

Information sheet – Chief Psychiatrist/Delegate

Following sections of the ACT *Mental Health Act 2015* are particularly relevant for Delegates of Chief Psychiatrist. <https://health.act.gov.au/sites/default/files/2021-10/Information%20sheet%20Delegates.docx>

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A Delegate undertakes all Chief Psychiatrist's functions under this Act, **except**

- Signing contraventions
- Approving leave for a person on a Forensic Mental Health Order
- Some statutory functions (e.g., reporting directly to Minister, oversight of people with *mental illness* across all services)

It is also useful for Delegates to specifically review Chapter 5 (Parts 5.1 to Part 5.3) to understand the role, functions and processes of ACAT.

Some important Section in the Act

Section 9 **Meaning of *mental disorder***

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

Section 10 **Meaning of *mental illness***

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).

Part 5.4 **Psychiatric treatment orders**

Section 58 **Psychiatric treatment order**

- 1) This section applies to—
 - a) person assessed under an assessment order; or
 - b) a person in relation to whom an application for a mental health order has been made under part 5.2; or
 - c) a person in relation to whom an application for a forensic mental health order has been made under division 7.1.2; or
 - d) a person required by a court to submit to the jurisdiction of the ACAT under the Crimes Act, part 13 or the [Crimes Act 1914](#) (Cwlth), part 1B.
- (2) The ACAT may make a psychiatric treatment order in relation to the person if—
 - a) the person has a mental illness; and
 - b) either—

- i. the person 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
- c) the ACAT believes on reasonable grounds that, because of the mental illness, the person—
 - i. is doing, or is likely to do, serious harm to themselves or someone else; or
 - ii. is suffering, or is likely to suffer, serious mental or physical deterioration; and
- d) in relation to a person mentioned in paragraph (b) (ii)—the ACAT is satisfied that the harm or deterioration, or likely harm or deterioration, mentioned in paragraph (c) is of such a serious nature that it outweighs the person’s right to refuse to consent; and
- e) the ACAT is satisfied that psychiatric treatment, care or support is likely to—
 - i. reduce the harm or deterioration, or the likelihood of the harm or deterioration, mentioned in paragraph (c); or
 - ii. result in an improvement in the person’s psychiatric condition; and
- f) if an application has been made for a forensic mental health order— the ACAT is satisfied that a psychiatric treatment order should be made instead; and
- g) the ACAT is satisfied that the treatment, care or support to be provided under the psychiatric treatment order cannot be adequately provided in another way that would involve less restriction of the freedom of choice and movement of the person.

Section 59 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 admitted;
 - 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 made in relation to a person must—
 - a) state that the person must comply with any determination made under section 62 (Role of chief psychiatrist—psychiatric treatment order); and
 - b) be accompanied by a statement about how the person meets the criteria under section 58 (2) (Psychiatric treatment order).
 - 3) A psychiatric treatment order must not include any requirement mentioned in section 61 (1) (Content of restriction order made with psychiatric treatment order).

Section 60 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 it believes on reasonable grounds that—

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

Section 61 Content of restriction order made with psychiatric treatment order

- 1) A restriction order made under section 60 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.
- 2) A restriction order does not prevent the chief psychiatrist from granting leave to a person detained at a stated place.

Section 62 Role of chief psychiatrist—psychiatric treatment order

- 1) The chief psychiatrist is responsible for the treatment, care or support 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) whether the person requires admission to an approved mental health facility to receive treatment, care or support under the order and, if so, whether the person can be given leave from the facility; and
- b) for a person living in the community—the times when and the place where the person is required to attend to receive treatment, care or support, in accordance with the order; and
- c) the nature of the psychiatric treatment to be given to the person.

Note The power to make an instrument includes the power to amend or repeal the instrument (see [Legislation Act](#), s 46).

- 3) If the chief psychiatrist forms a belief on reasonable grounds that a person subject to a psychiatric treatment order who is living in the community requires admission to an approved mental health facility to receive treatment, care or support under the order, the chief psychiatrist may determine, in writing—
 - a) the approved mental health facility that the person is to be admitted to; and
 - b) the nature of the psychiatric treatment to be given to the person; and
 - c) whether the person can be given leave from the facility.
- 4) For subsection (2) (c) or (3) (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.
- 5) Before making a determination in relation to a person, the chief psychiatrist must—
 - a) take all reasonable steps to consult the following:
 - i. the person;
 - ii. if the person is a child—each person with parental responsibility for the child under the Children and Young People Act 2008, division 1.3.2 (Parental responsibility);
 - iii. if the person has a guardian under the Guardianship and Management of Property Act 1991—the guardian;
 - iv. if the person has an attorney under the Powers of Attorney Act 2006—the attorney;
 - v. if the person has a carer—the carer;
 - vi. if the person has a nominated person—the nominated person;
 - vii. if a health attorney is involved in the treatment, care or support of the person—the health attorney;

- viii. if the person is a detainee, a person released on parole or licence, or a person serving a community-based sentence—the corrections director-general;
 - ix. if the person is covered by a bail order that includes a condition that the person accept supervision under the Bail Act 1992, section 25 (4) (e) or section 25A—the director-general responsible for the supervision of the person under the Bail Act 1992;
 - x. if the person is a child covered by a bail order that includes a condition that the child accept supervision under the Bail Act 1992, section 26 (2)—the CYP director-general;
 - xi. if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general; and
- b) take into account the views of the people consulted under this section.
- 6) After making a determination in relation to a person, the chief psychiatrist 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.
- 7) The chief psychiatrist must, as soon as practicable after making a determination, give a copy of the determination to—
- a) the person; and
 - b) if the person is a child—each person with parental responsibility for the child under the Children and Young People Act 2008, division 1.3.2 (Parental responsibility); and
 - c) the ACAT; and
 - d) the public advocate; and
 - e) if the person has a guardian under the Guardianship and Management of Property Act 1991—the guardian; and
 - f) if the person has an attorney under the Powers of Attorney Act 2006—the attorney; and
 - g) if the person has a nominated person—the nominated person; and
 - h) if a health attorney is involved in the treatment, care or support of the person—the health attorney.

