

# MOCK-UP

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

**A1994-44**

This document is a mock-up of the *Mental Health (Treatment and Care) Act 1994* (republication 47) incorporating proposed amendments set out in the exposure draft of the *Mental Health (Treatment and Care) Amendment Bill 2012*.

Prepared by the ACT Parliamentary Counsel's Office to assist in consideration of the exposure draft.



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Mental Health (Treatment and Care)  
Act 1994

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

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

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## Chapter 1 Preliminary

### 1 Short title

This Act may be cited as the *Mental Health (Treatment and Care) Act 1994*.

### 2 Dictionary

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

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

For example, the signpost definition '*electroconvulsive therapy*—see section 136.' means that the term 'electroconvulsive therapy' is defined in that section.

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

### 3 Notes

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

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

## 4 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 69 (Communication during detention)
- s 138 (Offence—electroconvulsive therapy without consent)
- s 139 (Offence—electroconvulsive therapy on 10 or more occasions since consent)
- s 140 (Offence—electroconvulsive therapy after consent withdrawn)
- s 141 (Offence—administering electroconvulsive therapy to children)
- s 146 (Offence—electroconvulsive therapy without electroconvulsive therapy order)
- s 147 (Offence—electroconvulsive therapy on 10 or more occasions since electroconvulsive therapy order)
- s 148 (Offence—electroconvulsive therapy after order consent withdrawn)
- s 154 (Offence—electroconvulsive therapy without doctor's consent)
- s 155 (1) (Doctor must record electroconvulsive therapy)
- s 155 (2)
- s 155 (3)
- s 156 (Electroconvulsive therapy records to be kept for 5 years)
- s 192 (2) (Identity cards for mental health officers).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg **conduct**, **intention**, **recklessness** and **strict liability**).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

**5 People not to be regarded as mentally dysfunctional or mentally ill**

For this Act, a person is not to be regarded as mentally dysfunctional or mentally ill only because of any of the following:

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

- (k) that the person engages in or has engaged in antisocial behaviour.

**6 Proceeding relating to children**

In determining whether a person who is the subject of a proceeding is a child, regard shall be had to the age of the person at the commencement of the proceeding.

## **Chapter 2                      Objects and important concepts**

### **7                      Objects of Act**

The objects of this Act are to—

- (a) promote the capacity of people with a mental dysfunction or mental illness to determine, and participate in, their assessment and treatment, care or support, taking into account their rights in relation to mental health under territory law; and
- (b) ensure that people with a mental dysfunction or mental illness receive assessment and treatment, care or support in a way that is least restrictive or intrusive to them; and
- (c) facilitate access by people with a mental dysfunction or mental illness to services that recognise and respect their rights, inherent dignity and needs; and
- (d) promote the inclusion of, and participation by, people with a mental dysfunction or mental illness in their communities of choice; and
- (e) promote mental health by promoting prevention, early intervention and support; and
- (f) facilitate access by people with a mental dysfunction or mental illness to assessment and treatment, care or support as far as practicable in their communities of choice.

## 8 Principles applying to Act

The following principles apply to this Act:

- (a) a person with a mental dysfunction or mental illness has the same rights and responsibilities as other members of the community and is to be supported to exercise those rights and responsibilities without discrimination;
- (b) a person with a mental dysfunction or mental illness has the right to consent to, refuse or stop treatment, care or support, and to be informed about the consequences of consenting to, refusing or stopping treatment, care or support;
- (c) a person with a mental dysfunction or mental illness has the right to determine his or her own recovery;
- (d) a person with a mental dysfunction or mental illness has the right to access the best available treatment, care or support relating to his or her individual needs;
- (e) a person with a mental dysfunction or mental illness has the right to access services that—
  - (i) are sensitive and responsive to his or her individual needs, including in relation to age, gender, culture, language, religion, sexuality, trauma and individual life experiences; and
  - (ii) observe, respect and promote his or her rights, liberty, dignity, autonomy and self-respect;

- (f) a person with a mental dysfunction or mental illness has the right to be given timely information to allow him or her to make decisions or maximise his or her contribution to decision-making about his or her assessment and treatment, care or support;
- (g) services provided to a person with a mental dysfunction or mental illness should—
  - (i) promote the informed consent of the person to his or her assessment and treatment, care or support; and
  - (ii) support and allow the person to make his or her own decisions; and
  - (iii) consider and respect the preferences of the person, including those expressed in an advance agreement; and
  - (iv) seek to bring about the best therapeutic outcomes for the person and promote his or her recovery; and
  - (v) be therapeutic or diagnostic in nature for the benefit of the person, and never administered as punishment or for the benefit of someone other than the person; and
  - (vi) be delivered in a way that takes account of, and continues to build on, evidence of effective assessment and treatment, care or support; and
  - (vii) ensure that the person is aware of his or her rights.



**9 Principles of decision-making capacity**

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

**10      Meaning of *mental dysfunction***

In this Act:

***mental dysfunction***—

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

**11      Meaning of *mental illness***

In this Act:

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

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

## **Chapter 3            Assessments**

### **Part 3.1            Applications and referrals for assessment orders**

#### **12            Applications by people with mental dysfunction or mental illness—assessment order**

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

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

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

### **13 Applications by other people—assessment order**

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

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

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

**14      Applicant to tell ACAT of risks—assessment order**

- (1) This section applies if—
  - (a) a person (the *applicant*) applies under section 13 for an assessment order in relation to someone else (the *subject person*); and
  - (b) the applicant believes on reasonable grounds that the appearance of the subject person before the ACAT is likely to substantially increase—
    - (i) the risk to the subject person’s health or safety; or
    - (ii) the risk of serious harm to others.
- (2) The application must state the belief.

**15      Referrals to ACAT—assessment order**

- (1) This section applies if the referring officer for an alleged offender or the director-general believes on reasonable grounds that—
  - (a) because of mental impairment—
    - (i) the alleged offender’s health or safety is, or is likely to be, substantially at risk; or
    - (ii) the alleged offender is doing, or is likely to do, serious harm to others; and
  - (b) it may not be appropriate to prosecute, or to continue to prosecute, the alleged offender, considering—
    - (i) the nature and circumstances of the offence; and
    - (ii) the alleged offender’s apparent mental condition.
- (2) The referring officer or director-general may refer the alleged offender to the ACAT for an assessment order.

- (3) In this section:

***alleged offender*** means a person—

- (a) who is arrested in connection with an offence; or
- (b) in relation to whom a police officer believes on reasonable grounds that there are sufficient grounds on which to charge the person in connection with an offence; or
- (c) who is charged in connection with an offence.

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

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

## **16 Referring officer to tell ACAT of risks—assessment order**

- (1) This section applies if—

- (a) a person (the ***subject person***) is referred to the ACAT for an assessment order under section 15; and
- (b) the referring officer or director-general believes on reasonable grounds that the appearance of the subject person before the ACAT is likely to substantially increase—
  - (i) the risk to the subject person's health or safety; or
  - (ii) the risk of serious harm to others.

- (2) The referral must state the belief.

## **Part 3.2                      Assessment orders**

### **17                      Assessment orders**

The ACAT may order an assessment of a person if—

- (a) for an application or referral made under part 3.1—the ACAT is satisfied on the face of the application that—
  - (i) the person appears to have a mental dysfunction or mental illness; and
  - (ii) either—
    - (A) the person's health or safety is, or is likely to be, substantially at risk; or
    - (B) the person is doing, or is likely to do, serious harm to others; or
- (b) the ACAT reviews a mental health order in force in relation to the person under section 58 (Review, variation and revocation of orders); or
- (c) the person is required to submit to the jurisdiction of the ACAT under—
  - (i) an ACAT mental health provision in a care and protection order or interim care and protection order; or
  - (ii) an interim therapeutic protection order; or
- (d) the person is required to submit to the jurisdiction of the ACAT under the Crimes Act, division 13.2; or

- (e) the ACAT reviews an order for detention in force in relation to the person under section 170 (Periodic review of orders for detention).

*Note* If a person is assessed under an assessment order as having a mental dysfunction or mental illness, the ACAT may make a mental health order or forensic mental health order in relation to the person (see s 38, s 46, s 81 and s 87).

## **18 Consent for assessment orders**

- (1) This section applies if the ACAT is considering ordering an assessment of a person mentioned in section 17 (a), (b) or (c).
- (2) The ACAT must take reasonable steps to find out the opinion of the person in relation to the assessment and obtain the person's consent to the assessment.
- (3) However, subsection (2) does not prevent the ACAT from ordering an assessment without the person's consent.

## **19 Content and effect of assessment orders**

- (1) An assessment order must—
  - (a) state the nature of the assessment to be conducted; and
  - (b) state the mental health facility at which the assessment is to be conducted and, if appropriate, the person who is to conduct the assessment; and
  - (c) direct the person to be assessed to attend the mental health facility and, if necessary and reasonable, stay at the facility until the assessment has been conducted; and



- (d) direct the person in charge of the mental health facility—
  - (i) if appropriate, to admit the person to be assessed to the facility to conduct the assessment; and
  - (ii) if necessary and reasonable, to detain the person at the facility until the assessment has been conducted; and
  - (iii) to provide the assistance that is necessary and reasonable to conduct the assessment.
- (2) An assessment order authorises—
  - (a) the conduct of the assessment stated in the order; and
  - (b) anything necessary and reasonable to be done to conduct the assessment.
- (3) Before making an assessment order for an assessment at a stated mental health facility or by a stated person, the ACAT must be satisfied that the assessment can be provided or performed at the facility or by the person.

## **20 Public advocate to be told about assessment orders**

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

## **21 Time for conducting assessments**

- (1) The assessment of a person in relation to whom an assessment order is made must be conducted as soon as practicable after the order is made, and not later than—
  - (a) 7 days after the order is made; or
  - (b) if another day stated in the order—the stated day.

- (2) However, the ACAT may, on application, extend the period for conducting the assessment if satisfied, based on clinical evidence provided to it by the person conducting the assessment, that a satisfactory assessment cannot be completed within the period under subsection (1).
- (3) The extension must be for a period not longer than 7 days.

## 22 Removal order to conduct assessments

- (1) This section applies if the ACAT makes an assessment order in relation to—
  - (a) a person mentioned in section 17 (a), (b) or (c) who—
    - (i) has not been served with a subpoena under the *ACT Civil and Administrative Tribunal Act 2008*, section 41 for a reason stated in section 180 (3) (Subpoena to appear in person); or
    - (ii) does not appear at a proceeding in relation to the order under a subpoena given under the *ACT Civil and Administrative Tribunal Act 2008*, section 41; or
    - (iii) does not comply with the assessment order; or
  - (b) a person mentioned in section 17 (d) or (e).
- (2) The ACAT may order (a **removal order**) the removal of the person to an approved mental health facility to conduct the assessment if satisfied that—
  - (a) the person has been made aware of the assessment order; and
  - (b) either—
    - (i) if the person does not comply with the assessment order—the person does not have a reasonable excuse for failing to comply with the order; and

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

## **23      Executing removal order**

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

- (4) In this section:  
*removal order*—see section 22 (2).

**24 Contact with others**

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

**25 Public advocate and lawyer to have access**

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

**26 Person to be assessed to be told about the order**

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

**27 Copies of assessments**

- (1) This section applies to an assessment conducted at a mental health facility under an assessment order.
- (2) The person in charge of the mental health facility must, as soon as practicable after completing the assessment—
  - (a) give a copy of the assessment to—
    - (i) the person assessed; and
    - (ii) the ACAT; and
    - (iii) the public advocate; and
    - (iv) if the person assessed was referred to the ACAT under section 15—the referring officer; and
  - (b) if the person has a nominated person—tell the nominated person about the outcome of the assessment.

## **Chapter 4      Mental health orders**

### **Part 4.1      Preliminary**

#### **28      Meaning of *relevant official*—ch 4**

In this chapter:

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

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

## Part 4.2 Applications and referrals for mental health orders

### 29 Applications for mental health orders

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

*Note* An application is not required in relation to a person who has been assessed under an assessment order as having a mental dysfunction or mental illness (see s 38 and s 46).

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

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

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

- (3) In this section:

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

### **30            Applicant to tell ACAT of risks**

- (1) This section applies if—
  - (a) a person (the *applicant*) may apply under section 29 for a mental health order in relation to someone else (the *subject person*); and
  - (b) the applicant believes on reasonable grounds that the appearance of the subject person before the ACAT is likely to substantially increase—
    - (i) the risk to the subject person's health or safety; or
    - (ii) the risk of serious harm to others.
- (2) If the applicant applies for the mental health order in relation to the subject person, the application must state the applicant's belief about the matters mentioned in subsection (1).

### **31            Referrals to ACAT**

- (1) This section applies if the referring officer for an alleged offender believes on reasonable grounds that—
  - (a) because of mental impairment—
    - (i) the alleged offender's health or safety is, or is likely to be, substantially at risk; or
    - (ii) the alleged offender is or is likely to do serious harm to others; and
  - (b) it may not be appropriate to prosecute, or to continue to prosecute, the alleged offender, considering—
    - (i) the nature and circumstances of the offence; and
    - (ii) the alleged offender's apparent mental condition.



- (2) The referring officer may refer the alleged offender to the ACAT for a mental health order.

- (3) In this section:

***alleged offender*** means a person—

- (a) who is arrested in connection with an offence; or
- (b) if a police officer believes on reasonable grounds that there are sufficient grounds on which to charge the person in connection with an offence; or
- (c) who is charged in connection with an offence.

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

*Note 2* A referral is not required in relation to a person who has been assessed under an assessment order as having a mental dysfunction or mental illness (see s 38 and s 46).

## 32 Referring officer to tell ACAT of risks

- (1) This section applies if—
- (a) a person (the ***applicant***) may refer someone else (the ***subject person***) to the ACAT for a mental health order under section 31; and
  - (b) the applicant believes on reasonable grounds that the appearance of the subject person before the ACAT is likely to substantially increase—
    - (i) the risk to the subject person's health or safety; or
    - (ii) the risk of serious harm to others.
- (2) If the applicant applies for the mental health order in relation to the subject person, the application must state the applicant's belief about the matters mentioned in subsection (1).

## **Part 4.3                      Making of orders—preliminary matters**

### **33                      ACAT must consider assessment**

- (1) Before making a mental health order in relation to a person, the ACAT must consider—
  - (a) an assessment of the person conducted under an assessment order; or
  - (b) another assessment of the person that the ACAT considers appropriate.
- (2) In considering an assessment, the ACAT must take into account how recently the assessment was conducted.
- (3) If an assessment in relation to a person does not indicate that the person has a mental dysfunction or mental illness, the ACAT may dismiss the application for the mental health order.

### **34                      ACAT must hold inquiry**

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

### **35                      Consultation by ACAT etc**

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

- (c) if the person has an attorney appointed under the *Powers of Attorney Act 2006*—the attorney; and
  - (d) if the person has a nominated person—the nominated person; and
  - (e) the person most likely to be responsible for providing the treatment, care or support proposed to be ordered.
- (2) Also, before the ACAT makes a mental health order for the provision of a particular treatment, care or support at a stated facility or by a stated person, the relevant official for the order must, in writing, tell the ACAT that the treatment, care or support can be performed at the stated facility or by the stated person.

### **36 What ACAT must take into account**

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

- (a) whether the person consents, refuses to consent or has the decision-making capacity to consent, to a proposed course of treatment, care or support;
- (b) the views and wishes of the person, so far as they can be found out;
- (c) if an advance agreement is in force in relation to the person—the person's wishes in relation to his or her treatment, care or support stated in the agreement;
- (d) the views and wishes of the people responsible for the day-to-day care of the person, so far as those views and wishes are made known to the ACAT;
- (e) the views of the people appearing at the proceeding;
- (f) the views of the people consulted under section 35;

- (g) the matters stated in section 8 (Principles applying to Act);
- (h) that any restrictions placed on the person should be the minimum necessary for the safe and effective care of the person;
- (i) the alternative treatments, programs and other services available, including—
  - (i) the purposes of those treatments, programs and services; and
  - (ii) the benefits likely to be derived by the person from those treatments, programs and services; and
  - (iii) the distress, discomfort, risks, side effects or other disadvantages associated with those treatments, programs and services;
- (j) any relevant medical history of the person;
- (k) for a person referred to the ACAT under section 15 or section 31, or an offender with a mental impairment—the nature and circumstances of the offence in relation to which the person has been arrested, or may be or has been charged;
- (l) for an offender with a mental impairment—the nature and extent of the person’s mental impairment, including the effect it is likely to have on the person’s behaviour in the future;
- (m) for an offender with a mental impairment—whether or not, if the person is not detained—
  - (i) the person’s health or safety is, or is likely to be, substantially at risk; or
  - (ii) the person is likely to do serious harm to others;
- (n) anything else prescribed under the regulations for this section.

**37 ACAT must not order particular drugs etc**

The ACAT must not order the administration of a particular drug or make an order about the way a particular clinical procedure is to be carried out.

## **Part 4.4                      Psychiatric treatment orders**

### **38                      Psychiatric treatment order**

- (1) This section applies to—
  - (a) a person assessed under an assessment order; or
  - (b) a person in relation to whom an application or referral for a mental health order has been made under part 3.1.
- (2) The ACAT may make a psychiatric treatment order in relation to the person if—
  - (a) the person has a mental illness; and
  - (b) the ACAT believes on reasonable grounds that, because of the mental illness, the person—
    - (i) is doing, or is likely to do, serious harm to himself or herself or someone else; or
    - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; and
  - (c) the ACAT is satisfied that psychiatric treatment, care or support is likely to—
    - (i) reduce the harm or deterioration, or the likelihood of harm or deterioration, mentioned in paragraph (b); or
    - (ii) result in an improvement in the person's psychiatric condition; and
  - (d) either—
    - (i) the person does not have decision-making capacity to consent to the treatment, care or support and refuses to receive the treatment; or

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

### **39 Content of psychiatric treatment order**

- (1) A psychiatric treatment order made in relation to a person may state 1 or more of the following:
  - (a) an approved mental health facility to which the person may be taken;
  - (b) that the person must do either or both of the following:
    - (i) undergo psychiatric treatment, other than electroconvulsive therapy or psychiatric surgery;
    - (ii) undertake a counselling, training, therapeutic or rehabilitation program;
  - (c) that limits may be imposed on communication between the person and other people.
- (2) A psychiatric treatment order may not include any requirement mentioned in section 41 (Content of restriction order).

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

**40      Criteria for making restriction order with psychiatric treatment order**

In addition to making a psychiatric treatment order in relation to a person, the ACAT may make a restriction order in relation to the person if satisfied that it is in the interests of the person's health or safety or public safety to do so.

