



**A SUBMISSION BY CARERS ACT**

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

**Second Exposure Draft Bill**

**May 2013**

## About Carers ACT

Carers ACT is the recognised and expert voice with and for carers, as well as being the major provider of carer services and supports in the ACT. Carers ACT is a member of the National Network of Carers Associations. It is a non-government, not for profit association that relies on public and private sector support to fulfil its mission with and on behalf of carers.

It also coordinates the ACT Mental Health Carers Voice policy and representation program. Carers ACT appreciates and acknowledges the important contribution of carers to its policy work.

***Carers ACT acknowledges that modern day Canberra has been built on the traditional lands of the Ngunnawal people. We pay our respects to their elders past, present and future, and celebrate the Ngunnawal people's living culture and valuable contribution to the ACT community.***

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## Introduction and Summary

This submission is provided in response to the invitation by ACT Health and the ACT Justice and Community Safety Directorates to provide feedback on the Second Exposure Draft Bill to amend the *Mental Health (Treatment and Care) Act 1994 (ACT)* (the Mental Health Act).

Carers ACT is a stakeholder on the Mental Health Act Review Advisory Committee (RAC) established to update the Mental Health Act and has participated in meetings, forums and one to one discussions with government officials for a lengthy period.

Carers ACT provided a submission on the First Exposure Draft Bill proposing issues for consideration in advance of the release of the Second Exposure Draft<sup>1</sup>. The submission referred to the increasing level of recognition of carer principles in other jurisdictions in order to provide guidance to the RAC and the ACT Government on key issues of concern. It also provided evidence of the importance and benefits for all parties of carer and family involvement in the treatment, care and support of their mentally ill family member.

A further submission was provided and discussed by the Carer and Consumer Working group<sup>2</sup> of the RAC in December 2012. This submission could not be considered by a full meeting of the RAC at that time as meetings had been closed off in order to enable drafting of the Second Exposure Bill to commence. However we were advised that the views expressed in the submission would be considered by the Department. It appears that the submission was considered by the government and has influenced the drafting of the Second Exposure Draft by inserting additional subclauses in the Objects clause of the Act to recognise the experience and knowledge of families and carers and to promote inclusive practices through engaging them in responding to an individual's mental disorder or mental illness.

As members of the Carers and Consumers Working Group of the RAC carer representatives provided details of their personal experiences and suggested areas for consideration in the updated Mental Health Act. These issues included the need to address the recognition and involvement of carers in the treatment and support of their ill family member to ensure mental health consumers are provided with the best care, treatment and support for recovery and to maintain wellness. In addition a focus group was held in April 2013 with carers to discuss the Second Exposure Draft of the Mental Health Act. The outcomes of this focus group have helped in the development of this submission.

The momentum to include support for carers within the legal framework of the ACT Mental Health has been growing for some time and has been influenced by the reform of mental health laws in other national and international jurisdictions<sup>3</sup> through local advocacy by Carers ACT and carer

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<sup>1</sup> Carers ACT Submission on the Review of the *Mental Health (Treatment and Care) Act 1994*, September 2012

<sup>2</sup> Carers ACT Second Submission on the Review of the *Mental Health (Treatment and Care) Act 1994*, December 2012

<sup>3</sup> Recent reviews of mental health laws in Victoria, Western Australia and NSW have focused on human rights reform and community involvement. These reviews have also considered issues of carer rights and recognition under mental health laws and informed the development of this submission.

representatives on the RAC and through meeting with key ACT mental health officials and representatives.

Carers ACT seeks amendments to the Second Exposure Draft Bill to provide greater recognition in the law of the role of carers and family members, consistent with their key role in supporting better outcomes for consumers and consistent with legislative trends in New South Wales, Western Australia and other Commonwealth jurisdictions.

There are two key elements to this submission. The first element of our submission is the provision of evidence from a variety of research sources and also from the evidence of our carers that the involvement of carers and family members in supporting mental health consumers facilitates better treatment and recovery outcomes in the community. Consequently we urge that further consideration be given to amending the Second Exposure Draft Bill to facilitate better outcomes for both mental health consumers and carers through acknowledging the role of carers in consumer care.

