division 7.1.3 Making forensic mental health**
17 **orders—preliminary matters**

18 **48V ACAT must consider assessment—forensic mental health**
19 **order**

- 20 (1) Before making a forensic mental health order in relation to a person,
21 the ACAT must consider—
- 22 (a) an assessment of the person conducted under an assessment
23 order; or
- 24 (b) another assessment of the person that the ACAT considers
25 appropriate.

- 1 (2) In considering an assessment, the ACAT must take into account
2 how recently the assessment was conducted.

3 **48W Consultation by ACAT—forensic mental health order**

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

- 6 (a) if the person is a child—each person with parental
7 responsibility for the child under the *Children and Young
8 People Act 2008*, division 1.3.2 (Parental responsibility); and
9 (b) if the person has a guardian under the *Guardianship and
10 Management of Property Act 1991*—the guardian; and
11 (c) if the person has an attorney under the *Powers of Attorney
12 Act 2006*—the attorney; and
13 (d) if the person has a nominated person—the nominated person;
14 and
15 (e) if a health attorney is involved in the treatment care or support
16 of the person—the health attorney; and
17 (f) if the chief psychiatrist or care-coordinator is likely to be
18 responsible for providing the treatment, care or support
19 proposed to be ordered—the chief psychiatrist or
20 care-coordinator; and
21 (g) if the person is a detainee, a person serving a community-based
22 sentence, a person released on parole, or a person released on
23 licence under the *Crimes (Sentence Administration) Act 2005*,
24 section 299—the corrections director-general and the
25 director-general responsible for the *Crimes (Sentence
26 Administration) Act 2005*; and
27 (h) if the person is a young detainee or a young offender serving a
28 community-based sentence—the CYP director-general.

- 1 **48X ACAT must hold hearing—forensic mental health order**
- 2 Before making a forensic mental health order in relation to a person,
3 the ACAT must hold a hearing into the matter.
- 4 **48Y What ACAT must take into account—forensic mental**
5 **health order**
- 6 (1) In making a forensic mental health order in relation to a person, the
7 ACAT must take into account the following:
- 8 (a) a plan for the proposed treatment, care or support of the
9 person, mentioned in section 48T (3);
- 10 (b) whether the person consents, refuses to consent or has the
11 decision-making capacity to consent, to proposed treatment,
12 care or support;
- 13 (c) the views and wishes of the person, so far as they can be found
14 out;
- 15 (d) if an advance agreement or advance consent direction is in
16 force in relation to the person—the person’s wishes in relation
17 to the person’s treatment, care or support stated in the
18 agreement or direction;
- 19 (e) the views and wishes of the people responsible for the
20 day-to-day care of the person, to the extent that those views
21 and wishes are made known to the ACAT;
- 22 (f) the views of each person appearing at the proceeding;
- 23 (g) if the proceeding is on a forensic mental health order for which
24 there is a registered affected person for an offence committed
25 or alleged to have been committed by the person—any
26 statement by the registered affected person;
- 27 (h) the views of each person consulted under section 48W
28 (Consultation by ACAT—forensic mental health order);

- 1 (i) that any restrictions placed on the person should be the
2 minimum necessary for the safe and effective care of the
3 person and protection of public safety;
- 4 (j) any alternative treatment, care or support available,
5 including—
- 6 (i) the purpose of the treatment, care or support; and
7 (ii) the benefits likely to be derived by the person from the
8 treatment, care or support; and
9 (iii) the distress, discomfort, risks, side effects or other
10 disadvantages associated with the treatment, care or
11 support;
- 12 (k) any relevant medical history of the person;
- 13 (l) for a person required by a court to submit to the jurisdiction of
14 the ACAT under the [Crimes Act](#), part 13 or the [Crimes Act](#)
15 [1914](#) (Cwlth), part 1B—
- 16 (i) the nature and circumstances of the alleged offence or the
17 offence in relation to which the person is charged; and
18 (ii) the nature and extent of the person's mental illness or
19 mental disorder and the effect it is likely to have on the
20 person's behaviour in the future; and
21 (iii) whether, if the person is not detained—
- 22 (A) the person's health or safety is, or is likely to be,
23 substantially at risk; or
24 (B) the person is likely to do serious harm to others;
- 25 (m) if the proceeding is on a forensic mental health order for which
26 there is a registered affected person for the offence committed
27 or alleged to have been committed by the subject person—the
28 views of the victims of crime commissioner;

1 (n) anything else prescribed by regulation.

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

4 (2) Also, before the ACAT makes a forensic mental health order for the
5 particular treatment, care or support at a stated facility or by a stated
6 person, the ACAT must have a certificate from the relevant person
7 that the treatment, care or support can be provided at the stated
8 facility or by the stated person.

9 (3) If the treatment, care or support cannot be performed at the stated
10 facility or by the stated person, the certificate may include options
11 that the relevant person considers appropriate for the ACAT to
12 consider in making the forensic mental health order.

13 (4) A certificate must be given to the ACAT within 7 days after the
14 ACAT makes the request, or any longer time allowed by the ACAT.

15 **48Z ACAT must not order particular treatment, care or**
16 **support—forensic mental health order**

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

20 **Division 7.1.4 Forensic psychiatric treatment orders**

21 **48ZA Forensic psychiatric treatment order**

22 (1) This section applies to—

23 (a) a detainee or a person serving a community-based sentence
24 assessed under an assessment order; or

25 (b) a detainee or a person serving a community-based sentence
26 referred to the ACAT for a forensic mental health order under
27 division 7.1.2; or

- 1 (c) a person required by a court to submit to the jurisdiction of the
2 ACAT under the [Crimes Act](#), part 13 or the [Crimes Act 1914](#)
3 (Cwlth), part 1B.
- 4 (2) The ACAT may make a forensic psychiatric treatment order in
5 relation to the person if—
- 6 (a) the person has a mental illness; and
- 7 (b) the ACAT believes on reasonable grounds that, because of the
8 mental illness, the person—
- 9 (i) is doing, or is likely to do, serious harm to themselves or
10 someone else; or
- 11 (ii) is suffering, or is likely to suffer, serious mental or
12 physical deterioration; and
- 13 (c) the ACAT believes on reasonable grounds that, because of the
14 mental illness, the person has seriously endangered, is
15 seriously endangering, or is likely to seriously endanger, public
16 safety; and
- 17 (d) the ACAT is satisfied that psychiatric treatment, care or
18 support is likely to—
- 19 (i) reduce the harm, deterioration or endangerment, or the
20 likelihood of harm, deterioration or endangerment,
21 mentioned in paragraph (b) or (c); or
- 22 (ii) result in an improvement in the person's psychiatric
23 condition; and
- 24 (e) the ACAT is satisfied that, in the circumstances, a mental
25 health order should not be made; and
- 26 *Note* For the making of a mental health order see ch 5.

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

9 **48ZB Content of forensic psychiatric treatment order**

- 10 (1) A forensic psychiatric treatment order made in relation to a person
11 may state 1 or more of the following:
- 12 (a) an approved mental health facility to which the person may be
13 taken;
- 14 (b) that the person must do either or both of the following:
- 15 (i) undergo psychiatric treatment, care or support, other than
16 electroconvulsive therapy or psychiatric surgery;
- 17 (ii) undertake a counselling, training, therapeutic or
18 rehabilitation program;
- 19 (c) that limits may be imposed on communication between the
20 person and other people;
- 21 (d) that the person must—
- 22 (i) live (but not be detained) at a stated place; or
23 (ii) be detained at a stated approved mental health facility;
- 24 (e) that the person must not approach a stated person or stated
25 place or undertake stated activities.

- 1 (2) A forensic psychiatric treatment order made in relation to a person
2 must—
- 3 (a) state that the person must comply with any determination made
4 under section 48ZC (Role of chief psychiatrist—forensic
5 psychiatric treatment order); and
- 6 (b) be accompanied by a statement about how the person meets the
7 criteria under section 48ZA (2) (Forensic psychiatric treatment
8 order).

9 **48ZC Role of chief psychiatrist—forensic psychiatric treatment**
10 **order**

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

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

- 1 (3) If the chief psychiatrist forms a belief on reasonable grounds that a
2 person subject to a forensic psychiatric treatment order who is living
3 in the community requires admission to an approved mental health
4 facility to receive treatment, care or support under the order, the
5 chief psychiatrist may determine, in writing—
- 6 (a) the approved mental health facility that the person is to be
7 admitted to; and
- 8 (b) the nature of the psychiatric treatment to be given to the
9 person; and
- 10 (c) whether the person can be given leave from the facility.
- 11 *Note* If a form is approved under s 146A for a determination, the form must
12 be used.
- 13 (4) For subsection (2) (b) or (3) (c), the chief psychiatrist must not
14 determine psychiatric treatment, care or support that has, or is likely
15 to have, the effect of subjecting the person to whom it is given to
16 undue stress or deprivation, having regard to the benefit likely to
17 result from the treatment, care or support.
- 18 (5) The chief psychiatrist must also determine, in writing, the place
19 where the person must live if—
- 20 (a) the forensic psychiatric treatment order does not state that the
21 person live at a stated place; and
- 22 (b) the chief psychiatrist considers that the person should live at a
23 place other than the place where the person usually lives.
- 24 (6) Before making a determination in relation to a person, the chief
25 psychiatrist must—
- 26 (a) take all reasonable steps to consult the following:
- 27 (i) the person;

- 1 (ii) if the person is a child—each person with parental
2 responsibility for the child under the *Children and Young*
3 *People Act 2008*, division 1.3.2 (Parental responsibility);
- 4 (iii) if the person has a guardian under the *Guardianship and*
5 *Management of Property Act 1991*—the guardian;
- 6 (iv) if the person has an attorney under the *Powers of*
7 *Attorney Act 2006*—the attorney;
- 8 (v) if the person has a nominated person—the nominated
9 person;
- 10 (vi) if a health attorney is involved in the treatment, care or
11 support of the person—the health attorney; and
- 12 (b) take into account the views of the people consulted under this
13 section.
- 14 (7) After making a determination in relation to a person, the chief
15 psychiatrist must record whether the person was consulted and—
- 16 (a) if the person was consulted—what the person’s views were; or
17 (b) if the person was not consulted—the reasons why.
- 18 (8) The chief psychiatrist must, as soon as practicable after making a
19 determination, give a copy of the determination to—
- 20 (a) the person; and
- 21 (b) if the person is a child—each person with parental
22 responsibility for the child under the *Children and Young*
23 *People Act 2008*, division 1.3.2 (Parental responsibility); and
- 24 (c) the ACAT; and
- 25 (d) the public advocate; and
- 26 (e) if the person has a guardian under the *Guardianship and*
27 *Management of Property Act 1991*—the guardian; and

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

7 **48ZD Treatment etc to be explained—forensic psychiatric**
8 **treatment order**

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

15 **48ZE Action if forensic psychiatric treatment order no longer**
16 **appropriate—no longer person in relation to whom ACAT**
17 **could make order**

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

24 *Note 1* For the criteria for making a forensic psychiatric treatment order,
25 see s 48ZA.

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

- 28 (2) The chief psychiatrist must give written notice to—
29 (a) if the person has a carer—the carer; and

- 1 (b) if the person has a nominated person—the nominated person.
- 2 (3) The notice must—
- 3 (a) include the reasons why the chief psychiatrist is satisfied of the
4 matter mentioned in subsection (1) (b); and
- 5 (b) ask whether the carer or nominated person is aware of any
6 other information that may be relevant to whether the forensic
7 psychiatric treatment order continues to be appropriate for the
8 person; and
- 9 (c) state that, subject to consideration of any information given
10 under paragraph (b), the chief psychiatrist must tell the ACAT
11 and public advocate of the matter mentioned in
12 subsection (1) (b) and this will lead to an ACAT review of the
13 forensic psychiatric treatment order; and
- 14 (d) tell the carer or nominated person that they are entitled to make
15 a submission to the ACAT review of the forensic psychiatric
16 treatment order.
- 17 *Note* If a form is approved under s 146A for this provision, the form must be
18 used.
- 19 (4) If, having taken into account any information given under
20 subsection (3) (b), the chief psychiatrist is still satisfied of the matter
21 mentioned in subsection (1) (b) the chief psychiatrist must tell the
22 ACAT and the public advocate in writing about—
- 23 (a) the chief psychiatrist’s opinion, including the reasons for the
24 opinion; and
- 25 (b) the details of any information given under subsection (3) (b).
- 26 *Note* The ACAT must review the order within 10 days after being notified
27 under this section (see s 48ZZ (3)).

- 1 **48ZF** **Action if forensic psychiatric treatment order no longer**
2 **appropriate—no longer necessary to detain person**
- 3 (1) This section applies if—
- 4 (a) a forensic psychiatric treatment order is in force in relation to a
5 person; and
- 6 (b) the forensic psychiatric treatment order requires the person to
7 be detained at an approved mental health facility; and
- 8 (c) the chief psychiatrist forms the opinion that it is no longer
9 necessary for the person to be detained.
- 10 (2) The chief psychiatrist must give written notice to—
- 11 (a) if the person has a carer—the carer; and
- 12 (b) if the person has a nominated person—the nominated person.
- 13 (3) The notice must—
- 14 (a) include the reasons why the chief psychiatrist is satisfied of the
15 matter mentioned in subsection (1) (c); and
- 16 (b) ask whether the carer or nominated person is aware of any
17 other information that may be relevant to whether the detention
18 under the forensic psychiatric treatment order continues to be
19 appropriate for the person; and
- 20 (c) state that, subject to consideration of any information given
21 under paragraph (b), the chief psychiatrist must tell the ACAT
22 and public advocate of the matter mentioned in
23 subsection (1) (c) and this will lead to an ACAT review of the
24 detention under forensic psychiatric treatment order; and

1 (d) tell the carer or nominated person that they are entitled to make
2 a submission to the ACAT review of the forensic psychiatric
3 treatment order.

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

6 *Note 2* If a form is approved under s 146A for this provision, the form must be
7 used.

8 (4) If, having taken into account any information given under
9 subsection (3) (b), the chief psychiatrist is still satisfied of the matter
10 mentioned in subsection (1) (c) the chief psychiatrist must tell the
11 ACAT and the public advocate in writing about—

12 (a) the chief psychiatrist’s opinion, including the reasons for the
13 opinion; and

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

15 *Note* The ACAT must review the order within 10 days after being notified
16 under this section (see s 48ZZ (3)).

17 **48ZG Powers in relation to forensic psychiatric treatment order**

18 (1) This section applies if—

19 (a) a forensic psychiatric treatment order has been made in relation
20 to a person; and

21 (b) either—

22 (i) the order requires the person to be detained at an
23 approved mental health facility; or

24 (ii) the chief psychiatrist has made a determination under
25 section 48ZC (Role of chief psychiatrist—forensic
26 psychiatric treatment order) requiring detention at an
27 approved mental health facility.