**41      Content of restriction order**

A restriction order made under section 40 in relation to a person may state either or both of the following:

- (a) that the person must—
  - (i) live (but not be detained) at a stated place; or
  - (ii) be detained at a stated place;
- (b) that the person must not approach a stated person or stated place or undertake stated activities.



## **42      Role of chief psychiatrist**

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

*Note*      If a form is approved under s 254 for a determination, the form must be used.

- (3) The chief psychiatrist must also determine, in writing, the place where the person must live if—
  - (a) the ACAT has not made a restriction order requiring the person to live at a stated place; and
  - (b) the chief psychiatrist considers that the person should live at a place other than the place where the person usually lives.
- (4) Before making a determination, the chief psychiatrist must, if practicable, consult—
  - (a) the person; and
  - (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
  - (c) if the person has an attorney appointed under the *Powers of Attorney Act 2006*—the attorney; and

- (d) if the person has a nominated person—the nominated person; and
  - (e) if a health attorney is involved in the treatment, care or support of the person—the health attorney.
- (5) For subsection (2) (b), the chief psychiatrist must not determine treatment that has, or is likely to have, the effect of subjecting the person to whom it is given to undue stress or deprivation, having regard to the benefit likely to result from the treatment.
- (6) As soon as practicable after making a determination, the chief psychiatrist must give a copy of the determination to the ACAT and the public advocate.
- (7) The chief psychiatrist may also give a copy of the determination to—
  - (a) any guardian consulted under subsection (4) (b); and
  - (b) any attorney consulted under subsection (4) (c); and
  - (c) any nominated person consulted under subsection (4) (d); and
  - (d) any health attorney consulted under subsection (4) (e).

**43 Treatment to be explained**

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

**44      Action if psychiatric treatment order no longer appropriate**

- (1) This section applies if the chief psychiatrist is satisfied that—
  - (a) a person subject to a psychiatric treatment order is no longer a person in relation to whom the ACAT could make a psychiatric treatment order; or
  - (b) if the person is also subject to a restriction order—it is no longer necessary for the person to be subject to the restriction order.
- (2) The chief psychiatrist must tell the ACAT and the public advocate in writing.

*Note*      The ACAT must review the order within 72 hours after being notified under this section (see s 58 (2)).

**45      Powers in relation to detention, restraint etc**

- (1) This section applies if a psychiatric treatment order has been made in relation to a person.
- (2) If the chief psychiatrist considers that it is necessary for the treatment and care of the person to detain the person at certain premises, the chief psychiatrist may—
  - (a) take, or authorise someone else to take, the person to the premises and for that purpose—
    - (i) use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the premises stated by the chief psychiatrist; and

- (ii) if there are reasonable grounds for believing that the person is at particular premises—enter those premises using the force and assistance that is necessary and reasonable; and
  - (b) keep the person at the premises in the custody that the chief psychiatrist considers appropriate; and
  - (c) subject the person to the confinement or restraint that is necessary and reasonable—
    - (i) to prevent the person from causing harm to himself, herself or someone else; or
    - (ii) to ensure that the person remains in custody under the order; and
  - (d) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to himself, herself or someone else.
- (3) If the chief psychiatrist subjects a person to involuntary seclusion, the chief psychiatrist must ensure that the person is examined by a relevant doctor of the approved mental health facility in each 4-hour period that the person is in seclusion.
- (4) If the chief psychiatrist determines that a person be given medication for the treatment of the person's mental illness, the chief psychiatrist may—
- (a) approve the giving by appropriately trained people of medication prescribed by a doctor in accordance with the order; and
  - (b) use, or authorise someone else to use, the force and assistance necessary and reasonable to give the medication.

- (5) In acting under this section, the chief psychiatrist must have regard to the matters stated in section 7 (Objects of Act) and section 8 (Principles applying to Act).
- (6) If the chief psychiatrist subjects a person to involuntary restraint, seclusion or the involuntary giving of medication, the chief psychiatrist must—
  - (a) enter in the person's record the fact of and the reasons for the involuntary restraint, seclusion or giving of medication; and
  - (b) tell the public advocate and the ACAT in writing within 24 hours after the person is subjected to the involuntary restraint, seclusion or giving of medication; and
  - (c) keep a record of the involuntary restraint, seclusion or giving of medication.

- (7) In this section:

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

## **Part 4.5                      Community care orders**

### **46                      Community care orders**

- (1) This section applies to—
  - (a) a person assessed under an assessment order; or
  - (b) a person in relation to whom an application or referral for a mental health order has been made under part 3.1.
- (2) The ACAT may make a community care order in relation to the person if—
  - (a) the person has a mental dysfunction; and
  - (b) the ACAT believes on reasonable grounds that, because of the mental dysfunction, the person—
    - (i) is doing, or is likely to do, serious harm to himself or herself or someone else; or
    - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; and
  - (c) the ACAT is satisfied that treatment, care or support is likely to reduce the harm or deterioration, or likelihood of harm or deterioration, mentioned in paragraph (b); and
  - (d) either—
    - (i) the person does not have decision-making capacity to consent to the treatment, care or support and refuses to receive the treatment, care or support; or
    - (ii) the person has decision-making capacity to consent to the treatment, care or support, but refuses to consent; and

- (e) in relation to a person mentioned in paragraph (d) (ii)—the ACAT is satisfied that the harm or deterioration, or likelihood of harm or deterioration, mentioned in paragraph (b) outweighs the right to consent or refuse to consent; and
- (f) the ACAT is satisfied that, in the circumstances, a psychiatric treatment order should not be made; and
- (g) the treatment, care or support cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person than would result from the person being an involuntary patient.

#### **47      Content of community care order**

- (1) A community care order made in relation to a person may state 1 or more of the following:
  - (a) that the person is to be given treatment, care or support;
  - (b) that the person may be given medication for the treatment or amelioration of the person's mental dysfunction that is prescribed by a doctor;
  - (c) that the person is to undertake a counselling, training, therapeutic or rehabilitation program;
  - (d) that limits may be imposed on communication between the person and other people.
- (2) A community care order may not include any requirement mentioned in section 49 (Content of restriction order).
- (3) A community care order made in relation to a person must include a statement about whether the person has the decision-making capacity to consent to the treatment, care or support under the order, and whether the person has consented.

**48            Criteria for making restriction order with community care order**

In addition to making a community care order in relation to a person, the ACAT may make a restriction order in relation to the person if satisfied that it is in the interests of the person's health or safety or public safety to make the order.

**49            Content of restriction order**

A restriction order made under section 48 in relation to a person may state either or both of the following:

- (a) that the person must—
  - (i) live (but not be detained) at a stated approved community care facility or another stated place; or
  - (ii) be detained at a stated approved community care facility;
- (b) that the person must not approach a stated person or stated place or undertake stated activities.

**50            Role of care coordinator**

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

*Note*        If a form is approved under s 254 for a determination, the form must be used.



- (3) Before making a determination, the care coordinator—
- (a) must consult—
    - (i) the ACAT; and
    - (ii) if the person has an attorney appointed under the *Powers of Attorney Act 2006*—the attorney; and
    - (iii) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
  - (b) if practicable, must consult—
    - (i) the person; and
    - (ii) if the person has an attorney appointed under the *Powers of Attorney Act 1956*—the attorney; and
    - (iii) if the person has a nominated person—the nominated person; and
    - (iv) if a health attorney under that Act for the person has been involved in the treatment, care or support of the person—the health attorney; and
  - (c) may consult any other service provider the care coordinator considers relevant.
- (4) After making a determination, the care coordinator must record whether the person was consulted and—
- (a) if the person was consulted—what the person's views were; or
  - (b) if the person was not consulted—the reasons why.

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

**51 Treatment to be explained**

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

**52            Action if community care order no longer appropriate**

- (1) This section applies if the care coordinator is satisfied that—
  - (a) a person subject to a community care order is no longer a person in relation to whom the ACAT could make a community care order; or
  - (b) if the person is also subject to a restriction order—it is no longer necessary for the person to be subject to the restriction order.
- (2) The care coordinator must tell the ACAT and the public advocate in writing.

*Note*        The ACAT must review the order within 72 hours after being notified under this section (see s 58 (2)).

**53            Powers in relation to detention, restraint etc**

- (1) Subsection (2) applies if a community care order has been made in relation to a person and—
  - (a) a restriction order has also been made in relation to the person requiring the person to be detained at an approved community care facility; or
  - (b) the care coordinator requires the person to be detained at an approved community care facility under section 57 (Contravention of psychiatric treatment order or community care order).

- (2) The care coordinator may—
  - (a) take, or authorise someone else to take, the person to the premises and, for that purpose—
    - (i) use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the premises; and
    - (ii) if there are reasonable grounds for believing that the person is at particular premises—enter those premises using the force and assistance that is necessary and reasonable; and
  - (b) keep the person at the premises in the custody that the ACAT considers appropriate; and
  - (c) subject the person to the confinement or restraint that is necessary and reasonable—
    - (i) to prevent the person from causing harm to himself, herself or someone else; or
    - (ii) to ensure that the person remains in custody under the order; and
  - (d) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to himself, herself or someone else; and
- (3) If the care coordinator subjects a person to involuntary seclusion, the care coordinator must ensure that the person is examined by a relevant doctor of the approved community care facility in each 4-hour period that the person is in seclusion.

- (4) If a community care order made in relation to a person authorises the giving of medication for the treatment or amelioration of the person's mental dysfunction, the care coordinator may—
  - (a) approve the administration by appropriately trained people of medication prescribed by a doctor in accordance with the order; and
  - (b) for that purpose, use (or authorise someone else to use) the force and assistance that is necessary and reasonable.
- (5) In acting under subsection (2) or (4), the care coordinator must have regard to the matters stated in section 7 (Objects of Act) and section 8 (Principles applying to Act).
- (6) If the care coordinator subjects a person to involuntary restraint or seclusion, or the involuntary administration of medication prescribed by a doctor, the care coordinator must—
  - (a) enter in the person's record the fact of and the reasons for the involuntary restraint, seclusion or administration of medication; and
  - (b) tell the ACAT and the public advocate in writing within 24 hours after the person is subjected to the involuntary restraint, seclusion or administration of medication; and
  - (c) keep a register of the involuntary restraint, seclusion or administration of medication.
- (7) In this section:

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

## **Part 4.6                      Limits on communication**

### **54                      Limits on communication**

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

- (7) This section has effect despite part 8.1 (Rights of people with mental dysfunction or mental illness—general) but subject to section 55.

**55      Communication with public advocate and person's lawyer**

If the relevant official has imposed limits on communication by a person under section 54, the official must ensure that the person has reasonable access to facilities, and adequate opportunity, to contact the public advocate and the person's lawyer.

## **Part 4.7                      Duration, contravention and review of orders**

### **56                      Duration of orders**

- (1) Unless sooner revoked—
  - (a) a psychiatric treatment order or community care order has effect for—
    - (i) 6 months; or
    - (ii) if a shorter period is stated in the order—the shorter period; and
  - (b) a restriction order has effect for—
    - (i) 3 months; or
    - (ii) if a shorter period is stated in the order—the shorter period.
- (2) This section does not apply to an order made in relation to an offender with a mental impairment.

### **57                      Contravention of psychiatric treatment order or community care order**

- (1) This section applies if—
  - (a) a mental health order (but not a restriction order) is in force in relation to a person; and
  - (b) the person contravenes the order.



- (2) This section also applies if—
- (a) a restriction order is in force in relation to a person; and
  - (b) the relevant official tells the ACAT that the relevant official considers that the person has contravened the order; and
- Note* The ACAT must review the order within 72 hours after being notified under this section (see s 58 (2)).
- (c) the ACAT authorises the relevant official to act under this section.
- (3) The relevant official may—
- (a) orally tell the person that failure to comply with the order may result in the person being apprehended and being taken to an approved mental health facility or approved community care facility for treatment or care; and
  - (b) if the noncompliance continues after the taking of action under paragraph (a)—tell the person in writing that failure to comply with the order will result in the person being apprehended and being taken to an approved mental health facility or approved community care facility for treatment or care; and
  - (c) if the noncompliance continues after the taking of action under paragraph (b)—require the person to be detained in an approved mental health facility or approved community care facility to ensure compliance with the order.
- (4) If the relevant official requires the detention of a person under subsection (3) (c), he or she must tell the ACAT and the public advocate—
- (a) the name of the person detained; and
  - (b) the reasons for requiring the detention; and

- (c) the name and address of the approved mental health facility or approved community care facility where the person is detained.
- (5) If a person is required to be detained under subsection (3) (c), a police officer, ambulance paramedic, mental health officer or doctor may apprehend the person and take the person to an approved mental health facility or approved community care facility.
- (6) For subsection (5), a police officer, ambulance paramedic, mental health officer or doctor—
  - (a) may use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the facility; and
  - (b) if there are reasonable grounds for believing that the person is at particular premises—may enter those premises using the force and assistance that is necessary and reasonable.
- (7) If a person is detained under subsection (3) (c), the relevant official must tell the ACAT and the public advocate within 72 hours.

## **58 Review, variation and revocation of orders**

- (1) The ACAT may, on application or on its own initiative, review a mental health order in force in relation to a person.
- (2) If the ACAT receives notice under section 44, section 52 or section 57 (2) in relation to a person, the ACAT must review the mental health orders in force in relation to the person within 72 hours.
- (3) Subsection (2) has effect despite section 183 (Notice of hearing).

- (4) If the ACAT is satisfied that a person subject to a psychiatric treatment order or community care order is no longer a person in relation to whom the ACAT could make a psychiatric treatment order or community care order, the ACAT must revoke all the mental health orders in force in relation to the person.
- (5) In any other case, the ACAT may, if appropriate to do so—
  - (a) vary or revoke any of the mental health orders in force in relation to the person; or
  - (b) make additional mental health orders in relation to the person; or
  - (c) make an assessment order in relation to the person.

## **Chapter 5      Emergency detention**

### **59      Apprehension**

- (1) If a police officer or ambulance paramedic has reasonable grounds for believing that a person is mentally dysfunctional or mentally ill and has attempted or is likely to attempt—
  - (a) to commit suicide; or
  - (b) to inflict serious harm on himself or herself or another person;the police officer or ambulance paramedic may apprehend the person and take him or her to an approved mental health facility.
- (2) Where a doctor or mental health officer believes on reasonable grounds that—
  - (a) a person is mentally dysfunctional or mentally ill and—
    - (i) as a consequence, requires immediate treatment or care; or
    - (ii) in the opinion of the doctor or mental health officer, the person's condition will deteriorate within 3 days to such an extent that the person would require immediate treatment or care;
  - (b) the person has refused to receive that treatment or care; and
  - (c) detention is necessary for the person's own health or safety, social or financial wellbeing, or for the protection of members of the public; and
  - (d) adequate treatment or care cannot be provided in a less restrictive environment;

the doctor or mental health officer may apprehend the person and take him or her to an approved mental health facility.

- (3) The ACAT must, on application, review the decision of a doctor or mental health officer under subsection (2) (a) (ii) within 2 working days after the day the application is made.
- (4) For subsections (1) and (2), a police officer, ambulance paramedic, doctor or mental health officer—
  - (a) may use such force and assistance as is necessary and reasonable to apprehend the person and take him or her to the facility; and
  - (b) if there are reasonable grounds for believing that the person is at certain premises—may enter those premises using such force and with such assistance as is necessary and reasonable.

## **60 Detention**

- (1) Where a person is taken to an approved mental health facility under section 59 or the Crimes Act, section 309 (1) (a), the person in charge of the facility shall detain the person at the facility and while the person is so detained—
  - (a) may keep the person in such custody as the person in charge thinks appropriate; and
  - (b) may subject the person to such confinement as is necessary and reasonable—
    - (i) to prevent the person from causing harm to himself or herself or to another person; or
    - (ii) to ensure that the person remains in custody; and

(c) may subject the person to such restraint (other than confinement) as is necessary and reasonable—

(i) to prevent the person from causing harm to himself or herself or to another person; or

(ii) to ensure that the person remains in custody.

- (2) If a doctor or mental health officer believes on reasonable grounds that a person who has voluntarily attended an approved mental health facility is a person to whom section 59 (2) (a) to (d) apply, the doctor or mental health officer may detain the person at the facility and, while the person is so detained, the person in charge of the facility may exercise the powers mentioned in subsection (1) (a) to (c) in relation to the person detained.

**61           Circumstances in which copy of court order to be provided**

A police officer or corrections officer who conveys an accused person to an approved mental health facility for examination by a medical practitioner under the Crimes Act, section 309 (1) (a) shall give a copy of the court order to the person in charge of the facility.

**62           Statement of action taken**

- (1) A police officer, ambulance paramedic, doctor or mental health officer shall, as soon as practicable after taking a person to an approved mental health facility under section 59, prepare and give to the person in charge of the facility a written statement containing a description of the action taken under that section, including the following details:
- (a) the name and address (if known) of the person taken to the facility;
- (b) the date and time when the person was taken to the facility;

- (c) detailed reasons for taking the action;
  - (d) the extent of the force or assistance used to enter any premises, or to apprehend the person and to take him or her to the facility.
- (2) The person in charge of a facility who receives a statement under subsection (1) shall place the statement with the clinical records of the person whom it concerns.

### **63 Examination at approved mental health facility**

- (1) This section applies to a person (the *subject person*) detained at an approved mental health facility under section 60.
- (2) The person in charge of the approved mental health facility must ensure that the subject person is examined by a relevant doctor of the facility within 4 hours after—
- (a) for a person detained under section 60 (1)—arriving at the facility; or
  - (b) for a person detained under section 60 (2)—being detained at the facility.
- (3) However, the person in charge of the facility may continue to detain the subject person if he or she believes on reasonable grounds that, if the subject person is released without examination—
- (a) the subject person's health or safety is, or is likely to be, substantially at risk; or
  - (b) the subject person is doing, or is likely to do, serious harm to others; or
  - (c) the subject person is seriously endangering, or is likely to seriously endanger, public safety.

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

## **64      Authorisation of involuntary detention**

- (1) Where the doctor who examines a person under section 63 has reasonable grounds for believing that—
  - (a) the person is mentally dysfunctional or mentally ill and—
    - (i) as a consequence, requires immediate treatment or care; or
    - (ii) in the opinion of the doctor, the person's condition will deteriorate within 3 days to such an extent that the person would require immediate treatment or care; and



- (b) the person has refused to receive that treatment or care; and
- (c) detention is necessary for the person's own health or safety, social or financial wellbeing, or for the protection of members of the public; and
- (d) adequate treatment or care cannot be provided in a less restrictive environment;

the doctor may authorise the involuntary detention and care of the person at an approved mental health facility for a period not exceeding 3 days.