The second element is that the human rights of consumers are enhanced through the involvement of carers and family members in the care, management and treatment of those they care for. Central to this involvement is the provision of timely and comprehensive information to carers from medical professionals and others about the condition and treatment of the carer's ill family member. The rights of carers are also enhanced in this way. Carers ACT seeks suitable amendments to the Mental Health Act to facilitate holistic and effective care of consumers through ensuring carers and family members are informed and involved in the treatment planning and support provided by medical professionals.

## The Framework for Legislative Change in the ACT and the recognition of carers

Existing legislation in other Australian jurisdictions and ACT policy such as the *ACT Carers' Charter* provides a framework for the further recognition of the rights of carers and family members to be included in the ACT Mental Health Act. *The Carer Recognition Act 2010 (Cth)*<sup>4</sup> (hereafter, the 'Recognition Act') provides (at Principle 7 of Schedule 1) that: "Carers should be considered as partners with other health providers in the provision of care, acknowledging the unique knowledge and experience of carers."

The principles set out in the Recognition Act should be included in the Mental Health Act to ensure consistency with the federal sphere. A partnership framework which involves carers and family members in the treatment, care and support of their family member is needed. The approach adopted by Second Exposure Draft provides only for the promotion of inclusive practices involving carers and unless a carer becomes a 'nominated person' there is little opportunity for any partnership arrangement to develop.

We also note a concern that was raised at a meeting of the RAC in 2012 about the need for a clear definition of a "carer" to be adopted. We submit that Section 5 of the Recognition Act provides a clear definition appropriate for incorporation in the ACT Mental Health Act.

### Carer Recognition Act 2010 (Cth) Section 5

For the purposes of this Act, a carer is an individual who provides personal care, support and assistance to another individual who needs it because that individual:

- (a) has a disability; or
- (b) has a medical condition (including a terminal or chronic illness); or
- (c) has a mental illness; or
- (d) is frail and aged.

Recent Commonwealth law reforms have provided mechanisms to enable consumers to be supported by their carers or others in the management of health matters. Similar mechanisms can be incorporated in the Mental Health Act to enable carers to have the necessary information to support the care and treatment of their ill family member.

In particular we refer to the provisions of the *Personally Controlled Electronic Health Records Act 2012 (Cth)*<sup>5</sup> which provides for an "authorised representative" who, with consumer consent, may be

<sup>4</sup> Australian Government (2010) *Carer Recognition Act*. Available at: <http://www.comlaw.gov.au/Details/C2010A00123>

<sup>5</sup> Australian Government (2012) *Personally Controlled Electronic Health Records Act 2012*. Available at: <http://www.comlaw.gov.au/Details/C2012A00063>

granted access to and/or management of a consumer's personally controlled electronic health record. This right can importantly extend to the ability to enter information on the record and to change the access controls on the record including granting new healthcare provider organisations access to the electronic record. An authorised representative may be a family member and carer, who, through access to the record may support the consumer and assist in recovery and better health outcomes. 'Advance Care Directives' as they are termed under the Act may also be stored on a Personally Controlled Electronic Health Record to enable a carer or family member to know the wishes of the record holder for treatment and care. We propose that a similar consent based approach should be adopted and encouraged in the Mental Health Act in relation to non-electronic health records<sup>6</sup>.

Amending the ACT Mental Health Act to include greater recognition, consultation with and involvement of carers would also be consistent with broader trends in other Australian jurisdictions. In December 2012, Carers ACT provided the RAC with information about planned legislative changes to mental health law in Western Australia. The review of mental health practices in that State by Professor Bryant Stokes<sup>7</sup> and the subsequent release of a *Green paper Mental Health Bill 2012*<sup>8</sup> provides for greater recognition of the important role of carers and families as partners in the care, treatment and support of mental health consumers. The Bill is likely to be passed in the 2013 Spring Session of the Western Australian parliament. We support the proposals in the Western Australia Bill to include carers and family members in a partnership arrangement with health professionals to support their ill family member and would like to see a similar model adopted in the ACT Act.