- 1 (2) The chief psychiatrist may—
- 2 (a) detain the person at an approved mental health facility; and
- 3 *Note* See s 139F (Powers of entry and apprehension) and s 140 (Powers
- 4 of search and seizure).
- 5 (b) subject the person to the minimum confinement or restraint
- 6 that is necessary and reasonable to—
- 7 (i) prevent the person from causing harm to themselves or
- 8 someone else; or
- 9 (ii) ensure that the person remains in custody under the order;
- 10 and
- 11 (c) subject the person to involuntary seclusion if satisfied that it is
- 12 the only way in the circumstances to prevent the person from
- 13 causing harm to themselves or someone else; and
- 14 (d) determine that the person can be given leave from the facility.
- 15 *Note* For principles that must be taken into account when exercising a
- 16 function under this Act, see s 6.
- 17 (3) If the chief psychiatrist subjects a person to involuntary seclusion,
- 18 the chief psychiatrist must ensure that the person is examined by a
- 19 relevant doctor of the approved mental health facility at least once in
- 20 each 4-hour period for which the person is in seclusion.
- 21 (4) If the chief psychiatrist determines that a person be given
- 22 medication for the treatment of the person's mental illness, the chief
- 23 psychiatrist may—
- 24 (a) approve the giving by appropriately trained people of
- 25 medication prescribed by a doctor in accordance with the chief
- 26 psychiatrist's determination; and
- 27 (b) use, or authorise someone else to use, the force and assistance
- 28 that is necessary and reasonable to give the medication
- 29 (***forcible giving of medication***).

- 1 (5) If the chief psychiatrist subjects a person to confinement or restraint,
2 involuntary seclusion or forcible giving of medication, the chief
3 psychiatrist must—
- 4 (a) enter in the person’s record the fact of and the reasons for the
5 confinement or restraint, involuntary seclusion or forcible
6 giving of medication; and
- 7 (b) tell the public advocate in writing within 12 hours after the
8 person is subjected to the confinement or restraint, involuntary
9 seclusion or forcible giving of medication; and
- 10 (c) keep a register of the confinement or restraint, involuntary
11 seclusion or forcible giving of medication.
- 12 (6) In this section:
- 13 *relevant doctor*, of a relevant place, means a person employed at the
14 place as a consultant psychiatrist, psychiatric registrar in
15 consultation with a consultant psychiatrist or another doctor in
16 consultation with a consultant psychiatrist.

17 **Division 7.1.5 Forensic community care orders**

18 **48ZH Forensic community care order**

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

- 1 (2) The ACAT may make a forensic community care order in relation to
2 the person if—
- 3 (a) the person has a mental disorder; and
- 4 (b) the ACAT believes on reasonable grounds that, because of the
5 mental disorder, the person—
- 6 (i) is doing, or is likely to do, serious harm to themselves or
7 someone else; or
- 8 (ii) is suffering, or is likely to suffer, serious mental or
9 physical deterioration; and
- 10 (c) the ACAT believes on reasonable grounds that, because of the
11 mental disorder, the person has seriously endangered, is
12 seriously endangering, or is likely to seriously endanger, public
13 safety; and
- 14 (d) the ACAT is satisfied that treatment, care or support is likely to
15 reduce the harm, deterioration or endangerment, or the
16 likelihood of harm deterioration or endangerment, mentioned
17 in paragraph (b) or (c); and
- 18 (e) the ACAT is satisfied that, in the circumstances, a forensic
19 psychiatric treatment order should not be made; and
- 20 (f) the ACAT is satisfied that, in the circumstances, a mental
21 health order should not be made; and
- 22 (g) the ACAT is satisfied that the treatment, care or support to be
23 provided under the forensic community care order cannot be
24 adequately provided in another way that would involve less
25 restriction of the freedom of choice and movement of the
26 person.
- 27 (3) In making a forensic community care order in relation to a person,
28 the ACAT is not required to take into account the person's
29 decision-making capacity.

- 1 **48ZI Content of forensic community care order**
- 2 (1) A forensic community care order made in relation to a person may
- 3 state 1 or more of the following:
- 4 (a) that the person is to be given treatment, care or support;
- 5 (b) that the person may be given medication for the treatment of
- 6 the person’s mental disorder that is prescribed by a doctor;
- 7 (c) that the person is to undertake a counselling, training,
- 8 therapeutic or rehabilitation program;
- 9 (d) that limits may be imposed on communication between the
- 10 person and other people;
- 11 (e) that the person must—
- 12 (i) live (but not be detained) at a stated approved community
- 13 care facility; or
- 14 (ii) be detained at a stated approved community care facility
- 15 or another stated place;
- 16 (f) that the person must not approach a stated person or stated
- 17 place or undertake stated activities.
- 18 (2) A forensic community care order made in relation to a person must
- 19 include a statement about whether the person has the
- 20 decision-making capacity to consent to the treatment, care or
- 21 support under the order, and whether the person consents.
- 22 **48ZJ Role of care coordinator—forensic community care order**
- 23 (1) The care coordinator is responsible for coordinating the provision of
- 24 treatment, care or support for a person in relation to whom a
- 25 forensic community care order is in force.

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

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

9 (3) The care coordinator must not determine psychiatric treatment, care
10 or support that has, or is likely to have, the effect of subjecting the
11 person to whom it is given to undue stress or deprivation, having
12 regard to the benefit likely to result from the treatment, care or
13 support.

14 (4) Before making a determination in relation to a person, the care
15 coordinator—

16 (a) must take all reasonable steps to consult the following:

17 (i) the person;

18 (ii) if the person is a child—each person with parental
19 responsibility for the child under the *Children and Young*
20 *People Act 2008*, division 1.3.2 (Parental responsibility);

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

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

25 (v) if the person has a nominated person—the nominated
26 person;

27 (vi) if a health attorney is involved in the treatment, care or
28 support of the person—the health attorney; and

29 (b) may consult any other service provider the care coordinator
30 considers relevant; and

- 1 (c) must take into account the views of the people consulted under
2 this section.
- 3 (5) After making a determination in relation to a person, the care
4 coordinator must record whether the person was consulted and—
- 5 (a) if the person was consulted—what the person’s views were; or
6 (b) if the person was not consulted—the reasons why.
- 7 (6) The care coordinator must, as soon as practicable after making a
8 determination, give a copy of the determination to—
- 9 (a) the person; and
10 (b) if the person is a child—each person with parental
11 responsibility for the child under the *Children and Young
12 People Act 2008*, division 1.3.2 (Parental responsibility); and
13 (c) the ACAT; and
14 (d) the public advocate; and
15 (e) if the person has a guardian under the *Guardianship and
16 Management of Property Act 1991*—the guardian; and
17 (f) if the person has an attorney under the *Powers of Attorney
18 Act 2006*—the attorney; and
19 (g) if the person has a nominated person—the nominated person;
20 and
21 (h) if a health attorney is involved in the treatment, care or support
22 of the person—the health attorney.

23 **48ZK Treatment etc to be explained—forensic community care**
24 **order**

- 25 (1) Before treatment, care or support is given to a person under a
26 forensic community care order, the care coordinator must ensure
27 that the nature and effects (including any side effects) of the
28 treatment, care or support are explained to the person.

- 1 (2) The explanation must be given in a way that the person is most
2 likely to understand.

3 **48ZL Action if forensic community care order no longer**
4 **appropriate—no longer person in relation to whom ACAT**
5 **could make order**

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

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

- 14 (2) The care coordinator must give written notice to—
15 (a) if the person has a carer—the carer; and
16 (b) if the person has a nominated person—the nominated person.
17 (3) The notice must—
18 (a) include the reasons why the care coordinator is satisfied of the
19 matter mentioned in subsection (1) (b); and
20 (b) ask whether the carer or nominated person is aware of any
21 other information that may be relevant to whether the forensic
22 community care order continues to be appropriate for the
23 person; and
24 (c) state that, subject to consideration of any information given
25 under paragraph (b), the care coordinator must tell the ACAT
26 and public advocate of the matter mentioned in
27 subsection (1) (b) and this will lead to an ACAT review of the
28 forensic community care order; and

1 (d) tell the carer or nominated person that they are entitled to make
2 a submission to the ACAT review of the forensic community
3 care order.

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

6 *Note 2* If a form is approved under s 146A for this provision, the form must be
7 used.

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

12 (a) the care coordinator’s opinion, including the reasons for the
13 opinion; and

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

15 *Note* The ACAT must review the order within 10 days after being notified
16 under this section (see s 48ZZ (3)).

17 **48ZM Action if forensic community care order no longer**
18 **appropriate—no longer necessary to detain person**

19 (1) This section applies if—

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

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

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

26 *Note 1* For the criteria for making a forensic community care order, see
27 s 48ZH. For detention powers in relation to a forensic community care
28 order, see s 48ZN.

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

-
- 1 (2) The care coordinator must give written notice to—
- 2 (a) if the person has a carer—the carer; and
- 3 (b) if the person has a nominated person—the nominated person.
- 4 (3) The notice must—
- 5 (a) include the reasons why the care coordinator is satisfied of the
- 6 matter mentioned in subsection (1) (c); and
- 7 (b) ask whether the carer or nominated person is aware of any
- 8 other information that may be relevant to whether the detention
- 9 under the forensic psychiatric treatment order continues to be
- 10 appropriate for the person; and
- 11 (c) state that, subject to consideration of any information given
- 12 under paragraph (b), the care coordinator must tell the ACAT
- 13 and public advocate of the matter mentioned in
- 14 subsection (1) (c) and this will lead to an ACAT review of the
- 15 detention under forensic psychiatric treatment order; and
- 16 (d) tell the carer or nominated person that they are entitled to make
- 17 a submission to the ACAT review of the forensic psychiatric
- 18 treatment order.
- 19 *Note* If a form is approved under s 146A for this provision, the form must be
- 20 used.
- 21 (4) If, having taken into account any information given under
- 22 subsection (3) (b), the care coordinator is still satisfied of the matter
- 23 mentioned in subsection (1) (c) the chief psychiatrist must tell the
- 24 ACAT and the public advocate in writing about—
- 25 (a) the care coordinator’s opinion, including the reasons for the
- 26 opinion; and
- 27 (b) the details of any information given under subsection (3) (b).
- 28 *Note* The ACAT must review the order within 10 days after being notified
- 29 under this section (see s 48ZZ (3)).

- 1 **48ZN Powers in relation to forensic community care order**
- 2 (1) This section applies if—
- 3 (a) a forensic community care order has been made in relation to a
- 4 person; and
- 5 (b) either—
- 6 (i) the order requires the person to be detained at an
- 7 approved community care facility; or
- 8 (ii) the care coordinator requires the person to be detained at
- 9 an approved community care facility under
- 10 section 48ZX (Contravention of forensic mental health
- 11 order).
- 12 (2) The care coordinator may—
- 13 (a) detain the person at the facility in the custody that the care
- 14 coordinator considers appropriate; and
- 15 *Note* See s 139F (Powers of entry and apprehension) and s 140 (Powers
- 16 of search and seizure).
- 17 (b) subject the person to the minimum confinement or restraint
- 18 that is necessary and reasonable to—
- 19 (i) prevent the person from causing harm to themselves or
- 20 someone else; or
- 21 (ii) ensure that the person remains in custody under the order;
- 22 and
- 23 (c) subject the person to involuntary seclusion if satisfied that it is
- 24 the only way in the circumstances to prevent the person from
- 25 causing harm to themselves or someone else.
- 26 *Note* For principles that must be taken into account when exercising a
- 27 function under this Act, see s 6.

- 1 (3) If the care coordinator subjects a person to involuntary seclusion,
2 the care coordinator must ensure that the person is examined by a
3 relevant doctor of the approved community care facility at least
4 once in each 4-hour period for which the person is in seclusion.
- 5 (4) If a community care order made in relation to a person authorises
6 the giving of medication for the treatment of the person's mental
7 disorder, the care coordinator may—
- 8 (a) approve the giving by appropriately trained people of
9 medication prescribed by a doctor in accordance with the
10 order; and
- 11 (b) use, or authorise someone else to use, the force and assistance
12 that is necessary and reasonable to give the medication
13 (*forcible giving of medication*).
- 14 (5) If the care coordinator subjects a person to confinement or restraint,
15 involuntary seclusion or forcible giving of medication, the chief
16 psychiatrist must—
- 17 (a) enter in the person's record the fact of and the reasons for the
18 confinement or restraint, involuntary seclusion or forcible
19 giving of medication; and
- 20 (b) tell the public advocate in writing within 12 hours after the
21 person is subjected to the confinement or restraint, involuntary
22 seclusion or forcible giving of medication; and
- 23 (c) keep a register of the confinement or restraint, involuntary
24 seclusion or forcible giving of medication.
- 25 (6) In this section:
- 26 *relevant doctor*, of an approved community care facility, means a
27 person employed at the facility as a consultant psychiatrist, a
28 psychiatric registrar in consultation with a consultant psychiatrist or
29 another doctor in consultation with a consultant psychiatrist.

1 **Division 7.1.6 Limits on communication under**
2 **forensic mental health orders**

3 **48ZO Limits on communication—forensic mental health order**

- 4 (1) This section applies if—
- 5 (a) a forensic mental health order is made in relation to a person;
- 6 and
- 7 (b) the order states that a limit may be imposed on communication
- 8 between the person and other people.
- 9 (2) The relevant official for the order may impose a limit on
- 10 communication by the person with other people if—
- 11 (a) the limit is consistent with the order; and
- 12 (b) the relevant official believes on reasonable grounds that the
- 13 limit is necessary and reasonable to avoid prejudicing the
- 14 effectiveness of the person’s treatment, care or support.
- 15 (3) The relevant official must not impose a limit on communication by
- 16 the person with someone authorised under a territory law to
- 17 communicate with the person.
- 18 (4) As soon as practicable after imposing a limit on communication by a
- 19 person, the relevant official must explain to the person, in a way the
- 20 person is most likely to understand—
- 21 (a) the nature of the limit; and
- 22 (b) the period for which the limit will be in effect; and
- 23 (c) the reason for imposing the limit.
- 24 (5) A limit must not be imposed for a period longer than 7 days.
- 25 (6) Subsection (5) does not prevent a further limit being imposed
- 26 immediately after a limit previously imposed ceases to be in effect.

1 (7) This section has effect despite part 3.1 (Rights in relation to
2 information and communication) but subject to section 48ZP.

3 **48ZP Offence—limits on communication—forensic mental**
4 **health order**

5 (1) A relevant official commits an offence if—

6 (a) the relevant official imposes a limit on communication by a
7 person subject to a forensic mental health order; and

8 (b) the relevant official does not ensure that the person has
9 reasonable access to facilities and adequate opportunity to
10 contact the public advocate and the person’s lawyer.

11 Maximum penalty: 20 penalty units.

12 (2) A relevant official commits an offence if—

13 (a) the relevant official imposes a limit on communication by a
14 person subject to a forensic mental health order; and

15 (b) the public advocate or the person’s lawyer asks the relevant
16 official to give any reasonable assistance necessary to allow
17 the public advocate or lawyer to have access to the person; and

18 (c) the relevant official does not ensure that the assistance is given.

19 Maximum penalty: 50 penalty units.

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

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

3 **48ZQ Duration of forensic mental health orders**

4 (1) Unless sooner revoked, a forensic mental health order in relation to
5 a person remains in force for the period, not longer than the
6 following, stated in the order:

7 (a) 3 months;

8 (b) if consecutive forensic mental health orders have been in force
9 in relation to a person for 1 year or more—1 year.

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

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

17 *Note 2* The chief psychiatrist or another relevant person may apply for a mental
18 health order in relation to the person (see s 36O).