- (2) Before the end of the 3-day period of detention, the chief psychiatrist may apply to the ACAT to extend the period of detention if the chief psychiatrist believes on reasonable grounds that the person does not have the decision-making capacity to consent to the treatment, care or support.
- (3) On application, the ACAT may order that the period of detention be extended by the period, not longer than 11 days, stated in the order.
- (4) The ACAT shall, on application, review the decision of a doctor or mental health officer under subsection (1) (a) (ii) within 2 working days of the date of receipt of the application.
- (5) The ACAT must, on application, review an order made under subsection (3) within 2 working days after the day the application is lodged.
- (6) The Minister must, 18 months after the day this subsection commences, review the maximum further period for detaining a person under subsection (3).
- (7) The Minister must present a report of the review to the Legislative Assembly not later than 2 years after the day this subsection commences.

- (8) This subsection and subsections (6) and (7) expire 3 years after the day this subsection commences.

**65      Notification of Magistrates Court about emergency detention or release from emergency detention**

The person in charge of an approved mental health facility—

- (a) shall notify the Magistrates Court of the results of an examination conducted by a doctor under an order under the Crimes Act, section 309 (1); and
- (b) if, after examination by the doctor—
  - (i) the person is to be detained for treatment or care—shall ensure that the person is detained for the purposes of receiving that treatment or care; or
  - (ii) the person is not to be detained for treatment or care, or is to be released after being detained—shall release the person into the custody of a police officer.

**66      Notification of certain persons about detention**

- (1) This section applies if a doctor authorises the involuntary detention of a person under section 64 (1).
- (2) The doctor must, within 12 hours after authorising the involuntary detention, notify the public advocate and the ACAT of—
  - (a) the name of the person detained; and
  - (b) the reasons for authorising the involuntary detention and care; and
  - (c) the name and address of the approved mental health facility where the person is being detained.

Maximum penalty: 5 penalty units.

- (3) The person in charge of a facility in which a person is detained under section 64 shall, if the accused person has been taken to the facility in accordance with an order under the Crimes Act, section 309 (1) (a), in addition to complying with subsection (1) of this section, notify the court of the reasons for the involuntary detention and care.
- (4) The person in charge of a facility in which a person is detained under section 64 shall ensure that the person has adequate opportunity to notify a relative or friend of the person's detention.

#### **67 Medical examination**

The person in charge of an approved mental health facility shall ensure that a proper physical and psychiatric examination of a person detained at the facility under section 64 (1) is undertaken within 24 hours of the person being so detained.

#### **68 Treatment during detention**

- (1) The person in charge of a mental health facility at which a person is detained under section 64 shall ensure that during the period of detention—
  - (a) any custody under which the person detained is kept; and
  - (b) any confinement or other restraint to which the person detained is subjected; and
  - (c) any treatment administered to the person detained;

is the minimum necessary to prevent any immediate and substantial risk of the person detained causing harm to himself or herself or to another person.

*Note* Special provisions apply for the emergency administration of electroconvulsive therapy (see div 9.2.4).

- (2) Subsection (1) does not apply if a person has a mental illness for which, in the opinion of a psychiatrist, the most appropriate treatment is long acting medication.
- (3) In determining whether to administer long acting medication, the psychiatrist shall take into account the likely deterioration in the person's condition within 3 days of his or her examination of the person.

## **69      Communication during detention**

- (1) A person commits an offence if—
  - (a) the person is in charge of a mental health facility; and
  - (b) a person (the *detainee*) is detained at the facility; and
  - (c) the person does not ensure that, during the detention, the detainee has reasonable access to facilities, and adequate opportunity, to contact the public advocate and the detainee's lawyer.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
  - (a) the person is in charge of a mental health facility; and
  - (b) a person (the *detainee*) is detained at the facility; and
  - (c) the public advocate or the detainee's lawyer asks the person to give any reasonable assistance necessary to allow the public advocate or lawyer to have access to the detainee; and
  - (d) the person does not ensure that the assistance is given.

Maximum penalty: 50 penalty units.

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

**70 Orders for release**

- (1) If satisfied that the detention of a person under section 64 (1) or (2) is no longer justified then, subject to subsection (2)—
  - (a) the doctor who examined the person under section 67; or
  - (b) the chief psychiatrist; or
  - (c) the ACAT;may order the release of the person before the period of detention authorised under that subsection expires.
- (2) If the person detained under section 64 (1) or (2) is an accused person to whom an order under the Crimes Act, section 309 (1) applies—
  - (a) the doctor who examined the person under section 67; or
  - (b) the chief psychiatrist; or
  - (c) the ACAT;shall notify the person in charge of an approved mental health facility if satisfied that the detention of the person is no longer justified.

**71      Duty to release**

- (1) A person in charge of an approved mental health facility shall ensure that a person detained at that facility under section 64 (1) or (2)—
  - (a) is released in accordance with an order under section 70; or
  - (b) if no such order is made and subject to any other order of the ACAT—is released at the expiration of the period of detention authorised under section 64 (1) or (2).

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

- (2) If the person in charge of an approved mental health facility is notified under section 70 (2), he or she shall, as soon as practicable, discharge the person to whom the notification relates into the custody of a police officer.

## **Chapter 6            Forensic mental health**

### **Part 6.1            Forensic mental health orders**

#### **Division 6.1.1       Preliminary**

##### **72            Definitions—pt 6.1**

In this part:

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

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

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

#### **Division 6.1.2       Referrals for forensic mental health orders**

##### **73            Referrals to ACAT for forensic mental health order—alleged offenders**

- (1) This section applies to an alleged offender if the chief psychiatrist believes on reasonable grounds that—
  - (a) because of mental impairment—
    - (i) the alleged offender's health or safety is, or is likely to be, substantially at risk; or
    - (ii) the alleged offender has done, is doing, or is likely to do, serious harm to others; and

- (b) because of mental impairment, the person has seriously endangered, is seriously endangering or is likely to seriously endanger, public safety; and
- (c) it may not be appropriate to prosecute, or to continue to prosecute, the alleged offender, considering—
  - (i) the nature and circumstances of the offence; and
  - (ii) the alleged offender's apparent mental condition.
- (2) The chief psychiatrist may refer the alleged offender to the ACAT for a forensic mental health order.
- (3) In this section:  
*alleged offender* means—
  - (a) a person who is arrested in connection with an offence; or
  - (b) a person who is charged in connection with an offence; or
  - (c) a person in relation to whom a police officer believes on reasonable grounds there are sufficient grounds on which to charge the person in connection with an offence.

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



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

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

**75 Chief psychiatrist to tell ACAT of risks**

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

### **Division 6.1.3 Making forensic mental health orders—preliminary matters**

#### **76 ACAT must consider assessment—forensic mental health order**

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

#### **77 ACAT must hold inquiry—forensic mental health order**

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

#### **78 Consultation by ACAT etc—forensic mental health order**

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

- (d) if the person has a nominated person—the nominated person;  
and
  - (e) the person most likely to be responsible for providing the  
treatment, care or support proposed to be ordered; and
  - (f) if the person is a detainee—the director-general responsible for  
the *Corrections Management Act 2007*.
- (2) Also, before the ACAT makes a forensic mental health order for the  
provision of a particular treatment, care or support at a stated facility  
or by a stated person, the relevant official for the order must, in  
writing, tell the ACAT that the treatment, care or support can be  
performed at the stated facility or by the stated person.

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

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

- (a) whether the person consents, refuses to consent or has the  
decision-making capacity to consent, to proposed treatment,  
care or support;
- (b) the views and wishes of the person, so far as they can be found  
out;
- (c) if an advance agreement is in force in relation to the person—  
the person's wishes in relation to his or her treatment, care or  
support stated in the agreement;
- (d) the views and wishes of the people responsible for the  
day-to-day care of the person, to the extent that those views  
and wishes are made known to the ACAT;
- (e) the views of each person appearing at the proceeding;

- (f) if the proceeding is on a forensic mental health order for which there is a registered affected person for an offence committed or alleged to have been committed by the person—any statement by the registered affected person;
- (g) the views of each person consulted under section 78 (Consultation by ACAT etc—forensic mental health order);
- (h) the matters stated in section 8 (Principles applying to Act);
- (i) that any restrictions placed on the person should be the minimum necessary for the safe and effective care of the person and protection of public safety;
- (j) any alternative treatment, care or support available, including—
  - (i) the purpose of the treatment, care or support; and
  - (ii) the benefits likely to be derived by the person from the treatment, care or support; and
  - (iii) the distress, discomfort, risks, side effects or other disadvantages associated with the treatment, care or support;
- (k) any relevant medical history of the person;
- (l) the nature and circumstances of the offence in relation to which the person has been sentenced, arrested, or may be or has been charged;
- (m) for an offender with a mental impairment—the nature and extent of the person’s mental impairment, including the effect it is likely to have on the person’s behaviour in the future;

- (n) whether, if the person is not detained—
  - (i) the person's health or safety is, or is likely to be, substantially at risk; or
  - (ii) the person is likely to do serious harm to others;
- (o) whether, if the person is not detained, public safety is likely to be seriously endangered;
- (p) if the proceeding is on a forensic mental health order for which there is a registered affected person for the offence committed or alleged to have been committed by the subject person—the victims of crime commissioner;
- (q) anything else prescribed by regulation.

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

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

**Division 6.1.4 Forensic psychiatric treatment orders**

**81 Forensic psychiatric treatment order**

- (1) This section applies to—
  - (a) a detainee or a person serving a community-based sentence assessed under an assessment order; or
  - (b) a detainee or a person serving a community-based sentence referred to the ACAT for a forensic mental health order under division 6.1.2; or

- (c) a person required to submit to the jurisdiction of the ACAT for a forensic mental health order under the Crimes Act, division 13.2.
- (2) The ACAT may make a forensic psychiatric treatment order in relation to the person if—
  - (a) the person has a mental illness; and
  - (b) the ACAT believes on reasonable grounds that, because of the mental illness, the person—
    - (i) is doing, or is likely to do, serious harm to himself or herself or someone else; or
    - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; and
  - (c) the ACAT believes on reasonable grounds that, because of the mental illness, the person has seriously endangered, is seriously endangering, or is likely to seriously endanger, public safety; and
  - (d) the ACAT is satisfied that psychiatric treatment, care or support is likely to—
    - (i) reduce the harm, deterioration or endangerment, or the likelihood of harm, deterioration or endangerment, mentioned in paragraph (b) or (c); or
    - (ii) result in an improvement in the person's psychiatric condition; and
  - (e) the ACAT is satisfied that, in the circumstances, a mental health order should not be made; and

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

## **82 Content of forensic psychiatric treatment order**

- (1) A forensic psychiatric treatment order made in relation to a person may state 1 or more of the following:
  - (a) an approved mental health facility to which the person may be taken;
  - (b) that the person must do either or both of the following:
    - (i) undergo psychiatric treatment, care or support, other than electroconvulsive therapy or psychiatric surgery;
    - (ii) undertake a counselling, training, therapeutic or rehabilitation program;
  - (c) that limits may be imposed on communication between the person and other people;
  - (d) that the person must live (but not be detained) at a stated place;
  - (e) that the person must not approach a stated person or stated place or undertake stated activities;
  - (f) that the person must be detained at a stated approved mental health facility or correctional centre.
- (2) A forensic psychiatric treatment order made in relation to a person must include a statement about whether the person has the decision-making capacity to consent to the treatment, care or support under the order, and whether the person consents.

**83 Role of chief psychiatrist for forensic psychiatric treatment order**

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

*Note* If a form is approved under s 254 for a determination, the form must be used.
- (3) The chief psychiatrist must also determine, in writing, the place where the person must live if—
  - (a) the forensic psychiatric treatment order does not state that the person live at a stated place; and
  - (b) the chief psychiatrist considers that the person should live at a place other than the place where he or she usually lives.
- (4) Before making a determination, the chief psychiatrist must, if practicable, consult—
  - (a) the person; and
  - (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and



- (c) if the person has an attorney appointed under the *Powers of Attorney Act 2006*—the attorney; and
  - (d) if the person has a nominated person—the nominated person.
- (5) For subsection (2) (b), the chief psychiatrist must not determine treatment, care or support that has, or is likely to have, the effect of subjecting the person to whom it is given to undue stress or deprivation, having regard to the benefit likely to result from the treatment, care or support.
- (6) As soon as practicable after making a determination, the chief psychiatrist must give a copy of the determination to the ACAT and the public advocate.
- (7) The chief psychiatrist may also give a copy of the determination to—
- (a) any guardian consulted under subsection (4) (b); and
  - (b) any attorney consulted under subsection (4) (c); and
  - (c) any nominated person consulted under subsection (4) (d).

**84 Treatment etc under forensic psychiatric treatment order to be explained**

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

**85 Action if forensic psychiatric treatment order no longer appropriate**

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

*Note* The ACAT must review the order within 72 hours after being notified under this section (see s 100 (2)).

**86 Powers in relation to detention, restraint etc—forensic psychiatric treatment order**

- (1) This section applies if—
  - (a) a forensic psychiatric treatment order has been made in relation to a person; and
  - (b) either—
    - (i) the order requires the person to be detained at an approved mental health facility or correctional centre; or
    - (ii) the chief psychiatrist considers that it is necessary for the treatment, care or support of the person to detain the person at a particular place.

- (2) The chief psychiatrist may—
- (a) take, or authorise someone else to take, the person to the approved mental health facility stated in the order or particular place under subsection (1) (b) (ii) (the *relevant place*) and for that purpose—
    - (i) use the force and assistance that is necessary and reasonable to apprehend the person and take him or her to the place; and
    - (ii) if there are reasonable grounds for believing that the person is at particular premises—enter the premises using the force and assistance that is necessary and reasonable; and
  - (b) keep the person at the relevant place in the custody that the chief psychiatrist considers appropriate; and
  - (c) subject the person to the confinement or restraint that is necessary and reasonable to—
    - (i) prevent the person from causing harm to himself or herself or someone else; or
    - (ii) ensure that the person remains in custody under the order; and
  - (d) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to himself or herself or someone else.
- (3) The chief psychiatrist must not subject a person to involuntary seclusion for longer than 4 hours without examination by a relevant doctor of the approved mental health facility.

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

## **Division 6.1.5      Forensic community care orders**

### **87      Forensic community care order**

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

- (e) the ACAT is satisfied that, in the circumstances, a forensic psychiatric treatment order should not be made; and
  - (f) the ACAT is satisfied that, in the circumstances, a mental health order should not be made; and
  - (g) the treatment, care or support cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person than would result from the person being an involuntary patient.
- (3) Without limiting subsection (2) (c), grounds for belief that a person is likely to seriously endanger public safety may include that the person has previously seriously endangered public safety.

## **88 Content of forensic community care order**

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

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

**89 Role of care coordinator—forensic community care order**

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

*Note* If a form is approved under s 254 for a determination, the form must be used.

- (3) Before making a determination in relation to a person, the care coordinator—
- (a) must consult—
- (i) the ACAT; and
  - (ii) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
  - (iii) if the person has an attorney appointed under the *Powers of Attorney Act 2006*—the attorney; and
  - (iv) if the person has a nominated person—the nominated person; and
- (b) if practicable, must consult the person; and

- (c) may consult any other service provider the care coordinator considers relevant.
- (4) After making a determination in relation to a person, the care coordinator must record whether the person was consulted and—
  - (a) if the person was consulted—what the person’s views were; or
  - (b) if the person was not consulted—the reasons why.
- (5) As soon as practicable after making a determination, the care coordinator must give a copy of the determination to—
  - (a) the ACAT; and
  - (b) the public advocate; and
  - (c) any guardian consulted under subsection (3) (a) (ii); and
  - (d) any attorney consulted under subsection (3) (a) (iii); and
  - (e) any nominated person consulted under subsection (3) (a) (iv).
- (6) The care coordinator may also give a copy of the determination to—
  - (a) anyone consulted under subsection (3) (c); and
  - (b) anyone providing treatment, care or support to the person.

**90 Treatment etc to be explained—forensic community care order**

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



**91      Action if forensic community care order no longer appropriate**

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

*Note*      The ACAT must review the order within 72 hours after being notified under this section (see s 100 (2)).

**92      Powers in relation to detention, restraint etc—forensic community care order**

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

- (ii) the care coordinator requires the person to be detained at an approved community care facility under section 99 (Contravention of forensic mental health order).
- (2) The care coordinator may—
  - (a) take, or authorise someone else to take, the person to the approved community care facility and, for that purpose—
    - (i) use the force and assistance that is necessary and reasonable to apprehend the person and take him or her to the facility; and
    - (ii) if there are reasonable grounds for believing that the person is at particular premises—enter those premises using the force and assistance that is necessary and reasonable; and
  - (b) keep the person at the facility in the custody that the ACAT considers appropriate; and
  - (c) subject the person to the confinement or restraint that is necessary and reasonable—
    - (i) to prevent the person from causing harm to himself or herself or someone else; or
    - (ii) to ensure that the person remains in custody under the order; and
  - (d) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to himself or herself or someone else.
- (3) The care coordinator must not subject a person to involuntary seclusion for longer than 4 hours without an examination by a relevant doctor of the approved community care facility.

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

## **Division 6.1.6 Limits on communication under forensic mental health orders**

### **93 Limits on communication—forensic mental health order**

- (1) This section applies if—
  - (a) a forensic mental health order is made in relation to a person; and
  - (b) the ACAT orders, under section 82 (1) (c) or section 88 (1) (d), that limits may be imposed on communication between the person and other people; and
  - (c) the relevant official for the person believes on reasonable grounds that it is necessary, in the interests of the effective treatment, care or support of the person, that communication between the person and other people be limited.
- (2) The relevant official may, subject to the order mentioned in subsection (1) (b), impose limits on communication by the person with other people that are necessary and reasonable to avoid prejudicing the effectiveness of the treatment, care or support.
- (3) As soon as practicable after imposing limits on communication by a person, the relevant official must explain to the person—
  - (a) the nature of the limits; and
  - (b) the period for which the limits will be in effect; and
  - (c) the reasons for imposing the limits.
- (4) The explanation must be given in the language or way of communicating that the person is most likely to understand.
- (5) Limits must not be imposed for a period longer than 7 days.

- (6) Subsection (5) does not prevent further limits being imposed immediately after a limit previously imposed under subsection (2) ends.
- (7) This section has effect despite part 8.1 (Rights of people with mental dysfunctional or mental illness—general) but subject to section 94.