Section 63 Treatment etc to be explained—psychiatric treatment order

- 1) Before treatment, care or support 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, care or support.

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

Section 64 Action if psychiatric treatment order no longer appropriate—no longer person in relation to whom ACAT could make order

- 1) This section applies if—
 - a) a psychiatric treatment order is in force in relation to a person; and
 - b) the chief psychiatrist is satisfied that—
 - i. the person is no longer a person in relation to whom the ACAT could make a psychiatric treatment order; or
 - ii. if a restriction order is also in force in relation to the person— it is no longer necessary for the restriction order to be in force.

Note 1 For the criteria for making a psychiatric treatment order, see s 58. For the criteria for making a restriction order with a psychiatric treatment order, see s 60.

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

- 2) The chief psychiatrist must take all reasonable steps to give notice to—
 - a) if the person has a carer—the carer; and
 - b) if the person has a nominated person—the nominated person.
- 3) The notice must—
 - a) include the reasons why the chief psychiatrist is satisfied of the matter mentioned in subsection (1) (b); and
 - b) ask whether the carer or nominated person is aware of any other information that may be relevant to whether the psychiatric treatment order or restriction order continues to be appropriate for the person; and
 - c) state that, subject to consideration of any information given under paragraph (b), the chief psychiatrist must tell the ACAT and public advocate of the matter mentioned in subsection (1) (b) and the ACAT must review the psychiatric treatment order or restriction order; and
 - d) tell the carer that the carer is entitled to do either or both of the following:
 - i. make a submission to the ACAT review of the psychiatric treatment order or restriction order;
 - ii. apply to the ACAT to attend the hearing; and
 - e) tell the nominated person that the nominated person is entitled to make a submission to the ACAT review of the psychiatric treatment order or restriction order.

- 4) If, having taken into account any information given under subsection (3) (b), the chief psychiatrist is still satisfied of the matter mentioned in subsection (1) (b), the chief psychiatrist must tell the ACAT and the public advocate in writing about—
 - a) the chief psychiatrist's opinion, including the reasons for the opinion; and
 - b) the details of any information given under subsection (3) (b).

Note The ACAT must review the order within 72 hours after being notified under this section (see s 79 (3)).

Section 65 Powers in relation to psychiatric treatment order

- 1) This section applies if a psychiatric treatment 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 a stated place; or
 - b) the chief psychiatrist makes a determination under section 62 (Role of chief psychiatrist—psychiatric treatment order) requiring the person to be admitted to an approved mental health facility; or
 - c) the person is detained at an approved mental health facility under section 77 (Contravention of mental health order).

- 2) The chief psychiatrist may—

- a) detain the person at an approved mental health facility; and

Note See s 264 (Powers of search and seizure).

- b) subject the person to the minimum confinement or restraint that is necessary and reasonable to—
 - i. prevent the person from causing harm to themselves or someone else; or
 - ii. ensure that the person remains in custody under the order; and
- c) 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 themselves or someone else; and
- d) determine that the person can be given leave from the facility.

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

- 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 relevant place at least once in each 4-hour period for which 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 chief psychiatrist's determination; and
 - b) use, or authorise someone else to use, the force and assistance that is necessary and reasonable to give the medication (***forcible giving of medication***).
- 5) If the chief psychiatrist subjects a person to restraint, involuntary seclusion or forcible giving of medication, the chief psychiatrist must—
 - a) enter in the person's record the fact of and the reasons for the restraint, involuntary seclusion or forcible giving of medication; and
 - b) tell the public advocate in writing of the restraint, involuntary seclusion or forcible giving of medication; and
 - c) keep a register of the restraint, involuntary seclusion or forcible giving of medication.
- 6) In this section:

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

Division 7.1.1 Application of a forensic psychiatric treatment order

Section 93 The *relevant official* for a forensic psychiatric treatment order is the Chief Psychiatrist.

The *relevant person* for a forensic psychiatric treatment order is the Chief Psychiatrist.

Section 95 Relevant person to tell ACAT of risks

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

Division 7.1.4 Forensic psychiatric treatment orders

Section 101 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 person referred to the ACAT for a forensic mental health order under division 7.1.2; or
 - c) a person required by a court to submit to the jurisdiction of the ACAT under the [Crimes Act](#), part 13 or the [Crimes Act 1914](#) (Cwlth), part 1B.
- 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 themselves 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

Note For the making of a mental health order see ch 5.

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

Section 102 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—
 - i. live (but not be detained) at a stated place; or
 - ii. be detained at a stated approved mental health facility;
 - e) that the person must not approach a stated person or stated place or undertake stated activities.
- 2) A forensic psychiatric treatment order made in relation to a person must—
 - a) state that the person must comply with any determination made under section 103 (Role of chief psychiatrist—forensic psychiatric treatment order); and
 - b) be accompanied by a statement about how the person meets the criteria under section 101 (2) (Forensic psychiatric treatment order).