19 **Division 7.1.8 Leave for detained people**

20 **48ZR Meaning of *corrections order*—div 7.1.8**

21 In this division:

22 *corrections order* means any of the following:

23 (a) a warrant of remand;

24 (b) a warrant of imprisonment;

25 (c) a bail order under the *Bail Act 1992*, with a condition to be
26 supervised;

- 1 (d) a community-based sentence under the *Crimes (Sentence*
2 *Administration) Act 2005*, with a condition to be supervised;
- 3 (e) release on licence under the *Crimes (Sentence Administration)*
4 *Act 2005*, chapter 13.

5 **48ZS Grant of leave for person detained by ACAT**

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

9 *Note 1* The ACAT may order the detention of a person under a forensic mental
10 health order under s 48ZB (1) (d) or s 48ZI (1) (e).

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

- 13 (2) The ACAT may grant the person a period of leave from the
14 facility—

- 15 (a) on application by the person; or
16 (b) on application by the relevant official for the order.

- 17 (3) Before granting leave the ACAT must—

- 18 (a) if the person is subject to a corrections order—consult the
19 corrections director-general; and
20 (b) if the application is by the person—consult the relevant official
21 for the order.

- 22 (4) The ACAT may grant leave for any purpose the ACAT considers
23 appropriate if satisfied that—

- 24 (a) the consultation mentioned in subsection (3) does not raise a
25 serious concern about the appropriateness of the leave; and
26 (b) the safety of the person, anyone else or the public will not be
27 seriously endangered.

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

5 **Examples—purposes**

- 6 1 to attend a health or rehabilitation service
7 2 to take part in work or work-related activities
8 3 for compassionate reasons

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

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

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

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

- 6 (8) If leave is granted under this section, the ACAT must give written
7 notice to—

- 8 (a) the person; and
9 (b) the relevant official for the order; and
10 (c) if the person is subject to a corrections order—the corrections
11 director-general.

12 **48ZT Revocation of leave granted by ACAT**

- 13 (1) The ACAT may revoke leave granted under section 48ZS to a
14 person—

- 15 (a) on application by the relevant official for the person's forensic
16 mental health order; or
17 (b) if the person is subject to a corrections order—on application
18 by the corrections director-general; or
19 (c) in any case—on its own initiative.

- 20 (2) Before revoking a person's leave, the ACAT must give notice that
21 the revocation is being considered to—

- 22 (a) the person; and
23 (b) the relevant official for the person's forensic mental health
24 order; and
25 (c) if the person is subject to a corrections order—the corrections
26 director-general.

- 1 (3) The ACAT may revoke a person's leave if—
- 2 (a) the ACAT believes on reasonable grounds it is necessary to do
- 3 so because the person—
- 4 (i) is doing, or is likely to do, serious harm to themselves or
- 5 someone else; or
- 6 (ii) is suffering, or is likely to suffer, serious mental or
- 7 physical deterioration; or
- 8 (iii) is seriously endangering, or is likely to seriously
- 9 endanger, public safety; or
- 10 (b) the person contravenes a condition of the grant.
- 11 (4) If a person's leave is revoked under this section, the ACAT must
- 12 give written notice of the revocation to—
- 13 (a) the person; and
- 14 (b) the relevant official for the person's forensic mental health
- 15 order; and
- 16 (c) if the person is subject to a corrections order—the corrections
- 17 director-general.
- 18 (5) If a person's leave is revoked under this section, a police officer,
- 19 authorised ambulance paramedic, doctor or mental health officer
- 20 may apprehend the person and take the person to a relevant facility.
- 21 *Note* See s 139F (Powers of entry and apprehension) and s 140 (Powers of
- 22 search and seizure).
- 23 (6) If a person is detained under subsection (5), the relevant official
- 24 must, within 12 hours after the detention starts, give written notice
- 25 to the ACAT and the public advocate of—
- 26 (a) the name of the person detained; and
- 27 (b) the reasons for the detention; and

- 1 (c) the name and address of the relevant facility where the person
2 is detained.
- 3 (7) In this section:
- 4 *relevant facility* means—
- 5 (a) for a person in relation to whom a forensic psychiatric
6 treatment order is in force—an approved mental health facility;
7 or
- 8 (b) for a person in relation to whom a forensic community care
9 order is in force—an approved community care facility.

10 **48ZU Grant of leave for person detained by relevant official**

- 11 (1) This section applies to a person detained at an approved mental
12 health facility or approved community care facility under a forensic
13 mental health order if the relevant official has detained the person at
14 the facility.
- 15 *Note 1* The chief psychiatrist may make a determination under s 48ZC (Role of
16 chief psychiatrist—forensic psychiatric treatment order) requiring
17 detention of a person at an approved mental health facility.
- 18 *Note 2* The care coordinator may require a person to be detained at an approved
19 community care facility (see s 48ZN and s 48ZX).
- 20 (2) The relevant official may grant a period of leave from the approved
21 mental health facility or approved community care facility—
- 22 (a) on application by the person; or
- 23 (b) on the relevant official's own initiative.
- 24 (3) Before granting leave the relevant official must—
- 25 (a) notify the ACAT of the application for leave; and
- 26 (b) if the person is subject to a corrections order—consult with the
27 corrections director-general.

- 1 (4) The relevant official must not grant leave if satisfied that—
- 2 (a) the person applied to the ACAT for leave for the same purpose
- 3 in the previous 6 months; and
- 4 (b) the application was refused.
- 5 (5) The relevant official may allow the person to take a period of leave
- 6 for any purpose the relevant official considers appropriate if
- 7 satisfied that—
- 8 (a) the consultation mentioned in subsection (3) does not raise a
- 9 serious concern about the appropriateness of the leave; and
- 10 (b) the safety of the person, anyone else or the public will not be
- 11 seriously endangered.

12 **Examples—purposes**

- 13 1 to attend a health or rehabilitation service
- 14 2 to take part in work or work-related activities
- 15 3 for compassionate reasons

16 *Note* An example is part of the Act, is not exhaustive and may extend, but

17 does not limit, the meaning of the provision in which it appears (see

18 [Legislation Act](#), s 126 and s 132).

- 19 (6) The grant of leave must state—
- 20 (a) the purpose for which the leave is granted; and
- 21 (b) the period for which the leave is granted.
- 22 (7) The grant of leave may be subject to conditions, including in
- 23 relation to any of the following:
- 24 (a) accepting treatment, care or support as required;
- 25 (b) enrolling and participating in educational, rehabilitation,
- 26 recreational, therapeutic or training programs;
- 27 (c) not using alcohol and other drugs;
- 28 (d) undergoing drug testing and other medical tests;

- 1 (e) the standard of conduct required;
- 2 (f) prohibitions or limits on association with stated people or kinds
3 of people;
- 4 (g) prohibitions or limits on visiting stated places, or kinds of
5 places;
- 6 (h) prohibitions or limits on travelling interstate or overseas;
- 7 (i) any other condition the relevant official considers appropriate
8 in the circumstances taking into account the safety of the
9 person, anyone else or the public.
- 10 *Note* For principles that must be taken into account when exercising a
11 function under this Act, see s 6.
- 12 (8) If leave is granted under this section, the relevant official must give
13 written notice to—
- 14 (a) the person; and
- 15 (b) if the person is subject to a corrections order—the corrections
16 director-general.

17 **48ZV Leave in emergency or special circumstances**

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

- 1 (2) The relevant official may grant the person a period of leave from the
2 approved mental health facility or approved community care facility
3 if satisfied that—
- 4 (a) there are emergency or special circumstances for granting the
5 leave; and
- 6 **Examples**
- 7 1 to attend a relative’s funeral
- 8 2 to attend an urgent medical appointment
- 9 *Note* An example is part of the Act, is not exhaustive and may extend,
10 but does not limit, the meaning of the provision in which it
11 appears (see [Legislation Act](#), s 126 and s 132).
- 12 (b) the safety of the person, someone else or the public will not be
13 seriously endangered by the leave.
- 14 (3) The relevant official must not grant leave under this section if the
15 person—
- 16 (a) has applied for leave based on the same emergency or special
17 circumstances under section 48ZS (Grant of leave for person
18 detained by ACAT), section 48ZU (Grant of leave for person
19 detained by relevant official) or this section; and
- 20 (b) the ACAT or the relevant official has refused to grant the
21 leave.
- 22 (4) If leave is granted under this section, the relevant official must give
23 written notice to—
- 24 (a) the person; and
- 25 (b) if the person is subject to a corrections order—the corrections
26 director-general.
- 27 *Note* The function of granting leave under this section must not be delegated
28 (see s 118 (2) (Delegation by chief psychiatrist) and s 120D (2)
29 (Delegation by care coordinator)).

-
- 1 **48ZW Revocation of leave granted by relevant official**
- 2 (1) The relevant official may revoke leave granted under section 48ZU
- 3 or section 48ZV to a person—
- 4 (a) if the person is subject to a corrections order—on application
- 5 by the corrections director-general; or
- 6 (b) in any case—on its own initiative.
- 7 (2) Before revoking a person’s leave, the relevant official must give
- 8 notice that the revocation is being considered to—
- 9 (a) the person; and
- 10 (b) if the person is subject to a corrections order—the corrections
- 11 director-general.
- 12 (3) The relevant official may revoke a person’s leave if—
- 13 (a) the relevant official believes on reasonable grounds it is
- 14 necessary to do so because the person—
- 15 (i) is doing, or is likely to do, serious harm to themselves or
- 16 someone else; or
- 17 (ii) is suffering, or is likely to suffer, serious mental or
- 18 physical deterioration; or
- 19 (iii) is seriously endangering, or is likely to seriously
- 20 endanger, public safety; or
- 21 (b) the person contravenes a condition of the grant.
- 22 (4) If a person’s leave is revoked under this section, the relevant official
- 23 must give written notice of the revocation to—
- 24 (a) the person; and
- 25 (b) if the person is subject to a corrections order—the corrections
- 26 director-general.

- 1 (5) If a person's leave is revoked under this section, a police officer,
2 authorised ambulance paramedic, doctor or mental health officer
3 may apprehend the person and take the person to a relevant facility.
- 4 *Note* See s 139F (Powers of entry and apprehension) and s 140 (Powers of
5 search and seizure).
- 6 (6) If a person is detained under subsection (5), the relevant official
7 must, within 12 hours after the detention starts, give written notice
8 to the ACAT and the public advocate of—
- 9 (a) the name of the person detained; and
10 (b) the reasons for the detention; and
11 (c) the name and address of the relevant facility where the person
12 is detained.
- 13 (7) In this section:
- 14 *relevant facility* means—
- 15 (a) for a person in relation to whom a forensic psychiatric
16 treatment order is in force—an approved mental health facility;
17 or
18 (b) for a person in relation to whom a forensic community care
19 order is in force—an approved community care facility.

20 **Division 7.1.9 Contravention and review of forensic**
21 **mental health orders**

22 **48ZX Contravention of forensic mental health order**

- 23 (1) This section applies if—
- 24 (a) a forensic mental health order is in force in relation to a person;
25 and
26 (b) the person contravenes the order; and

1 (c) section 48ZY (Contravention of forensic mental health order—
2 absconding from facility) does not apply to the contravention.

3 **Examples—contravention**

4 1 failure to return from leave granted by ACAT

5 2 not attending mental health facility for treatment, care or support

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

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

10 (a) within 7 days of the contravention, orally tell the person that
11 failure to comply with the order may result in the person being
12 apprehended and taken to a relevant facility for treatment, care
13 or support; and

14 (b) if the noncompliance continues after the taking of action under
15 paragraph (a)—tell the person in writing that failure to comply
16 with the order will result in the person being apprehended and
17 taken to a relevant facility for treatment, care or support; and

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

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

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

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

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

4 (a) the name of the person detained; and

5 (b) the reasons for the detention; and

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

8 *Note* The ACAT must review the order within 72 hours after being notified
9 under this subsection (see s 48ZZ (5)).

10 (5) In this section:

11 *relevant facility* means—

12 (a) for a person in relation to whom a forensic psychiatric
13 treatment order is in force—an approved mental health facility;
14 or

15 (b) for a person in relation to whom a forensic community care
16 order is in force—an approved community care facility.

17 **48ZY Contravention of forensic mental health order—**
18 **absconding from facility**

19 (1) This section applies if—

20 (a) a forensic mental health order is in force in relation to a person;
21 and

22 (b) the forensic mental health order requires the person to be
23 detained at an approved mental health facility or an approved
24 community care facility; and

25 (c) the person absconds from the facility.

1 (2) A police officer, authorised ambulance paramedic, mental health
2 officer or doctor may apprehend the person and take the person to
3 an approved mental health facility or approved community care
4 facility.

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

7 (3) A police officer, authorised ambulance paramedic, mental health
8 officer or doctor who apprehends a person under this section must
9 tell the person the reason for the apprehension.

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

13 (a) the name of the person detained; and

14 (b) the reasons for the detention; and

15 (c) the name and address of the facility where the person is
16 detained.

17 *Note* The ACAT must review the order within 72 hours after being notified
18 under this subsection (see s 48ZZ (5)).

19 **48ZZ Review, amendment or revocation of forensic mental**
20 **health order**

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

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

25 (2) The ACAT must review a forensic mental health order in force in
26 relation to a person if the person, or the person's representative,
27 applies for the review on the basis that the order, or part of the
28 order, is no longer required.

- 1 (3) The ACAT must review each forensic mental health order in force
2 in relation to a person within 10 days if the ACAT receives notice in
3 relation to the person under any of the following:
- 4 (a) section 48ZE (Action if forensic psychiatric treatment order no
5 longer appropriate—no longer person in relation to whom
6 ACAT could make order);
- 7 (b) section 48ZF (Action if forensic psychiatric treatment order no
8 longer appropriate—no longer necessary to detain person);
- 9 (c) section 48ZL (Action if forensic community care order no
10 longer appropriate—no longer person in relation to whom
11 ACAT could make order);
- 12 (d) section 48ZM (Action if forensic community care order no
13 longer appropriate—no longer necessary to detain person).
- 14 (4) A review of a matter under subsection (3) must include, as far as
15 practicable, consulting a person mentioned in section 48W.
- 16 (5) The ACAT must review each forensic mental health order in force
17 in relation to the person within 72 hours if the ACAT receives
18 notice in relation to the person under—
- 19 (a) section 48ZX (4) (Contravention of forensic mental health
20 order); or
- 21 (b) section 48ZY (4) (Contravention of forensic mental health
22 order—absconding from facility).
- 23 (6) A review required under subsection (5)—
- 24 (a) may be conducted without a hearing; and
- 25 (b) may include consulting a person mentioned in section 48W.
- 26 *Note* If the ACAT holds a hearing for the review, s 79A (1) (Notice of
27 hearing) does not apply (see s 79A (3)).