**94            Communication with public advocate and person's lawyer**

- (1) If a relevant official for a person has imposed limits on communication by the person under section 93, the official must ensure that the person has reasonable access to facilities, and adequate opportunity, to contact the public advocate or the person's lawyer.
- (2) The relevant official must, if asked by the public advocate or the person's lawyer, give any reasonable assistance necessary to allow the public advocate or lawyer to have access to the person.

**Division 6.1.7            Duration of forensic mental health orders**

**95            Duration of forensic mental health orders**

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

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

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

*Note 2* The chief psychiatrist or another relevant person may apply for a mental health order in relation to the person (see s 29).

## **Division 6.1.8 Leave for detained people**

### **96 Grant leave for detained person**

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

#### **Examples—purposes**

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

3 for compassionate reasons

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

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

## **97 Revoke leave for detained person**

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

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

## **Division 6.1.9 Contravention and review of forensic mental health orders**

### **98 Abscond from facility or fail to return from leave**

- (1) This section applies to a person detained at a correctional centre, approved mental health facility or approved community care facility under a forensic mental health order.
- (2) The ACAT may issue a warrant for a person's arrest if—
  - (a) satisfied by information on oath that—
    - (i) the person has absconded from the correctional centre, approved mental health facility or approved community care facility; or
    - (ii) the person has failed to return to the correctional centre, approved mental health facility or approved community care facility after a period of leave, granted under section 96 (Grant leave for detained person), ends; or
  - (b) the ACAT revokes a grant of leave in relation to the person under section 97 (Revoke leave for detained person).
- (3) The warrant must—
  - (a) be in writing signed by a presidential member of the ACAT; and
  - (b) be directed to all police officers or a named police officer; and
  - (c) state briefly the matter on which the information is based; and
  - (d) order the person's arrest and bringing of the person before the ACAT.



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

**99      Contravention of forensic mental health order**

- (1) This section applies if—
- (a) a forensic mental health order is in force in relation to a person; and
  - (b) the person contravenes a condition of the order.
- (2) However, this section does not apply to a contravention to which section 98 applies.
- (3) The relevant official for the order may—
- (a) orally tell the person that failure to comply with the order may result in the person being apprehended and taken to a relevant facility for treatment, care or support; and
  - (b) if the noncompliance continues after the taking of action under paragraph (a)—tell the person in writing that failure to comply with the order will result in the person being apprehended and being taken to a relevant facility for treatment, care or support; and
  - (c) if the noncompliance continues after the taking of action under paragraph (b)—require the person to be detained at a relevant facility to ensure compliance with the order.

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

**100      Review, variation and revocation of forensic mental health order**

- (1) The ACAT may, on application or on its own initiative, review a forensic mental health order in force in relation to a person.
- (2) The ACAT must review each forensic mental health order in force in relation to the person within 72 hours if the ACAT receives notice under any of the following sections in relation to the person:
  - (a) section 85 (Action if forensic psychiatric treatment order no longer appropriate);
  - (b) section 91 (Action if forensic community care order no longer appropriate);
  - (c) section 99 (2) (Contravention of forensic mental health order).
- (3) Subsection (2) has effect despite section 183 (Notice of hearing).
- (4) If the ACAT is satisfied that a person in relation to whom a forensic mental health order is in force is no longer a person in relation to whom the ACAT could make a forensic mental health order, the ACAT must revoke all the forensic mental health orders in force in relation to the person.
- (5) In any other case, the ACAT may, if appropriate to do so—
  - (a) amend or revoke any of the forensic mental health orders in force in relation to the person; or
  - (b) make additional forensic mental health orders in relation to the person; or
  - (c) make an assessment order in relation to the person.

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

### **101                      Definitions—pt 6.2**

In this part:

*information sharing entity* means each of the following:

*information sharing protocol*—see section 102.

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

*relevant information* means—

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

### **102                      Information sharing protocol**

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

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

## Part 6.3 Affected people

### 103 Meaning of *affected person*

- (1) For this Act, each of the following is an *affected person* in relation to an offence committed, or alleged to have been committed, by a person in relation to whom a forensic mental health order may be made or is in force:
- (a) a person (a *primary affected person*) who suffers harm because of the offence;
  - (b) if a primary affected person dies because of the offence—a person who was financially or psychologically dependent on the primary affected person immediately before the primary affected person's death.
- (2) In this section:
- because of*, an offence—see the *Crimes (Sentencing) Act 2005*, section 47.
- harm*—see the *Crimes (Sentencing) Act 2005*, section 47.

### 104 Meaning of *registered affected person*

In this Act:

*registered affected person*, in relation to an offence committed or alleged to have been committed by an adult in relation to whom a forensic mental health order may be made or is in force, means an affected person in relation to the offence whose information is entered in the register kept under section 105.

## 105 Affected person register

- (1) The director-general must maintain a register of affected people in relation to offences committed or alleged to have been committed in relation to whom forensic mental health orders may be made or are in force.
- (2) The director-general must enter in the register information about an affected person that the person, or someone acting for the person, asks the director-general to enter in the register.
- (3) As soon as practicable after entering the affected person's information in the register, the director-general must give the affected person, orally or in writing, information about the person's rights as a registered affected person under section 106.
- (4) If the affected person is a child under 15 years old, the director-general may give the information to a person who has parental responsibility for the affected person under the *Children and Young People Act 2008*.
- (5) Subsection (4) does not limit the cases in which the director-general may give information to a person acting for a affected person.
- (6) In this section:

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

## **106 Disclosures to registered affected people**

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

### **Examples—disclosures**

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

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

- (3) However, the director-general must not disclose identifying information about a child unless the offence was a personal violence offence and the director-general believes that the registered affected person, or a family member of the affected person, may come into contact with the child.
- (4) If the registered affected person is a child under 15 years old, the director-general may give the information to a person who has parental responsibility for the affected person under the *Children and Young People Act 2008*.



(5) Subsection (4) does not limit the cases in which the director-general may give information to a person acting for a registered affected person.

(6) In this section:

*domestic violence offence*—see the *Domestic Violence and Protection Orders Act 2008*, section 13 (2).

*personal violence offence* means—

- (a) an offence that involves causing harm, or threatening to cause harm, to anyone; or
- (b) a domestic violence offence.

## **Chapter 7      Correctional patients**

### **Part 7.1      Preliminary**

#### **107      Meaning of *correctional patient***

In this Act:

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

## Part 7.2                      Transfer of correctional patients

### 108                      Transfer to mental health facility or community care facility

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

### 109                      Return to correction centre unless direction to remain

- (1) A correctional patient must be returned to a correction centre within 7 days after the day the person is transferred to an approved mental health facility or approved community care facility under a transfer direction.
- (2) However, the director-general may direct that a correctional patient remain at an approved mental health facility or approved community care facility for longer than 7 days if the chief psychiatrist is satisfied that—
  - (a) the person has a mental dysfunction or mental illness for which treatment, care or support is available in the approved mental health facility or approved community care facility; and

- (b) other care of an appropriate kind would not be reasonably available to the person in the correctional centre.
- (3) The director-general may direct that a correctional patient be returned to the correctional centre at any time if the director-general is satisfied that—
  - (a) the person no longer has a mental dysfunction or mental illness for which treatment, care or support is available in an approved mental health facility or approved community care facility; or
  - (b) other care of an appropriate kind would be reasonably available to the person in a correctional centre.

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

## **110 Release etc on change of status of correctional patient**

- (1) This section applies if the director-general is told by the director-general responsible for the *Corrections Management Act 2007*, or otherwise becomes aware, of any of the following in relation to a person who is a correctional patient:
  - (a) the person's sentence of imprisonment ends;
  - (b) the person is released on parole;
  - (c) the person is otherwise released from detention on the order of a court;
  - (d) the relevant charge against the person is dismissed;

- (e) the director of public prosecutions notifies the ACAT or a court that the relevant charge against the person will not proceed.

*Note* The director-general responsible for the *Corrections Management Act 2007* must tell the director-general of a change in the person's status (see *Corrections Management Act 2007*, s 54A).

- (2) The director-general must—
  - (a) at the person's request, continue the detention or treatment, care or support in the approved mental health facility or approved community care facility; or
  - (b) make any other decision that the director-general may make in relation to the person under this Act; or
  - (c) release the person from the approved mental health facility or approved community care facility.

## **111 ACAT may return people to correctional centre**

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

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

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

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

**112      Review of correctional patient awaiting transfer to mental health facility or community care facility**

- (1) This section applies to a correctional patient who has not been transferred to an approved mental health facility or approved community care facility under a transfer direction during the period prescribed by regulation.
- (2) The ACAT must review the transfer direction—
  - (a) at the end of 1 month after the direction is made; and
  - (b) at the end of each subsequent month until the person is transferred to an approved mental health facility or approved community care facility or the transfer direction is revoked.

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

**113      Review of correctional patient transferred to mental health facility or community care facility**

- (1) This section applies to a correctional patient who has been transferred to an approved mental health facility or approved community care facility under a transfer direction.
- (2) The ACAT must review the transfer direction as soon as practicable after the correctional patient has been transferred.
- (3) On review, the ACAT—
  - (a) must determine—
    - (i) whether the person has a mental dysfunction or mental illness for which treatment, care or support is available in an approved mental health facility or approved community care facility; and

- (ii) whether the approved mental health facility or approved community care facility has capacity to continue the detention and treatment, care or support under the transfer direction; and
  - (iii) whether other treatment, care or support of an appropriate kind would not be reasonably available to the person in the correctional centre; and
- (b) may, as it considers appropriate, make an order in relation to the person's continued detention or treatment, care or support in an approved mental health facility, approved community care facility or correctional centre.



## **Part 7.3                      Review of correctional patients**

### **114              Review of correctional patient detained at mental health facility or community care facility**

- (1) This section applies to a correctional patient transferred to an approved mental health facility or approved community care facility under a transfer direction and detained at the facility for at least 6 months.
- (2) The ACAT must review the transfer—
  - (a) at the end of each 12-month period that the correctional patient is detained at the approved mental health facility or approved community care facility; and
  - (b) at any other time on request by any of the following:
    - (i) the Minister;
    - (ii) the Attorney-General;
    - (iii) the director-general;
    - (iv) the person in charge of the approved mental health facility or approved community care facility at which the person is detained.
- (3) Also, the ACAT may, at any time on its own initiative, review the transfer.
- (4) For a review, the chief psychiatrist must give the ACAT a report about—
  - (a) the person's condition; and

- (b) the capacity of the approved mental health facility or approved community care facility to continue, and the availability of any other facility or place to accept a transfer for, the detention or treatment, care or support.
- (5) On review, the ACAT may, as it considers appropriate, make an order in relation to the person's continued detention at, treatment, care or support in, or transfer to, an approved mental health facility, approved community care facility, correctional centre or other place.
- (6) The ACAT must tell the director-general responsible for the *Corrections Management Act 2007* in writing, about a review under this section.

## **115 Extension of time for review of correctional patient**

- (1) The ACAT may, on application by a correctional patient or on its own initiative, extend the time for undertaking a review under section 114 by not more than 12 months.
- (2) However, the ACAT may only extend the time under subsection (1) if satisfied that—
  - (a) there are reasonable grounds for the extension; or
  - (b) an earlier review is not required because—
    - (i) there has been no change in the patient's circumstances since the last review; and
    - (ii) there is no apparent need for any change in the existing arrangements for the correctional patient; and
    - (iii) an earlier review may be detrimental to the condition of the correctional patient.

## **Part 7.4                      Leave for correctional patients**

### **116              Grant of leave for correctional patients**

- (1) The director-general may allow a correctional patient to take a period of leave from an approved mental health facility or approved community care facility if satisfied that—

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

**Example**

to attend a relative's funeral

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

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

- (2) The grant of leave must state—

- (a) the purpose for which the leave is granted; and  
(b) the period for which the leave is granted.

- (3) The grant of leave may be subject to conditions the director-general considers appropriate in the circumstances, taking into account—

- (a) section 8 (Principles applying to Act); and  
(b) the safety of the person, anyone else or the public.

- (4) The director-general must, at least 72 hours before allowing leave under this section, tell the director-general responsible for the *Corrections Management Act 2007* about the leave.

**117      Revoke leave for correctional patients**

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

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

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

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

#### **118                      Meaning of *responsible person***

In this part:

*responsible person*—

- (a) in relation to a mental health facility that is not conducted by the Territory—means the owner of the facility; or
- (b) in relation to a psychiatric institution conducted by the Territory—means the chief psychiatrist; or
- (c) in relation to any other mental health institution or community care facility conducted by the Territory—the director-general of the administrative unit responsible for the conduct of the institution or facility.

#### **119                      Statement of rights**

- (1) The responsible person shall ensure that on admission to, or before receiving treatment at, the mental health facility or community care facility, a person—
  - (a) is orally advised of his or her rights under this Act; and

- (b) is given a copy of an information statement containing—
  - (i) a prescribed statement setting out the rights and entitlements of persons under this Act, including the right to obtain legal advice and the right to seek a second opinion from an appropriate mental health professional; and
  - (ii) any other information relating to the treatment and care of the person that the Minister considers relevant.
- (2) The responsible person shall ensure that, wherever possible, a person is given an information statement in a language with which the person is familiar.
- (3) The responsible person shall ensure that, if a person appears to be incapable of reading and understanding an information statement, then as far as practicable arrangements are made to convey the information contained in the statement to the person in the language, mode of communication or terms that the person is most likely to understand.
- (4) The responsible person shall ensure that, if a person appears to be unable to understand the information contained in an information statement, the public advocate is informed of that fact.

## **120 Information to be provided**

The responsible person shall ensure that the following items are kept at the mental health facility or community care facility in a place readily accessible to all persons admitted to, or receiving treatment at, the facility:

- (a) copies of this Act, the *Guardianship and Management of Property Act 1991* and any other relevant legislation;

- (b) copies of any publications prepared by the administrative unit to which responsibility for the administration of that legislation is allocated for the purpose of explaining the legislation;
- (c) copies of information statements printed in different languages;
- (d) a list of the addresses and telephone numbers of the offices of, and the relevant functions of, the following:
  - (i) the ACAT;
  - (ii) the Supreme Court;
  - (iii) the Magistrates Court;
  - (iv) the public advocate;
  - (v) the chief psychiatrist;
  - (vi) the care coordinator;
  - (vii) the legal aid commission;
  - (viii) the ombudsman.

## **121 Communication**

- (1) The responsible person shall ensure that all persons admitted to, or receiving treatment at, the mental health facility or community care facility are given reasonable opportunities to communicate with persons of their choice by means other than written communication.
- (2) The responsible person shall ensure that a person admitted to, or receiving treatment at, the mental health facility or community care facility is provided, on request, with facilities for preparing written communications and for enclosing those communications in sealed envelopes.

- (3) The responsible officer shall ensure any written communication addressed to or written by a person admitted to, or receiving treatment at, the mental health facility or community care facility (other than an offender with a mental impairment) is forwarded without being opened and without delay to the person to whom it is addressed.
- (4) Subject to any security conditions imposed under any Act, the responsible officer shall ensure any written communication addressed to or written by an offender with a mental impairment is forwarded without being opened and without delay to the person to whom it is addressed.

**122 Failure by owner to comply**

The owner of a mental health facility that is not conducted by the Territory who, without reasonable excuse, fails to comply with this part commits an offence.

Maximum penalty: 20 penalty units.



## **Part 8.2                      Nominated people**

### **123              Nominated person**

- (1) A person with a mental dysfunction or mental illness may, in writing, nominate another person to be his or her nominated person.
- (2) However, a person cannot nominate another person to be his or her nominated person unless the proposed nominated person—
  - (a) is an adult; and
  - (b) is able to undertake the functions of a nominated person; and
  - (c) is readily available; and
  - (d) agrees to be nominated as the person's nominated person.
- (3) The main function of a nominated person for a person with a mental dysfunction or mental illness is to help the person by ensuring that the interests of the person are respected if he or she requires treatment, care or support for his or her mental dysfunction or mental illness.
- (4) Without limiting subsection (3), the functions of a nominated person include—
  - (a) receiving information under this Act; and
  - (b) being consulted about decisions in relation to treatment, care or support; and
  - (c) other functions given to the nominated person under this Act.

## Part 8.3 Advance agreements

### 124 Definitions—pt 8.3

In this part:

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

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

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

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

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

## 125 Person may make advance agreement

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

*Note* If a form is approved under s 254 for this provision, the form must be used.

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

## 126 Content of advance agreement

An advance agreement for a person may include the following:

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

**127 Duration of advance agreement**

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

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

*Note* A person in relation to whom an advance agreement is in force may end the agreement under s 129.

**128 Amending advance agreement**

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

**129 Ending advance agreement**

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

**130 Decisions about treatment etc must consider advance agreement**

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

**Examples—person involved in making a decision**

guardian, attorney under a power of attorney

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

**131      Treatment etc to be administered under advance agreement**

- (1) Before administering treatment, care or support to a person with a mental dysfunction or mental illness, a mental health professional must take reasonable steps to find out if an advance agreement is in force in relation to the person.
- (2) If an advance agreement is in force in relation to a person, a mental health professional may administer treatment, care or support to the person only in accordance with the agreement.
- (3) Subsection (2) does not apply if the mental health professional is administering treatment, care or support to the person in accordance with—
  - (a) a mental health order or forensic mental health order in force in relation to the person; or
  - (b) a decision of a guardian under the *Guardianship and Management of Property Act 1991* or attorney under the *Powers of Attorney Act 2006* made in accordance with the guardian or attorney's appointment.

*Note*      For the effect of a mental health order or forensic mental health order on an advance agreement, see s 133. For the effect of an appointment of a guardian or attorney on an advance agreement, see s 134.

**132 Treatment etc may be continued after end of advance agreement**

- (1) This section applies if—
  - (a) a mental health professional is administering treatment, care or support to a person with a mental dysfunction or mental illness under an advance agreement; and
  - (b) an advance agreement in force in relation to a person ends under section 127 (Duration of advance agreement) in the course of administering the treatment, care or support; and
  - (c) the person to whom the treatment, care or support is being administered does not have the decision-making capacity to consent to the continuation of the treatment, care or support.
- (2) The mental health professional may continue to administer the treatment, care or support to the person under the advance agreement as if it was still in force.
- (3) However, the mental health professional must stop administering the treatment, care or support to the person if asked to stop by—
  - (a) the person; or
  - (b) a guardian appointed for the person under the *Guardianship and Management of Property Act 1991*; or
  - (c) an attorney appointed for the person under the *Powers of Attorney Act 2006*.

*Note* The mental health professional may apply for a mental health order in relation to the person (see s 29).