Section 103 Role of chief psychiatrist—forensic psychiatric treatment order

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

Note The power to make an instrument includes the power to amend or repeal the instrument (see [Legislation Act](#), s 46).

- 3) If the chief psychiatrist forms a belief on reasonable grounds that a person subject to a forensic psychiatric treatment order who is living in the community requires admission to an approved mental health facility to receive treatment, care or support under the order, the chief psychiatrist may determine, in writing—
 - a) the approved mental health facility that the person is to be admitted to; and
 - b) the nature of the psychiatric treatment to be given to the person; and
 - c) whether the person can be given leave from the facility.
- 4) For subsection (2) (b) or (3) (c), the chief psychiatrist must not determine psychiatric treatment, care or support that has, or is likely to have, the effect of subjecting the person to whom it is given to undue stress or deprivation, having regard to the benefit likely to result from the treatment, care or support.
- 5) 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 the person usually lives.
- 6) Before making a determination in relation to a person, the chief psychiatrist must—
 - a) take all reasonable steps to consult the following:
 - i. the person;
 - ii. if the person is a child—each person with parental responsibility for the child under the Children and Young People Act 2008, division 1.3.2 (Parental responsibility);
 - iii. if the person has a guardian under the Guardianship and Management of Property Act 1991—the guardian;
 - iv. if the person has an attorney under the Powers of Attorney Act 2006—the attorney;
 - v. if the person has a nominated person—the nominated person;
 - vi. if a health attorney is involved in the treatment, care or support of the person—the health attorney;
 - vii. if the person is a detainee, a person released on parole or licence, or a person serving a community-based sentence—the corrections director-general;

- viii. if the person is covered by a bail order that includes a condition that the person accept supervision under the Bail Act 1992, section 25 (4) (e) or section 25A—the director-general responsible for the supervision of the person under the Bail Act 1992;
 - ix. if the person is a child covered by a bail order that includes a condition that the child accept supervision under the Bail Act 1992, section 26 (2)—the CYP director-general;
 - x. if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general; and
- b) take into account the views of the people consulted under this section.
- 7) After making a determination in relation to a person, the chief psychiatrist 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.
- 8) The chief psychiatrist must, as soon as practicable after making a determination, give a copy of the determination to—
- a) the people mentioned in subsection (6) (a); and
 - b) the ACAT; and
 - c) the public advocate.

Section 104 Treatment etc to be explained—forensic psychiatric treatment order

- 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 a way that the person is most likely to understand.

Section 105 Action if forensic psychiatric treatment order no longer appropriate—no longer person in relation to whom ACAT could make order

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

Note 1 For the criteria for making a forensic psychiatric treatment order, see s 101.

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

- 2) The chief psychiatrist must give written notice to the following (the ***notified people***):
 - a) if the person has a carer—the carer;
 - b) if the person has a nominated person—the nominated person;
 - c) if the person is covered by a bail order that includes a condition that the person accept supervision under the Bail Act 1992, section 25 (4) (e), section 25A or section 26 (2)—the director-general responsible for the supervision of the person under the Bail Act 1992;
 - d) if the person is a detainee, a person on parole or licence, or a person serving a community-based sentence—the corrections director-general;
 - e) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general;
 - f) if the person is a child—each person with parental responsibility for the person under the [Children and Young People Act 2008](#), division 1.3.2 (Parental responsibility).
 - 3) The notice must—
 - a) include the reasons why the chief psychiatrist is satisfied of the matter mentioned in subsection (1) (b); and
 - b) ask whether the notified people are aware of any other information that may be relevant to whether the forensic psychiatric treatment order continues to be appropriate for the person; and
 - c) state that, subject to consideration of any information given under paragraph (b), the chief psychiatrist must tell the ACAT and public advocate of the matter mentioned in subsection (1) (b) and this will lead to an ACAT review of the forensic psychiatric treatment order; and
 - d) tell the carer that the carer is entitled to do either or both of the following:
 - i. make a submission to the ACAT review of the forensic psychiatric treatment order;
 - ii. apply to the ACAT to attend the hearing; and
 - e) tell the other notified people that they are entitled to make a submission to the ACAT review of the forensic psychiatric treatment order.
 - 4) If, having taken into account any information given under subsection (3) (b), the chief psychiatrist is still satisfied of the matter mentioned in subsection (1) (b) the chief psychiatrist must tell the ACAT and the public advocate in writing about—
 - a) the chief psychiatrist’s opinion, including the reasons for the opinion; and
-

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

Note The ACAT must review the order within 10 days after being notified under this section (see s 126(3)).

Section 106 Action if forensic psychiatric treatment order no longer appropriate — no longer necessary to detain person