## **The Importance of carer involvement and collaboration with health professionals**

There is considerable experience and research evidence concerning the positive benefits and health outcomes achieved as a result of the active involvement of carers and family members in managing the care, treatment and support of mental health consumers. There is also evidence that the level of collaboration between carers and health professionals impacts on carers levels of wellbeing, knowledge and care giving skills<sup>9</sup>. Many carers have expressed their frustration about their inability to discuss issues of concern to them with mental health professionals and the concerns they have as a result. The concerns of a mental health carer supported by Carers ACT are set out in the box below.

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<sup>6</sup> Personally Controlled Electronic Health Records Act 2012, Press Release, Minister for Health, *Advance care Plans to be included on E-health records*, 9 May 2013. Available at:

<http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr13-tp-tp037.htm>

<sup>7</sup> Government of Western Australia Mental Health Commission (2012) and Professor Bryant Stokes, *Review of the Admission or Referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia* (2012). Available at: <http://www.health.wa.gov.au/publications/mental-health-review-2012.cfm>

<sup>8</sup> Government of Western Australia (2012) *Green paper Mental Health Bill 2012*. Available at: [http://www.mentalhealth.wa.gov.au/Libraries/pdf\\_docs/Green\\_paper-Mental\\_Health\\_Bill\\_2012\\_325-1.sflb.ashx](http://www.mentalhealth.wa.gov.au/Libraries/pdf_docs/Green_paper-Mental_Health_Bill_2012_325-1.sflb.ashx)

<sup>9</sup> Peternelj-Taylor and Hartley 1993 Living with Mental Illness: Professional/family collaboration. *Journal of Psycho-social Nursing* 31(93) 23-28

Extraordinary things happen when a carer says 'no – that's just not possible'. The mental health service has to rethink. You see, services take carers for granted. I urge government to remember that carers have aspirations and rights too. Carers can make choices. They have the right to be safe in their own home. Therefore, Government has a responsibility to provide safe accommodation as a priority where the family member may be at risk. Carers have the right to expect that services have a plan that includes input from the carer. Importantly the plan must inform the carer if the client is at risk of self-harm. Carers are not the 'medication police' they have the right to expect health services teams to administer medications daily (or as necessary) to our most vulnerable mental health clients.

A view provide by a carer member of Carers ACT

### Recognising the Diversity of Carers in the Community

Any review of mental health law and policy must take account of the way that different ethnic groups and communities have special needs and/or different relationships. For instance an Indigenous community member who has mental illness may relate differently to their carer and family than someone from another ethnic or social background and have the right to have this difference recognition recognised. The same right applies to those from any culturally or linguistically diverse background and their carers.

The ACT Charter of Rights for people who experience mental health issues recognises the right to receive information in an appropriate form and language that the consumer understands and to have individual needs respected irrespective of culture or language. Therefore, the framework of the Mental Health Act and policy should address more inclusive carer and family provisions as has been the case in other jurisdictions.

For instance, *Involving Families: Guidance Notes*<sup>10</sup> from the Ministry of Health New Zealand set out principles and processes about Maori and Pacific peoples family structures and social relationships to the care, assessment and treatment of their mentally ill community members and to assist family members to establish and maintain effective working relationships with mental health services.

Carers ACT has specific evidence of situations where the early provision of information and involvement of carers would have helped their family member to deal with their mental illness or mental dysfunction and, by definition, have enhanced their human right to receive the best possible treatment and care. Our recommendations and supporting arguments below are based partly on this experience.

Carers ACT program staff work with carers to manage distressing situations that have arisen as a result of a lack of information provided to them. For example, currently, there is no requirement in

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<sup>10</sup> *Involving Families Guidance Notes*, Ministry of Health on behalf of the Royal Australian and New Zealand College of Psychiatrists, November 2000

law for carers to be informed when their family member is to be discharged from hospital or what plans hospital and medical staff have made for that person's treatment and future activities. This can cause particularly acute problems when complex logistical matters for the care and treatment of the consumer need to be managed in a context where carers are not sufficiently informed.