**133      Effect of mental health order or forensic mental health order on advance agreement**

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

**134      Effect of guardian or power of attorney on advance agreement**

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



## **Chapter 9                      Electroconvulsive therapy and                                          psychiatric surgery**

### **Part 9.1                      Consent**

#### **135                      Informed consent**

- (1) For this part, a person gives ***informed consent*** to a procedure if the consent is given by the person after—
- (a) the person has been given a clear explanation of the procedure that contains sufficient information to enable the person to make a balanced judgment about whether or not to consent to the procedure; and
  - (b) the person has been given an adequate description (without exaggeration or concealment) of the benefits, discomfort and risks involved in the procedure; and
  - (c) the person has been advised of all alternative treatments reasonably available that may be of benefit to the person; and
  - (d) the person has been given an opportunity to ask any questions about the procedure, those questions have been answered and the person appears to have understood the answers; and
  - (e) a full disclosure has been made to the person of any financial relationship between the person seeking to obtain the consent, the doctor who is proposing to conduct the procedure or both (as the case may be) and the psychiatric institution at which it is proposed to conduct the procedure; and

- (f) the person has been given, has read and appears to have understood a notice stating that—
  - (i) the person has the right to obtain independent legal and medical advice and any other independent advice or assistance before giving informed consent; and
  - (ii) the person is free to refuse or withdraw consent and to have the procedure discontinued at any time; and
- (g) the person has been given an information statement.
- (2) For this part, informed consent shall be given in writing signed by the person giving the consent and witnessed by a person, other than the person seeking to obtain the consent or the doctor who is proposing to conduct the procedure.
- (3) In this section:  
*procedure* means—
  - (a) the administration of electroconvulsive therapy; or
  - (b) the performance of psychiatric surgery.

## **Part 9.2                      Electroconvulsive therapy**

### **Division 9.2.1              What is *electroconvulsive therapy*?**

#### **136              What is *electroconvulsive therapy*?**

For this Act:

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

### **Division 9.2.2              Informed consent for                                          electroconvulsive therapy**

#### **137              Electroconvulsive therapy may be administered with                                          consent**

- (1) A doctor, or person authorised by a doctor, may administer electroconvulsive therapy to a person who is not the subject of a psychiatric treatment order if—
  - (a) the person gives informed consent to the administration of the electroconvulsive therapy; and
  - (b) the person has not had electroconvulsive therapy administered on 10 or more occasions since the consent; and
  - (c) the person has not withdrawn the consent, either orally or in writing.
- (2) However, if the person is a child who is 12 years old or older, the therapy must not be administered unless—
  - (a) an electroconvulsive therapy order is in force in relation to the person; or

- (b) an emergency electroconvulsive therapy order is in force in relation to the person.

*Note* Electroconvulsive therapy must not be administered to a child under 12 years old (see s 141).

### **138 Offence—electroconvulsive therapy without consent**

- (1) A doctor commits an offence if—
  - (a) a person has not given informed consent to the administration of electroconvulsive therapy; and
  - (b) the doctor—
    - (i) administers electroconvulsive therapy to the person; or
    - (ii) authorises the administration of electroconvulsive therapy to the person.

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

- (2) This section does not apply to the administration of electroconvulsive therapy to a person in accordance with—
  - (a) an electroconvulsive therapy order in force in relation to the person; or
  - (b) an emergency electroconvulsive therapy order in force in relation to the person.

**139 Offence—electroconvulsive therapy on 10 or more occasions since consent**

- (1) A doctor commits an offence if—
- (a) a person has given informed consent to the administration of electroconvulsive therapy; and
  - (b) electroconvulsive therapy has been administered to the person on 10 or more occasions since the person consented; and
  - (c) the doctor—
    - (i) administers electroconvulsive therapy to the person; or
    - (ii) authorises the administration of electroconvulsive therapy to the person.

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

- (2) This section does not apply to the administration of electroconvulsive therapy to a person in accordance with—
- (a) an electroconvulsive therapy order in force in relation to the person; or
  - (b) an emergency electroconvulsive therapy order in force in relation to the person.

**140 Offence—electroconvulsive therapy after consent withdrawn**

- (1) A doctor commits an offence if—
- (a) a person has given informed consent to the administration of electroconvulsive therapy; and
  - (b) the person withdraws the consent, whether orally or in writing; and
  - (c) after the consent is withdrawn, the doctor—
    - (i) administers electroconvulsive therapy to the person; or
    - (ii) authorises the administration of electroconvulsive therapy to the person.

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

- (2) This section does not apply to the administration of electroconvulsive therapy to a person in accordance with—
- (a) an electroconvulsive therapy order in force in relation to the person; or
  - (b) an emergency electroconvulsive therapy order in force in relation to the person.

**141      Offence—administering electroconvulsive therapy to children**

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

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

**Division 9.2.3      Electroconvulsive therapy orders**

**142      Electroconvulsive therapy may be administered under electroconvulsive therapy order**

A doctor, or person authorised by a doctor, may administer electroconvulsive therapy to a person who is the subject of a psychiatric treatment order if—

- (a) there is an electroconvulsive therapy order in force in relation to the person; and
- (b) the person has not had electroconvulsive therapy administered on 10 or more occasions since the electroconvulsive therapy order was made; and
- (c) if the electroconvulsive therapy order states that the person had the capacity to consent to the order, and gave informed consent to the order—the person has not withdrawn the consent, either orally or in writing.

**143 Application for electroconvulsive therapy order**

- (1) The chief psychiatrist or a doctor may apply for an order (an *electroconvulsive therapy order*) for the administration of electroconvulsive therapy to a person if—
  - (a) a psychiatric treatment order is in force in relation to the person; and
  - (b) the chief psychiatrist or doctor believes on reasonable grounds that—
    - (i) the administration of electroconvulsive therapy is likely to result in substantial benefit to the person; and
    - (ii) either—
      - (A) all other reasonable forms of treatment available have been tried but have not been successful; or
      - (B) the treatment is the most appropriate treatment reasonably available.
- (2) The application must be supported by the evidence of—
  - (a) a psychiatrist other than the applicant; and
  - (b) if the person is not an adult—a psychiatrist, other than the applicant, who specialises in the treatment of children and young people.



**144      Criteria for making electroconvulsive therapy order**

The ACAT may make an electroconvulsive therapy order in relation to a person who is the subject of a psychiatric treatment order if—

- (a) the person, (or, if the person is not an adult, a parent or guardian of the person)—
  - (i) has given informed consent to the administration of electroconvulsive therapy; and
  - (ii) has not withdrawn the consent either orally or in writing; or
- (b) the ACAT is satisfied that—
  - (i) the person does not have the decision-making capacity to consent to the administration of electroconvulsive therapy; and
  - (ii) the administration of electroconvulsive therapy is likely to result in substantial benefit to the person; and
  - (iii) either—
    - (A) all other reasonable forms of treatment available have been tried but have not been successful; or
    - (B) the treatment is the most appropriate treatment reasonably available.

**145 Content of electroconvulsive therapy order**

An electroconvulsive therapy order made in relation to a person must—

- (a) state that the person may be given electroconvulsive therapy; and
- (b) include a statement that the person—
  - (i) has the capacity to consent to the order, and gives informed consent; or
  - (ii) does not have the capacity to consent to the order.

*Note* The ACAT must give a copy of the order to certain people (see s 185).

**146 Offence—electroconvulsive therapy without electroconvulsive therapy order**

- (1) A doctor commits an offence if—
  - (a) a psychiatric treatment order is in force in relation to a person; and
  - (b) an electroconvulsive therapy order is not in force in relation to the person; and
  - (c) the doctor—
    - (i) administers electroconvulsive therapy to the person; or
    - (ii) authorises the administration of electroconvulsive therapy to the person.

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

- (2) This section does not apply to the administration of electroconvulsive therapy to a person in accordance with an emergency electroconvulsive therapy order in force in relation to the person.

**147 Offence—electroconvulsive therapy on 10 or more occasions since electroconvulsive therapy order**

- (1) A doctor commits an offence if—
- (a) a psychiatric treatment order is in force in relation to a person; and
  - (b) an electroconvulsive therapy order is in force in relation to the person; and
  - (c) electroconvulsive therapy has been administered to the person on 10 or more occasions since the ACAT made the electroconvulsive therapy order; and
  - (d) the doctor—
    - (i) administers electroconvulsive therapy to the person; or
    - (ii) authorises the administration of electroconvulsive therapy to the person.

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

- (2) This section does not apply to the administration of electroconvulsive therapy to a person in accordance with an emergency electroconvulsive therapy order in force in relation to the person.

**148 Offence—electroconvulsive therapy after order consent withdrawn**

- (1) A doctor commits an offence if—
- (a) a psychiatric treatment order is in force in relation to a person; and
  - (b) an electroconvulsive therapy order is in force in relation to the person; and
  - (c) the electroconvulsive therapy order states that the person has the capacity to consent to the order, and gives informed consent; and
  - (d) the person withdraws the consent, whether orally or in writing; and
  - (e) after the consent is withdrawn, the doctor—
    - (i) administers electroconvulsive therapy to the person; or
    - (ii) authorises the administration of electroconvulsive therapy to the person.

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

- (2) This section does not apply to the administration of electroconvulsive therapy to a person in accordance with an emergency electroconvulsive therapy order in force in relation to the person.

## **Division 9.2.4      Emergency electroconvulsive therapy orders**

### **149      Electroconvulsive therapy may be administered under emergency electroconvulsive therapy order**

A doctor, or person authorised by a doctor, may administer electroconvulsive therapy to a person if—

- (a) there is an emergency electroconvulsive therapy order in force in relation to the person; and
- (b) the electroconvulsive therapy is administered in accordance with the emergency electroconvulsive therapy order.

### **150      Application for emergency electroconvulsive therapy order**

- (1) The chief psychiatrist and a doctor may jointly apply for an order (an ***emergency electroconvulsive therapy order***) for the emergency administration of electroconvulsive therapy to a person if the chief psychiatrist and doctor believe on reasonable grounds that—
  - (a) the person is at least 16 years old; and
  - (b) the person has a mental illness; and
  - (c) the administration of the electroconvulsive therapy is necessary to save the person's life.
- (2) The application must be accompanied by—
  - (a) if a psychiatric treatment order is in force in relation to the person—an application for an electroconvulsive therapy order in relation to the person; or

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

*Note 1* The ACAT must give a copy of the application and accompanying documents to the following people as soon as practicable (and not longer than 24 hours) after the application is lodged:

- the public advocate
- if the person is a child—the CYP director-general (see s 177).

*Note 2* Certain people are entitled to appear and give evidence, and be represented, at the proceeding including the following:

- the person who is the subject of the proceeding
- the public advocate
- the discrimination commissioner.

Other people are also entitled to appear (see s 178).

## **151 Criteria for making emergency electroconvulsive therapy order**

- (1) The ACAT may make an emergency electroconvulsive therapy order in relation to a person if satisfied that—
- (a) the person is at least 16 years old; and
  - (b) the person has a mental illness; and
  - (c) the person does not have the decision-making capacity to consent to the administration of electroconvulsive therapy; and
  - (d) the administration of electroconvulsive therapy is necessary to save the person's life; and

- (e) either—
  - (i) all other reasonable forms of treatment available have been tried but have not been successful; or
  - (ii) the treatment is the most appropriate treatment reasonably available.
- (2) In making an emergency electroconvulsive therapy order in relation to a person, the ACAT must take into account the following:
  - (a) the views and wishes of the person, so far as they can be found out;
  - (b) the views and wishes of the people responsible for the day-to-day care of the person, so far as those views and wishes are made known to the ACAT;
  - (c) the views of the people appearing at the proceeding.
- (3) To remove any doubt, section 183 (Notice of hearing) does not apply to the making of an emergency electroconvulsive therapy order in relation to a person.

## **152 Content of an emergency electroconvulsive therapy order**

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

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

*Note* The ACAT must give a copy of the order to certain people within 24 hours (see s 185).

**153 Conflict between orders**

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

**Division 9.2.5 Only doctor or authorised person to administer electroconvulsive therapy**

**154 Offence—electroconvulsive therapy without doctor's consent**

A person commits an offence if—

- (a) the person administers electroconvulsive therapy to someone else; and
- (b) the person is not a doctor; and
- (c) the person is not authorised by a doctor to administer the electroconvulsive therapy.

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



## **Division 9.2.6      Records of electroconvulsive therapy**

### **155      Doctor must record electroconvulsive therapy**

- (1) A doctor commits an offence if the doctor—
- (a) administers electroconvulsive therapy to a person; and
  - (b) does not make a record of the administration, including whether the administration was in accordance with an order of the ACAT or was voluntary.

Maximum penalty: 20 penalty units.

- (2) A doctor commits an offence if the doctor—
- (a) authorises the administration of electroconvulsive therapy to a person; and
  - (b) does not make a record of the authorisation, including whether the administration is to be in accordance with an order of the ACAT or is voluntary.

Maximum penalty: 20 penalty units.

- (3) A doctor commits an offence if the doctor does not give a record of electroconvulsive therapy mentioned in subsection (1) or (2) to a person in charge of the psychiatric institution where the therapy is, or is to be, administered.

Maximum penalty: 20 penalty units.

**156 Electroconvulsive therapy records to be kept for 5 years**

A person in charge of a psychiatric institution commits an offence if the person does not keep a record of electroconvulsive therapy given under section 155 (3) for at least 5 years after the day the record is given.

Maximum penalty: 20 penalty units.

## **Part 9.3                      Psychiatric surgery**

### **157                      Performance on persons subject to orders of ACAT**

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

### **158                      Approval and consent required**

A doctor shall not knowingly perform psychiatric surgery on a person—

- (a) except in accordance with the approval of the chief psychiatrist; or
- (b) after he or she is informed under section 164 that the person refuses to have the surgery performed.

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

### **159                      Application for approval**

An application for the approval of the chief psychiatrist for the performance of psychiatric surgery—

- (a) shall be made in writing by the doctor proposing to perform the surgery; and
- (b) shall be delivered to the chief psychiatrist together with—
  - (i) a copy of the informed consent of the person on whom it is proposed the surgery will be performed; or
  - (ii) a copy of an order of the Supreme Court under section 163.

**160      Application to be considered by committee**

- (1) The chief psychiatrist shall, as soon as practicable after receiving an application in accordance with section 159, submit the application to a committee appointed under section 165 by delivering a copy of the application to the chairperson of the committee.
- (2) A committee—
  - (a) shall consider an application submitted to it; and
  - (b) in a report to the chief psychiatrist—
    - (i) shall recommend whether or not the chief psychiatrist should approve the performance of the psychiatric surgery; and
    - (ii) if the committee recommends that the chief psychiatrist should approve the performance of the surgery—shall recommend the conditions (if any) to which the approval should be subject.
- (3) A committee shall not recommend that the chief psychiatrist should approve the performance of psychiatric surgery unless—
  - (a) the committee is satisfied—
    - (i) that there are reasonable grounds for believing that the performance of the surgery will result in substantial benefit to the person on whom it is proposed to be performed; and
    - (ii) that all alternative forms of treatment reasonably available have failed, or are likely to fail, to benefit the person; and
  - (b) the recommendation is supported by the psychiatrist and the neurosurgeon on the committee.

**161 Chief psychiatrist may require further information**

- (1) The chief psychiatrist shall, at the request of a committee and by notice in writing delivered to the doctor, require the doctor who made the application under section 159 to produce to the chief psychiatrist the documents or other information specified in the notice.
- (2) Where a requirement is imposed under subsection (1), the committee is not required to give further consideration to the application until the documents and other information specified in the notice are produced to the chief psychiatrist.
- (3) The chief psychiatrist shall deliver any documents and other information produced in compliance with a requirement under subsection (1) to the chairperson of the committee.
- (4) Nothing in this section authorises the chief psychiatrist to require the production of documents or other information, other than documents or information relevant to the application being considered by the committee.

**162 Chief psychiatrist to act on committee's recommendation**

The chief psychiatrist shall deal with an application under section 159 in accordance with the committee's recommendations.

**163      Consent of Supreme Court**

Where the Supreme Court is, on application by a doctor, satisfied that—

- (a) the person in relation to whom the application is made has a mental illness; and
- (b) the person has not given informed consent to the performance of psychiatric surgery and has not refused, either orally or in writing, to consent to such surgery; and
- (c) the person does not have the decision-making capacity to consent to the surgery; and
- (d) there are grounds for believing that the performance of such surgery is likely to result in substantial benefit to the person; and
- (e) all alternative forms of treatment reasonably available have failed, or are likely to fail, to benefit the person;

the court may, by order, consent to the performance of psychiatric surgery on the person.

**164      Refusal of surgery**

(1) A person—

- (a) who has given informed consent to the performance of psychiatric surgery; or
- (b) in respect of whom the Supreme Court has made an order consenting to the performance of such surgery under section 163;

may, before the psychiatric surgery is performed, inform the chief psychiatrist or any other person, either orally or in writing, that he or she refuses to have the surgery performed.

- (2) A person (other than the chief psychiatrist) who is informed that another person refuses to have psychiatric surgery performed on himself or herself shall inform the chief psychiatrist of the refusal.

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

- (3) Where the chief psychiatrist—

- (a) has approved the performance of psychiatric surgery on a person under section 162; and
- (b) is informed under subsection (1) or (2), other than by the doctor who is to perform the surgery, that the person refuses to have the surgery performed;

the chief psychiatrist shall inform the doctor of the refusal.

- (4) Where the chief psychiatrist is informed under subsection (1) or (2) that a person refuses to have psychiatric surgery performed—

- (a) any informed consent to the performance of the surgery given by the person, or any order made by the Supreme Court under section 163 in respect of the person, ceases to have effect; and
- (b) if, immediately before the date of the refusal, an application for the approval of the performance of the surgery has been made but has not been determined—the application is to be taken to have been withdrawn on that date; and
- (c) any approval given by the chief psychiatrist for the performance of the surgery ceases to have effect.

## **165 Committees**

- (1) For the purposes of section 160, the Minister shall appoint a committee consisting of—
- (a) a psychiatrist; and
  - (b) a neurosurgeon; and
  - (c) a legal practitioner; and
  - (d) a clinical psychologist; and
  - (e) a social worker.

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

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

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

- (2) The Minister shall appoint a member of a committee to be the chairperson of the committee.
- (3) A member of a committee shall be paid such remuneration and allowances (if any) as are prescribed.
- (4) The chairperson of a committee shall convene meetings of the committee.
- (5) Subject to section 160 (3) (b), a question arising at a meeting of a committee shall be decided in accordance with the opinion of a majority of members of the committee.



