

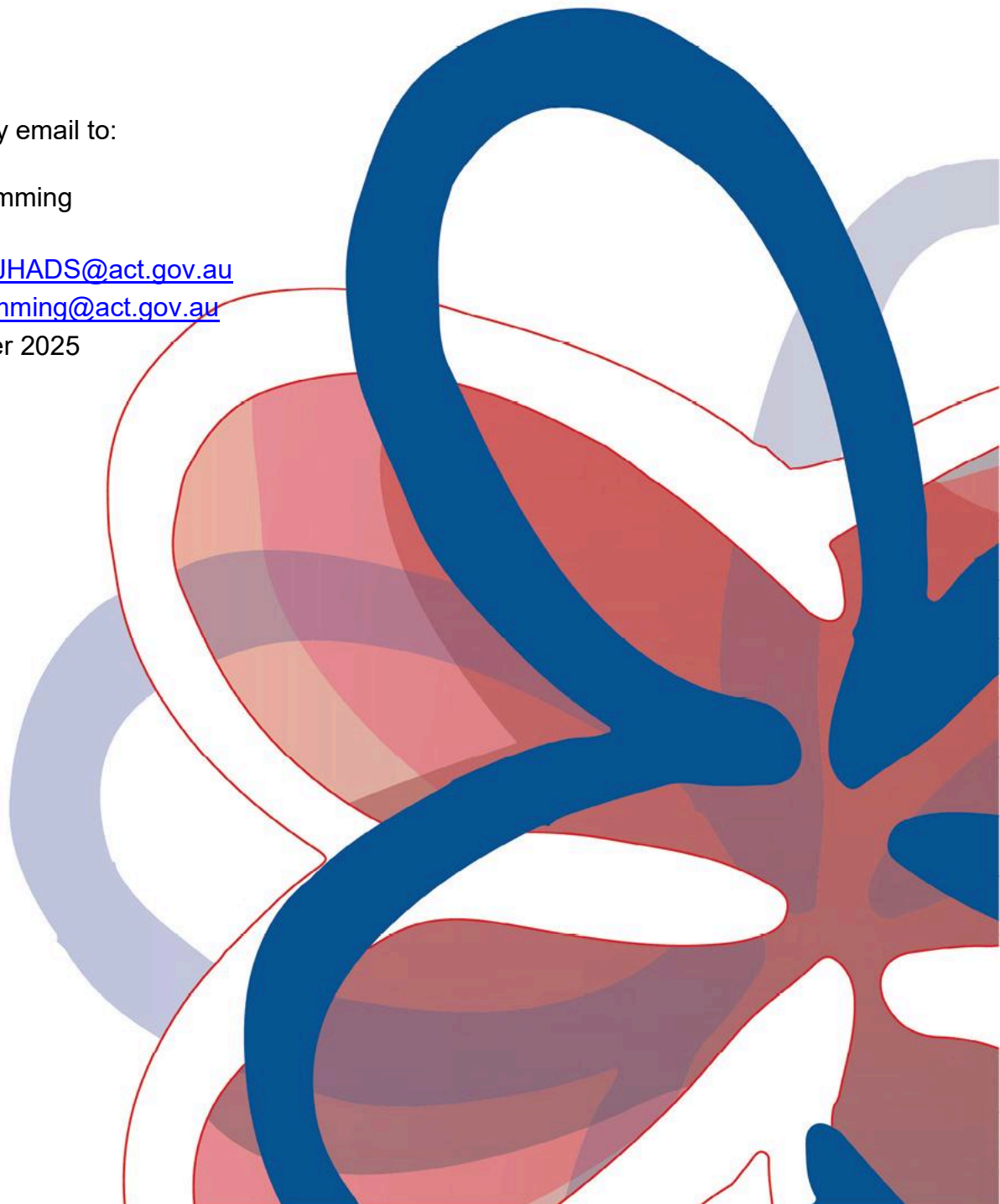


ACT Mental Health Consumer Network Inc.
The Griffin Centre, Level 2, Room 11
20 Genge Street, Canberra City, 2601
G.P.O Box 836, Canberra, ACT, 2601
Phone: 02 6230 5796
Email: research@actmhc.org.au
Website: www.actmhc.org.au

Submission: Review of Canberra Health Services Advance Agreement, Advance Consent Direction and Nominated Person under the Mental Health Act 2015

Submitted by email to:

Michelle Hemming
MHJHADS
CHSGMMHJHADS@act.gov.au
michelle.hemming@act.gov.au
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This submission has been prepared by the ACT Mental Health Consumer Network (the Network) in response to the invitation from the Canberra Health Services (CHS).