One recent example involved a carer not being told of the discharge of their young family member from a residential mental health program or being provided with any support or information to assist a return to schooling for that young person. The result of this lack of information was both confusion for the young person and stress for the carer as no arrangements had been made in advance to assist the difficult transition back to regular home and school life. This again demonstrates the importance of timely information to the family and carer whenever a person is discharged from a mental health facility.

Carers also regularly experience managing the medication needs of their ill family member in the absence of sufficient information being provided to them by medical professionals. Carers sometimes need to purchase and for the medication required but lack sufficient information about it or its effects. Carers have told us of the importance of information sharing about the treatment and condition of their ill family member and have stressed the need for adequate legal powers and guidelines to deal with complex situations such as where a family member may have been assessed as having mental capacity, but does not wish to seek treatment.

In some situations the lack of information sharing between carers and treatment providers exacerbates risks to physical safety for both carers and consumers. We suggest that if a carer considers that the condition of their family member is such that the family member is still at risk to themselves or others, this advice must be considered by the treatment team, the ACT Civil and Administrative Tribunal (ACAT) or other medical professionals and discussed with the carer. The revised Objects in the Second Exposure draft and 'nominated person' clause does facilitate such information exchange to a limited extent only and need to be strengthened.

The broader health and wellbeing of carers should also be considered. Carers regularly report feelings of depression and hopelessness to us as they do not feel involved in the treatment and support of their ill family member and they see no hope of this situation changing.

Similar evidence has been provided in our previous submissions to the RAC and through the information and views provided by Carers ACT carer representatives on the RAC and its Carer and Consumer Working Group.

#### Suicide prevention and carer and family support

Carers ACT is aware that some carers and families strongly believe that improved communication from clinicians about the treatment and discharge plans for their family member with mental illness may have helped prevent suicide incidents. Carers and families have also indicated that they had confidently relied on clinicians to manage the treatment of their family member, including treatment post discharge and in community settings, rather than actively seek information that would alert them to prevention factors to reduce the risk of or prevent suicide. Some now perceive this lack of information from, or involvement by, clinicians as a member of the care team as a major failure in the mental health care sector.

The government has also acknowledged through the national Care Aware campaign the importance of health and community care professionals working with Australia's 2.6 million carers to develop and deliver treatment plans. On 27 May 2013, the Parliamentary Secretary for Disabilities and Carers, Amanda Rishworth, launched the Health Professionals Initiative, which encourages health professionals to work closely with carers in the treatment of their patients. She acknowledged that “carers make an extraordinary contribution to the care and support of millions of Australians who need it, and involving them in the treatment of those they care for will lead to better outcomes for both patients and carers”. Her Press release is at <http://amandarishworth.fahcsia.gov.au/node/47>

Research evidence and suicide prevention frameworks also clearly support the protective factor of carers and families for mentally ill individuals at risk of self-harm or suicide. This is supported by research evidence. For instance Hunt *et al* said “Many young patients live with their families prior to suicide and improved communication between services and families may help to detect warning signs<sup>11</sup>.

One of the aims of the Government’s *Living is For Everyone (Life) Framework* was to raise awareness of the role people can play in reducing loss of life to suicide. The framework stated that suicidal behaviours can be reduced by a number of social factors including providing a sense of caring. It also identified “Safety Nets for people moving between treatment options, and back into the community”, and these included these components:

- effective client hand-over practices between services and back into the community
- effective cooperation and communication between health professionals, community
- support services, schools, families, workplaces and community group<sup>12</sup>.

Suicide Prevention Australia recommended in its *Mental Illness and Suicide Position Statement* that “Greater education and information regarding care of mentally ill individuals at risk of suicide for caregivers, prior to the discharge of psychiatric clients/patients from hospital” was required<sup>13</sup>.

