

|     | Where is the term defined?  | At what stage in the criminal justice process does the term apply? |   |  |   | Other stages   |
|-----|---|--|---|--|---|--|
|     |   | Bail   | Remand at a hospital or secure mental health facility                             | Custody after a determination that the accused will be fit to plead within 12 months | Custody or supervised release after being found not guilty by reason of mental illness or unfit to stand trial within 12 months   |  |
| ACT | <i>Mental Health Act 2015</i> (ACT) (MHA) s127 defines a <b>forensic patient</b> as a person in relation to whom a <i>forensic mental health order</i> may be made or is in force. A forensic mental health order means a <i>forensic psychiatric treatment order</i> or a <i>forensic community care order</i> (Dictionary); the persons to whom these apply or might apply are listed in ss101 and 108. The list includes people who are required by a court to submit to the jurisdiction of the ACAT under the <i>Crimes Act 1900</i> (ACT) (CA) Part 13, and people who are 'detainees' – a term defined by the <i>Corrections Management Act 2007</i> (ACT) s6. | CA s315D (2); MHA s94 (1) (g)                                      | CA s315D (2)  | CA s315D (2)   | CA ss318 (2), 319 (2) (b), 323, 324, 328 (3), 329 (b), 334 (1), 335 (2)   | Parolees, young detainees and offenders, persons released on licence, detainees (which include all adults held in custody or detention) and persons serving community-based sentences may be subject to a forensic mental health order: MHA ss94, 101 and 108.   |
| NSW | <i>Mental Health Act 2007</i> (NSW) (MHA) s4: incorporates the definition of <b>forensic patient</b> found in the <i>Mental Health (Forensic Provisions) Act 1990</i> (MHFPA) s42. This may include persons belonging to a class prescribed by the Regulations or persons subject to the <i>Criminal Appeal Act 1912</i> s7(4) (CAA).   | MHFPA s14 (b) (ii)   | MHFPA s14 (b) (iii)   | MHFPA s17 (3)  | MHFPA s24, 25, 27, 39; CAA 7 (4)  | N/A  |
| NT  | <i>Criminal Code Act Schedule One 43A</i> (NT) (CCA) defines a <b>supervised person</b> as 'a person who is the subject of a supervision order'. These may be custodial (at a secure care facility or a custodial correctional facility) or non-custodial with conditions: s43ZA (1).   | N/A  | N/A   | N/A  | CCA ss43I (2) (a), 43X (2) (a) or (3), 412A (3)   | N/A  |
| QLD | The <i>Mental Health Act 2016</i> (Qld) (MHA) Schedule 3 defines a <b>forensic patient</b> as 'a person subject to a forensic order' and lists three types of forensic order: 'mental health', 'disability' and 'criminal code'. A Forensic Order (criminal code) is defined according to the <i>Criminal Code 1899</i> (Qld) (CC). The remaining orders are made by the Mental Health Court under the MHA if considered necessary – because of the person's mental condition – to protect the safety of the community, including from the risk of serious harm to other persons or property.   | N/A  | Forensic Order (Criminal Code): CC ss 613 (3), 645 (1), 647 (1)                   | N/A  | Forensic Order (mental health): MHA s134 (3) (a)<br><br>Forensic Order (Criminal Code): CC s647 (2)   | A Forensic Order (disability) applies when unfit for trial or unsoundness of mind is considered to be the result of an intellectual disability, and the person needs care for that disability but not for any mental illness: MHA s134 (3) (b). The Mental Health Court must do one of the following: order no limited community treatment/approve a doctor or senior practitioner to authorise limited community treatment/ order limited community treatment: MHA ss139-140. |