Acknowledgment of Country

We wish to acknowledge the Ngunnawal people as traditional custodians of the land upon which we sit and recognise any other people or families with connection to the lands of the ACT and region. We wish to acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people may be reading this submission, and we recognise the ongoing contributions of all Indigenous peoples to ACT society and Australia more broadly.

Recognition of lived experience

We wish to recognise people with mental health illness whose resilience and work contributes to creating a better mental health system for the Australian Capital Territory (ACT) and a more compassionate society for all.

The ACT Mental Health Consumer Network

The Network is a consumer-led peak organisation representing the interests of mental health consumers in the ACT in policy and decision-making forums. The Network is committed to social justice and the inclusion of people with experience of mental illness. Run by consumers for consumers, our aim is to advocate for services and supports for mental health consumers which better enable them to live fuller, healthier and more valued lives in the community.

A meeting of the Policy Reference Group was held and additional feedback was sought via email in relation to Canberra Health Services Advance Agreement, Advance Consent Direction and Nominated Person under the Mental Health Act 2015 (the Procedure). Both verbal and written feedback received from consumers is incorporated in this submission.

In addition, organisational feedback has been provided on pages 6-10 of this submission.

General comments

The Network welcomes the opportunity to contribute to the review of the Procedure. Overall, consumers felt that this updated version represents a significant improvement on the initial version, particularly in relation to the scope of information included and the improved organisation of the Procedure's structure.

Given the Procedure's close relevance to consumer rights and decision-making, the Network has received extensive feedback from consumers. This feedback has been informed by consumer experience, as well as organisational input from the Network's Community Education team, who educate consumers and the community about the My Rights, My Decision Form Kit.

Consumers identified several areas where the Procedure would benefit from greater clarity, stronger system-level accountability, and more detailed operational guidance. In addition to the issues discussed below, consumers have provided specific, section-level recommendations where wording could be improved or where further guidance or information should be included. These detailed suggestions are contained in a tracked-changes version of the Procedure (attached), which will be submitted alongside this written feedback.

Consumers outlined concerns in relation to the following areas:

- Responsibility and accountability;
- Monitoring, evaluation and data collection;
- Legal obligations not clearly reflected in practice;
- Consent and access to information; and
- Gaps and errors in policy content.

Each of these matters is discussed below, followed by a list of recommendations provided by consumers.

Responsibility and accountability

Consumers expressed concern that it is unclear who within MHJHADS governance holds final responsibility for the implementation, monitoring and compliance of Advance Agreements, Advance Consent Directions and Nominated Persons (AA, ACD and NP respectively) instruments and related processes (for example, a Division Head or Quality, Safety and Assurance function). The Procedure does not clearly identify a role or position within the health system with responsibility for overseeing these processes. Consumers suggested that accountability for AA, ACD

and NP should be embedded within managerial duties and competencies, rather than relying on individual staff awareness or discretion.

In the absence of a clearly identified institutional or positional owner, consumers noted that accountability remains diffuse, oversight is weakened, and the overall effectiveness of the Procedure is reduced.

In addition, Section 8 (p. 12) states that the Chief Psychiatrist may end a Nominated Person nomination; however, the Procedure does not clearly articulate the conditions under which this power may be exercised. Given the breadth of this authority, consumers recommended that this section be reviewed and aligned more explicitly with the Act. The Procedure is also unclear about how the reasons for ending a nomination should be recorded and where such records should be stored. Consumers recommended that these matters be clarified and incorporated into formal monitoring and evaluation processes.