Carers ACT believes that the *Mental Health Act* amendments need to reflect the experiences of caring families as well as evidence and national frameworks and ensure that carers receive appropriate care and treatment information necessary for suicide interventions.

## **The Second Exposure Draft of the Mental health (Treatment and Care) Amendment Bill 2013**

The First Exposure Draft Bill included some provisions that were supported by Carers ACT and our carer representatives. These were the incorporation of the concept of Advance Agreements in the legislation for the first time and the inclusion of *a Nominated Person*, who may be carer, friend or

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<sup>11</sup> Hunt et al 2006, *Suicide within 12 months of mental health service contact in different age and diagnostic groups*, British Journal of Psychiatry 188 135-4

<sup>12</sup> Australian Government Department of Health and Ageing (2008) *Mental Illness, life events and suicide (Factsheet) Living is For everyone (LIFE) Framework*, Canberra. Available at: <http://www.livingisforeveryone.com.au/LIFE-Framework.html>

<sup>13</sup> Suicide Prevention Australia (2009) *Position Statement Mental Illness and Suicide*, June 2009. Available at: <http://suicidepreventionaust.org/wp-content/uploads/2012/01/SPA-Mental-Illness-Position-Statement.pdf>

family member. These provisions assist the involvement of carers in the care, treatment and support of their family member.

The Second Exposure Draft incorporates further provisions that support the requirements of carers and families for greater involvement in the care, support and treatment of their family member or other person they are caring for.

We welcome the incorporation of Principles and Objects to encourage a collaborative working relationship between carers and clinicians including input to treatment planning by carers and sharing of information about treatment plans with carers subject to privacy considerations. The promotion of inclusive practices in treatment and care through engaging carers and families is also welcomed. We also welcome the incorporation in the Act of the formal recognition of carer representation on the Minister's Mental Health Advisory Council.

However, some key recommendations made in our previous submissions have not been agreed. We continue to advocate for changes to the Act to provide for information sharing arrangements with carers and family members. Although we acknowledge the importance of service policy and protocols, we do not agree with the suggestion made by the RAC and the Department that carer involvement issues should be managed at the service policy level. For this reason, further arguments for the incorporation these provisions in the amended Act are set out below.

#### Human Rights Issues for Carers and Consumers under the revised Mental Health Act

We consider that the revision of the Mental Health Act provides the best opportunity in many years to enhance the human rights of both mental health consumers and carers and this opportunity has only partially been grasped by the proposed amendments as set out in the latest Exposure draft.

The amended Mental Health Act will enhance the human rights for consumers by the incorporation of principles of decision-making capacity in the Act and the inclusion of decision-making capacity as a criterion when the ACAT is considering applications for mental health orders. This is a welcome change. It enhances the human rights and welfare of consumers considerably. Such rights can be further enhanced through the introduction of rights for the involvement of carers and families in the care and treatment of the consumer. This is because the consumer has the right to the best possible care and treatment and in many situations this can only be available if their carers and family members have information and involvement in their care.

As well as enhancing the rights of mental health consumers through decision-making capacity provisions we consider the human rights of carers and family members will be enhanced through the introduction of provisions for information sharing, notification and involvement of carers in the care, treatment and support of their family member or person cared for. Our recommendations below are based on this approach.

A recent report by the Australian Human Rights Commission *Investing In care: Recognising and valuing those who care*<sup>14</sup> provides key data and recommendations for recognising and valuing unpaid caring work. It examines the nature of unpaid care and its impact on workforce participation and

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<sup>14</sup> Australian Human Rights Commission (2013) *Investing In care: Recognising and Valuing those who care, Volume 1 Research report*, Australian Human Rights Commission, Sydney

retirement income and savings. The report provides evidence of the high economic significance of unpaid carer work for the economy, and builds on a body of earlier research that has also demonstrated the economic value of the work of carers<sup>15</sup>. Implicit in the report's findings is the understanding that a carer's human rights are not being reasonably considered if the high economic and social contributions they make to society remain 'hidden' and is not recognised or supported by government and legislation. The Report found that the cost of unpaid care for people with disabilities is estimated to be 1.32 billion hours each year, valued at \$40.9 billion per annum in 2010, if unpaid care were to be replaced by paid care providers and provided in the home<sup>16</sup>.