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

### **166      Review of certain people found unfit to plead**

- (1) This section applies if—
  - (a) the Supreme Court or the Magistrates Court makes a decision under the Crimes Act, section 315A (3) or section 315D (7) that a person is unfit to plead to a charge; and
  - (b) the charge is for an offence punishable by imprisonment for 5 years or longer; and
  - (c) an order is made in relation to the charge under any of the following provisions of the Crimes Act:
    - section 318 (2) (Non-acquittal at special hearing—non-serious offence);
    - section 319 (2) or (3) (Non-acquittal at special hearing—serious offence);
    - section 335 (2), (3) or (4) (Fitness to plead—Magistrates Court).
- (2) The ACAT may (on application or on its own initiative) review the person's fitness to plead at any time.
- (3) However, the ACAT must review the person's fitness to plead—
  - (a) as soon as practicable (but within 3 months) after the end of 12 months after the day the order is made; and
  - (b) at least once every 12 months after each review.

- (4) Subsection (3) does not apply if—
  - (a) the person has already been found fit to plead; or
  - (b) the director of public prosecutions has told the ACAT, in writing, of the director's intention not to take further proceedings against the person in relation to the offence.
- (5) On a review, the ACAT must decide on the balance of probabilities whether the person is unfit to plead.
- (6) The ACAT must decide that the person is unfit to plead if satisfied that the person's mental processes are disordered or impaired to the extent that the person cannot—
  - (a) understand the nature of the charge; or
  - (b) enter a plea to the charge and exercise the right to challenge jurors or the jury; or
  - (c) understand that the proceeding is an inquiry about whether the person committed the offence; or
  - (d) follow the course of the proceeding; or
  - (e) understand the substantial effect of any evidence that may be given in support of the prosecution; or
  - (f) give instructions to the person's lawyer.
- (7) The person is not unfit to plead only because the person is suffering from memory loss.
- (8) To remove any doubt, this section applies even if the person is no longer in custody or under a mental health order or forensic mental health order.

*Note* A person who is the subject of a proceeding may be subpoenaed to appear at the proceeding (see *ACT Civil and Administrative Tribunal Act 2008*, s 41).

**167 Recommendations about people with mental impairment**

- (1) This section applies if—
  - (a) the Supreme Court makes an order under the Crimes Act, division 13.3 requiring a person to submit to the jurisdiction of the ACAT to enable the ACAT to make recommendations to the court about how the person should be dealt with; or
  - (b) a court makes an order under the Crimes Act, division 13.5 (Referral of mentally impaired people to ACAT after conviction) or division 13.6 (Summary proceedings against mentally impaired people), requiring a person to submit to the jurisdiction of the ACAT to enable the ACAT—
    - (i) to determine whether the person has a mental impairment; and
    - (ii) if the ACAT determines that the person has a mental impairment—to make recommendations to the court about how the person should be dealt with.
- (2) After an inquiry, and as the ACAT thinks appropriate in relation to the person—
  - (a) the ACAT must determine on the balance of probabilities, whether or not the person has a mental impairment; and
  - (b) if the ACAT determines that the person has a mental impairment, the ACAT must make recommendations to the court about how the person should be dealt with.

**168 Recommendations about people with mental illness or mental dysfunction**

- (1) This section applies if the Childrens Court makes a care and protection order, interim care and protection order with a mental health ACAT provision or interim therapeutic protection order, under the *Children and Young People Act 2008* requiring a person to submit to the jurisdiction of the ACAT to enable the ACAT—
  - (a) to determine whether the person has a mental illness or mental dysfunction; and
  - (b) if the ACAT determines that the person has a mental illness or mental dysfunction—to make recommendations to the court about how the person should be dealt with.
- (2) After an inquiry, and as the ACAT thinks appropriate in relation to the person—
  - (a) the ACAT must determine on the balance of probabilities, whether or not the person has a mental illness or mental dysfunction; and
  - (b) if the ACAT determines that the person has a mental illness or mental dysfunction, the ACAT must make recommendations to the court about how the person should be dealt with.

**169 Service of decisions etc**

The ACAT must serve a copy of a decision, determination or recommendation made under section 166, section 167 or section 168 on—

- (a) the person about whom the decision, determination or recommendation is made; and
- (b) the representative of that person (if any); and
- (c) the public advocate; and
- (d) the director of public prosecutions; and
- (e) if the person about whom the decision, determination or recommendation is made is a child—the CYP director-general.

**170 Periodic review of orders for detention**

- (1) In this section:

*order for detention* means—

- (a) an order of a court under the Crimes Act, part 13 requiring a person to be detained in custody until the ACAT orders otherwise; or
- (b) an order of the ACAT requiring a person to be detained in custody under section 172 (5).

- (2) Where a person has been in custody under an order for detention—

- (a) for a period of 6 months; or
- (b) for a further period of 6 months following the last review of the order under this section;

the ACAT shall, as soon as practicable, review the order for detention and may order the release of the person.

- (3) In considering whether or not to order the release of a person, the ACAT shall have regard to the following:
  - (a) the nature and extent of the person's mental dysfunction or mental illness, including the effect it is likely to have on the person's behaviour in the future;
  - (b) whether or not, if released—
    - (i) the person's health or safety would be, or would be likely to be, substantially impaired; or
    - (ii) the person would be likely to do serious harm to others;
  - (c) the best estimate of the sentence of imprisonment nominated by the relevant court under the Crimes Act, part 13 as the sentence it would have imposed had the person been found guilty of the relevant offence.
- (4) An order for the release of a person may be made subject to such conditions (if any) as the ACAT thinks appropriate, including a requirement to comply with a stated mental health order or forensic mental health order.
- (5) If, on a review, the ACAT does not order the release of a person, the ACAT may—
  - (a) make mental health orders or forensic mental health orders (including additional orders) in respect of the person; or
  - (b) vary or revoke any of the mental health orders or forensic mental health orders in force in respect of the person.

**171      Contravention of conditions of release**

- (1) This section applies if—
  - (a) the ACAT orders the release of a person subject to a condition under section 170 (4); and
  - (b) the person contravenes the condition.
- (2) The chief psychiatrist must tell the ACAT of the contravention as soon as practicable after becoming aware of the contravention.

**172      Review of conditions of release**

- (1) The ACAT may, on application or on its own initiative, review a condition under section 170 (4) to which an order for release of a person is subject.
- (2) The ACAT must review each condition under section 170 (4), to which an order for release of a person is subject within 72 hours after receiving notice under section 171 (2).
- (3) Subsection (2) has effect despite section 183 (Notice of hearing).
- (4) The ACAT may, as it considers appropriate—
  - (a) amend or revoke any condition of the order, including any requirement to comply with a stated mental health order or forensic mental health order; or
  - (b) impose any other condition the ACAT considers appropriate, including a requirement to comply with a stated mental health order or forensic mental health order.
- (5) Also, if a person contravenes a condition of an order of release, the ACAT may order the person be detained in custody until the ACAT orders otherwise.

**173 Limit on detention**

- (1) Nothing in section 170 or 172 permits the ACAT to require a person to remain in custody for a period that is, or for periods that in the aggregate are, greater than the limiting period.
- (2) In subsection (1):
  - limiting period*, in relation to a person, means a period that is equivalent to the period—
  - (a) commencing on the day on which an order of the relevant court under the Crimes Act, part 13 is made requiring the person to be detained in custody until the ACAT orders otherwise; and
  - (b) ending on the day on which, if the person had been sentenced to a term of imprisonment for a period equivalent to the term nominated under that Act, section 301, section 302, section 304 or section 305 (as the case may be) that sentence would have expired.



## Chapter 11 ACAT procedural matters

### 174 Meaning of *subject person*—ch 11

In this chapter:

*subject person*—see section 178.

### 175 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 22 (2);
  - (c) an order for the extension of a person's detention under section 64 (3);
  - (d) an order for a person's release under section 70;
  - (e) a review of a transfer direction under section 112;
  - (f) a review of a transfer direction under section 113.
- (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).

**176 When ACAT must be constituted by more members**

- (1) This section applies to a proceeding on any of the following:
  - (a) a mental health order;
  - (b) a review of a mental health order under section 58;
  - (c) a forensic mental health order;
  - (d) a review of a forensic mental health order under section 100;
  - (e) an electroconvulsive therapy order under section 144;
  - (f) an emergency electroconvulsive therapy order under section 151;
  - (g) a review of a person's fitness to plead under section 166;
  - (h) a recommendation under section 167 or section 168 about a person who has a mental impairment, mental dysfunction or mental illness;
  - (i) a review of an order for detention under section 170;
  - (j) a review of a condition in force in relation to a person released from detention under section 172.
- (2) The ACAT must include—
  - (a) a presidential member; and
  - (b) a non-presidential member with a relevant interest, experience or qualification.

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

**177 Applications and referrals**

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

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

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

**178 Appearance**

- (1) The following people may appear and give evidence at the hearing of a proceeding:
- (a) the person (the *subject person*) who is the subject of the proceeding;
  - (b) if the subject person is a child—
    - (i) the person's parents; and
    - (ii) the CYP director-general;
  - (c) if the subject person has a guardian—the guardian;
  - (d) if the subject person has made a power of attorney under the *Powers of Attorney Act 2006*—the attorney under the power of attorney;
  - (e) the applicant or referring officer (if any);

- (f) if the proceeding is on a forensic mental health order for which there is a registered affected person for the offence committed or alleged to have been committed by the subject person—the victims of crime commissioner;
  - (g) the public advocate;
  - (h) the chief psychiatrist;
  - (i) the director-general who has control of the administrative unit to which responsibility for the provision of treatment, care and protection for people with a mental dysfunction (other than people with a mental illness) is allocated;
  - (j) the discrimination commissioner.
- (2) Other people may appear and give evidence at the hearing with the leave of the ACAT.
  - (3) This section does not prevent a person from making a written submission to the ACAT in relation to a proceeding.

## **179 Representation of children**

- (1) This section applies in relation to a proceeding if—
  - (a) the subject person is a child; and
  - (b) the child is not separately represented; and
  - (c) it appears to the ACAT that the child should be separately represented.
- (2) The ACAT may, on its own initiative or on the application of a person (including the child)—
  - (a) adjourn the proceeding to allow the child to obtain representation; and

- (b) give reasonably necessary advice and assistance to the child to allow the child to obtain representation.

**180 Subpoena to appear in person**

- (1) This section applies if the ACAT is satisfied that it is necessary for the subject person to be present at the hearing of the proceeding.
- (2) The ACAT may require the person to appear at the hearing by subpoena given under the *ACT Civil and Administrative Tribunal Act 2008*, section 41.
- (3) However, the ACAT must not require the person to appear at the hearing by subpoena if satisfied that the appearance of the subject person before the ACAT is likely to increase substantially—
  - (a) any risk to the subject person's health or safety; or
  - (b) the risk of serious harm to others.

*Note* If a person who is subpoenaed does not appear before the ACAT, the ACAT may issue a warrant to arrest the person (see *ACT Civil and Administrative Tribunal Act 2008*, s 42).

**181 Person subpoenaed in custody**

- (1) This section applies if the subject person—
  - (a) is given a subpoena under the *ACT Civil and Administrative Tribunal Act 2008*, section 41; and
  - (b) is in the custody of another person.
- (2) The ACAT may order the other person ensure that the subject person appears before the ACAT in accordance with the subpoena.

**182 Directions to registrar**

- (1) After considering an assessment of the subject person for a proceeding, but before holding an inquiry or review, the general president of the ACAT may give to the registrar the directions the general president considers appropriate to—
  - (a) define and limit the relevant matters in the proceeding, including—
    - (i) the alternative treatments, programs and other services that are available and may be appropriate for the subject person; and
    - (ii) the evidence that appears to be relevant to the proper disposition of the matter; and
    - (iii) any unusual or urgent factors requiring special attention; and
  - (b) ensure all necessary measures are taken to allow the inquiry or review to proceed as quickly as possible, including ensuring that—
    - (i) all relevant particulars have been provided; and
    - (ii) people who may be entitled to appear and give evidence in the proceeding have been notified, the people's availability confirmed and any related matters requiring special attention have been dealt with; and
    - (iii) people who may wish to apply for leave to appear and give evidence in the proceeding have been notified; and
    - (iv) people not entitled to appear in the proceeding but who may be interested in making written submissions about the matter have been given an opportunity to do so; and

- (v) issues (if any) that may be decided before the inquiry or review have been identified.
- (2) However, the general president of the ACAT must not give a direction under subsection (1) in a proceeding in relation to—
  - (a) the treatment, care, control, rehabilitation and protection of a person found unfit to plead; or
  - (b) the treatment, care, control, rehabilitation and protection of a person found not guilty of a criminal offence because of mental impairment; or
  - (c) a request by a court to provide advice in relation to the sentencing of a person before the court.

### **183 Notice of hearing**

At least 3 days before the ACAT holds a hearing in relation to a matter under this Act, the ACAT must give written notice of the hearing to the following people:

- (a) if the subject person is not required to appear by a subpoena under the *ACT Civil and Administrative Tribunal Act 2008*, section 41 for a reason other than because section 180 (3) (Subpoena to appear in person) applies in relation to the person—the subject person;
- (b) the representative of the subject person (if any);
- (c) if the subject person is a child—
  - (i) the subject person's parents; and
  - (ii) the CYP director-general;
- (d) if the subject person has a guardian—the guardian;

- (e) if the subject person has an attorney appointed under the *Powers of Attorney Act 2006*—the attorney;
- (f) the applicant or referring officer (if any);
- (g) if the hearing is on a proceeding on a forensic mental health order for which there is a registered affected person for the offence committed or alleged to have been committed by the subject person—
  - (i) the registered affected person; or
  - (ii) the victims of crime commissioner;
- (h) the public advocate;
- (i) the chief psychiatrist;
- (j) the care coordinator;
- (k) the director-general who has control of the administrative unit to which responsibility for providing treatment, care and protection for people with a mental dysfunction (other than people with a mental illness) is allocated;
- (l) anyone else the ACAT considers appropriate.

**184 Hearings to be in private**

- (1) A hearing of a proceeding in relation to a subject person must be held in private.
- (2) However, if the subject person is not a child, the hearing may be held in public if—
  - (a) the subject person asks for the hearing be held in public; or
  - (b) the ACAT otherwise orders.



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

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

### **185 Who is given a copy of the order?**

- (1) The ACAT must give a copy of an ACAT order to the following people:
- (a) the subject person;
  - (b) if the subject person has a representative—the representative;
  - (c) if the subject person is a child—the child’s parents;
  - (d) if the subject person has a guardian—the guardian;
  - (e) if the subject person has made a power of attorney under the *Powers of Attorney Act 2006*—the attorney under the power of attorney;
  - (f) the public advocate;
  - (g) if the subject person was referred to the ACAT under section 15, section 31, section 73 or section 74—the referring officer;
  - (h) if the subject person was referred to the ACAT under section 74—the director-general responsible for the *Corrections Management Act 2007*;
  - (i) if the person was ordered to submit to the jurisdiction of the ACAT by a court—the court;
  - (j) if the order requires the person to be admitted to a facility or institution—the person in charge of the facility or institution;

- (k) anyone else ordered by the ACAT.
- (2) The ACAT must also give a copy of the following orders of the ACAT to the chief psychiatrist:
  - (a) a psychiatric treatment order;
  - (b) a restriction order in relation to a person subject to a psychiatric treatment order;
  - (c) a forensic psychiatric treatment order;
  - (d) an electroconvulsive therapy order;
  - (e) an emergency electroconvulsive therapy order.
- (3) The ACAT must also give a copy of the following orders of the ACAT to the care coordinator:
  - (a) a community care order;
  - (b) a restriction order in relation to a person subject to a community care order;
  - (c) a forensic community care order.
- (4) The ACAT must give a copy of an emergency electroconvulsive therapy order to the people mentioned in subsection (1) and (2) in relation to the order within 24 hours after the order is made.

*Note* For how documents may be served, see the Legislation Act, pt 19.5.

## **Chapter 12      Administration**

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

#### **186      Chief psychiatrist**

- (1) The Minister must appoint a public servant as Chief Psychiatrist.

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

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

- (2) A person is not eligible for appointment as the chief psychiatrist unless the person is a psychiatrist.

#### **187      Functions**

The chief psychiatrist has the following functions:

- (a) to provide treatment, care, rehabilitation and protection for persons who have a mental illness;
- (b) to make reports and recommendations to the Minister with respect to matters affecting the provision of treatment, care, control, accommodation, maintenance and protection for persons who have a mental illness;
- (c) any other function given to the care coordinator under this Act.

**188      Termination of appointment**

- (1) The Minister may terminate the appointment of the chief psychiatrist for misbehaviour or physical or mental incapacity.
- (2) The Minister shall terminate the appointment of the chief psychiatrist if the chief psychiatrist ceases to be eligible to hold the office of chief psychiatrist.

**189      Delegation by chief psychiatrist**

The chief psychiatrist may delegate the chief psychiatrist's functions under this Act to a psychiatrist who is a public employee or is engaged by the Territory.

*Note*      For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

**190      Mental health officers**

- (1) The Minister may appoint a person as a mental health officer.

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

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

*Note 3*      Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).
- (2) A person is not eligible for appointment as a mental health officer unless the person is a nurse, authorised nurse practitioner, psychologist, occupational therapist or social worker.

- (3) In this section:

***authorised nurse practitioner*** means a nurse practitioner who is the occupant of a nurse practitioner position acting within the scope of practice for the position.

***nurse practitioner position***—see the *Health Act 1993*, section 195 (2).

***occupational therapist*** means a person registered under the *Health Practitioner Regulation National Law (ACT)* to practise in the occupational therapy profession (other than as a student).

***scope of practice***—see the *Health Act 1993*, section 195 (2).

## **191 Functions of mental health officers**

The functions of a mental health officer for this Act are the functions that the chief psychiatrist directs.

*Note* ***Function*** includes authority, duty and power (see Legislation Act, dict, pt 1).

## **192 Identity cards for mental health officers**

- (1) The director-general must give a mental health officer an identity card that states the person is a mental health officer for this Act and shows—
- (a) the name of the person; and
  - (b) a recent photograph of the person.
- (2) A person commits an offence if—
- (a) the person was appointed as a mental health officer; and
  - (b) the person ceases to be a mental health officer; and

- (c) the person does not return the person's identity card to the director-general as soon as practicable (but within 7 days) after the day the person ceases to be a mental health officer.

Maximum penalty: 1 penalty unit.

- (3) An offence against subsection (2) is a strict liability offence.

### **193 Chief psychiatrist's annual report**

A report prepared by the chief psychiatrist under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include—

- (a) statistics in relation to people who have a mental illness during the year; and
- (b) details of any arrangements with New South Wales during the year in relation to people who have a mental illness.