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- 1 (7) If the ACAT is satisfied that a person in relation to whom a forensic
2 mental health order is in force is no longer a person in relation to
3 whom the ACAT could make a forensic mental health order, the
4 ACAT must revoke all the forensic mental health orders in force in
5 relation to the person.
- 6 (8) In any other case, the ACAT may, if appropriate, do any of the
7 following:
- 8 (a) amend or revoke any of the forensic mental health orders in
9 force in relation to the person;
- 10 (b) make additional forensic mental health orders in relation to the
11 person;
- 12 (c) make a mental health order in relation to the person;
- 13 (d) make an assessment order in relation to the person.
- 14 (9) In this section:
- 15 ***representative***, for a person, means any of the following:
- 16 (a) if the person has a guardian under the *Guardianship and*
17 *Management of Property Act 1991*—the guardian;
- 18 (b) if the person has an attorney under the *Powers of Attorney*
19 *Act 2006*—the attorney;
- 20 (c) if the person has a nominated person—the nominated person;
- 21 (d) a close relative or close friend of the person;
- 22 (e) a legal representative of the person.

1 **Part 7.2** **Affected people**

2 **48ZZA** **Definitions—pt 7.2**

3 In this part:

4 *affected person register*—see section 48ZZD.

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

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

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

13 **48ZZB** **Meaning of *affected person***

14 (1) In this Act:

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

18 (a) a person (the *primary affected person*) who suffers harm—

19 (i) in the course of, or as a result of, the commission of the
20 offence; or

21 (ii) as a result of witnessing the offence; and

22 (b) a family member of the primary affected person who suffers
23 harm because of the harm to the primary affected person; and

24 (c) a person who is financially or psychologically dependent on
25 the primary affected person and who suffers harm because of
26 the harm to the primary affected person; and

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

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

- 6 (2) In this section:

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

9 ***guardian*** means—

- 10 (a) for a child—a parent, a legally appointed guardian of the child
11 or someone else with parental responsibility for the child under
12 the *Children and Young People Act 2008*, division 1.3.2
13 (Parental responsibility); or

- 14 (b) for a legally incompetent person—a person who is—

15 (i) a legally appointed guardian of the legally incompetent
16 person; or

17 (ii) an attorney, appointed under an enduring power of
18 attorney that has become operative, for the legally
19 incompetent person.

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

21 (a) physical injury;

22 (b) mental injury or emotional suffering (including grief);

23 (c) pregnancy;

24 (d) economic loss;

25 (e) substantial impairment of a person's legal rights.

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

- 1 *legally incompetent person* means an adult who is subject to—
2 (a) an enduring power of attorney that has become operative; or
3 (b) a guardianship order.

4 **48ZZC Meaning of *registered affected person***

5 In this Act:

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

9 **48ZZD Affected person register**

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

13 **48ZZE Notifying people about the affected person register**

- 14 (1) The director-general must take reasonable steps to notify affected
15 people in relation to forensic patients about the affected person
16 register.
- 17 (2) The notice must set out—
- 18 (a) the rights of a registered affected person under section 48ZZH;
19 and
- 20 (b) the requirement for an affected person to sign an undertaking
21 not to publish the information received under section 48ZZH if
22 the person wants to be registered as an affected person.

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

4 *Note 1* If a form is approved under s 146A for this provision, the form must be
5 used.

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

10 **48ZZF Including person in affected person register**

- 11 (1) The director-general must enter in the register information about an
12 affected person if—

13 (a) the person, or someone acting for the person—

14 (i) asks the director-general to enter the information; or

15 (ii) gives consent to the director-general entering the
16 information; and

17 (b) the person signs an undertaking not to publish information
18 disclosed under section 48ZZH; and

19 (c) the director-general is satisfied that entering the information is
20 necessary for the affected person's safety and wellbeing.

- 21 (2) As soon as practicable after entering the affected person's
22 information in the register, the director-general must give the
23 registered affected person, orally or in writing, information about
24 the person's rights as a registered affected person under
25 section 48ZZH.

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

- 1 (4) If the registered affected person is a child under 15 years old, the
2 director-general may give the information to a person who has
3 parental responsibility for the person under the *Children and Young*
4 *People Act 2008*, division 1.3.2 (Parental responsibility).
- 5 (5) The director-general must not disclose the information in the
6 register about a registered affected person to—
- 7 (a) a forensic patient; or
- 8 (b) anyone else except the following:
- 9 (i) the registered affected person;
- 10 (ii) a person mentioned in subsection (4);
- 11 (iii) a person with legal authority to act for the registered
12 affected person.

13 **48ZZG Removing person from affected person register**

- 14 (1) The director-general must remove a registered affected person's
15 information from the affected person register on request by the
16 person or someone with legal authority to act for the person.
- 17 (2) The director-general may, at any time, remove a registered affected
18 person's information from the register if—
- 19 (a) the ACAT considers that it is no longer necessary for the
20 person's wellbeing and safety to be a registered affected
21 person; or
- 22 (b) the person breaches an undertaking not to publish information
23 disclosed under section 48ZZH.
- 24 (3) However, before removing a person's information from the register
25 under subsection (2), the director-general must give the person and
26 the victims of crimes commissioner written notice of the
27 director-general's intention to remove the information.

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

5 **48ZZH Disclosures to registered affected people**

- 6 (1) This section applies if a forensic mental health order has been made
7 in relation to a forensic patient.
- 8 (2) The director-general must disclose to a registered affected person in
9 relation to the forensic patient information about any of the
10 following happening in relation to the forensic patient:
- 11 (a) an application for a forensic mental health order has been
12 made;
- 13 (b) a forensic mental health order is in force;
- 14 (c) the patient absconds, or fails to return after leave, from a
15 mental health facility or community care facility;
- 16 (d) the patient is transferred to or from another jurisdiction;
- 17 (e) the patient is released from a mental health facility or
18 community care facility.
- 19 (3) The director-general may disclose any other information about the
20 forensic patient to a registered affected person in relation to the
21 patient that the director-general considers necessary for the
22 registered affected person's safety and wellbeing.
- 23 (4) However, the director-general must not disclose identifying
24 information about a child unless the offence was a personal violence
25 offence and the director-general believes that the registered affected
26 person, or a family member of the affected person, may come into
27 contact with the child.

- 1 (5) If the registered affected person is a child under 15 years old, the
2 director-general may give the information to a person who has
3 parental responsibility for the affected person under the *Children*
4 *and Young People Act 2008*, division 1.3.2 (Parental responsibility).
- 5 (6) Subsection (5) does not limit the cases in which the director-general
6 may give information to a person acting for a registered affected
7 person.
- 8 (7) The director-general must ensure that every disclosure under this
9 section is accompanied by a written statement that—
- 10 (a) the registered affected person must not publish the disclosed
11 information; and
- 12 (b) publishing disclosed information may result in a registered
13 affected person being removed from the register of affected
14 people; and
- 15 (c) if the disclosed information relates to a forensic patient who is
16 a child or young person—publishing the disclosed information
17 is an offence under the *Criminal Code*, section 712A.
- 18 (8) In this section:
- 19 *domestic violence offence*—see the *Domestic Violence and*
20 *Protection Orders Act 2008*, section 13 (2).
- 21 *personal violence offence* means—
- 22 (a) an offence that involves causing harm, or threatening to cause
23 harm, to anyone; or
- 24 (b) a domestic violence offence.

1 Chapter 8 Correctional patients

2 Part 8.1 Preliminary

3 48ZZI Meaning of *correctional patient*

4 In this Act:

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

7 Part 8.2 Transfer of correctional patients

8 48ZZJ Transfer to mental health facility

9 (1) This section applies if—

10 (a) the chief psychiatrist is satisfied that a detainee has a mental
11 illness for which treatment, care or support is available in an
12 approved mental health facility; and

13 (b) a mental health order or forensic mental health order cannot be
14 made in relation to the person.

15 (2) The chief psychiatrist may request the corrections director-general
16 to direct that the detainee be transferred from a correctional centre to
17 a stated approved mental health facility, and be detained at the
18 facility.

19 (3) The corrections director-general must make the direction requested
20 (the *transfer direction*) under the *Corrections Management*
21 *Act 2007*, section 54 (Transfers to health facilities).

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

1 **48ZZK Return to correctional centre unless direction to remain**

2 (1) A correctional patient must be returned to a correctional centre
3 within 7 days after the day the person is transferred to an approved
4 mental health facility under a transfer direction.

5 (2) However, the chief psychiatrist may direct that a correctional patient
6 remain at an approved mental health facility for longer than 7 days
7 if the chief psychiatrist is satisfied that—

8 (a) the person has a mental illness for which treatment, care or
9 support is available in the approved mental health facility; and

10 (b) other care of an appropriate kind would not be reasonably
11 available to the person in the correctional centre.

12 (3) The chief psychiatrist may direct that a correctional patient be
13 returned to the correctional centre at any time if the chief
14 psychiatrist is satisfied that—

15 (a) the person no longer has a mental illness for which treatment,
16 care or support is available in an approved mental health
17 facility; or

18 (b) other care of an appropriate kind would be reasonably
19 available to the person in a correctional centre.

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

23 **48ZZL Release etc on change of status of correctional patient**

24 (1) This section applies if—

25 (a) the director-general is told by the corrections director-general,
26 or otherwise becomes aware, of any of the following in relation
27 to a person who is a correctional patient:

28 (i) the person's sentence of imprisonment ends;

29 (ii) the person is released on parole;

- 1 (iii) the person is otherwise released from detention on the
2 order of a court;
- 3 (iv) the relevant charge against the person is dismissed;
- 4 (v) the director of public prosecutions notifies the ACAT or a
5 court that the relevant charge against the person will not
6 proceed; and
- 7 (b) the person is not required to be detained under another court
8 order.

9 *Note* The corrections director-general must tell the director-general of any
10 change in a person's status as a detainee (see *Corrections Management*
11 *Act 2007*, s 54A).

12 (2) The director-general must—

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

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

20 **48ZZM ACAT may return people to correctional centre**

21 (1) This section applies to a correctional patient who has been
22 transferred to an approved mental health facility.

23 (2) The correctional patient may, at any time, apply to the ACAT to be
24 returned to a correctional centre.

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

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

- 1 (c) the availability of an approved mental health facility with
2 capacity to accept the transfer and provide the treatment, care
3 or support.
- 4 (4) On review, the ACAT may, as it considers appropriate, make an
5 order in relation to the detention or treatment, care or support of the
6 person in an approved mental health facility, correctional centre or
7 other place.

8 **48ZZO Review of correctional patient transferred to mental**
9 **health facility**

- 10 (1) This section applies to a correctional patient who has been
11 transferred to an approved mental health facility under a transfer
12 direction.
- 13 (2) The ACAT must review the transfer direction as soon as practicable
14 after the correctional patient has been transferred.
- 15 (3) On review, the ACAT—
- 16 (a) must determine—
- 17 (i) whether the person has a mental illness for which
18 treatment, care or support is available in an approved
19 mental health facility; and
- 20 (ii) whether the approved mental health facility has capacity
21 to continue the detention and treatment, care or support
22 under the transfer direction; and
- 23 (iii) whether other treatment, care or support of an appropriate
24 kind would not be reasonably available to the person in
25 the correctional centre; and
- 26 (b) may, as it considers appropriate, make an order in relation to
27 the person's continued detention or treatment, care or support
28 in an approved mental health facility or correctional centre.

- 1 **48ZZP Review of correctional patient detained at mental health**
2 **facility**
- 3 (1) This section applies to a correctional patient transferred to an
4 approved mental health facility under a transfer direction and
5 detained at the facility for at least 6 months.
- 6 (2) The ACAT must review the transfer—
- 7 (a) at the end of each 12-month period for which the correctional
8 patient is detained at the approved mental health facility; and
- 9 (b) at any other time on request by any of the following:
- 10 (i) the Minister;
- 11 (ii) the Attorney-General;
- 12 (iii) the director-general;
- 13 (iv) the corrections director-general;
- 14 (v) the person in charge of the approved mental health
15 facility at which the person is detained.
- 16 (3) Also, the ACAT may, at any time on its own initiative, review the
17 transfer.
- 18 (4) For a review, the chief psychiatrist must give the ACAT a report
19 about—
- 20 (a) the person’s condition; and
- 21 (b) the capacity of the approved mental health facility to continue,
22 and the availability of any other facility or place to accept a
23 transfer for, the detention or treatment, care or support.
- 24 (5) On review, the ACAT may, as it considers appropriate, make an
25 order in relation to the person’s continued detention at, treatment,
26 care or support in, or transfer to, an approved mental health facility,
27 correctional centre or other place.

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

5 **Part 8.4 Leave for correctional patients**

6 **48ZZQ Grant of leave for correctional patients**

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

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

10 **Example**

11 to attend a relative's funeral

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

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

- 17 (2) The grant of leave must state—

- 18 (a) the purpose for which the leave is granted; and

- 19 (b) the period for which the leave is granted.

- 20 (3) The grant of leave may be subject to conditions, including in
21 relation to any of the following:

- 22 (a) accepting treatment, care or support as required;

- 23 (b) enrolling and participating in educational, rehabilitation,
24 recreational, therapeutic or training programs;

- 25 (c) not using alcohol and other drugs;

- 26 (d) undergoing drug testing and other medical tests;

- 1 (e) the standard of conduct required;
- 2 (f) prohibitions or limits on association with stated people or kinds
3 of people;
- 4 (g) prohibitions or limits on visiting stated places, or kinds of
5 places;
- 6 (h) prohibitions or limits on travelling interstate or overseas;
- 7 (i) any other condition the director-general considers appropriate
8 in the circumstances taking into account the safety of the
9 person, anyone else or the public.
- 10 *Note* For principles that must be taken into account when exercising a
11 function under this Act, see s 6.
- 12 (4) The director-general must, at least 72 hours before the leave starts,
13 tell the corrections director-general about the leave, in writing.

14 **48ZZR Revocation of leave for correctional patients**

- 15 (1) The director-general may revoke a grant of leave in relation to a
16 correctional patient if—
- 17 (a) the patient contravenes a condition of the grant; or
- 18 (b) the chief psychiatrist considers it is necessary to revoke the
19 grant because the patient—
- 20 (i) is doing, or is likely to do, serious harm to themselves or
21 someone else; or
- 22 (ii) is suffering, or is likely to suffer, serious mental or
23 physical deterioration; or
- 24 (iii) seriously endangers, or is likely to seriously endanger,
25 public safety.
- 26 *Note* For principles that must be taken into account when exercising a
27 function under this Act, see s 6.

1 (2) If a person's leave is revoked under this section, a police officer,
2 authorised ambulance paramedic, doctor or mental health officer
3 may apprehend the person and take the person to an approved
4 mental health facility.

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

7 (3) If a person is detained under subsection (2), the person in charge of
8 the approved mental health facility must, within 12 hours after the
9 detention starts, give written notice to the ACAT and the public
10 advocate of—

11 (a) the name of the person detained; and

12 (b) the reasons for the detention; and

13 (c) the name and address of the approved mental health facility
14 where the person is detained.