- 1) This section applies if—
 - a) a forensic psychiatric treatment order is in force in relation to a person; and
 - b) the forensic psychiatric treatment order requires the person to be detained at an approved mental health facility; and
 - c) the chief psychiatrist forms the opinion that it is no longer necessary for the person to be detained.
- 2) The chief psychiatrist must give written notice to the following (the ***notified people***):
 - a) if the person has a carer—the carer;
 - b) if the person has a nominated person—the nominated person;
 - c) if the person is covered by a bail order that includes a condition that the person accept supervision under the Bail Act 1992, section 25 (4) (e), section 25A or section 26 (2)—the director-general responsible for the supervision of the person under the Bail Act 1992;
 - d) if the person is a detainee, a person on parole or licence, or a person serving a community-based sentence—the corrections director-general;
 - e) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general;
 - f) if the person is a child—each person with parental responsibility for the person under the [Children and Young People Act 2008](#), division 1.3.2 (Parental responsibility).
- 3) The notice must—
 - a) include the reasons why the chief psychiatrist is satisfied of the matter mentioned in subsection (1) (c); and
 - b) ask whether the notified people are aware of any other information that may be relevant to whether the detention under the forensic psychiatric treatment order continues to be appropriate for the person; and
 - c) state that, subject to consideration of any information given under paragraph (b), the chief psychiatrist must tell the ACAT and public advocate of the matter mentioned in subsection (1) (c) and this will

lead to an ACAT review of the detention under forensic psychiatric treatment order; and

- d) tell the carer that the carer is entitled to do either or both of the following:
 - i. make a submission to the ACAT review of the forensic psychiatric treatment order;
 - ii. apply to the ACAT to attend the hearing; and
- e) tell the other notified people that they are entitled to make a submission to the ACAT review of the forensic psychiatric treatment order.

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

- 4) If, having taken into account any information given under subsection (3) (b), the chief psychiatrist is still satisfied of the matter mentioned in subsection (1) (c) the chief psychiatrist must tell the ACAT and the public advocate in writing about—
 - a) the chief psychiatrist’s opinion, including the reasons for the opinion; and
 - b) the details of any information given under subsection (3) (b).

Note The ACAT must review the order within 10 days after being notified under this section (see s 126 (3)).

Section 107 Powers in relation to 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
 - ii. the chief psychiatrist has made a determination under section 103 (Role of chief psychiatrist—forensic psychiatric treatment order) requiring detention at an approved mental health facility.

- 2) The chief psychiatrist may—

- a) detain the person at an approved mental health facility; and

Note See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

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

- i. prevent the person from causing harm to themselves or someone else; or
 - ii. ensure that the person remains in custody under the order; and
- c) 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 themselves or someone else; and
- d) determine that the person can be given leave from the facility.

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

- 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 at least once in each 4-hour period for which 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 chief psychiatrist's determination; and
 - b) use, or authorise someone else to use, the force and assistance that is necessary and reasonable to give the medication (***forcible giving of medication***).
- 5) If the chief psychiatrist subjects a person to restraint, involuntary seclusion or forcible giving of medication, the chief psychiatrist must—
- a) enter in the person's record the fact of and the reasons for the restraint, involuntary seclusion or forcible giving of medication; and
 - b) tell the public advocate in writing of the restraint, involuntary seclusion or forcible giving of medication; and
 - c) keep a register of the restraint, involuntary seclusion or forcible giving of medication.
- 6) In this section:

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

Division 7.1.6 Limits on communication under forensic mental health orders

Section 115 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 order states that a limit may be imposed on communication between the person and other people.
- 2) The relevant official for the order may impose a limit on communication by the person with other people if—
 - a) the limit is consistent with the order; and
 - b) the relevant official believes on reasonable grounds that the limit is necessary and reasonable to avoid prejudicing the effectiveness of the person’s treatment, care or support.
- 3) The relevant official must not impose a limit on communication by the person with someone authorised under a territory law to communicate with the person.
- 4) As soon as practicable after imposing a limit on communication by a person, the relevant official must explain to the person, in a way the person is most likely to understand—
 - a) the nature of the limit; and
 - b) the period for which the limit will be in effect; and
 - c) the reason for imposing the limit.
- 5) A limit must not be imposed for a period longer than 7 days.
- 6) Subsection (5) does not prevent a further limit being imposed immediately after a limit previously imposed ceases to be in effect.
- 7) This section has effect despite part 3.1 (Rights in relation to information and communication) but subject to section 116.

Section 116 Offence—limits on communication—forensic mental health order

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

Maximum penalty: 20 penalty units.

- 2) A relevant official commits an offence if—

- a) the relevant official imposes a limit on communication by a person subject to a forensic mental health order; and
- b) the public advocate or the person’s lawyer asks the relevant official to give any reasonable assistance necessary to allow the public advocate or lawyer to have access to the person; and
- c) the relevant official does not ensure that the assistance is given.

Maximum penalty: 50 penalty units.

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

Division 7.1.7 Duration of forensic mental health orders

Section 117 Duration of forensic mental health orders

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

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

Note 2 The chief psychiatrist or another relevant person may apply for a mental health order in relation to the person (see s 51).

Division 7.1.8 Leave for detained people

Section 118 Meaning of *corrections order*—div 7.1.8

In this division:

corrections order means any of the following:

- a) a warrant of remand;
- b) a warrant of imprisonment;
- c) a bail order under the Bail Act 1992, with a condition to be supervised;
- d) a community-based sentence under the Crimes (Sentence Administration) Act 2005, with a condition to be supervised;
- e) release on licence under the [Crimes \(Sentence Administration\) Act 2005](#), chapter 13.

Section 119 Grant of leave for person detained by ACAT

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

Note 1 The ACAT may order the detention of a person under a forensic mental health order under s 102 (1)(d) or s 109 (1) (e).