*Note* **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

## **Part 12.2                      Care coordinator**

### **194                      Care coordinator**

- (1) The Minister must appoint a public servant as care coordinator.

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

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

- (2) The Minister may only appoint a person as care coordinator if satisfied that the person has the training, experience and personal qualities necessary to exercise the care coordinator's functions.
- (3) An appointment is a notifiable instrument.

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

### **195                      Functions**

The care coordinator has the following functions:

- (a) to coordinate the provision of treatment, care and support to mentally dysfunctional people in accordance with community care orders made by the ACAT;
- (b) to coordinate the provision of appropriately trained people for the treatment, care and support of mentally dysfunctional people who are subject to community care orders;
- (c) to coordinate the provision of appropriate residential or detention facilities for people with a mental dysfunction in relation to whom any of the following orders are in force:
  - (i) a community care order;
  - (ii) a restriction order with a community care order;

- (iii) a forensic community care order;
- (d) to coordinate the provision of medication and anything else required to be done for mentally dysfunctional people in accordance with community care orders and restriction orders made by the ACAT;
- (e) to make reports and recommendations to the Minister about matters affecting the provision of treatment, care, control, accommodation, maintenance and protection for mentally dysfunctional people;
- (f) any other function given to the care coordinator under this Act.

**196      Termination of appointment**

- (1) The Minister may terminate the appointment of the care coordinator for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of the care coordinator if the care coordinator ceases to be eligible to be appointed as the care coordinator.

**197      Delegation by care coordinator**

- (1) The care coordinator may delegate the care coordinator's functions under this Act to anyone else.

*Note*      For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

- (2) However, the care coordinator may only delegate a function to a person if the care coordinator is satisfied that the person has the training, experience and personal qualities necessary to exercise the function.



**198      Care coordinator's annual report**

A report prepared by the care coordinator under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include statistics in relation to people who have a mental dysfunction during the year.

*Note*      **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

## **Part 12.3                      Official visitors**

### **199                      Appointment etc**

- (1) For this Act, the Minister may appoint 1 or more official visitors for an approved mental health facility.

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

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

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

- (2) The Minister may appoint 1 official visitor as the principal official visitor.
- (3) A person is eligible for appointment as an official visitor if the person—
- (a) is a legal practitioner who has not less than 5 years practising experience; or
  - (b) is a medical practitioner; or
  - (c) has been nominated by a body representing consumers of mental health services; or
  - (d) has experience and skill in the care of persons with a mental dysfunction or mental illness.
- (4) A person shall not be appointed an official visitor if the person—
- (a) is a public servant; or
  - (b) has a direct interest in a contract with an approved mental health facility or a mental health care provider; or

- (c) has a financial interest in a private hospital.
- (5) A person shall not be appointed as an official visitor unless the Minister is satisfied that the person has appropriate qualifications and experience to exercise the functions of an official visitor.
- (6) The Minister may terminate the appointment of an official visitor—
  - (a) for misbehaviour; or
  - (b) for physical or mental incapacity; or
  - (c) who is convicted, in Australia or elsewhere, of an offence punishable on conviction by imprisonment for 1 year or longer; or
  - (d) if the person ceases to be a person who is eligible for appointment.

## **200 Principal official visitor—functions**

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

- (a) to oversee the exercise of the functions of official visitors, including reporting to the Minister and the public advocate under section 203;
- (b) to report to the Minister, as requested, on the exercise of his or her functions and the functions of official visitors;
- (c) any other function given to the principal official visitor under this Act.

**201      Official visitor—functions**

- (1) An official visitor—
  - (a) shall visit and inspect mental health facilities; and
  - (b) shall inquire into—
    - (i) the adequacy of services for the assessment and treatment of persons with mental dysfunction or a mental illness; and
    - (ii) the appropriateness and standard of facilities for the recreation, occupation, education, training and rehabilitation of persons receiving treatment or care for mental dysfunction or a mental illness; and
    - (iii) the extent to which people receiving treatment or care for mental dysfunction or a mental illness are being provided the best possible treatment or care appropriate to their needs in the least possible restrictive environment and least possible intrusive manner consistent with the effective giving of that treatment or care; and
    - (iv) any contravention of this Act; and
    - (v) any other matter that an official visitor considers appropriate taking into account section 7 (Objects of Act) and section 8 (Principles applying to Act); and
    - (vi) any complaint made to an official visitor by a person receiving treatment or care for mental dysfunction or a mental illness; and
  - (c) has such other functions as are conferred on the official visitor by this or another Act.

- (2) An official visitor—
  - (a) may, with or without prior notice given to a responsible person for a mental health facility, visit the mental health facility at such times and for such periods as the visitor thinks fit; and
  - (b) shall visit a mental health facility at least once every 3 months.
- (3) The Minister may, in writing, direct an official visitor to visit a mental health facility at such times as the Minister directs.
- (4) In this section:  
*responsible person*—see section 118.

## **202 Official visitor—powers etc**

- (1) An official visitor may, when visiting a mental health facility—
  - (a) inspect any part of the facility; and
  - (b) see any person who is receiving treatment or care for mental dysfunction or a mental illness unless the person has asked not to be seen; and
  - (c) make inquiries relating to the admission, detention, care, treatment and control of persons receiving treatment or care for mental dysfunction or a mental illness; and
  - (d) inspect—
    - (i) any document or medical record relating to any person receiving treatment or care for mental dysfunction or a mental illness if he or she has the consent in writing of the person receiving the treatment or care; and
    - (ii) any records required to be kept under this Act.

- (2) If an official visitor to a mental health facility wishes to exercise, or is exercising, a function or power under this Act, the person in charge of the facility shall provide, or shall ensure that there is provided, to the official visitor such reasonable assistance as the official visitor requires to exercise the function or power effectively.
- (3) A person in charge of a mental health facility shall not, without reasonable excuse—
  - (a) refuse or neglect to render assistance when required under subsection (2); or
  - (b) fail to answer any question when asked by an official visitor in the exercise of his or her powers under this Act.

Maximum penalty: 50 penalty units.

- (4) A person in charge of a mental health facility shall not, without reasonable excuse, obstruct or hinder an official visitor in the exercise of his or her powers under this Act.

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

- (5) A person in charge of a mental health facility shall keep a record of each visit by an official visitor to the facility.

Maximum penalty: 5 penalty units.

*Note*      If a form is approved under s 254 (Approved forms) for a record, the form must be used.

## **203 Reports by official visitors**

- (1) An official visitor may, of his or her own motion make a report to the Minister relating to the exercise of his or her powers under this Act.
- (2) An official visitor shall, when requested to do so by the Minister, report in writing to the Minister in accordance with that request.
- (3) If an official visitor visits a mental health facility under section 201, the visitor must report, in writing, to the Minister and public advocate in relation to the exercise of the visitor's functions under section 201 or section 202.
- (4) If, in a report, an official visitor is critical of the services provided by a mental health facility, the official visitor shall advise the person in charge of the facility in writing, within 7 days of making that report.
- (5) A person in charge of a mental health facility shall, within 21 days after receipt of a report of the kind referred to in subsection (4), give to the official visitor and the public advocate a written response to the report, including any action taken, or to be taken, in response to any criticism contained in the report.
- (6) A person may at any reasonable time inspect a copy of a report under this section.
- (7) A person may, on payment of the reasonable copying costs, obtain a copy of a report under this section.

## **Part 12.4                      Coordinating director-general**

### **204                      Coordinating director-general**

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

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

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

### **205                      Functions of coordinating director-general**

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

### **206                      Coordinating director-general instructions**

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



## **Chapter 13      Private psychiatric institutions**

### **Part 13.1      Interpretation**

#### **207      Definitions—ch 13**

In this chapter:

*inspector* means an inspector appointed under section 216.

*licence* means a licence issued under this chapter.

*licensed premises* means the premises at which a psychiatric institution is, or is proposed to be, conducted and in respect of which a licence is issued.

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

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

- (a) a recognised hospital within the meaning of the *Health Insurance Act 1973* (Cwlth); or
- (b) an institution conducted by the Territory.

## **Part 13.2 Licences**

### **208 Owner or manager to be licensed**

A person shall not conduct a psychiatric institution on his or her own behalf, or on behalf of another person, without a licence.

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

### **209 Issue of licence**

- (1) The Minister may, on application, issue a licence to a person in respect of the premises specified in the licence.
- (2) An application shall be in writing and shall be lodged with the Minister.

*Note* A fee may be determined under s 253 (Determination of fees) for this section.

- (3) The Minister shall not issue a licence unless satisfied that the applicant is a fit and proper person to hold a licence and that—
  - (a) the structural and sanitary condition and the location of the premises in respect of which the application is made are satisfactory, having regard to the interests of the persons who will receive treatment or reside at the premises; and
  - (b) the facilities in case of fire or flood at those premises are adequate; and
  - (c) the cooking and ablution facilities at those premises are adequate; and
  - (d) the accommodation provided for patients, residents and members of staff at those premises are adequate.

- (4) A licence shall be issued subject to conditions as to—
  - (a) the maximum number of persons for whom treatment, care, rehabilitation or accommodation may be provided at the licensed premises; and
  - (b) the classes of persons for whom treatment, care, rehabilitation or accommodation may be provided at the licensed premises.
- (5) A licence may be issued subject to such other conditions (if any) as the Minister thinks necessary, including but not limited to conditions as to any of the following:
  - (a) the minimum number of staff to be employed at the licensed premises;
  - (b) the qualifications of the staff;
  - (c) the treatment that may be provided at the licensed premises;
  - (d) the measures to be taken to ensure the health and safety of patients, residents and members of staff on the licensed premises;
  - (e) the insurance to be carried by the licensee against any liability arising from the conduct of a psychiatric institution on the licensed premises;
  - (f) the recreational and educational facilities to be provided at the licensed premises for patients and residents;
  - (g) the management of the licensed premises.

## **210 Term and renewal of licence**

- (1) A licence remains in force for the period of 12 months commencing on the day on which the licence is issued and may be renewed in accordance with this section.
- (2) A licensee may, at any time before the expiration of the period referred to in subsection (1) or the last period of renewal, as the case may be, apply to the Minister for a renewal of the licence.
- (3) An application shall be in writing and shall be lodged with the Minister.

*Note* A fee may be determined under s 253 (Determination of fees) for this section.

- (4) If the Minister is satisfied of the matters referred to in section 209 (3), the Minister shall renew the licence for a further period of 12 months commencing on the expiration of the period referred to in subsection (1) or the last period of renewal, as the case requires.

## **211 Variation and revocation of conditions**

- (1) On application in writing by the licensee and if satisfied that it is in the best interests of the patients and residents at the licensed premises, the Minister may—
  - (a) vary a condition imposed under section 209 (4) or (5) in the manner specified in the application; or
  - (b) revoke a condition imposed under section 209 (5); or
  - (c) impose a condition specified in the application.

- (2) If satisfied that it is in the best interests of the patients and residents at the licensed premises—
  - (a) to vary a condition imposed under section 209 (4) or (5); or
  - (b) to revoke a condition imposed under section 209 (5); or
  - (c) to impose a condition;the Minister may, by notice in writing served on the licensee, require the licensee, within 28 days after the date of the notice, to show cause why that condition should not be varied in the manner specified in the notice or should not be revoked or imposed.
- (3) The Minister may, after the expiration of 28 days after the date of the notice, vary in the manner specified in the notice, or revoke or impose, the condition specified in the notice.
- (4) A decision of the Minister under subsection (1) or (3) takes effect on the day after the day on which the notice under section 221 (1) is given to the licensee or on such later day as may be specified in that notice.

## **212 Surrender of licence**

- (1) A licensee may surrender the licence by notice in writing signed by the licensee and lodged with the Minister together with the licence.
- (2) A surrender takes effect on the date of the notice or on such later day as may be specified in the notice.

**213 Cancellation of licence**

- (1) If satisfied that a licensee has failed to comply with a condition of the licence, the Minister may, by notice in writing served on the licensee, require the licensee, within 28 days after the date of the notice, to show cause why the licence should not be cancelled.
- (2) The Minister may, after the expiration of 28 days after the date of the notice, cancel the licence.
- (3) The cancellation of a licence under this section takes effect on the day after the day on which the notice under section 221 (1) is given to the licensee or on such later day as may be specified in that notice.

**214 Emergency cancellation**

- (1) Despite section 213, if satisfied that circumstances exist in relation to licensed premises that give rise to an immediate risk of harm to the health or safety of patients or residents on the licensed premises, the Minister may, by notice in writing served on the licensee, cancel the licence.
- (2) A notice under subsection (1) shall set out—
  - (a) the terms of the decision; and
  - (b) the findings on material questions of fact, referring to the evidence or other material on which those findings were made; and
  - (c) the reasons for the decision.
- (3) The cancellation of a licence under this section takes effect on the day after the day on which the notice is served on the licensee.

- (4) Where a licence is cancelled under subsection (1), the former licensee may apply for restoration of the licence on the ground that, because of a specified change in the circumstances referred to in subsection (1) that has occurred since the date of cancellation, the licence should be restored.
- (5) The Minister may restore the licence if satisfied that, because of the change specified in the application, it should be restored.

## **215 Effect of cancellation**

Where a licence is cancelled under section 213 or 214, the former licensee shall not—

- (a) admit any person for treatment, care, rehabilitation or accommodation at the premises to which the licence related on or after the day on which the cancellation takes effect; or
- (b) permit treatment, care, rehabilitation or accommodation to be provided on those premises after the expiration of 1 month after that day.

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

## **Part 13.3 Inspectors**

### **216 Appointment of inspectors**

- (1) The Minister may appoint a person as an inspector for this part.
- (2) An inspector must exercise functions for this part that the chief psychiatrist directs.

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

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

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

### **217 Identity cards**

- (1) The Minister shall issue to each inspector an identity card that specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector.
- (2) A person appointed to be an inspector shall not, without reasonable excuse, fail to return his or her identity card to the Minister on ceasing to be an inspector.

Maximum penalty (subsection (2)): 1 penalty unit.



**218 Powers of inspection**

- (1) An inspector may, at any time of the day, enter any licensed premises and—
  - (a) inspect the premises and any equipment used at the premises in connection with the treatment, care, rehabilitation or accommodation of patients or residents; and
  - (b) inspect any books, documents or other records that are in the possession of the occupier of the premises, or to which the occupier has access, relating to the conduct of the psychiatric institution at those premises; and
  - (c) require the occupier of the premises to furnish the inspector with any information, books, documents or other records that are in the possession of the occupier, or to which the occupier has access, relating to the conduct of the psychiatric institution at those premises.
- (2) An inspector who enters premises under subsection (1) is not authorised to remain on the premises if, when requested to do so by the occupier of the premises, the inspector does not show his or her identity card to the occupier.
- (3) A person is not required to furnish material to an inspector under subsection (1) (c) if, when requested to do so by the person, the inspector does not show his or her identity card to the person.
- (4) Where an inspector enters premises under subsection (1), a reference in this section to the *occupier* of the premises includes a reference to a person the inspector believes on reasonable grounds to be the occupier, or the person in charge, of those premises.

**219 Failing to comply with requirement of inspector**

A person shall not, without reasonable excuse, fail to comply with a requirement to furnish material under section 218 (1) (c).

Maximum penalty: 50 penalty units.

## Part 13.4 Notification and review of decisions

### 220 Meaning of *reviewable decision*—pt 13.4

In this part:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 221 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

*Note 1* The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

### 222 Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

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

## **Part 13.5**                      **Miscellaneous**

### **223**                      **Unauthorised treatment**

A licensee is guilty of an offence if the licensee allows treatment for mental illness to be given to a person at the licensed premises after the licensee receives notice that the person is the subject of an order of the ACAT that does not authorise the giving of that treatment to that person at the psychiatric institution conducted at those premises.

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

## Chapter 14      Mental health advisory council

### 224      Establishment of mental health advisory council

The mental health advisory council is established.

### 225      Mental health advisory council functions

The mental health advisory council has the following functions:

- (a) advising the Minister about—
  - (i) emerging or urgent mental health issues; and
  - (ii) mental health service reforms; and
  - (iii) mental health policy; and
  - (iv) mental health legislative change;
- (b) any other function given to the council under this Act.

### 226      Membership of mental health advisory council

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

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

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

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

- (2) In appointing members to the mental health advisory council, the Minister must, unless it is not reasonably practicable, ensure that the council includes—
- (a) someone who is or has been—
    - (i) a person with a mental dysfunction or mental illness; or
    - (ii) a carer of a person with a mental dysfunction or mental illness; and
  - (b) someone with experience or expertise in mental health; and
  - (c) someone with current knowledge of scientific, evidence-based mental health research and practice; and
  - (d) someone with experience or expertise in mental health promotion and mental illness prevention and treatment, care or support.
- (3) A person must be appointed to the mental health advisory council for not longer than 3 years.

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

## **227 Mental health advisory council procedure**

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

## Chapter 15 Interstate application of mental health laws

### Part 15.1 Preliminary

#### 228 Object of ch 15

The object of this chapter is to provide for—

- (a) the interstate transfer of patients under mental health legislation; and
- (b) the interstate recognition of documents that authorise the detention of persons under mental health legislation; and
- (c) the treatment in the ACT of persons subject to mental health orders or similar orders made in other States; and
- (d) the apprehension of persons subject to certain interstate warrants or orders, or otherwise liable to apprehension, under mental health legislation.

#### 229 Definitions—ch 15

In this chapter:

***agreement*** means an agreement made under section 230.

***corresponding law*** means a law of another State which is declared to be a corresponding law under section 231 (1).

***interstate custodial patient*** means a person who is declared to be an interstate custodial patient under section 231 (2).

***interstate non-custodial order*** means an order which is declared to be an interstate non-custodial order under section 231 (4).

*State* includes Territory.

**230 Authority to enter into agreements**

- (1) The Minister may enter into an agreement with a Minister of another State for or with respect to the application of mental health laws of the ACT or the other State, the transfer, detention and apprehension of persons in the ACT and the other State under mental health laws and administrative matters and other matters ancillary to, or consequential on, any of those matters or other matters contained in this chapter.
- (2) Nothing in this section limits the power of the Minister to enter into any agreement relating to mental health laws.
- (3) An agreement under subsection (1) is a notifiable instrument.