15 **44 Rights of mentally dysfunctional or mentally ill persons**
16 **Part 6**

17 *omit*

18 **45 Informed consent**
19 **Section 54**

20 *omit*

21 part

22 *substitute*

23 chapter

1 **46 Section 62**

2 *substitute*

3 **62 Application to be considered by committee**

- 4 (1) The chief psychiatrist must, as soon as practicable after receiving an
5 application under section 61, give a copy of the application to the
6 chairperson of the committee appointed under section 67.
- 7 (2) The chairperson must as soon as practicable after receiving the
8 application—
- 9 (a) tell the following people in writing of the application:
- 10 (i) if the person on whom the surgery is proposed to be
11 performed (the *subject person*) is a child—each person
12 with parental responsibility for the child under the
13 *Children and Young People Act 2008*, division 1.3.2
14 (Parental responsibility);
- 15 (ii) if the subject person has a guardian under the
16 *Guardianship and Management of Property Act 1991*—
17 the guardian;
- 18 (iii) if the subject person has an attorney under the *Powers of*
19 *Attorney Act 2006*—the attorney;
- 20 (iv) if the subject person has a nominated person—the
21 nominated person;
- 22 (v) if a health attorney is involved in the treatment, care or
23 support of the subject person—the health attorney; and
- 24 (b) convene a meeting of the committee to consider the
25 application; and

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

24 **47 Consent of Supreme Court**
25 **Section 65 (b)**

26 *substitute*

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

- 1 **48 Refusal of surgery**
2 **Section 66 (3)**
- 3 *substitute*
- 4 (3) If the chief psychiatrist has approved psychiatric surgery under
5 section 64 and is informed under this section that the person refuses
6 to have the surgery, the chief psychiatrist must—
- 7 (a) immediately inform the doctor who is to perform the surgery of
8 the refusal; and
- 9 (b) ensure that written documentation of the refusal is placed on
10 the person's record.
- 11 **49 Committees**
12 **New section 67 (6)**
- 13 *insert*
- 14 (6) The chairperson and each member of the committee must take all
15 reasonable steps to avoid being placed in a position where a conflict
16 of interest arises during the exercise of the committee's functions.
- 17 **50 Electroconvulsive therapy and psychiatric surgery**
18 **Part 7**
- 19 *renumber as chapter 9*
- 20 **51 Divisions 7.1 to 7.3**
- 21 *renumber as parts 9.1 to 9.3*
- 22 **52 Subdivisions 7.2.1 to 7.2.6**
- 23 *renumber as divisions 9.2.1 to 9.2.6*

1 **53 Part 8 heading**

2 *substitute*

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

6 **54 Review of certain people found unfit to plead**
7 **Section 68 (8)**

8 *after*
9 mental health order
10 *insert*
11 or forensic mental health order

12 **55 Recommendations about people with mental illness or**
13 **mental dysfunction**
14 **Section 70A**

15 *omit*
16 mental illness or mental dysfunction
17 *substitute*
18 mental disorder or mental illness

19 **56 Sections 72 to 74**

20 *substitute*

21 **72 Review of detention under court order**

22 (1) This section applies if, under the [Crimes Act](#), part 13, a court orders
23 that a person be detained in custody for immediate review by the
24 ACAT.

- 1 (2) The ACAT must review the detention and consider the release of the
2 person—
- 3 (a) as soon as practicable, and not later than 7 days after the day of
4 the order; and
- 5 (b) as soon as practicable after the person has been in custody
6 under the order for 1 month since the detention was last
7 reviewed.
- 8 *Note* Under s 79A, the ACAT must give notice of the hearing to certain
9 people and may give notice to anyone else it considers appropriate.
- 10 (3) In reviewing the detention and considering the release of a person,
11 the ACAT must have regard to the following:
- 12 (a) that detention in custody is to be regarded as a last resort and
13 ordered only in exceptional circumstances;
- 14 (b) the nature and extent of the person’s mental disorder or mental
15 illness, including the effect it is likely to have on the person’s
16 behaviour in the future;
- 17 (c) whether or not, if released—
- 18 (i) the person’s health or safety would be, or would be likely
19 to be, substantially at risk; or
- 20 (ii) the person would be likely to do serious harm to others;
- 21 (d) if the court nominated a term under the [Crimes Act](#), part 13—
22 the nominated term.
- 23 (4) An order for the release of a person may be made subject to the
24 conditions (if any) the ACAT considers appropriate, including a
25 requirement to comply with a stated mental health order or forensic
26 mental health order.

- 1 (5) If, on a review, the ACAT does not order the release of a person, the
2 ACAT may—
- 3 (a) make mental health orders (including additional orders) in
4 relation to the person; or
- 5 (b) vary or revoke any of the mental health orders in force in
6 relation to the person.

7 **73 Contravention of conditions of release**

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

15 **74 Review of conditions of release**

- 16 (1) The ACAT may, on application or on its own initiative, review a
17 condition under section 72 (4) to which an order for release of a
18 person is subject.
- 19 (2) The ACAT must review each condition under section 72 (4), to
20 which an order for release of a person is subject within 72 hours
21 after receiving notice under section 73 (2).
- 22 (3) A review required under subsection (2) may be conducted without a
23 hearing.

24 *Note* If the ACAT holds a hearing for the review, s 79A (1) (Notice of
25 hearing) does not apply (see s 79A (3)).

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

11 **57 Part 9 heading**

12 *substitute*

13 **Chapter 11 ACAT procedural matters**

14 **58 Section 76 heading**

15 *substitute*

16 **76 Meaning of *subject person*—ch 11**

17 **59 Section 76**

18 *omit*

19 part

20 *substitute*

21 chapter

60 Sections 77 to 79

substitute

77 When ACAT may be constituted by presidential member

- (1) This section applies to a proceeding on any of the following:
- (a) an assessment order;
 - (b) a removal order under section 36G (2) (Removal order to conduct assessment);
 - (c) an order for the extension of a person's detention under section 41 (3) (Authorisation of involuntary detention);
 - (d) an order for a person's release under section 46 (Orders for release);
 - (e) a grant of leave under section 48ZV (Leave in emergency or special circumstances);
 - (f) a review of a transfer direction under section 48ZZN (Review of correctional patient awaiting transfer to mental health facility);
 - (g) a review of a transfer direction under section 48ZZO (Review of correctional patient transferred to mental health facility).
- (2) The ACAT may be made up by a presidential member alone, but not a non-presidential member alone.

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

- 1 **78 When ACAT must be constituted by more members**
- 2 (1) This section applies to a proceeding on any of the following:
- 3 (a) a mental health order;
- 4 (b) a review of a mental health order under section 36ZQ (Review,
- 5 amendment or revocation of mental health order);
- 6 (c) a forensic mental health order;
- 7 (d) a grant of leave under section 48ZS (Grant of leave for person
- 8 detained by ACAT);
- 9 (e) revocation of leave under section 48ZT (Revocation of leave
- 10 granted by ACAT);
- 11 (f) a review of a forensic mental health order under section 48ZZ
- 12 (Review, amendment or revocation of forensic mental health
- 13 order);
- 14 (g) an electroconvulsive therapy order under section 55G (Criteria
- 15 for making electroconvulsive therapy order);
- 16 (h) an emergency electroconvulsive therapy order under
- 17 section 55N (Criteria for making emergency electroconvulsive
- 18 therapy order);
- 19 (i) a review of a person's fitness to plead under section 68
- 20 (Review of certain people found unfit to plead);
- 21 (j) a recommendation under section 70 (Recommendations about
- 22 people with mental impairment) or section 70A
- 23 (Recommendations about people with mental disorder or
- 24 mental illness) about a person who has a mental impairment,
- 25 mental disorder or mental illness;
- 26 (k) a review of detention under section 72 (Review of detention
- 27 under court order).

- 1 (2) The ACAT must include—
2 (a) a presidential member; and
3 (b) a non-presidential member with a relevant interest, experience
4 or qualification.

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

8 **79 Applications**

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

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

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

16 **79A Notice of hearing**

- 17 (1) At least 3 days before the ACAT holds a hearing in relation to a
18 matter under this Act, the ACAT—
19 (a) must give written notice of the hearing to the following people:
20 (i) if the subject person is not required to appear by a
21 subpoena under the *ACT Civil and Administrative*
22 *Tribunal Act 2008*, section 41 for a reason other than
23 because section 82 (3) (Subpoena to appear in person)
24 applies in relation to the person—the subject person;
25 (ii) the representative of the subject person (if any);

- 1 (iii) if the subject person is a child—
2 (A) each person with parental responsibility for the
3 child under the *Children and Young People Act*
4 *2008*, division 1.3.2 (Parental responsibility); and
5 (B) the CYP director-general;
6 (iv) if the subject person has a guardian under the
7 *Guardianship and Management of Property Act 1991*—
8 the guardian;
9 (v) if the subject person has an attorney under the *Powers of*
10 *Attorney Act 2006*—the attorney;
11 (vi) if the subject person is referred to the ACAT under
12 section 35 (Applications by referring officers—
13 assessment order)—the referring officer;
14 (vii) the applicant (if any);
15 (viii) if the hearing is on a proceeding on a forensic mental
16 health order for which there is a registered affected
17 person for the person—
18 (A) the registered affected person; or
19 (B) the victims of crime commissioner;
20 (ix) the public advocate;
21 (x) the chief psychiatrist;
22 (xi) the care coordinator;
23 (xii) the director-general of the administrative unit that has
24 responsibility for providing care, support and protection
25 for people with a mental disorder; and

- 1 (b) may give written notice to anyone else the ACAT considers
2 appropriate.
- 3 **Example—par (b)**
4 an official visitor
- 5 *Note* An example is part of the Act, is not exhaustive and may extend, but
6 does not limit, the meaning of the provision in which it appears (see
7 [Legislation Act](#), s 126 and s 132).
- 8 (2) Subsection (1) does not apply to a matter under this Act if—
- 9 (a) the chief psychiatrist gives the ACAT written notice that the
10 chief psychiatrist believes on reasonable grounds that anything
11 to do with the notification process is likely to substantially
12 increase—
- 13 (i) the risk to the subject person’s health or safety; or
14 (ii) the risk of serious harm to others; and
- 15 (b) a presidential member of the ACAT is satisfied that the risks
16 mentioned in paragraph (a) make the giving of notice under
17 subsection (1) undesirable for the matter; and
- 18 (c) the ACAT—
- 19 (i) tells the public advocate that notice under subsection (1)
20 has not been given; and
- 21 (ii) gives the public advocate a copy of the written notice
22 mentioned in paragraph (a).
- 23 (3) Also, subsection (1) does not apply in relation to a hearing to be
24 held for any of the following:
- 25 (a) the making of an emergency assessment order under
26 section 36C;
- 27 (b) a review required under section 36ZQ (3) (Review, amendment
28 or revocation of mental health order);

- 1 (c) an application under section 41 (2) or (4) (Authorisation of
2 involuntary detention);
- 3 (d) a review required under section 48ZZ (5) (Review, amendment
4 or revocation of forensic mental health order);
- 5 (e) the making of an emergency electroconvulsive therapy order
6 under section 55N;
- 7 (f) a review required under section 74 (2) (Review of conditions
8 of release).

9 *Note* Requirements in relation to hearings are set out in the *ACT Civil and*
10 *Administrative Tribunal Act 2008*, div 5.4. Those requirements apply
11 unless this Act provides otherwise.

12 **61 Appearance**
13 **Section 80 (1) (b) to (d)**

14 *substitute*

- 15 (b) if the subject person is a child—
- 16 (i) each person with parental responsibility for the child
17 under the *Children and Young People Act 2008*,
18 division 1.3.2 (Parental responsibility); and
- 19 (ii) the CYP director-general;
- 20 (c) if the subject person has a guardian under the *Guardianship*
21 *and Management of Property Act 1991*—the guardian;
- 22 (d) if the subject person has an attorney under the *Powers of*
23 *Attorney Act 2006*—the attorney;
- 24 (da) if the subject person has a nominated person—the nominated
25 person;
- 26 (db) the applicant (if any);

- 1 (dc) if the subject person is referred to the ACAT under section 35
2 (Applications by referring officers—assessment order)—the
3 referring officer;
- 4 (dd) if the proceeding is on a forensic mental health order for which
5 there is a registered affected person for the offence committed
6 or alleged to have been committed by the subject person—the
7 victims of crime commissioner;

8 **62 Section 80 (1) (g)**

- 9 *omit*
10 dysfunction
11 *substitute*
12 disorder

13 **63 Section 81**

- 14 *substitute*

15 **81 Separate representation of children etc**

- 16 (1) This section applies in relation to a proceeding if—
17 (a) the subject person is a child or a person the ACAT considers is
18 unable to represent themselves; and
19 (b) the person is not separately represented; and
20 (c) the ACAT considers that the person should be separately
21 represented.
- 22 (2) The ACAT may, on its own initiative or on the application of a
23 person—
24 (a) adjourn the proceeding to allow the subject person to obtain
25 representation; and

- 1 (b) give reasonably necessary advice and assistance to the person
2 to enable the person to obtain representation.

3 **64 Directions to registrar**
4 **Section 84 (2)**

5 *after*

6 care

7 *insert*

8 or support

9 **65 Section 84 (as amended)**

10 *relocate as section 79B*

11 **66 Notice of hearing**
12 **Section 85**

13 *omit*

14 **67 Section 86**

15 *substitute*

16 **86 Hearings to be in private**

17 (1) A hearing of a proceeding in relation to a subject person must be
18 held in private.

19 (2) However, a hearing of a proceeding in relation to a subject person
20 who is not a child may be held in public if—

21 (a) the subject person asks for the hearing to be held in public; or

22 (b) the ACAT orders the hearing be held in public.

- 1 (3) A private hearing is taken to be a hearing to which the *ACT Civil*
2 *and Administrative Tribunal Act 2008*, section 39 (Hearings in
3 private or partly in private) applies.

4 *Note* Requirements for keeping private hearings secret are set out in the *ACT*
5 *Civil and Administrative Tribunal Act 2008*, s 40.

6 **68 Who is given a copy of the order?**
7 **Section 87 (1) (c)**

8 *substitute*

- 9 (c) if the subject person is a child—each person with parental
10 responsibility for the child under the *Children and Young*
11 *People Act 2008*, division 1.3.2 (Parental responsibility);

12 **69 Section 87 (1) (g)**

13 *substitute*

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

22 **70 Section 87 (1) (i)**

23 *omit*

24 or institution

1 **71 New section 87 (1) (k)**
2 *insert*
3 (k) if the subject person has a nominated person—the nominated
4 person.

5 **72 New section 87 (2) (ba)**
6 *insert*
7 (ba) a forensic psychiatric treatment order;

8 **73 New section 87 (3) (c)**
9 *insert*
10 (c) a forensic community care order.

11 **74 Part 10 heading**
12 *substitute*

13 **Chapter 12 Administration**

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

16 **75 Functions**
17 **Section 113**
18 *after*
19 care
20 *insert*
21 or support

76 New section 113 (c)

insert

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

77 New section 114

insert

114 Approved code of practice

- (1) The chief psychiatrist may approve a code of practice to provide guidance on assessing whether a person has decision-making capacity.

Note Power given under an Act to make a statutory instrument (including a code of practice) includes power to amend or repeal the instrument (see [Legislation Act](#), s 46 (1)).

- (2) An approved code of practice may apply, adopt or incorporate an instrument as in force from time to time.

- (3) An approved code of practice is a notifiable instrument.

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

78 Section 116

substitute

116 Ending appointment—chief psychiatrist

- (1) The Minister may end the appointment of the chief psychiatrist—

(a) for misbehaviour; or

(b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions.

- 1 (2) The Minister must end the appointment of the chief psychiatrist if
2 the chief psychiatrist stops being eligible to hold the office of chief
3 psychiatrist.