| TAS | <i>Mental Health Act 2013</i> (Tas) (MHA) s68 defines a <b>forensic patient</b> as 'a person who is admitted to a Secure Mental Health Unit'. This may be ordered under the <i>Criminal Justice (Mental Impairment) Act 1999</i> (CJMIA), the <i>Sentencing Act 1997</i> (SA), the <i>Justices Act 1959</i> (JA), the <i>Criminal Code</i> (CC), the <i>Youth Justice Act 1997</i> (YJA) or the <i>Corrections Act 1997</i> (CA).   | CJMIA s39 (1)(a)   | CJMIA s39 (1) (b); JA s47; CC s348; YJA s105                                      | N/A  | CJMIA ss18 (2), 31; SA s73  | A prisoner or detainee who has a disability or appears to have a mental illness may be removed to a secure mental health unit: CCA s36A (2) or (3). If a youth, YJA 134A (2) or (3) applies.   |
| VIC | <i>Mental Health Act 2014</i> (Vic) (MHA) s305: incorporates the definitions of <b>forensic patient</b> found in the <i>Crimes (Mental Impairment and Unfitness to be tried) Act 1997</i> (CYMIUA) and the <i>Crimes Act 1914</i> (Cth) (CA).   | N/A  | CYMIUA (Other than Part 5A – Children's Court and Appeals from those proceedings) | N/A  | CYMIUA [Other than Part 5A – Children's Court and Appeals from those proceedings], including international forensic patients: s730; CA s20BJ (1), 20BM  | N/A  |
| WA  | The <i>Criminal Law (Mentally Impaired Accused) Act 1996</i> (WA) (CLA) s23 defines a <b>mentally impaired accused person</b> as an accused person in respect of whom an undischarged <i>custody order</i> has been made. Custody orders may only apply to persons found not guilty (due to unsoundness of mind or mental unfitness) of offences listed in Schedule One of the CLA.   | N/A  | N/A   | N/A  | CLA ss 19 (4) & 22 (1)  | N/A  |
| NZ  | <i>Mental Health (Compulsory Assessment and Treatment) Act 1992</i> (NZ) (MHA) s2 defines a <b>special patient</b> as a person who is liable to be detained in a hospital under an order made under the <i>Criminal Procedure (Mentally Impaired Persons) Act 2003</i> (CPMIA); the <i>Criminal Procedure Act 2011</i> (CPA); the <i>Armed Forces Discipline Act 1971</i> (AFDA); and the <i>Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003</i> (IDCCR).   | N/A  | CPMIA ss 23, 35, 44 (1)   | N/A  | CPMIA ss24 (2) (a), 34 (1) (a) (i). An order may be made following a court martial: AFDA s191 (2) (a). A <i>special care recipient</i> may become a special patient if they appear to have developed a mental disorder: IDCCR s136 (5) (a). | If not in custody, an order to detain at a hospital or secure facility may be made: CPA s169. If in custody (before/ during the hearing or trial), or awaiting sentence or the determination of an appeal, a court may order assessment in a hospital or secure facility: CPMIA s39 (2) (c). If imprisoned and in need of psychiatric care, an order seeking transfer to a hospital or secure facility may be made: MHA ss45 (2), 46.  |

Disclaimer: These tables have been developed by the RANZCP as at 30 June 2017 in order to allow key provisions in the Mental Health Acts to be compared. They are intended for reference purposes only and are not intended to be a substitute for legal or clinical advice.

Comment: No definition of 'forensic patient' (or an equivalent term) is found in legislation from the Commonwealth of Australia or South Australia. The main Commonwealth provisions governing persons who are not guilty by reason of mental illness or unfit to stand trial are set out in the *Crimes Act 1914* (Cth) Part 1B. The main South Australian provisions governing persons who are not guilty by reason of mental illness or unfit to stand trial are set out in the *Criminal Law Consolidation Act 1935* (SA) Part 8A. All the jurisdictions create a framework for detaining persons found to belong to one or both categories or for imposing supervised release. Detention does not necessarily occur in separate forensic facilities (see RANZCP [Position Statement 90: Principles for the treatment of persons found not criminally responsible or not fit for trial due to mental illness or cognitive disability](#)). Other categories of forensic patient exist in some jurisdictions, such as bailed defendants and convicted prisoners who have been diagnosed with mental illness.