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

**231 Recognition of interstate laws and orders**

- (1) The regulations may declare that a specified law of another State relating to mental health is a corresponding law for this chapter.
- (2) The regulations may declare that a specified class of persons, being persons who under a corresponding law are required to be detained at a hospital or other facility or in the custody of a person, are interstate custodial patients for this chapter.
- (3) The regulations may declare that a class of interstate custodial patients corresponds to 1 of the following:
  - (a) persons being detained under section 60, with the detention having commenced at a specified time;
  - (b) persons being detained under section 64, with the detention having commenced at a specified time;



- (c) persons subject to a specified custody order that was made at a specified time.
- (4) The regulations may declare that a specified class of orders made under a corresponding law, being orders which require the treatment of a person but not the holding of the person in custody, are interstate non-custodial orders for this chapter.

**232 Territory officers may exercise functions under corresponding laws**

Subject to any agreement under section 230, a person authorised by the Minister for this section may exercise any function conferred on him or her by or under a corresponding law or an agreement under section 230.

## **Part 15.2                      Transfer of persons from ACT**

### **233                      Emergency admission of persons to health facilities in other States**

- (1) A person who may be apprehended and detained at an approved health facility under section 59 may be taken to a health facility in another State for detention instead, if this is permitted by or under a corresponding law of the other State.
- (2) A person may be taken to a health facility in another State under this section by—
  - (a) a person who is authorised by this Act to apprehend the person and deliver him or her to an approved health facility, if this is permitted by or under the law of the other State; or
  - (b) any other person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (3) The regulations may provide for or with respect to—
  - (a) the handing over of custody of a person referred to in subsection (1) by persons in the ACT; and
  - (b) the persons (including interstate persons) who may take such a person to a health facility in another State under this section; and
  - (c) the health facilities to which a person may be taken under this section.

## **234      Transfer of custodial patients from ACT**

- (1) A person who—
  - (a) is being detained at an approved health facility or an approved mental health facility under section 60 or 64; or
  - (b) is subject to a psychiatric treatment order and is being detained under—
    - (i) a restriction order made under section 40; or
    - (ii) action taken under section 45 (Powers in relation to detention, restraint etc) or section 57 (Contravention of psychiatric treatment order or community care order);

may be transferred to a health facility in another State, if the transfer is permitted by or under a provision of a corresponding law of the other State and is in accordance with the regulations.
- (2) A person may be taken to a health facility in another State under this section by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (3) The regulations may provide for or with respect to—
  - (a) procedures for authorising the transfer of a person under this section and for notifying any such transfer or proposed transfer; and
  - (b) criteria for authorising the transfer of a person under this section; and
  - (c) the handing over of custody of such a person by persons in the ACT; and
  - (d) the persons (including interstate persons) who may take a person to a health facility in another State under this section; and

- (e) the health facilities to which a patient may be taken under this section.

**235 Application of Act to persons transferred interstate**

- (1) Subject to the regulations, this Act ceases to apply to a person who is accepted into the custody of a responsible person at a health facility in another State under section 233 or 234.
- (2) Where an agreement under section 230 allows it, the regulations may provide for provisions of this Act to continue to apply in specified circumstances to a person after the person is accepted into the custody referred to in subsection (1).

## **Part 15.3                      Transfer of persons to ACT**

### **236                      Emergency admission of interstate persons to approved health facilities**

- (1) A person who may be taken to and detained in a hospital or other facility in another State under a corresponding law of that State may instead be taken to and detained in an approved health facility in the ACT.
- (2) A person may be taken to an approved health facility in the ACT under this section by—
  - (a) a person who is authorised under section 59 to apprehend a person and take the person to an approved health facility, if this is permitted by or under a law of the other State; or
  - (b) any other person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (3) The regulations may provide for or with respect to—
  - (a) the handing over of custody of a person referred to in subsection (1) to persons in the ACT; and
  - (b) the persons (including interstate persons) who may take such a person to an approved health facility in the ACT under this section; and
  - (c) the health facilities to which a person may be taken under this section.

### **237                      Application of Act to persons detained under s 236**

This Act applies to a person who is taken to and detained in an approved health facility under section 236 as if it had been done under section 59.

**238      Transfer of interstate custodial patients to health facilities in ACT**

- (1) An interstate custodial patient may be transferred to an approved health facility or an approved mental health facility in the ACT, if the transfer is authorised under a provision of a corresponding law of the other State and accepted by the person in charge of the facility.
- (2) An interstate custodial patient may be taken to a facility in the ACT under this section by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (3) The person in charge of an approved health facility or an approved mental health facility shall not accept the transfer of an interstate custodial patient to the facility unless the person in charge is satisfied that the patient could reasonably be detained under this Act.
- (4) A regulation may make provision in relation to the following:
  - (a) the procedures for authorising and arranging the receipt of an interstate custodial patient under this section;
  - (b) a person (including an interstate person) who may take an interstate custodial patient to a facility in the ACT under this section;
  - (c) receiving custody of an interstate custodial patient by a person in the ACT;
  - (d) the period within which an interstate custodial patient must be reviewed by the ACAT after being transferred to a facility in the ACT.

**239      Application of Act to persons transferred to ACT under  
             s 238**

An interstate custodial patient who is transferred to an approved health facility or an approved mental health facility under section 238 is subject to this Act—

- (a) where no regulation has been made under section 231 (3) that applies to the patient—as if the patient had been first detained at the facility in accordance with section 60 at the time of admission to the facility; or
- (b) where a regulation made under section 231 (3) (a) applies to the patient—as if the patient had been first detained at the facility in accordance with section 60 at the time specified in the regulation; or
- (c) where a regulation made under section 231 (3) (b) applies to the patient—as if the patient had been first detained at the facility in accordance with section 64 at the time specified in the regulation; or
- (d) where a regulation made under section 231 (3) (c) applies to the patient—as if the patient were subject to the custody order specified in the regulation.

## **Part 15.4                      Psychiatric treatment orders and interstate non-custodial orders**

### **240                      Psychiatric treatment orders relating to interstate people**

- (1) A psychiatric treatment order may be made under part 4.4 even though the affected person does not reside in the ACT, if—
  - (a) the agencies responsible for implementing the order are located in the ACT; or
  - (b) the order is allowed under an agreement under section 230 with the State where the person resides.
- (2) However, a restriction order mentioned in section 41 (a) (ii) may not be made in relation to the affected person.

### **241                      Orders relating to ACT residents**

- (1) Where a person (the *patient*) is subject to an interstate non-custodial order, persons who are authorised under the corresponding law of the State concerned to implement the order may treat the patient in the ACT and exercise other functions in the ACT for the purpose of implementing the order.
- (2) The regulations may provide for or with respect to—
  - (a) limiting the persons who may act under this section; and
  - (b) limiting the treatment that may be given or functions that may be exercised under this section.



## **Part 15.5                      Apprehension of persons absent from custody or in breach of orders**

### **242                      Recognition of apprehension orders**

A warrant, order or other document issued under a corresponding law, being a document which authorises the apprehension of a person, is recognised in the ACT if the conditions for recognition set out in the regulations are met.

### **243                      Apprehension of interstate persons absent without leave or in breach of orders**

(1) Where a person—

- (a) is the subject of a warrant, order or other document recognised in the ACT under section 242; or
- (b) is otherwise liable to be apprehended, under a provision of a corresponding law under which the person may be apprehended and taken to a health facility;

the person may be apprehended at any time—

- (c) by a police officer; or
- (d) by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.

- (2) A person who has been apprehended under this section may be—
  - (a) conveyed to and detained in an approved health facility in the ACT; or
  - (b) where it is permitted by a corresponding law of the other State concerned—conveyed to that State and there dealt with in accordance with the corresponding law.
- (3) This Act applies to a person conveyed to and detained in an approved health facility under subsection (2) (a) as if the person were first detained at the facility in accordance with section 64 at the time of admission to the facility.

#### **244 Regulations relating to apprehension of persons**

The regulations may provide for or with respect to—

- (a) the kinds of warrants, orders or other documents that may be recognised in the ACT for this chapter; and
- (b) the conditions (if any) to be met before a warrant, order or other document can be recognised in the ACT; and
- (c) the circumstances when a person is taken to be liable to be apprehended under a corresponding law; and
- (d) the persons (including interstate persons) who may apprehend a person under this section; and
- (e) the health facilities and places to which a person can be taken under this chapter (whether in the ACT or another State); and
- (f) the actions (including transfer to the other State) that may be taken in respect of a person detained under this chapter.

## Chapter 16      Miscellaneous

### 245      **Approved mental health facilities**

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

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

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

### 246      **Approved community care facilities**

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

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

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

### 247      **Legal effect of certain sections**

Nothing in section 7 or 8 is to be taken to create any legal rights not in existence before the enactment of that section or to affect any legal rights in existence before that enactment or that would, but for that section, have come into existence after that enactment.

**248      Protection of officials from liability**

- (1) An official is not civilly liable for conduct engaged in honestly and without recklessness—
  - (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from this section, attach to the official attaches instead to the Territory.
- (3) In this section:

***conduct*** means an act or omission to do an act.

***official*** means—

- (a) the chief psychiatrist; or
- (b) the care coordinator; or
- (c) a mental health officer; or
- (d) an official visitor; or
- (e) anyone else exercising a function under this Act.

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

**249 Appeals from ACAT to Supreme Court**

- (1) An appeal to the Supreme Court from a decision of the ACAT in a proceeding may be brought by—
  - (a) someone in relation to whom the decision was made; or
  - (b) someone who appeared, or was entitled to appear under section 178 (1) (Appearance), before the ACAT in the proceeding; or
  - (c) the discrimination commissioner; or
  - (d) anyone else with the court's leave.

*Note* See the *ACT Civil and Administrative Tribunal Act 2008*, pt 8.

- (2) The *Magistrates Court Act 1930*, section 214 (3) and (4) (Appeals in cases other than civil cases) applies in relation to an appeal under this section as if it were an appeal mentioned in that Act, section 214 (1).
- (3) The *ACT Civil and Administrative Tribunal Act 2008*, section 86 (Appeal to Supreme Court) and section 87 (Sending documents and things to Supreme Court) do not apply to a decision or appeal to which this section applies.

**250 Relationship with Guardianship and Management of Property Act**

- (1) Despite anything in the *Guardianship and Management of Property Act 1991* or an order appointing a guardian, a guardian appointed for a person under that Act—
  - (a) is not entitled to give consent to electroconvulsive therapy or psychiatric surgery; and

- (b) if the person is subject to a community care order—is not entitled to decide anything for the person contrary to any determinations or decisions made in relation to the person by the care coordinator under the community care order (or any related restriction order).
- (2) However, the guardian may make decisions for a person with a mental dysfunction or mental illness, and give consent to treatment for mental illness (other than electroconvulsive therapy or psychiatric surgery) in relation to the person if the person—
  - (a) has impaired decision-making ability; but
  - (b) expresses willingness to receive the treatment.
- (3) Despite anything in the *Guardianship and Management of Property Act 1991*, section 70 (ACAT may consent to prescribed medical procedures), the ACAT must not, while exercising its jurisdiction under the Act—
  - (a) make an order in relation to any consent to treatment for mental illness, electroconvulsive therapy or psychiatric surgery; and
  - (b) make an order in relation to a person contrary to any community care order (or restriction order) made in relation to the person.
- (4) In this section:  
*impaired decision-making ability*—see the *Guardianship and Management of Property Act 1991*, section 5.

**251 Relationship with Powers of Attorney Act**

- (1) Despite anything in the *Powers of Attorney Act 2006* or an instrument creating a power of attorney, an attorney of a person appointed under a power of attorney under that Act—
  - (a) is not entitled to give consent to treatment for electroconvulsive therapy or psychiatric surgery; and
  - (b) if the person is subject to a community care order—is not entitled to decide anything for the person contrary to any determinations or decisions made in relation to the person by the care coordinator under the community care order (or any related restriction order).
- (2) However, the attorney may make decisions for a person with a mental dysfunction or mental illness, and give consent to treatment for mental illness (other than electroconvulsive therapy or psychiatric surgery) in relation to the person if the person—
  - (a) has impaired decision-making capacity; but
  - (b) expresses willingness to receive the treatment.
- (3) In this section:  
*impaired decision-making capacity*—see the *Powers of Attorney Act 2006*, section 9 (2).

**252 Certain rights unaffected**

Nothing in this Act prevents a person in relation to whom no ACAT order is in force—

- (a) refusing to receive particular treatment or care at a mental health facility; or
- (b) discharging himself or herself from the facility.

**253      Determination of fees**

- (1) The Minister may determine fees for this Act.

*Note*      The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note*      A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

**254      Approved forms**

- (1) The Minister may approve forms for this Act.

- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note*      For other provisions about forms, see the *Legislation Act*, s 255.

- (3) An approved form is a notifiable instrument.

*Note*      A notifiable instrument must be notified under the *Legislation Act 2001*.

**255      Regulation-making power**

The Executive may make regulations for this Act.

*Note*      Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.



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## Schedule 1      Reviewable decisions

(see pt 13.4)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	209 (1)	refuse to issue licence	applicant for licence
2	210 (4)	refuse to renew licence	applicant for renewal of licence
3	211 (1) (a)	refuse to vary condition on licence	licensee
4	211 (1) (b)	refuse to revoke condition on licence	licensee
5	211 (1) (c)	refuse to impose condition on licence	licensee
6	211 (3)	vary condition on licence	licensee
7	211 (3)	revoke condition on licence	licensee
8	211 (3)	impose condition on licence	licensee
9	213 (2)	cancel licence	licensee
10	214 (5)	refuse to restore licence	former licensee

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

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

***ACAT mental health provision***—see the *Children and Young People Act 2008*, section 491.

***administer***, treatment, care or support to a person, for part 8.3 (Advance agreements)—see section 124.

***advance agreement***—see section 125.

***affected person***—see section 103.

***agreement***, for chapter 15 (Interstate application of mental health laws)—see section 229.

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

***approved community care facility***—see section 246.

***approved mental health facility***—see section 245.

***assessment*** means a psychiatric or psychological assessment.

***assessment order*** means an order under section 17.

***care and protection order***—see the *Children and Young People Act 2008*, section 422.

***care coordinator*** means the care coordinator appointed under section 194.

***chief psychiatrist*** means the Chief Psychiatrist appointed under section 186.

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

***community care facility*** means—

- (a) a facility, or part of a facility, for the care, protection, rehabilitation or accommodation of mentally dysfunctional persons; or
- (b) a prescribed psychiatric institution or a prescribed part of a psychiatric institution;

but does not include a correctional centre.

***community care order*** means an order made under section 46.

***coordinating director-general*** means the director-general appointed under section 204.

***correctional patient***—see section 107.

***corresponding law***, for chapter 15 (Interstate application of mental health laws)—see section 229.

***Crimes Act*** means the *Crimes Act 1900*.

***CYP director-general*** means the director-general responsible for the *Children and Young People Act 2008*.

***decision*** includes an order.

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

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

***electroconvulsive therapy***—see section 136.

***electroconvulsive therapy order***—see section 143.

***emergency electroconvulsive therapy order***—see section 150.

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

**general president**, of the ACAT—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

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

**information sharing entity**, for part 6.2 (Sharing information about forensic mental health orders—government agencies)—see section 101.

**information sharing protocol**, for part 6.2 (Sharing information about forensic mental health orders—government agencies)—see section 102.

**information statement** means an information statement described in section 119 (1) (b).

**informed consent**, for chapter 9 (Electroconvulsive therapy and psychiatric surgery)—see section 135.

**inspector**, for chapter 13 (Private psychiatric institutions)—see section 207.

**interim care and protection order**—see the *Children and Young People Act 2008*, section 433.

**interim therapeutic protection order**—see the *Children and Young People Act 2008*, section 543.

**interstate custodial patient**, for chapter 15 (Interstate application of mental health laws)—see section 229.

**interstate non-custodial order**, for chapter 15 (Interstate application of mental health laws)—see section 229.

**licence**, for chapter 13 (Private psychiatric institutions)—see section 207.

**licensed premises**, for chapter 13 (Private psychiatric institutions)—see section 207.

***licensee***, for chapter 13 (Private psychiatric institutions)—see section 207.

***mental dysfunction***—see section 10.

***mental health facility*** means a facility for the treatment, care, rehabilitation or accommodation of mentally dysfunctional or mentally ill persons, and includes a psychiatric institution.

***mental health officer*** means a person appointed as a mental health officer under section 190.

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

***mental health professional*** means a psychiatrist, psychologist, social worker, therapist or other person who provides services for mentally dysfunctional or mentally ill persons.

***mental illness***—see section 11.

***mental impairment***—see the Criminal Code, section 27.

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

***nominated member***, of a treating team, for part 8.3 (Advance agreements)—see section 124.

***nominated person*** means the person nominated as the nominated person for a person with a mental dysfunction or mental illness under section 123.

***non-presidential member***, of the ACAT—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

***offender with a mental impairment*** means a person who has been ordered by a court, under the Crimes Act, part 13 (Unfitness to plead and mental impairment), to submit to the jurisdiction of the ACAT to enable the ACAT to make a forensic mental health order in relation to the person.

***official visitor*** means an official visitor appointed under section 199 (1).

***order*** includes the variation or revocation of an order.

***presidential member***, of the ACAT—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

***principal official visitor*** means the principal official visitor appointed under section 199 (2).

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

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

***psychiatric institution***—

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

***psychiatric surgery*** means surgery on the brain of a person, other than neurosurgery.

***psychiatric treatment order*** means an order made under section 38.

***psychiatrist*** means a doctor who is registered under the *Health Practitioner Regulation National Law (ACT)* in the specialist area of psychiatry.

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

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

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

***registered affected person***—see section 104.

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

*Note* For the meaning of ***domestic partner***, see Legislation Act, s 169.



**relevant information**, for part 6.2 (Sharing information about forensic mental health orders—government agencies)—see section 101.

**relevant official**—

- (a) for chapter 4 (Mental health orders)—see section 28; or
- (b) for part 6.1 (Forensic mental health orders)—see section 72.

**responsible person**, for chapter 8 (Rights of people with mental dysfunctional or mental illness)—see section 118.

**restriction order** means an order made under section 40 or section 48.

**reviewable decision**, for part 13.4 (Notification and review of decisions)—see section 220.

**State**, for chapter 15 (Interstate application of mental health laws)—see section 229.

**subject person**, for chapter 11 (ACAT procedural matters)—see section 178.

**transfer direction**—see section 108 (3)

**treating mental health professional**, for a person with a mental dysfunction or mental illness, for part 8.3 (Advance agreements)—see section 124.

**treating team**, for a person with a mental dysfunction or mental illness, for part 8.3 (Advance agreements)—see section 124.

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

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

**Examples—rehabilitation support**

- 1 support to improve social confidence and integration
- 2 assistance to improve work skills

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

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

## Renumbered provisions

as proposed by the exposure draft of the *Mental Health (Treatment and Care) Amendment Bill 2012*, clause 149

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