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

- 2) The ACAT may grant the person a period of leave from the facility—
 - a) on application by the person; or
 - b) on application by the relevant official for the order.
- 3) Before granting leave the ACAT must—
 - a) if the person is subject to a corrections order—
 - i. if the person is a detainee—obtain the agreement of the corrections director-general; or
 - ii. if the person is a young detainee—obtain the agreement of the CYP director-general; or
 - iii. if the person is not a detainee or young detainee—consult the relevant director-general for the corrections order; and
 - b) if the application is by the person—consult the relevant official for the order.
- 4) The ACAT may grant leave for any purpose the ACAT considers appropriate if satisfied that—
 - a) the consultation mentioned in subsection (3) does not raise a serious concern about the appropriateness of the leave; and
 - b) the safety of the person, anyone else or the public will not be seriously endangered.
- 5) The ACAT may refuse to grant leave if satisfied that—
 - a) the person applied for leave for the same purpose in the previous 6 months; and
 - b) the application was refused.

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).

- 6) A grant of leave must state—
- a) the purpose for which the leave is granted; and
 - b) the period for which the leave is granted.
- 7) A grant of leave may be subject to conditions, including in relation to any of the following:
- a) accepting treatment, care or support as required;
 - b) enrolling and participating in educational, rehabilitation, recreational, therapeutic or training programs;
 - c) not using alcohol and other drugs;
 - d) undergoing drug testing and other medical tests;
 - e) the standard of conduct required;
 - f) prohibitions or limits on association with stated people or kinds of people;
 - g) prohibitions or limits on visiting stated places, or kinds of places;
 - h) prohibitions or limits on travelling interstate or overseas;
 - i) any other condition the ACAT considers appropriate in the circumstances, taking into account the safety of the person, anyone else or the public.

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

- 8) If leave is granted under this section, the ACAT must give written notice to—
- a) the person; and
 - b) the relevant official for the order; and
 - c) if the person is subject to a corrections order—
 - i. if the person is a detainee—the corrections director-general; or
 - ii. if the person is a young detainee—the CYP director-general; or
 - iii. if the person is not a detainee or young detainee—the relevant director-general for the corrections order.

Section 120 Revocation of leave granted by ACAT

- 1) The ACAT may revoke leave granted under section 119 to a person—

- a) on application by the relevant official for the person's forensic mental health order; or
 - b) if the person is subject to a corrections order—on application by the corrections director-general; or
 - c) in any case—on its own initiative.
- 2) Before revoking a person's leave, the ACAT must give notice that the revocation is being considered to—
- a) the person; and
 - b) the relevant official for the person's forensic mental health order; and
 - c) if the person is subject to a corrections order—
 - i. if the person is a detainee—the corrections director-general; or
 - ii. if the person is a young detainee—the CYP director-general; or
 - iii. if the person is not a detainee or young detainee—the relevant director-general for the corrections order.
- 3) The ACAT may revoke a person's leave if—
- a) the ACAT believes on reasonable grounds it is necessary to do so because the person—
 - i. is doing, or is likely to do, serious harm to themselves or someone else; or
 - ii. is suffering, or is likely to suffer, serious mental or physical deterioration; or
 - iii. is seriously endangering, or is likely to seriously endanger, public safety; or
 - b) the person contravenes a condition of the grant.
- 4) If a person's leave is revoked under this section, the ACAT must give written notice of the revocation to—
- a) the person; and
 - b) the relevant official for the person's forensic mental health order; and
 - c) if the person is subject to a corrections order—
 - i. if the person is a detainee—the corrections director-general; or
 - ii. if the person is a young detainee—the CYP director-general; or
 - iii. if the person is not a detainee or young detainee—the relevant director-general for the corrections order.

- 5) If a person's leave is revoked under this section, a police officer, authorised ambulance paramedic, doctor or mental health officer may apprehend the person and take the person to a relevant facility.

Note See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

- 6) If a person is detained under subsection (5), the relevant official must, within 12 hours after the detention starts, give written notice to the ACAT and the public advocate of—
 - a) the name of the person detained; and
 - b) the reasons for the detention; and
 - c) the name and address of the relevant facility where the person is detained.

- 7) In this section:

relevant facility means—

- a) for a person in relation to whom a forensic psychiatric treatment order is in force—an approved mental health facility; or
- b) for a person in relation to whom a forensic community care order is in force—an approved community care facility.

Section 121 Grant of leave for person detained by relevant official

- 1) This section applies to a person detained at an approved mental health facility or approved community care facility under a forensic mental health order if the relevant official has detained the person at the facility.

Note 1 The chief psychiatrist may make a determination under s 103 (Role of chief psychiatrist—forensic psychiatric treatment order) requiring detention of a person at an approved mental health facility.

Note 2 The Chief Psychiatrist may require a person to be detained at an approved community care facility (see s 114 and s 124).

- 2) The relevant official may grant a period of leave from the approved mental health facility or approved community care facility—
 - a) on application by the person; or
 - b) on the relevant official's own initiative.
- 3) Before granting leave the relevant official must—
 - a) notify the ACAT of the application for leave; and
 - b) if the person is subject to a corrections order—
 - i. if the person is a detainee—obtain the agreement of the corrections director-general; or
 - ii. if the person is a young detainee—obtain the agreement of the CYP director-general; or

- iii. if the person is not a detainee or young detainee — consult the relevant director-general for the corrections order.
- 4) The relevant official must not grant leave if satisfied that—
 - a) the person applied to the ACAT for leave for the same purpose in the previous 6 months; and
 - b) the application was refused.
 - 5) The relevant official may allow the person to take a period of leave for any purpose the relevant official considers appropriate if satisfied that—
 - a) the consultation mentioned in subsection (3) does not raise a serious concern about the appropriateness of the leave; and
 - b) 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).