A National Policy Position Statement released by Carers Australia<sup>17</sup> has emphasised the high economic and social impact carried by carers of those with a mental illness. The Position Statement provides survey and other evidence<sup>18</sup> that caring for a mentally ill family member is often burdensome and involves providing the person with personal care and organisational support to pay bills, attend appointments and help with many other matters including shouldering the financial burdens imposed by the caring relationship. The involvement of carers may involve many aspects of their family member's activities and reflect 'the interconnectedness of the lives and needs of carers and the people they support'.

The current review of the Mental Health Act provides an opportunity to recognise the close relationship between carers and their mentally ill family member by including rights for carers to be provided with information and involvement in the treatment and care of their family member in recognition of the responsibility they carry.

#### Privacy issues and Consumer and Carer Rights

Often concerns about privacy have hampered effective communications between carers and health professionals. This matter has been addressed by the National Mental Health Consumer and Carer Forum (NMHCCF). In their Privacy and Confidentiality Issues Paper<sup>19</sup> the NMHCCF provided insights from the perspectives of consumers, carers and clinicians with regard to privacy and confidentiality issues. While acknowledging the complexity of the issue and the difficulty of legislating about the confidentiality and information needs of each person, the Issues paper provides a strong argument that privacy concerns surrounding consultation with carers can be addressed through ethics training and practical guidance for health professionals and for the support of cooperative arrangements to ensure the knowledge and experience of carers are utilised to assist the treatment of their family member or other person they care for.

While carers' access to consumer health information raises important issues in respect of consumers' right to privacy, it is not inherently incompatible with privacy rights or the human rights of consumers. A potential conflict or incompatibility between enhancing carer rights and respect for

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<sup>15</sup> For instance the report by Access Economics, *The Economic value of Informal Care*, Report for Carers Australia, 2010

<sup>16</sup> Australian Human Rights Commission (2013), page 5

<sup>17</sup> Carers Australia and Network of Carers Associations National Policy Position Statement, Mental Health Reform, February 2012

<sup>18</sup> Including the Mental Health Councils report *Adversity to Advocacy: The Lives and Hopes of Mental Health Carers*, Canberra 2009

<sup>19</sup> Privacy and Confidentiality Issues Paper 2009

the privacy of consumers is sometimes regarded as an obstacle to agreement to the further modification of the Act to include carers rights to information. It has been asserted by many medical professionals and others that the provision of relevant information about a consumer's treatment or care to a carer or family member may be in breach of that consumer's human rights. However, whether there is such a breach of human rights will depend on the extent of the information or access to information that has been provided to the carer, the context in which it was provided including whether the information sharing is reasonably necessary to promote and protect the wellbeing of carers and consumers.

Carers ACT considers that there is no incompatibility between carer and consumer rights where:

- the relevant provision requires consumers consent (with capacity and preferably written) to be obtained prior to the release of the information (in this situation the consumer's right to privacy is promoted and maintained through obtaining consent); and/or,
- the relevant provision is reasonably necessary to ensure the safety and wellbeing of the consumer and/or the carer and the degree of intrusion on the consumer's right to privacy is limited only to the extent necessary to achieve this goal (in this situation the consumer's right to privacy is subject to a reasonable limit contemplated by section 28 of the ACT Human Rights Act).

Our proposed amendments are set out in the Schedule to this submission and have been drafted accordingly to avoid any incompatibility with the privacy or other rights of consumers. They promote demonstrably justified goals such as human safety, consumer health and wellbeing, carer health and wellbeing and the effectiveness of the overall care model; and only encroach on consumers' privacy rights to the extent that is reasonable and proportional to achieve these ends in the relevant circumstances. For these reasons Carers ACT sees no legal or policy incompatibility between our proposed amendments and human rights law or policy.

