

Submission to:

The Secretariat,
Review of ACT Mental Health Act
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**Submission to
Review of the ACT Mental Health
(Treatment and Care) Act 1994**

**From: Women's Centre for
Health Matters Inc.**

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Women's Centre for Health Matters

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Introduction

The Women's Centre for Health Matters Inc. (WCHM) is a community-based organisation that works in the ACT and surrounding region to improve women's health and wellbeing. WCHM focuses on groups of women who experience disadvantage and uses social research, community development, advocacy and health promotion to empower these women to achieve the highest possible standard of health and wellbeing.

WCHM believes that health is determined not only by biological factors, but by a broad range of social, environmental and economic factors known as the 'social determinants of health'. We acknowledge that the environment and life circumstances that each woman experiences have a direct impact on her health, and in many cases, women's poor health is rooted in social disadvantage. We understand that women are their own experts and believe that their expert knowledge is a largely untapped resource. For these reasons, WCHM is committed to taking a 'whole of life' and social approach to women's health, that is also firmly situated within a human rights framework.

Response to Review of the ACT Mental Health (Treatment and Care) Act 1994

WCHM welcomes the opportunity to provide feedback on the Review of the ACT Mental Health (Treatment and Care) Act 1994. In writing this submission WCHM has chosen to limit its responses to those areas in which it has the most knowledge; ACT women's preferences, aspirations and concerns in relation to mental health treatment and care.

What are your views about the appropriateness of a definition based on the 'domains of capacity', of the type set out at Appendix B.

WCHM believes that the requirement for mental health consumers to 'appreciate' information presented to them in order to demonstrate mental capacity is problematic and should be removed. A mental health consumer who decides on a course of action contrary to medical advice, might be considered mentally incapacitated because they have disagreed with the mental health 'experts'. WCHM would like to see appropriate safeguards put in place to ensure that this does not happen.

Which of the three Framework Options proposed in the Paper do you prefer and why? Considering of possible variations listed in the Paper for the Framework Option you have chosen, which variations should be applied (if any)?

WCHM supports the introduction of a capacity-based legal apparatus, as described in Framework Option C.

Often the discourse associated with mental health legislation focuses on the issue of coercive/involuntary treatment, and the right of mental health consumers to liberty and autonomy. This is no doubt a natural response to a piece of legislation that is itself, pre-occupied with the issue of coercive/involuntary treatment. However, WCHM believes that overall, women living with mental health issues would benefit from a paradigm shift – one which focuses on the individual's general right to good health, and the associated right to access health services¹. Creating a legislative framework to govern and support an individual's right to access health services (including mental health services) would be ideal. However, we understand that this is not the purpose of this particular stage of the review and have therefore evaluated the options presented to see which best fits with this ideal, and that is Framework Option C.

¹ B. McSherry, "Mental health and human rights: The role of the law in developing a right to enjoy the highest attainable standard of mental health in Australia", Presented at the "Public Health and Human Rights" conference (June 2007)

WCHM supports the introduction of a capacity-based legal apparatus for the following reasons:

- Criterion relating to the 'risk of harm to self or others' and the 'likelihood of serious mental or physical deterioration' will be removed, and mental health consumers will be treated similarly to all other people needing to make important decisions in relation to their lives and their health. This will greatly reduce the discriminating and stigma inducing nature of the current legislation;
- Opportunities for people living with mental health issues to detail *advance directives* (when they are well), for consideration when they are incapacitated can be considered;
- People living with mental health issues may have the opportunity to appoint a substitute decision-maker (i.e. an enduring guardian, statutory attorney) who they trust to make decisions that are in their best interests, and who they trust to respect their personal preferences and wishes in relation to involuntary treatment (should it be necessary);
- There is room to properly define the roles and rights of carer's, and have their wishes given greater consideration when their loved ones are unwell (particularly if appointed substitute decision-maker);
- It understands that decision-making incapacity can differ depending on the decision required, and that a high level of incapacity may only be temporary;
- It will also contribute to the burgeoning culture of recovery, autonomy and self-determination; all these principles of which have been embraced in international, national and local policies relating to mental health care².

² See, United Nations, Principle 9, "Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care"; United Nations, Principle 1, "Convention on the Rights of Persons with Disabilities"; WHO, Principle 5, "Mental Health Law: Ten Basic Principles", Dept. of Health and Ageing, Principles underlying the Fourth National Mental Health Plan, "Fourth National Mental Health Plan"; ACT Health, Primary Goal 3, "ACT Mental Health Strategy and Action Plan 2003-2008",