- 6) 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.
- 7) The grant of leave may be subject to conditions, including in relation to any of the following:
 - a) accepting treatment, care or support as required;
 - b) enrolling and participating in educational, rehabilitation, recreational, therapeutic or training programs;
 - c) not using alcohol and other drugs;
 - d) undergoing drug testing and other medical tests;
 - e) the standard of conduct required;
 - f) prohibitions or limits on association with stated people or kinds of people;
 - g) prohibitions or limits on visiting stated places, or kinds of places;
 - h) prohibitions or limits on travelling interstate or overseas;
 - i) any other condition the relevant official considers appropriate in the circumstances taking into account the safety of the person, anyone else or the public.

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

- 8) If leave is granted under this section, the relevant official must give written notice to—
- a) the person; and
 - b) if the person is subject to a corrections order—
 - i. if the person is a detainee—the corrections director-general; or
 - ii. if the person is a young detainee—the CYP director-general; or
 - iii. if the person is not a detainee or young detainee—the relevant director-general for the corrections order.

Section 122 Leave in emergency or special circumstances

- 1) This section applies to a person detained at an approved mental health facility or approved community care facility under a forensic mental health order if—
 - a) the ACAT has ordered the detention; or
 - b) the relevant official has detained the person at the facility.
- 2) The relevant official may grant the person a period of leave from the approved mental health facility or approved community care facility if satisfied that—
 - a) there are emergency or special circumstances for granting the leave; and

Examples

- 1 to attend a relative's funeral
- 2 to attend an urgent medical appointment

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 person, someone else or the public will not be seriously endangered by the leave.
- 3) Before granting leave the relevant official must—
 - a) if the person is a detainee—obtain the agreement of the corrections director-general; and
 - b) if the person is a young detainee—obtain the agreement of the CYP director-general; and
 - c) if the person is not a detainee or young detainee—consult the relevant director-general for the corrections order.
- 4) The relevant official must not grant leave under this section if the person—

- a) has applied for leave based on the same emergency or special circumstances under section 119 (Grant of leave for person detained by ACAT), section 121 (Grant of leave for person detained by relevant official) or this section; and
 - b) the ACAT or the relevant official has refused to grant the leave.
- 5) If leave is granted under this section, the relevant official must give written notice to—
- a) the person; and
 - b) if the person is subject to a corrections order—
 - i. if the person is a detainee—the corrections director-general; or
 - ii. if the person is a young detainee—the CYP director-general; or
 - iii. if the person is not a detainee or young detainee—the relevant director-general for the corrections order.
- Note* The function of granting leave under this section must not be delegated (see s 200 (2) (Delegation by chief psychiatrist) and s 207 (2) (Delegation by Chief Psychiatrist)).

Section 123 Revocation of leave granted by relevant official

- 1) The relevant official may revoke leave granted under section 121 or section 122 to a person—
 - a) if the person is subject to a corrections order—on application by the corrections director-general; or
 - b) in any case—on its own initiative.
- 2) Before revoking a person’s leave, the relevant official must give notice that the revocation is being considered to—
 - a) the person; and
 - b) if the person is subject to a corrections order—
 - i. if the person is a detainee—the corrections director-general; or
 - ii. if the person is a young detainee—the CYP director-general; or
 - iii. if the person is not a detainee or young detainee—the relevant director-general for the corrections order.
- 3) The relevant official may revoke a person’s leave if—
 - a) the relevant official believes on reasonable grounds it is necessary to do so because the person—
 - i. is doing, or is likely to do, serious harm to themselves or someone else; or

- ii. is suffering, or is likely to suffer, serious mental or physical deterioration; or
 - iii. is seriously endangering, or is likely to seriously endanger, public safety; or
 - b) the person contravenes a condition of the grant.
 - 4) If a person's leave is revoked under this section, the relevant official must give written notice of the revocation to—
 - a) the person; and
 - b) if the person is subject to a corrections order—
 - i. if the person is a detainee—the corrections director-general; or
 - ii. if the person is a young detainee—the CYP director-general; or
 - iii. if the person is not a detainee or young detainee—the relevant director-general for the corrections order.
 - 5) If a person's leave is revoked under this section, a police officer, authorised ambulance paramedic, doctor or mental health officer may apprehend the person and take the person to a relevant facility.
- Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).
- 6) If a person is detained under subsection (5), the relevant official must, within 12 hours after the detention starts, give written notice to the ACAT and the public advocate of—
 - a) the name of the person detained; and
 - b) the reasons for the detention; and
 - c) the name and address of the relevant facility where the person is detained.
 - 7) In this section:

relevant facility means—

- a) for a person in relation to whom a forensic psychiatric treatment order is in force—an approved mental health facility; or
- b) for a person in relation to whom a forensic community care order is in force—an approved community care facility.

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

Section 124 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 the order; and
 - c) section 125 (Contravention of forensic mental health order—absconding from facility) does not apply to the contravention.

Examples—contravention

- 1 failure to return from leave granted by ACAT
- 2 not attending mental health facility for treatment, care or support

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).

- 2) The relevant official for the order may—
 - a) within 7 days of the contravention, 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 taken to a relevant facility for treatment, care or support; and

Note If a form is approved under s 273 for this provision, the form must be used.

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

Note See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

- 4) If a person is detained under this section the relevant official must, within 12 hours after the detention starts, give written notice to the ACAT and the public advocate of—
 - a) the name of the person detained; and
 - b) the reasons for the detention; and
 - c) the name and address of the relevant facility where the person is detained.