4 **79 Delegation by chief psychiatrist**
5 **New section 118 (2)**

6 *insert*

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

9 **80 Mental health officers**
10 **Section 119 (3), new definitions**

11 *insert*

12 *psychologist* means a person registered under the *Health*
13 *Practitioner Regulation National Law (ACT)* to practise in the
14 psychology profession (other than as a student).

15 *social worker* means a person with a social work qualification that
16 provides eligibility for membership of the Australian Association of
17 Social Workers.

18 **81 Chief psychiatrist's annual report**
19 **Section 120 (b)**

20 *omit*

21 New South Wales

22 *substitute*

23 other States

1 **82 Care coordinator**
2 **Part 10A**

3 *renumber as part 12.2*

4 **83 Sections 120B and 120C**

5 *substitute*

6 **120B Functions**

7 The care coordinator has the following functions:

- 8 (a) to coordinate the provision of treatment, care or support to
9 people with a mental disorder in accordance with community
10 care orders made by the ACAT;
- 11 (b) to coordinate the provision of appropriately trained people for
12 the treatment, care or support of people with a mental disorder
13 who are subject to community care orders;
- 14 (c) to coordinate the provision of appropriate residential or
15 detention facilities for people with a mental disorder in relation
16 to whom any of the following orders are in force:
- 17 (i) a community care order;
- 18 (ii) a restriction order with a community care order;
- 19 (iii) a forensic community care order;
- 20 (d) to coordinate the provision of medication and anything else
21 required to be done for people with a mental disorder in
22 accordance with community care orders and restriction orders
23 made by the ACAT;
- 24 (e) to make reports and recommendations to the Minister about
25 matters affecting the provision of treatment, care or support,
26 control, accommodation, maintenance and protection for
27 people with a mental disorder;

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

2 **120C Ending appointment—care coordinator**

3 (1) The Minister may end the appointment of the care coordinator—

4 (a) for misbehaviour; or

5 (b) for physical or mental incapacity, if the incapacity substantially
6 affects the exercise of the person's functions.

7 (2) The Minister must end the appointment of the care coordinator if the
8 care coordinator stops being eligible to hold the office of care
9 coordinator.

10 **84 Delegation by care coordinator**
11 **Section 120D (2)**

12 *substitute*

13 (2) However—

14 (a) the function of granting leave under section 48ZV (Leave in
15 emergency or special circumstances) must not be delegated;
16 and

17 (b) the care coordinator may delegate a function to a person only if
18 the care coordinator is satisfied that the person has the training,
19 experience and personal qualities necessary to exercise the
20 function.

21 **85 Care coordinator's annual report**
22 **Section 120E**

23 *omit*

24 dysfunction

25 *substitute*

26 disorder

1 **86 Official visitors**
2 **Part 11**

3 *renumber as part 12.3*

4 **87 Meaning of *official visitor* etc**
5 **Section 121**

6 *omit*

7 treatment or care

8 *substitute*

9 treatment, care or support

10 **88 Section 121**

11 *omit*

12 dysfunction

13 *substitute*

14 disorder

15 **89 Appointment of official visitors—additional suitability**
16 **requirement**
17 **Section 122 (d)**

18 *omit*

19 dysfunction

20 *substitute*

21 disorder

- 1 **90** **New section 122AA**
- 2 *before section 122A, insert*
- 3 **122AA** **Appointment of principal official visitor**
- 4 The Minister may appoint 1 official visitor as the principal official
- 5 visitor.
- 6 **91** **Official visitor's functions**
- 7 **Section 122A**
- 8 *omit*
- 9 dysfunction
- 10 *substitute*
- 11 disorder
- 12 **92** **Section 122A**
- 13 *omit*
- 14 treatment or care
- 15 *substitute*
- 16 treatment, care or support
- 17 **93** **New section 122A (d)**
- 18 *insert*
- 19 (d) any other matter that an official visitor considers appropriate.
- 20 *Note* For principles that must be taken into account when exercising a
- 21 function under this Act, see s 6.

- 1 **94 New section 122BB**
- 2 *before section 122B, insert*
- 3 **122BB Principal official visitor's functions**
- 4 In addition to the functions of an official visitor, the principal
- 5 official visitor has the following functions:
- 6 (a) to oversee the exercise of the functions of official visitors;
- 7 (b) to report to the Minister, as requested, on the official visitor's
- 8 functions and how they are exercised;
- 9 (c) any other function given to the principal official visitor under
- 10 this Act.
- 11 **95 Notice to official visitor of detainee receiving mental**
- 12 **health treatment or care in correctional centre**
- 13 **Section 122B**
- 14 *omit*
- 15 treatment or care
- 16 *substitute*
- 17 treatment, care or support
- 18 **96 Section 122B**
- 19 *omit*
- 20 dysfunction
- 21 *substitute*
- 22 disorder

1 **97** **Complaint about treatment or care provided at a place**
2 **other than visitable place**
3 **Section 122C**

4 *omit*
5 treatment or care
6 *substitute*
7 treatment, care or support

8 **98** **Section 122C**

9 *omit*
10 dysfunction
11 *substitute*
12 disorder

13 **99** **New parts 12.4 and 12.5**

14 *insert*

15 **Part 12.4** **Coordinating director-general**

16 **122D** **Coordinating director-general**

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

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

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

1 **122E Functions of coordinating director-general**

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

6 **122F Coordinating director-general policies and operating**
7 **procedures**

8 (1) The coordinating director-general may make policies and operating
9 procedures, consistent with this Act, for the effective and efficient
10 management or operation of any administrative function under this
11 Act.

12 (2) A person exercising an administrative function under this Act must
13 comply with policies and operating procedures.

14 (3) A policy or operating procedure made under subsection (1) is a
15 notifiable instrument.

16 *Note 1* A notifiable instrument must be notified under the [Legislation Act](#).

17 *Note 2* The power to make an instrument includes the power to amend or repeal
18 the instrument. The power to amend or repeal the instrument is
19 exercisable in the same way, and subject to the same conditions, as the
20 power to make the instrument (see [Legislation Act](#), s 46).

21 **Part 12.5 Sharing information—**
22 **government agencies**

23 **122G Definitions—pt 12.5**

24 In this part:

25 *information sharing entity*—each of the following is an
26 *information sharing entity*:

27 (a) the director-general;

- 1 (b) the CYP director-general;
- 2 (c) the corrections director-general;
- 3 (d) the director-general responsible for the *Disability Services*
- 4 *Act 1991*;
- 5 (e) the director-general responsible for the *Health Act 1993*;
- 6 (f) the chief police officer;
- 7 (g) the chief officer (ambulance service);
- 8 (h) an agency of another jurisdiction approved by the
- 9 director-general under section 122J.

10 *information sharing protocol*—see section 122H.

11 *relevant information* means information needed for the safe and

12 effective care of a person who has, or may have, a mental illness or

13 mental disorder.

14 **122H Information sharing protocol**

- 15 (1) An information sharing entity may enter into an arrangement (an
- 16 *information sharing protocol*) with another information sharing
- 17 entity to allow each entity—
- 18 (a) to request and receive relevant information held by each other
- 19 entity; and
- 20 (b) to disclose relevant information to each other entity.
- 21 (2) An information sharing entity may share relevant information under
- 22 an information sharing protocol only if satisfied, and to the extent, it
- 23 is reasonably necessary for the safe and effective treatment, care or
- 24 support of the person to whom the information relates.
- 25 (3) Relevant information about a person in relation to whom a forensic
- 26 mental health order is in force may be shared under an information
- 27 sharing protocol without the consent of the person.

- 1 (4) If an information sharing entity shares relevant information without
2 the consent of the person to whom the information relates, the entity
3 must tell the following people in writing about the information
4 shared and reasons for sharing the information:
- 5 (a) if the person has a guardian under the *Guardianship and*
6 *Management of Property Act 1991*—the guardian;
- 7 (b) if the person has an attorney under the *Powers of Attorney*
8 *Act 2006*—the attorney;
- 9 (c) if the person has a nominated person—the nominated person.
- 10 (5) Subsection (4) applies to information shared about any person other
11 than information about a detainee or young detainee that is shared—
- 12 (a) because of a request for information under—
- 13 (i) the *Corrections Management Act 2007*, section 77
14 (Health reports); or
- 15 (ii) the *Children and Young People Act 2008*, section 186
16 (Health reports); or
- 17 (b) between the CYP director-general, the corrections
18 director-general and the director-general.

19 **122I Information sharing guidelines**

20 (1) The Minister may make guidelines about the operation of
21 information sharing protocols.

22 (2) A guideline is a disallowable instrument.

23 *Note* A disallowable instrument must be notified, and presented to the
24 Legislative Assembly, under the [Legislation Act](#).

1 **122J Information sharing—approval of agency**

2 (1) The director-general may approve an agency from another
3 jurisdiction as an information sharing entity for this part.

4 (2) An approval is a notifiable instrument.

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

6 **100 Part 12 heading**

7 *substitute*

8 **Chapter 13 Private psychiatric facilities**

9 **101 Section 123**

10 *substitute*

11 **123 Definitions—ch 13**

12 In this chapter:

13 *inspector* means an inspector appointed under section 132.

14 *licence* means a licence issued under this chapter.

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

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

20 *psychiatric facility* means a hospital or other facility for the
21 treatment, care or support, rehabilitation or accommodation of
22 people who have a mental illness, other than—

23 (a) a recognised hospital within the meaning of the [Health](#)
24 [Insurance Act 1973](#) (Cwlth); or

25 (b) a facility conducted by the Territory.

1 **102 Owner or manager to be licensed**
2 **Section 124**

3 *omit*

4 institution

5 *substitute*

6 facility

7 **103 Issue of licence**
8 **Section 125 (3) (a)**

9 *omit*

10 treatment or reside

11 *substitute*

12 treatment, care or support, or reside,

13 **104 Section 125 (4)**

14 *after*

15 care

16 *insert*

17 or support

18 **105 Section 125 (5) (e)**

19 *omit*

20 institution

21 *substitute*

22 facility

1 **106** **Effect of cancellation**
2 **Section 131**

3 *after*
4 care
5 *insert*
6 or support

7 **107** **Appointment of inspectors**
8 **Section 132**

9 *omit*
10 part
11 *substitute*
12 chapter

13 **108** **Powers of inspection**
14 **Section 134 (1) (a)**

15 *after*
16 care
17 *insert*
18 or support

19 **109** **Section 134 (1) (b) and (c)**

20 *omit*
21 institution
22 *substitute*
23 facility

1	110	Divisions 12.1 to 12.3
2		<i>renumber as parts 13.1 to 13.3</i>
3	111	Section 136 heading
4		<i>substitute</i>
5	136	Meaning of <i>reviewable decision</i>—ch 16
6	112	Section 136
7		<i>omit</i>
8		division
9		<i>substitute</i>
10		chapter
11	113	Sections 136 to 137A
12		<i>renumber as sections 139CR to 139CT</i>
13	114	Notification and review of decisions
14		Division 12.4 (as amended)
15		<i>relocate as chapter 16</i>
16	115	Unauthorised treatment
17		Section 138
18		<i>after</i>
19		treatment
20		<i>insert</i>
21		, care or support

1 **116 Section 138**

2 *omit*

3 institution

4 *substitute*

5 facility

6 **117 Miscellaneous**
7 **Division 12.5 (as amended)**

8 *renumber as part 13.4*

9 **118 New chapter 14**

10 *insert*

11 **Chapter 14 Mental health advisory council**

12 **139 Establishment of mental health advisory council**

13 The mental health advisory council is established.

14 **139A Functions of mental health advisory council**

15 The mental health advisory council has the following functions:

16 (a) advising the Minister about—

17 (i) emerging or urgent mental health issues; and

18 (ii) mental health service reforms; and

19 (iii) mental health policy; and

20 (iv) mental health legislative change; and

21 (v) anything else in relation to mental health requested by the
22 Minister;

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

1 **139B Membership of mental health advisory council**

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

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

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

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

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

15 (a) someone who is or has been a person with a mental disorder or
16 mental illness; and

17 (b) someone who is or has been a carer of a person with a mental
18 disorder or mental illness; and

19 (c) someone with experience or expertise in mental health; and

20 (d) someone with current knowledge of scientific, evidence-based
21 mental health research and practice; and

22 (e) someone with experience or expertise in mental health
23 promotion and mental illness prevention and treatment, care or
24 support.

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

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

1 **139C Procedures of mental health advisory council**

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

10 **119 Section 140**

11 *substitute*

12 **139D Approval of mental health facilities**

- 13 (1) The Minister may approve a facility as a mental health facility for
14 this Act.
- 15 (2) An approval is a notifiable instrument.

16 *Note 1* A notifiable instrument must be notified under the [Legislation Act](#).

17 *Note 2* Power to make a statutory instrument includes power to make different
18 provision for different categories (see [Legislation Act](#), s 48).

19 **139E Approval of community care facilities**

- 20 (1) The Minister may approve a facility as a community care facility for
21 this Act.
- 22 (2) An approval is a disallowable instrument.

23 *Note 1* A disallowable instrument must be notified, and presented to the
24 Legislative Assembly, under the [Legislation Act](#).

25 *Note 2* Power to make a statutory instrument includes power to make different
26 provision for different categories (see [Legislation Act](#), s 48).

1 **139F Powers of entry and apprehension**

2 (1) This section applies to a person (an *authorised person*) who is
3 authorised to apprehend, remove, detain or take a person to a place
4 under any of the following provisions:

5 (a) section 36H (Executing removal order);

6 (b) section 36ZO (Contravention of mental health order);

7 (c) section 36ZP (Contravention of mental health order—
8 absconding from facility);

9 (d) section 37 (Apprehension);

10 (e) section 48ZG (Powers in relation to forensic psychiatric
11 treatment order);

12 (f) section 48ZN (Powers in relation to forensic community care
13 order);

14 (g) section 48ZT (Revocation of leave granted by ACAT);

15 (h) section 48ZW (Revocation of leave granted by relevant
16 official);

17 (i) section 48ZX (Contravention of forensic mental health order);

18 (j) section 48ZY (Contravention of forensic mental health order—
19 absconding from facility);

20 (k) section 48ZZR (Revocation of leave for correctional patients).

21 (2) The authorised person—

22 (a) may, with necessary and reasonable assistance and minimum
23 force, enter any premises to apprehend, remove or take the
24 person to a place; and

25 (b) may use necessary and reasonable assistance to enter premises
26 and apprehend the person; and

- 1 (c) must use the minimum amount of force necessary to apprehend
2 the person and remove the person to—
3 (i) an approved mental health facility; or
4 (ii) another place where the person may be detained for
5 treatment, care or support.