#### Access to health records

We submit that the Mental Health Act should make it lawful for information to be released to carers about the health record and treatment of the person they are caring for. Access to another person's health records does raise privacy issues as recognised by section 12 of the *Human Rights Act 2004 (ACT)*.

However, Carers ACT's proposed amendments to the Mental Health Act to provide carers with information on the health record of a consumer represent a reasonable and justified limitation on a consumer's right to privacy because the proposed changes serve to promote the improved safety, health and wellbeing of consumers and carers. This is particularly the case because our suggested amendments are consistent with the promotion of consent-based information sharing through mechanisms such as Advance Agreements and the nomination of a consumer's carer as their 'nominated person'.

#### Supporting evidence from carers

There is considerable anecdotal evidence from our carers, clients and carer representatives that their inability to access vital information from clinical treatment teams, doctors and health

practitioners about the person they are caring for has been detrimental to that person's care. Some instances are set out above in this submission.

In addition, such evidence has been provided previously in submissions by Carers ACT to the RAC and to other government inquiries and is well recognised in the scholarly literature and references provided in our previous submissions. For instance amongst other sources we have referred to the requirements of the National Standards for Mental Health Services 2010 and the ACT Mental Health Services Plan 2009-14 which recognises the importance of carers in the recovery framework.

## Schedule 1

### Carers ACT Proposed Amendments and related Comments on the Second Exposure Draft Bill

Supporting evidence for these proposed amendments have been set out in our submission above and some additional comments are also provided below.

#### Recommendation 1

Amend draft Objects section 5(i) as highlighted

promote inclusive practices in treatment, care and support to engage families and carers in responding to an individual's mental; disorder or mental illness ***and to facilitate the involvement of families and carers in decisions about appropriate care, treatment and support in partnership with medical professionals.***

Additional comment: The current draft of section 18 **Nominated Person** which provides the example of family member and carers as possible nominated persons is strongly supported.

#### Recommendation 2

Amend Advance Agreements section

The Second Exposure Draft subsection 21 (d) draft refers to the situation where under an Advance Agreement a consumer may consent to the views of family members being obtained in relation to treatment, care or support of their mental disorder or mental illness. We support this proposal but we consider that it neglects the fact that carers and family members cannot provide timely and effective views or information to a treating team unless they have been engaged inclusively already in treatment and care issues by the treating team and others. Such inclusive practices are not yet common, although the amended Objects of the Act propose their support.

To remedy this problem we recommend a new Section 21 (e) be inserted which will formalise the principle that a consumer may include in an Advance Agreement a statement about the sharing of information and the extent of such information sharing with family members or carers. We consider that the new subsection will bring to the attention of the relevant authorities that information sharing is an important element that may be included in an Advance Agreement.

Additional comment: The 'catch all' subsection 21c does not satisfy the above requirement because we consider the issue of information sharing is crucial and needs to be set out distinctively as per the proposed new subsection below.

New subsection 21(e)

**(e) whether and to what extent the person consents to information sharing with family members or carers in relation to treatment, care or support of the person's mental dysfunction or mental illness.**

### Recommendation 3 Forensic Mental Health Orders: Improvements to the ACAT consultation process

The making of a forensic Mental Health Order is a complex matter and the capacity of ACAT to make a better decision in the best interests of the consumer and their carer or family member is improved if they have consulted the most relevant people.

In some cases a carer or family member will have responsibility for providing aspects of the treatment care and support proposed to be ordered. For this reason we recommend an amendment to subsection 93 (e) to ensure that the consultation process may involve more than one person and can therefore, when appropriate, involve carers and a family member or members. Any proposed treatment is likely to be more effective following inclusive consultation with carers and family members. For this reason we consider the additional requirement is necessary and will not impose an additional unjustifiable burden.

Amend subsection 93(e) as follows:

the **persons** most likely to be responsible for providing the treatment, the care and support proposed to be ordered.