Monitoring, evaluation and data collection

Consumers noted that the Evaluation section (p. 12) does not include mechanisms for monitoring staff awareness of, or compliance with, AA, ACD and NP requirements. The Procedure does not outline how uptake of these documents will be tracked, nor how staff will be held accountable for checking and applying them in practice.

There is also no provision for data collection on key indicators, such as how many consumers have an AA, ACD or NP in place, or whether staff routinely check the Digital Health Record (DHR) for these instruments. Consumers recommended that monitoring cover both the support provided to consumers to complete AA/ACD/NP documentation and staff adherence to existing documents during care delivery.

Legal obligations not reflected in practice

Given the lack of clarity identified in the areas above, consumers noted that the Procedure does not clearly state that the use of AA, ACD and NP documentation is a legal requirement under the Act. Without clear framing, the Procedure risks presenting these practices as examples of good practice rather than mandatory legal obligations, which may weaken compliance and undermine consumer rights. Consumers recommended that this requirement be explicitly articulated as part of the guidance.

Consent and access to information

Consumers expressed concern that Subsection 3.1 Making an Advance Consent Direction (p. 4) does not clearly state whether consumers are provided with comprehensive information about proposed treatments, including both potential benefits and risks, prior to providing consent. Consumers emphasised that consent must be free, informed and not subject to coercion. It is also important to recognise that compliance is not equivalent to consent.

Similar concerns apply to Subsections 3.1.1 Electroconvulsive Therapy (ECT) (p. 4) and 3.1.2 Psychiatric surgery (p. 5). Consumers highlighted that procedures such as ECT should not be undertaken without first determining if a consumer has recorded consent or refusal in an AA or ACD. The existence of an AA or ACD should be established as early as possible, particularly given consumers may have documented adverse reactions to certain treatments or medications.

Gaps and errors in policy content

Consumers identified several technical and editorial issues that affect the clarity and usability of the Procedure. These include numbering errors in the subsections of Section 8 Nominated Person (p. 10).

In addition, embedded links within the Procedure (p. 2, p. 3) should be tested to ensure functionality, as broken links undermine accessibility, usability and compliance.

Recommendations:

Recommendation 1:

Clearly identify a role or position within MHJHADS governance with overall responsibility for the implementation, monitoring and compliance of Advance Agreement, Advance Consent Direction and Nominated Person (AA, ACD and NP) processes.

Recommendation 2:

Embed responsibility for AA, ACD and NP compliance within managerial and supervisory roles, rather than relying solely on individual clinician awareness or discretion.

Recommendation 3:

Review Section 8 (p.12) to clearly articulate the conditions under which the Chief

Psychiatrist may end a Nominated Person nomination, ensuring alignment with the Act.

Recommendation 4:

Clarify how decisions to end a NP nomination are to be documented, including where records are stored and how they can be accessed or reviewed (p. 12).

Recommendation 5:

Strengthen the Evaluation section (p. 12) to include mechanisms for monitoring staff awareness of, and compliance with, AA, ACD and NP requirements.

Recommendation 6:

Introduce routine data collection to track uptake of AA, ACD and NP documentation, including whether staff routinely check a person's DHR.

Recommendation 7:

Explicitly state within the Procedure that the use of AA, ACD and NP documentation is a legal requirement under the Act, rather than optional or discretionary.

Recommendation 8:

Clarify within the Procedure that consent (p. 4, p. 5) for treatment must be informed, voluntary and free from coercion, and that consumers must be provided with balanced information about the benefits and risks of proposed treatments.

Recommendation 9:

Require staff to determine, as early as possible in care delivery, whether a consumer has an existing AA or ACD, particularly prior to procedures such as ECT or psychiatric surgery.

Recommendation 10:

Correct numbering errors in Section 8 (p. 10) NP and conduct an editorial review to improve clarity, consistency and usability of the Procedure.

Recommendation 11:

Test all embedded links (p. 2, p. 3) within the Procedure to ensure functionality and accessibility, as broken links undermine compliance and usability.

Organisational feedback

This section provides organisational feedback on the overall structure, sequencing and usability of the Procedure. Consumers and the Network's Community Education team identified that, while the Procedure broadly reflects legislative requirements, its current structure and presentation may limit clarity and practical use for staff. The feedback below focuses on improving navigability, alignment with legislation, and operational usability.