6 **140 Powers of search and seizure**

- 7 (1) This section applies to a person (an *authorised person*) who is
8 authorised to apprehend, remove, detain or take a person to a place
9 under any of the following provisions:
10 (a) section 36H (Executing removal order);
11 (b) section 36ZC (Powers in relation to psychiatric treatment
12 order);
13 (c) section 36ZK (Powers in relation to community care order);
14 (d) section 36ZO (Contravention of mental health order);
15 (e) section 36ZP (Contravention of mental health order—
16 absconding from facility);
17 (f) section 37 (Apprehension);
18 (g) section 41 (Authorisation of involuntary detention);
19 (h) section 48ZG (Powers in relation to forensic psychiatric
20 treatment order);
21 (i) section 48ZN (Powers in relation to forensic community care
22 order);
23 (j) section 48ZT (Revocation of leave granted by ACAT);
24 (k) section 48ZW (Revocation of leave granted by relevant
25 official);
26 (l) section 48ZX (Contravention of forensic mental health order);

-
- 1 (m) section 48ZY (Contravention of forensic mental health order—
2 absconding from facility);
- 3 (n) section 48ZZR (Revocation of leave for correctional patients).
- 4 (2) The authorised person—
- 5 (a) may carry out a scanning search, frisk search or ordinary
6 search of the person if there are reasonable grounds for
7 believing that the person is carrying anything—
- 8 (i) that would present a danger to the authorised person or
9 another person; or
- 10 (ii) that could be used to assist the person to escape the
11 authorised person’s custody; and
- 12 (b) may seize and detain a thing found in a search conducted under
13 paragraph (a).
- 14 (3) The authorised person must make a written record of anything
15 seized under this section.
- 16 (4) A thing seized under this section must be returned to its owner, or
17 reasonable compensation must be paid to the owner by the Territory
18 for the loss of the thing, unless—
- 19 (a) a prosecution for an offence against a territory law in
20 connection with the thing is begun within 1 year after the day
21 the seizure is made and the thing is required to be produced in
22 evidence in the prosecution; or
- 23 (b) an application for the forfeiture of the thing is made to a court
24 under the *Confiscation of Criminal Assets Act 2003* or another
25 territory law within 1 year after the day the seizure is made; or
- 26 (c) all proceedings in relation to the offence with which the seizure
27 was connected have ended and the court has not made an order
28 about the thing.

- 1 (5) However, subsection (4) does not apply to a thing if the authorised
2 person believes on reasonable grounds that—
- 3 (a) the only practical use of the thing in relation to the premises
4 where it was seized would be an offence against this Act; or
- 5 (b) possession of the thing would be an offence; or
- 6 (c) possession of the thing would present a serious risk or threat to
7 a person.
- 8 (6) In this section:
- 9 *frisk search* means—
- 10 (a) a search of a person conducted by quickly running the hands
11 over the person’s outer garments; and
- 12 (b) an examination of anything worn or carried by the person that
13 is conveniently and voluntarily removed by the person.
- 14 *ordinary search* means a search of a person, or of articles in a
15 person’s possession, that may include—
- 16 (a) requiring the person to remove the person’s overcoat, coat or
17 jacket and any gloves, shoes, hat or bag; and
- 18 (b) an examination of those items.
- 19 *scanning search* means a search of a person by electronic or other
20 means that does not require the person to remove the person’s
21 clothing or to be touched by someone else.

22 **120 Relationship with Guardianship and Management of**
23 **Property Act**
24 **Section 142 (1) (a)**

25 *omit*
26 treatment for mental illness,

-
- 1 **121 Section 142 (2) (a)**
- 2 *omit*
- 3 treatment for mental illness,
- 4 **122 Section 142, new note**
- 5 *after subsection (2), insert*
- 6 *Note* In certain circumstances a guardian can consent to a person's treatment,
7 care or support for mental illness (see *Guardianship and Management*
8 *of Property Act 1991*, s 70A).
- 9 **123 Relationship with Powers of Attorney Act**
- 10 **Section 143 (a)**
- 11 *omit*
- 12 treatment for mental illness,
- 13 **124 Section 143, new note**
- 14 *insert*
- 15 *Note* In certain circumstances an attorney can consent to a person's treatment,
16 care or support for mental illness (see *Powers of Attorney Act 2006*, s
17 46A).
- 18 **125 Certain rights unaffected**
- 19 **Section 145 (a)**
- 20 *omit*
- 21 treatment or care
- 22 *substitute*
- 23 treatment, care or support

1 **126 New section 145A**

2 *insert*

3 **145A Review of certain provisions**

4 (1) The Minister must invite public submissions and review the
5 operation of the following provisions of this Act 3 years after the
6 day this section commences:

7 (a) section 36V (Psychiatric treatment order);

8 (b) section 36ZD (Community care order);

9 (c) section 48ZA (Forensic psychiatric treatment order);

10 (d) section 48ZB (Content of forensic psychiatric treatment order);

11 (e) section 48ZH (Forensic community care order).

12 (2) The Minister must present a report of the review to the Legislative
13 Assembly not later than 4 years after the day this section
14 commences.

15 (3) Subsections (1) and (2) and this subsection expire 5 years after the
16 day this section commences.

17 (4) The Minister must—

18 (a) 18 months after the day this section commences, invite public
19 submissions and review the maximum further period of
20 detention under section 41 (5) (Authorisation of involuntary
21 detention); and

22 (b) present a report of the review to the Legislative Assembly not
23 later than 1 year after the day the review commences.

24 (5) Subsection (4) and this subsection expire 3 years after the day this
25 section commences.

1 **127** **Miscellaneous**
2 **Part 13 (as amended)**

3 *relocate as chapter 17*

4 **128** **Reviewable decisions**
5 **Schedule 1 heading, reference**

6 *substitute*
7 (see ch 16)

8 **129** **Schedule 1, new items 1A to 1E**

9 *before item 1, insert*

1A	48ZU	refuse to grant leave	applicant for leave
1B	48ZV	refuse to grant leave in emergency or special circumstances	applicant for leave
1C	48ZW	revoke leave	applicant for leave
1D	48ZZQ	refuse to grant leave	applicant for leave
1E	48ZZR	revoke leave for correctional patient	applicant for leave

10 **130** **Dictionary, note 2**

11 *insert*

- 12 • adult
- 13 • detention place

1 **131 Dictionary, new definitions**

2 *insert*

3 *advance agreement*—see section 26.

4 *advance consent direction*—see section 27.

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

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

9 **132 Dictionary, definition of *agreement***

10 *substitute*

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

13 **133 Dictionary, definitions of *applicant* and *application***

14 *omit*

15 **134 Dictionary, new definition of *approved community care*
16 *facility***

17 *insert*

18 *approved community care facility* means a facility approved under
19 section 139E.

1 **135 Dictionary, definition of *approved health facility***

2 *omit*

3 **136 Dictionary, definitions of *approved mental health facility***
4 **and *assessment order***

5 *substitute*

6 *approved mental health facility* means a facility approved under
7 section 139D.

8 *assessment order* means an order under section 36A.

9 **137 Dictionary, new definitions**

10 *insert*

11 *authorised ambulance paramedic* means a member of the
12 ambulance service—

13 (a) employed as a paramedic; and

14 (b) authorised by the chief officer (ambulance service) to
15 apprehend people with a mental disorder or mental illness.

16 *carer*—see section 12.

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

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

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

1 **138 Dictionary, definition of *community care facility***

2 *substitute*

3 *community care facility*—

4 (a) means—

5 (i) a facility, or part of a facility, for the treatment, care or
6 support, protection, rehabilitation or accommodation of
7 people with a mental disorder; or

8 (ii) a prescribed psychiatric facility or a prescribed part of a
9 psychiatric facility; but

10 (b) does not include a correctional centre or detention place.

11 **139 Dictionary, new definitions**

12 *insert*

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

15 *correctional patient*—see section 48ZZI.

16 *corrections director-general* means the director-general responsible
17 for the [Corrections Management Act 2007](#).

18 *corrections order*, for division 7.1.8 (Leave for detained people)—
19 see section 48ZR.

20 **140 Dictionary, definition of *corresponding law***

21 *substitute*

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

141 Dictionary, new definitions

1 *insert*

2 *decision-making capacity*—see section 7.

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

4 *director-general*, for part 7.2 (Affected people)—see
5 section 48ZZA.

6 *emergency assessment order* means an order under section 36C.

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

9 *forensic patient*, for part 7.2 (Affected people)—see section 48ZZA.

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

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

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

142 Dictionary, definitions of *information statement* etc

16 *substitute*

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

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

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

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

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

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

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

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

9 **143 Dictionary, new definition of *mental disorder***

10 *insert*

11 *mental disorder*—see section 9.

12 **144 Dictionary, definition of *mental dysfunction***

13 *omit*

14 **145 Dictionary, definitions of *mental health facility*, *mental*
15 *health professional* and *mental illness***

16 *substitute*

17 *mental health facility*—

18 (a) means a facility for the treatment, care or support,
19 rehabilitation or accommodation of people with a mental
20 illness; and

21 (b) includes a psychiatric facility.

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

26 *mental illness*—see section 10.

-
- 1 **146 Dictionary, new definition of *nominated person***
- 2 *insert*
- 3 *nominated person* means a person nominated under section 19.
- 4 **147 Dictionary, definition of *offender with a mental***
- 5 ***impairment***
- 6 *omit*
- 7 **148 Dictionary, definition of *official visitor***
- 8 *omit*
- 9 section 121
- 10 *substitute*
- 11 section 121 (1)
- 12 **149 Dictionary, new definitions**
- 13 *insert*
- 14 *principal official visitor* means the principal official visitor
- 15 appointed under section 122AA.
- 16 *private psychiatric facility* means a facility in relation to which a
- 17 licence is issued under chapter 13 (Private psychiatric facilities).
- 18 **150 Dictionary, definition of *private psychiatric institution***
- 19 *omit*
- 20 **151 Dictionary, definition of *proceeding***
- 21 *substitute*
- 22 *proceeding* means a proceeding on an application, or other
- 23 proceeding in, the ACAT.

- 1 **152 Dictionary, new definition of *psychiatric facility***
- 2 *insert*
- 3 *psychiatric facility*—
- 4 (a) for this Act generally—means a hospital or other facility for
- 5 the treatment, care or support, rehabilitation or accommodation
- 6 of people who have a mental illness, that is—
- 7 (i) a facility conducted by the Territory; or
- 8 (ii) a private psychiatric facility; and
- 9 (b) for chapter 13 (Private psychiatric facilities)—see section 123.
- 10 **153 Dictionary, definition of *psychiatric institution***
- 11 *omit*
- 12 **154 Dictionary, new definitions**
- 13 *insert*
- 14 *publish*, for part 7.2 (Affected people)—see section 48ZZA.
- 15 *registered affected person*, in relation to a forensic patient—see
- 16 section 48ZZC.
- 17 *relevant information*, for part 12.5 (Sharing information—
- 18 government agencies)—see section 122G.
- 19 *relevant official*—
- 20 (a) for a mental health order, for chapter 5 (Mental health
- 21 orders)—see section 36N; or
- 22 (b) for a forensic mental health order, for part 7.1 (Forensic mental
- 23 health orders)—see section 48S.

1 ***relevant person***—

2 (a) for a mental health order application, for chapter 5 (Mental
3 health orders)—see section 36N; and

4 (b) for a forensic mental health order application, for part 7.1
5 (Forensic mental health orders)—see section 48S.

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

8 **155 Dictionary, definitions of *responsible person* etc**

9 *substitute*

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

12 ***restriction order*** means an order made under section 36X or section
13 36ZF.

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

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

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

20 **156 Dictionary, new definitions**

21 *insert*

22 ***transfer direction***—see section 48ZZJ (3).

23 ***treating team***, for a person with a mental disorder or mental illness,
24 for part 3.3 (Advance agreements and advance consent directions)—
25 see section 24.

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

9 **Examples—rehabilitation support**

10 1 support to improve social confidence and integration

11 2 assistance to improve work skills

12 *Note* An example is part of the Act, is not exhaustive and may extend, but

13 does not limit, the meaning of the provision in which it appears (see

14 [Legislation Act](#), s 126 and s 132).

15 ***victims of crime commissioner*** means the victims of crime

16 commissioner appointed under the [Victims of Crime Act 1994](#).

17 ***young detainee***—see the [Children and Young People Act 2008](#),

18 section 95.

19 ***young offender***—see the [Children and Young People Act 2008](#),

20 dictionary.

21 ***young person***—see the [Children and Young People Act 2008](#),

22 section 12.

1 **Schedule 1** **Other amendments**

2 (see s 3)

3 **Part 1.1** **Children and Young People**
4 **Act 2008**

5 **[1.1] Section 530 (1), new definition of *mental disorder***

6 *insert*

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

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

13 **[1.2] Section 530 (1), definition of *mental dysfunction***

14 *omit*

15 **[1.3] Section 530 (1), definition of *mental illness***

16 *substitute*

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

19 *Note* The *Mental Health (Treatment and Care) Act 1994*, s 10 defines *mental*
20 *illness* as a condition that seriously impairs (either temporarily or
21 permanently) the mental functioning of a person in 1 or more areas of
22 thought, mood, volition, perception, orientation or memory, and is
23 characterised by—

- 24 (a) the presence of at least 1 of the following symptoms:
25 (i) delusions;
26 (ii) hallucinations;

- 1 (iii) serious disorders of streams of thought;
2 (iv) serious disorders of thought form;
3 (v) serious disturbance of mood; or
4 (b) sustained or repeated irrational behaviour that may be taken to
5 indicate the presence of at least 1 of the symptoms mentioned in
6 par (a).

7 **[1.4] Section 863 (2), example 2**

8 *substitute*

- 9 2 administration of a mental health order or forensic mental health order under
10 the *Mental Health (Treatment and Care) Act 1994*

11 **Part 1.2 Corrections Management**
12 **Act 2007**

13 **[1.5] New section 54A**

14 *insert*

15 **54A Transfer to mental health facility—transfer direction**

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

23 **Examples**

- 24 1 the person's sentence of imprisonment ends
25 2 the person is released on parole
26 3 the person is otherwise released from detention

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

1 (3) In this section:

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

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

6 **Part 1.3 Crimes Act 1900**

7 **[1.6] Section 300 (1), new definition of forensic mental health** 8 **order**

9 *insert*

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

12 **[1.7] Section 301 (1)**

13 *omit*

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

16 *substitute*

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

19 **[1.8] Section 301 (2)**

20 *omit*

21 shall nominate a term

22 *substitute*

23 must nominate a term (a *nominated term*)

- 1 **[1.9] New section 301 (3) and (4)**
- 2 *insert*
- 3 (3) In nominating a term in relation to an offence, the Supreme Court
4 may, as it considers appropriate, take into account the periods (if
5 any) for which the person has been detained in relation to the
6 offence, before or after the special hearing.
- 7 (4) A nominated term in relation to an offence takes effect on—
- 8 (a) the day the Supreme Court nominates the term; or
- 9 (b) if, after taking into account any periods mentioned in
10 subsection (3), the Supreme Court nominates an earlier day—
11 the earlier day.
- 12 **[1.10] Section 302 (1)**
- 13 *omit*
- 14 that the accused be detained in custody until the ACAT orders
15 otherwise, the court shall
- 16 *substitute*
- 17 that the accused be detained in custody for immediate review by the
18 ACAT, the court must
- 19 **[1.11] Section 302 (2)**
- 20 *omit*
- 21 shall nominate a term
- 22 *substitute*
- 23 must nominate a term (a *nominated term*)

1 **[1.12] New section 302 (3) and (4)**

2 *insert*

3 (3) In nominating a term in relation to an offence, the Supreme Court
4 may, as it considers appropriate, take into account the periods (if
5 any) for which the person has been detained in relation to the
6 offence, before or after the special hearing.

7 (4) A nominated term in relation to an offence takes effect on—

8 (a) the day the Supreme Court nominates the term; or

9 (b) if, after taking into account any periods mentioned in
10 subsection (3), the Supreme Court nominates an earlier day—
11 the earlier day.

