



ACT  
Mental Health  
Consumer Network

# RESPONSE TO DRAFT NATIONAL FRAMEWORK FOR ADVANCE DIRECTIVES

**Submitted via email to:**

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## Introduction

ACT Mental Health Consumer Network (ACTMHCN) is an organisation that is run by consumers for consumers. Our aim is to bring about a higher standard of care in the mental health sector through representation, lobbying and active involvement in new developments in the mental health sector.

Our organisation is extremely committed to the rights of mental health consumers. We promote a respectful and accepting system that involves Consumers, Carers and Professionals listening and respecting one another in an active healthy relationship. We also promote the development of support structures for all these groups.

The Network welcomes the opportunity to give feedback on the Draft National Framework for Advance Care Directives. We wish to comment specifically on what are the gaps in the draft Framework.

## Comment

### 8. Are there gaps in the draft Framework? What are they?

The Framework states on page 15:

*This Framework uses the term "health care" to refer to care, treatment (including medical treatment) and services or procedures to diagnose, maintain or treat a person's physical or mental condition...*

ACTMHCN welcomes the introduction of a National Advance Care Directives Framework which includes the refusal of or the consent by a substitute decision-maker to treatment offered for the care of mental illness. However the Framework omits to address the challenges that exist with the current State and Territory legislation. For example in the ACT, the Power of Attorney Act 2006 and the Mental Health (Care and Treatment) Act 1994 limited the capacity of Mental Health Consumers to make and use Advance Care Directives.

The ACT Power of Attorney Act 2006 states (Section 35) that a principle cannot authorise the attorney to exercise power in relation to special health care matters such as (Section 37) the treatment for mental illness, electroconvulsive therapy or psychiatric surgery. The capacity of the Framework to address the current limitations of the use of Advance Care Directives in the context of mental illness is greatly hampered due to the absence of any reference to the Mental Health Acts of the States and Territories.

The Draft Framework sets out a decision-making capacity criteria under the section entitled Competency and Capacity under Section 3.1 - Specific Items Used in this Framework, which is different to the criteria in the ACT Mental Health (Care and Treatment) Act 1994 for determining if someone is competent to make decisions regarding the treatment of their mental illness. Currently under the ACT Mental Health Act the ability of an individual "to make reasonable judgments" is used to determine competency whereas the ACT Medical Treatment (Health Directives) Act 2006 (Section 7) states a health direction cannot be made by anyone who "has impaired decision-making capacity". Therefore there could potentially two different benchmarks between the ACT Mental Health Act and the ACT Medical Treatment Act to assess competency. The Draft Framework is an opportunity to consider such issues but this is not currently possible because the Mental Health Acts of the States and Territories are not included in the investigations.

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