Overall Structure and Alignment with Legislation

The current ordering of content places Nominated Person (NP) provisions after Advance Agreements (AA) and Advance Consent Directions (ACD). This does not align with the structure of the legislation and may reduce clarity for staff attempting to understand the relationship between these instruments.

A structure more closely aligned with the legislation would improve coherence and accessibility. A suggested legislative-aligned order is:

- Section 1: Purpose and Scope
- Section 2: Awareness of NP, AA and ACD
- Section 3: Nominated Person
- Section 4: Advance Agreement
- Section 5: Advance Consent Direction
- Section 6: Copy of AA or ACD
- Section 7: Treatment with AA or ACD
- Section 8: Limitations
- Section 9: Update or End AA or ACD
- Section 10: Evaluation and Related Policies

Fragmentation of Related Content

The current Procedure separates closely related topics—such as treatment use, limitations, and updating or ending documents—into later sections, requiring staff to navigate multiple parts of the Procedure to understand a single process.

While this approach mirrors the structure of the Act (with general provisions followed by operational rules), it may be less intuitive in practice. An alternative approach would be to group all content relating to AA in one section, and all content relating to ACD in another.

Each comprehensive section could include:

- purpose and definition;
- eligibility and timing;
- process for making the document;
- storage and access;
- use in treatment;
- emergency situations;
- limitations; and
- updating or ending the document.

This approach would reduce navigation burden and support consistent application by staff.

Recommended High-Level Procedural Structure

To improve clarity and usability, consumers suggested a simplified high-level structure such as:

- Overview of AA, ACD, and NP
- Nominated Person
- Advance Agreement (comprehensive section)
- Advance Consent Direction (comprehensive section)
- General provisions (e.g. jurisdictional recognition, evaluation, related policies)

Section-Level Content and Clarity

Both AA and ACD sections would benefit from:

- consistent use of subheadings; and
- clearer articulation of purpose, eligibility, content and process.

AA content should clearly address:

- treatment preferences and practical arrangements;
- links to ACD and NP details, signature and witness requirements;
- system storage and access;
- use in treatment and emergency situations;
- processes for updating or ending the document; and
- jurisdictional limits or interactions with guardians or attorneys.

Similar comprehensive subheadings should be applied consistently to the ACD section.

System Use and Document Management

The Procedure does not clearly explain whether it is intended to be comprehensive, as it lacks explicit guidance on:

- how AA, ACD and NP documents are uploaded to systems;
- where they are stored; and
- how staff are expected to locate them in practice.

The section addressing copies of AA and ACD does not reference NP documentation, nor does the Procedure clarify how to manage the complete form kit compared to individual documents uploaded from CHS systems.

Digital Health Record Uploading Practices

Feedback from consumers and stakeholders indicated agreement that:

- “Mental Health Advance Decision Making” is a clear and appropriate name for the My Rights My Decision Form Kit once uploaded to the Digital Health Record (DHR);
- The kit should be stored under the Advance Care Planning section; and
- The kit should be uploaded as a single document, as the forms are intended to be read together.

Uploading documents separately risks critical information being overlooked by clinicians, potentially compromising quality of care.

Key Implications

While the Procedure broadly reflects legislative requirements, its current structure and limited system-level guidance may reduce usability for staff. Reorganising content for clarity and explicitly addressing system processes would strengthen compliance, reduce errors, and support consistent, rights-based practice.

Conclusion

Consumers welcomed the opportunity to provide feedback on this important Procedure. While the updated version represents a clear improvement, the issues and recommendations outlined above are intended to further strengthen the Procedure by improving clarity, accountability and practical implementation. In particular, consumers emphasised the importance of clearly articulating legal obligations, strengthening monitoring and evaluation mechanisms, and ensuring that consent and decision-making processes are consistently supported in practice.

The Network looks forward to continued collaboration with CHS to support the development of clear, effective and consumer-centred policies that uphold consumer rights and promote lawful, high-quality mental health care.

Att: *Tracked-changes version of the Procedure*, containing specific feedback in situ.