12 **[1.13] Section 303**

13 *omit*

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

17 *substitute*

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

20 **[1.14] Section 304 (1)**

21 *omit*

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

24 *substitute*

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

1 **[1.15] Section 304 (2)**

2 *omit*

3 shall nominate a term

4 *substitute*

5 must nominate a term (a *nominated term*)

6 **[1.16] New section 304 (3) and (4)**

7 *insert*

8 (3) In nominating a term in relation to an offence, the Magistrates Court
9 may, as it considers appropriate, take into account the periods (if
10 any) for which the person has been detained in relation to the
11 offence, before or after the special hearing.

12 (4) A nominated term in relation to an offence takes effect on—

13 (a) the day the Magistrates Court nominates the term; or

14 (b) if, after taking into account any periods mentioned in
15 subsection (3), the Magistrates Court nominates an earlier
16 day—the earlier day.

17 **[1.17] Section 305 (1)**

18 *omit*

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

21 *substitute*

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

1 **[1.18] Section 305 (2)**

2 *omit*

3 shall nominate a term

4 *substitute*

5 must nominate a term (a *nominated term*)

6 **[1.19] New section 305 (3) and (4)**

7 *insert*

8 (3) In nominating a term in relation to an offence, the Magistrates Court
9 may, as it considers appropriate, take into account the periods (if
10 any) for which the person has been detained in relation to the
11 offence, before or after the special hearing.

12 (4) A nominated term in relation to an offence takes effect on—

13 (a) the day the Magistrates Court nominates the term; or

14 (b) if, after taking into account any periods mentioned in
15 subsection (3), the Magistrates Court nominates an earlier
16 day—the earlier day.

17 **[1.20] Section 306**

18 *omit*

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

21 *substitute*

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

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

2 *omit*

3 approved health facility

4 *substitute*

5 approved mental health facility

6 **[1.22] Section 309 (1) (b) (ii)**

7 *omit*

8 approved health facility or

9 **[1.23] Section 309 (3)**

10 *before paragraph (a), omit*

11 approved health facility

12 *substitute*

13 approved mental health facility

14 **[1.24] Section 309 (3) (a)**

15 *omit*

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

18 **[1.25] Section 309 (3) (b)**

19 *omit*

20 approved health facility or approved mental health

1 **[1.26] Section 309 (4), definition of *approved health facility***

2 *omit*

3 **[1.27] Section 309 (4), definition of *approved mental health***
4 ***facility***

5 *substitute*

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

8 **[1.28] Section 318 (2)**

9 *substitute*

10 (2) The Supreme Court may make the orders that it considers
11 appropriate, including—

12 (a) that the accused be detained in custody for immediate review
13 by the ACAT under the *Mental Health (Treatment and Care)*
14 *Act 1994*, section 72; or

15 (b) that the accused submit to the jurisdiction of the ACAT to
16 allow the ACAT to make a mental health order or a forensic
17 mental health order under the *Mental Health (Treatment and*
18 *Care) Act 1994*.

1 **[1.29] Section 319 (2) and (3)**

2 *substitute*

3 (2) The Supreme Court must—

4 (a) order that the accused be detained in custody for immediate
5 review by the ACAT under the *Mental Health (Treatment and
6 Care) Act 1994*, section 72; or

7 (b) if, taking into account the criteria for detention in section 308,
8 it is more appropriate—order that the accused submit to the
9 jurisdiction of the ACAT to allow the ACAT to make a mental
10 health order or a forensic mental health order under the *Mental
11 Health (Treatment and Care) Act 1994*.

12 **[1.30] Section 323 (3)**

13 *substitute*

14 (3) The Supreme Court may make the orders that it considers
15 appropriate, including—

16 (a) that the accused be detained in custody for immediate review
17 by the ACAT under the *Mental Health (Treatment and Care)
18 Act 1994*, section 72; or

19 (b) that the accused submit to the jurisdiction of the ACAT to
20 allow the ACAT to make a mental health order or a forensic
21 mental health order under the *Mental Health (Treatment and
22 Care) Act 1994*.

1 **[1.31] Section 324**

2 *substitute*

3 **324 Supreme Court orders following special verdict of not**
4 **guilty because of mental impairment—serious offence**

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

17 **[1.32] Section 328 (3)**

18 *substitute*

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

- 1 **[1.33] Section 329**
- 2 *substitute*
- 3 **329 Magistrates Court orders following finding of not guilty**
4 **because of mental impairment—serious offence**
- 5 (1) This section applies if an accused is charged and the Magistrates
6 Court makes a finding of not guilty because of mental impairment.
- 7 (2) The Magistrates Court must—
- 8 (a) order that the accused be detained in custody for immediate
9 review by the ACAT under the *Mental Health (Treatment and*
10 *Care) Act 1994*, section 72; or
- 11 (b) if, taking into account the criteria for detention in section 308,
12 it is more appropriate—order that the accused submit to the
13 jurisdiction of the ACAT to allow the ACAT to make a mental
14 health order or a forensic mental health order under the *Mental*
15 *Health (Treatment and Care) Act 1994*.
- 16 **[1.34] Further amendments, mentions of *mental health order***
- 17 *after*
- 18 mental health order
- 19 *insert*
- 20 or forensic mental health order
- 21 *in*
- 22 • section 315D
23 • section 331
24 • section 334
25 • section 335

1 **Part 1.4** **Crimes (Child Sex Offenders)**
2 **Regulation 2005**

3 **[1.35] Section 12 (1) (d) (ii)**

4 *substitute*

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

9 **Part 1.5** **Crimes (Sentence**
10 **Administration) Act 2005**

11 **[1.36] New section 321AA**

12 *before section 321A, insert*

13 **321AA Director-general to give information—detainees etc**
14 **subject to forensic mental health orders**

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

1 **[1.39] New section 7 (3) (ea)**

2 *insert*

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

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

10 **[1.40] Section 19 heading**

11 *substitute*

12 **19 Review of guardians and managers**

13 **[1.41] Section 19 (2)**

14 *omit*

15 consider

16 *substitute*

17 review

18 **[1.42] New section 19 (2A)**

19 *insert*

20 (2A) The ACAT must review an order appointing a guardian for a person
21 if—

22 (a) the guardian tells the ACAT under section 70A (6) that a
23 consent to treatment is not to be renewed; or

24 (b) an advance consent direction made by the person is given to
25 the ACAT under the *Mental Health (Treatment and Care)*
26 *Act 1994*, section 27 (5).

- 1 **[1.43] Section 32A, definition of *health professional***
2 *substitute*
3 *health professional* means—
4 (a) in relation to medical treatment involving treatment, care or
5 support under the *Mental Health (Treatment and Care)*
6 *Act 1994*—a mental health professional under that Act; and
7 (b) in any other case—a doctor or dentist.

- 8 **[1.44] Section 32A, definition of *medical treatment*,**
9 **paragraph (a) (iii)**
10 *substitute*
11 (iii) a series of procedures or courses of treatment; and
12 (iv) medical treatment involving treatment, care or support
13 under the *Mental Health (Treatment and Care) Act 1994*;
14 but

- 15 **[1.45] Section 32A, definition of *protected person*, paragraph (c)**
16 *substitute*
17 (c) for whom the ACAT has not appointed a guardian under this
18 Act with authority to—
19 (i) give consent to medical treatment not involving consent
20 for treatment, care or support under the *Mental Health*
21 *(Treatment and Care) Act 1994*; or
22 (ii) give consent for medical treatment involving treatment,
23 care or support under the *Mental Health (Treatment and*
24 *Care) Act 1994*.

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

2 *insert*

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

6 **[1.47] New section 32D (4)**

7 *insert*

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

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

15 **[1.48] Section 32J (1) (a)**

16 *after*

17 protected person

18 *insert*

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

1 **[1.49] New section 32JA**

2 *insert*

3 **32JA Notice and duration of consent—mental health treatment,**
4 **care or support**

- 5 (1) This section applies if consent has been given under this part for
6 medical treatment for a protected person that involves treatment,
7 care or support under the *Mental Health (Treatment and Care)*
8 *Act 1994*.
- 9 (2) A health professional who is giving the treatment, care or support
10 must within 7 days after the consent is given—
- 11 (a) tell the public advocate in writing that treatment, care or
12 support is being given to the protected person in accordance
13 with the consent; and
- 14 (b) give the public advocate a copy of the plan for the proposed
15 treatment, care or support.
- 16 (3) The health professional may rely on the consent for 21 days after it
17 is given (the *initial consent period*).
- 18 (4) If treatment, care or support in accordance with the consent is likely
19 to be required for longer than the initial consent period, the health
20 professional must, before the end of that period, apply to the ACAT
21 for approval to continue providing treatment, care or support in
22 accordance with the consent.
- 23 (5) The ACAT may give approval for the health professional to
24 continue to provide treatment, care or support in accordance with
25 the consent for a stated period of not longer than 8 weeks after the
26 end of the initial consent period.
- 27 (6) The ACAT must tell the public advocate of any approval given
28 under subsection (5).

1 **[1.50] Section 70 (1)**

2 *omit*

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

5 *substitute*

6 (other than electroconvulsive therapy or psychiatric surgery)

7 **[1.51] Section 70 (1), note**

8 *omit*

9 **[1.52] Section 70 (2)**

10 *omit*

11 the consent

12 *substitute*

13 an order for consent under subsection (1)

14 **[1.53] New section 70A**

15 *insert*

16 **70A Restrictions on consent by guardian to mental health**
17 **treatment, care or support**

18 (1) A guardian who has power to give for a person a consent required
19 for medical treatment involving treatment, care or support under the
20 *Mental Health (Treatment and Care) Act 1994* may consent to that
21 treatment only if the person—

22 (a) does not have decision-making capacity under that Act; and

23 (b) does not have an advance consent direction under that Act
24 authorising the treatment; and

25 (c) expresses willingness to receive the treatment.

- 1 (2) A consent must be in writing.
- 2 *Note* If a form is approved under s 75A for this provision, the form must be
3 used.
- 4 (3) A consent must be for a stated period, of not longer than 6 months,
5 but can be renewed (and further renewed) for another stated period
6 of not longer than 6 months.
- 7 (4) In considering the stated period necessary for a consent to treatment,
8 a health professional who is giving the treatment must take into
9 account—
- 10 (a) whether, and when, the person is likely to regain
11 decision-making capacity under the *Mental Health (Treatment
12 and Care) Act 1994*; and
- 13 (b) the likely duration of the treatment, care or support required;
14 and
- 15 (c) the content of any advance consent direction in force for the
16 person.
- 17 (5) The health professional must tell the ACAT and the public advocate
18 in writing about a consent, including the stated period.
- 19 *Note* If a form is approved under s 75A for this provision, the form must be
20 used.
- 21 (6) If a consent is not renewed at the end of its stated period, the health
22 professional must tell the ACAT in writing.
- 23 (7) The ACAT—
- 24 (a) must, on application, review a consent; and
25 (b) may, at any time on its own initiative, review a consent.
- 26 (8) A consent ends before the end of its stated period if—
- 27 (a) the ACAT directs that the consent be withdrawn; or

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

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

5 **[1.54] Dictionary, definition of *mental illness***

6 *omit*

7 dictionary

8 *substitute*

9 section 10

10 **[1.55] Dictionary, definition of *prescribed medical procedure*,**
11 **paragraph (f)**

12 *omit*

13 treatment for mental illness,

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

16 **[1.56] Section 6 (a)**

17 *substitute*

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

- 1 **[1.57] Section 7 (a)**
- 2 *omit*
- 3 chapter 4, part 2 (Involuntary admission to hospitals), division 1
- 4 (Admission to and detention in hospitals);
- 5 *substitute*
- 6 chapter 3, part 2 (Involuntary detention and treatment in mental
- 7 health facilities);
- 8 **[1.58] Section 7 (b) and (c)**
- 9 *substitute*
- 10 (b) a person who is an involuntary patient as defined in the [NSW](#)
- 11 [Act](#), section 4;
- 12 **[1.59] Section 7 (f) (i)**
- 13 *omit*
- 14 [Sentencing Act 1986](#) (Vic)
- 15 *substitute*
- 16 [Sentencing Act 1991](#) (Vic)
- 17 **[1.60] Section 9**
- 18 *substitute*
- 19 **9 Interstate non-custodial orders—Act, s 48D (4)**
- 20 For the Act, chapter 15, an order under the [NSW Act](#), section 51
- 21 (Community treatment orders) is an interstate non-custodial order.

1 **[1.61] Dictionary, definition of *interstate agreement*, new note**

2 *after paragraph (d), insert*

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

6 **[1.62] Dictionary, definition of *NSW Act***

7 *substitute*

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

9 **Part 1.9 Powers of Attorney Act 2006**

10 **[1.63] Section 12, new example**

11 *insert*

12 5 consenting to treatment for a mental illness (other than electroconvulsive
13 therapy or psychiatric surgery) necessary for the principal's wellbeing

14 **[1.64] Section 37 (1) (e)**

15 *omit*

16 **[1.65] Section 37 (2), definition of *mental illness***

17 *omit*

1 **[1.66] New section 46A**

2 *insert*

3 **46A Restrictions on consent by attorney to mental health**
4 **treatment, care or support**

5 (1) An attorney under an enduring power of attorney may consent to
6 treatment for mental illness (other than electroconvulsive therapy or
7 psychiatric surgery) only if the principal—

8 (a) does not have decision-making capacity; and

9 (b) does not have an advance consent direction under the *Mental*
10 *Health (Treatment and Care) Act 1994* authorising the
11 treatment; and

12 (c) expresses willingness to receive the treatment.

13 (2) A consent must be in writing.

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

16 (3) A consent must be for a stated period, of not longer than 6 months,
17 but can be renewed (and further renewed) for another stated period
18 of not longer than 6 months.

19 (4) In considering the stated period necessary for a consent to treatment,
20 a health professional who is giving the treatment must take into
21 account—

22 (a) whether, and when, the principal is likely to regain
23 decision-making capacity; and

24 (b) the likely duration of the treatment required; and

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

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

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

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

7 (7) The ACAT—

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

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

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

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

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

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

16 (9) In this section:

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

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

21 **[1.67] Dictionary, definition of *health care facility***

22 *substitute*

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

1 **[1.68] Dictionary, new definition of *mental health facility***
2 *insert*
3 *mental health facility*—see the *Mental Health (Treatment and*
4 *Care) Act 1994*, dictionary.

5 **Part 1.10 Public Advocate Act 2005**

6 **[1.69] Dictionary, new definition of *mental disorder***
7 *insert*
8 *mental disorder*—see the *Mental Health (Treatment and Care)*
9 *Act 1994*, section 9.

10 **[1.70] Dictionary, definition of *mental dysfunction***
11 *omit*

12 **[1.71] Dictionary, definition of *mental illness***
13 *substitute*
14 *mental illness*—see the *Mental Health (Treatment and Care)*
15 *Act 1994*, section 10.

16 **Part 1.11 Victims of Crime Act 1994**

17 **[1.72] New section 11 (ba)**
18 *insert*
19 (ba) to advocate for the interests of affected people under the
20 *Mental Health (Treatment and Care) Act 1994*;

Endnotes

1 Presentation speech

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

2 Notification

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

3 Republications of amended laws

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

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