Note The ACAT must review the order within 72 hours after being notified under this subsection (see s 126(5)).

5) 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
- b) for a person in relation to whom a forensic community care order is in force—an approved community care facility.

Section 125 Contravention of forensic mental health order—absconding from facility

1) This section applies if—

- a) a forensic mental health order is in force in relation to a person; and
- b) the forensic mental health order requires the person to be detained at an approved mental health facility or an approved community care facility; and
- c) the person absconds from the facility.

2) The person in charge of the facility must immediately tell the police that the person has absconded.

3) A police officer, authorised 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.

Note See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

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

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

- a) the name of the person detained; and
- b) the reasons for the detention; and
- c) the name and address of the facility where the person is detained.

Note The ACAT must review the order within 72 hours after being notified under this subsection (see s 126(5)).

Section 126 Review of forensic mental health order

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

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

- (2) The ACAT must review a forensic mental health order in force in relation to a person if the person, or the person's representative, applies for the review on the basis that the order, or part of the order, is no longer required.
 - (3) The ACAT must review each forensic mental health order in force in relation to a person within 10 days if the ACAT receives notice in relation to the person under any of the following:
 - (a) section 105 (Action if forensic psychiatric treatment order no longer appropriate—no longer person in relation to whom ACAT could make order);
 - (b) section 106 (Action if forensic psychiatric treatment order no longer appropriate—no longer necessary to detain person);
 - (c) section 112 (Action if forensic community care order no longer appropriate—no longer person in relation to whom ACAT could make order);
 - (d) section 113 (Action if forensic community care order no longer appropriate—no longer necessary to detain person).
 - (4) A review of a matter under subsection (3) must include, as far as practicable, consulting a person mentioned in section 97.
 - (5) The ACAT must review each forensic mental health order in force in relation to the person within 72 hours if the ACAT receives notice in relation to the person under—
 - (a) section 124 (4) (Contravention of forensic mental health order); or
 - (b) section 125 (5) (Contravention of forensic mental health order—absconding from facility).
 - (6) A review required under subsection (5)—
 - (a) may be conducted without a hearing; and
 - (b) may include consulting a person mentioned in section 97.
- Note* If the ACAT holds a hearing for the review, s 188 (1) (Notice of hearing) does not apply (see s 188 (3)).
- (7) 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.
 - (8) In any other case, the ACAT may, if appropriate, do any of the following:
 - (a) confirm, amend or revoke any of the forensic mental health orders in force in relation to the person;
 - (b) make additional forensic mental health orders in relation to the person;
 - (c) make a mental health order in relation to the person;
 - (d) make an assessment order in relation to the person.

(9) In this section:

representative, for a person, means any of the following:

- (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 under the *Powers of Attorney Act 2006*—the attorney;
- (c) if the person has a nominated person—the nominated person;
- (d) a close relative or close friend of the person;
- (e) a legal representative of the person.

Part 12.1

Chief psychiatrist and mental health officers

Section 196 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 [Legislation Act](#), s 207).

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

Section 197 Functions

The chief psychiatrist has the following functions:

- (a) to provide treatment, care or support, 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 or support, control, accommodation, maintenance and protection for persons who have a mental illness;
- (c) to make guidelines for mental health facilities, mental health professionals or anyone else exercising a function under this Act, in relation to matters under this Act;
- (d) any other function given to the chief psychiatrist under this Act.

Section 198 Approved code of practice

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

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

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

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

Section 198A Chief psychiatrist may make guidelines

- 1) The chief psychiatrist may make guidelines for a mental health facility, mental health professional or anyone else exercising a function under this Act, in relation to any matter under this Act.

Note 1 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).

Note 2 The function of making guidelines under this section must not be delegated (see s 200 (2) (b)).

- 2) A guideline must include a statement about how the guideline is consistent with—
- a) the objects and principles of this Act; and
 - b) human rights.

3) If a guideline relates to a function under this Act exercised by a police officer or an authorised ambulance paramedic, the chief psychiatrist must consult the chief police officer or the chief officer (ambulance service) before making the guideline.

4) A mental health facility conducted by, or operating under an agreement with, the Territory must comply with a guideline that applies to the facility.

5) A person employed or engaged at a mental health facility mentioned in subsection (4) must comply with a guideline that applies to the facility.

6) A person, other than a person mentioned in subsection (5), exercising a function under this Act in relation to a matter for which a guideline has been made must consider the guideline in the exercise of the function.

7) A guideline may apply, adopt or incorporate a law of another jurisdiction or an instrument, as in force from time to time.

Note A reference to an instrument includes a reference to a provision of an instrument (see [Legislation Act](#), s 14 (2)).

8) The [Legislation Act](#), section 47 (6) does not apply in relation to a law or an instrument mentioned in subsection (7).

Note A law or an instrument applied, adopted or incorporated under s (7) does not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see [Legislation Act](#), s 47 (7)).

9) A [guideline](#) is a notifiable instrument.

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

10) In this section:

law of another jurisdiction—see the [Legislation Act](#), section 47 (10).

Chapter 5 Mental health orders

Part 5.1 Preliminary

Section 50 Definitions—ch 5

In this chapter:

relevant official, for a mental health order, means—

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

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

- (a) for a psychiatric treatment order—the chief psychiatrist or another person nominated by the chief psychiatrist; and
- (b) for a community care order—a person who can make the statement required under section 51 (3) (a) for the application.

Part 5.2 Applications for mental health orders

Section 51 Applications for mental health orders

- 1) This [section](#) applies if a relevant person believes on reasonable grounds that a person (the **subject person**) is a person in relation to whom the ACAT could reasonably make an order under section 58 (Psychiatric treatment order) or section 66 (Community care order).
- 2) The relevant person may apply to the ACAT for a mental health order in relation to the subject person.

Note 1 An application is not required in relation to a person who has been assessed under an assessment order as having a mental disorder or mental illness (see s 58 and s 66).

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

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

- 3) The application must include—
 - a) a written statement by the relevant person addressing the criteria the ACAT must consider in making an order under section 58 (Psychiatric treatment order) or section 66 (Community care order); and
 - b) a plan setting out the proposed treatment, care or support of the subject person.

Section 52 Applicant to tell ACAT of risks

- 1) This section applies if—
 - a) a person (the applicant) applies under section 51 for a mental health order in relation to someone else (the subject person); and
 - b) the applicant believes on reasonable grounds that anything to do with the application process is likely to substantially increase—
 - i. the risk to the subject person’s health or safety; or
 - ii. the risk of serious harm to others.
- 2) The application must state—
 - a) the applicant’s belief about the substantially increased risk; and
 - b) the basis for the belief.

Part 5.3 Making of mental health orders—preliminary matters

Section 53 ACAT must consider assessment—mental health order

- 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) The ACAT may consider making a mental health order even if an assessment recommends that the ACAT not consider making a mental health order.

Section 54 Consultation by ACAT—mental health order

- 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—each person with parental responsibility for the child under the Children and Young People Act 2008, division 1.3.2 (Parental responsibility); and
 - b) if the person has a guardian under the Guardianship and Management of Property Act 1991—the guardian; and
 - c) if the person has an attorney under the Powers of Attorney Act 2006—the attorney; and
 - d) if the person has a nominated person—the nominated person; and

- e) if a health attorney is involved in the treatment, care or support of the person—the health attorney; and
 - f) if the chief psychiatrist or care-coordinator is likely to be responsible for providing the treatment, care or support proposed to be ordered—the chief psychiatrist or care-coordinator; and
 - g) if the person is a detainee, a person released on parole or licence, or a person serving a community-based sentence—the corrections director-general; and
 - h) if the person is covered by a bail order that includes a condition that the person accept supervision under the Bail Act 1992, section 25 (4) (e) or section 25A—the director-general responsible for the supervision of the person under the Bail Act 1992; and
 - i) if the person is a child covered by a bail order that includes a condition that the child accept supervision under the Bail Act 1992, section 26 (2)—the CYP director-general; and
 - j) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general; and
 - k) if an assessment order under part 4.1 (Applications for assessment orders) gave rise to the ACAT consideration of the making of the mental health order—the applicant for the assessment order.
- 2) Before making a mental health order in relation to a person who has a carer, the ACAT must, as far as practicable, tell the carer in writing that—
- a) a hearing will be held in relation to making a mental health order for the person; and
 - b) the carer may do either or both of the following:
 - i. make a submission to the ACAT in relation to making a mental health order for the person;
 - ii. apply to the ACAT to attend the hearing.

Section 55 ACAT must hold hearing—mental health order

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

Section 56 What ACAT must take into account—mental health order

- 1) In making a mental health order in relation to a person, the ACAT must take into account the following:
- a) for a person the subject of an application under section 51 (Applications for mental health orders)—a plan for the proposed treatment, care or support of the person, mentioned in section 51 (3) (b);

- b) whether the person consents, refuses to consent or has the decision-making capacity to consent, to a proposed course of treatment, care or support;
- c) the views and wishes of the person, so far as they can be found out, including in—
 - i. an advance agreement; and
 - ii. an advance consent direction;
- d) the views of the people responsible for the day-to-day care of the person, so far as those views 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 54 (Consultation by ACAT—mental health order);
- g) that any restrictions placed on the person should be the minimum necessary for the safe and effective care of the person;
- h) 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;
- i) any relevant medical history of the person;
- j) for a person required by a court to submit to the jurisdiction of the ACAT under the [Crimes Act](#), part 13 or the [Crimes Act 1914](#) (Cwlth), part 1B—
 - i. the nature and circumstances of the alleged offence or the offence in relation to which the person is charged; and
 - ii. the nature and extent of the person’s mental illness or mental disorder and the effect it is likely to have on the person’s behaviour in the future; and
 - iii. whether, if the person is not detained—
 - (A) the person’s health or safety is, or is likely to be, substantially at risk; or
 - (B) the person is likely to do serious harm to others;
- k) anything else prescribed by regulation.

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

- 2) Before the ACAT makes a mental health order for the provision of particular treatment, care or support at a stated facility or by a stated person, the ACAT must be satisfied that the treatment, care or support can be provided at the stated facility or by the stated person.
- 3) The ACAT may ask the relevant person to provide information on the options that the relevant person considers are appropriate for the provision of particular treatment, care or support under the proposed mental health order.
- 4) The relevant person must respond to the ACAT within 7 days after receiving a request under subsection (3), or any longer time allowed by the ACAT.

Section 57 ACAT must not order particular treatment, care or support—mental health order

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

Section 200 Delegation by chief psychiatrist

- 1) 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.
- 2) However, the following functions must not be delegated:
 - a) granting leave under section 122 (Leave in emergency or special circumstances);
 - b) making guidelines under section 198A (Chief psychiatrist may make guidelines).

Note For the making of delegations and the exercise of delegated functions, see [Legislation Act](#), pt 19.4.