

A Guide for People in the role of the Nominated Person

Introduction

The *Mental Health Act 2014* (Act) aims to help consumers make or participate in decisions about their treatment. One of the ways that a consumer can be supported to participate in decision making about treatment when they are under compulsory care is for the consumer to appoint a 'Nominated Person.' This brochure is to help you if you have been asked to be a Nominated Person (under the *Mental Health Act 2014*).

What does a Nominated Person do?

The nominated person is someone the consumer chooses to support them and represent their views and interests if they become a compulsory patient¹. This person must be contacted by a patient's psychiatrist or mental health practitioner at important points of care (for example, when a compulsory order is made) to share the consumer's views and help them to participate in decision making. A nominated person must also be told about treatment decisions and provided with copies of treatment orders. A nominated person is there to support the consumer in participating in decisions about treatment. They cannot make decisions on behalf of a patient.

How is the role established?

It is helpful if the person wanting to nominate you as their nominated person considers and discusses with you the extent of the support they want and your ability to take on the role, including your availability. For example, are you willing to be contacted at any time or only in business hours? The consumer must be willing for the nominated person to be consulted about their treatment and given certain health information. Ideally they would discuss this with you and clarify their expectations about how you should respond to contacts from the treating team and the way they want their personal information handled. If the person who wants to nominate you has a mental health practitioner, they might help by calling a meeting with the consumer, you and any other significant people in their life so they can discuss the role of the nominated person and its implications.

Can I be a Nominated Person if I am under 18?

Yes. There is no age restriction on who can be a nominated person. If for example you are a young person who already has caring responsibilities for your parent, the psychiatrist or mental health practitioner will need to talk to you if they feel that any treatment decisions will affect you and the care relationship you have with your parent. You might like to talk about the advantages and disadvantages of being a nominated person with an adult you trust and consider the kinds of support you might need to carry out this role.

Making it official (putting it in writing)

A statement to appoint a nominated person under the Act must be in writing and must include:

1. Name and contact details of the nominated person.
2. A statement signed by the nominated person agreeing to be the nominated person.
3. A statement signed by the consumer identifying the nominated person as the person they want to take on this role.
4. The consumer's statement must be signed by an authorised witness (a mental health practitioner working in a mental health service or any one of the people who can sign a statutory declaration such as a GP, lawyer, a pharmacist, justice of the peace). This witness must write that they believe the consumer understands what the nominated person role means and that they saw the consumer sign their statement.

¹ See Definitions p. 5

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Revoking a nomination and choosing a new Nominated Person

A consumer can change their mind at any time about whether or not they want a nominated person. They can also change their mind about who they want to be their nominated person. If a new nominated person is chosen, the same steps for 'Making it official' must be followed and this cancels (revokes) any previous nomination. If a consumer simply wants to revoke a nomination without choosing a new nominated person, they must make a written statement that includes a statement signed by the consumer identifying who they no longer want to be their nominated person. This must be signed by an authorised witness. This witness must write that they believe the consumer understands what the revocation means and that they saw the consumer sign their statement.

The consumer must try their best to let their nominated person know that they have revoked their nomination. If they are a compulsory patient, the authorised psychiatrist must be told.

What if I want to withdraw from the role?

If a nominated person decides to withdraw from the role for any reason, he/she must take reasonable steps to inform the consumer. If the consumer is a compulsory patient at this time, they should inform the psychiatrist or mental health practitioner that they are no longer the nominated person.

Who should know?

Anyone who helps in the care and treatment of the person you support will need to know if you or anyone else has been appointed as a nominated person. This may include family, friends, a mental health practitioner, doctor and solicitor. A list of the names and contact details of the people who know about the nominated person should be kept by the consumer and the nominated person. If changes are made these will need to be known by everyone who is involved in the consumer's care.

When does the Nominated Person role apply?

The requirements for the authorised psychiatrist to consult with and inform the nominated person and carers apply or become 'active' only when a consumer becomes a compulsory patient² under the Act. However, good practice would suggest that clinicians, with the agreement of the consumer, seek to maintain regular contact with the significant people in the consumer's life including the nominated person throughout the consumer's treatment and care.

When and how should I expect to be contacted as the Nominated Person?

The Act sets out how the authorised psychiatrist must hear and think about your views, tell you about treatment decisions and provide you with a copy of certain documents at critical points in the patient's treatment.

You must be asked for your views when the authorised psychiatrist is making a Temporary Treatment Order (TTO) and determining whether the TTO is a Community TTO or an Inpatient TTO; determining whether there is no less restrictive way for the patient to be treated, or whether a medical treatment would benefit a patient; seeking a second psychiatric opinion; granting leave of absence and when considering making an application to the Mental Health Tribunal for the use of Electroconvulsive Treatment (ECT).

² See Definitions p. 5

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You must be informed of treatment decisions when an Assessment Order (AO) or a TTO is made, varied or revoked; there is a restriction of the patient's right to communicate; when a leave of absence is revoked; on commencement of the use of a restrictive intervention (the nature of the restrictive intervention and the reason for using it.)

You must be provided with the following documents that relate to the previous treatment decisions: a copy of an Assessment or Temporary Treatment Order (or varied Order) and the relevant Statement of Rights and a copy of a second psychiatric opinion report.

More information about the nominated person role and the role of carers and consumers in relation to the Nominated Person can be found at [A guide for consumers, carers and families about the role of Nominated Persons and carers \(under the Mental Health Act 2014\)](#)

Where to get more information

Mental Health Complaints Commissioner (MHCC)

Department of Health

www.health.vic.gov.au/mentalhealth/mhactreform

Tandem – representing Victorian mental health carers

www.tandemcarers.org.au

Victorian Mental Illness Awareness Council

www.vmiac.org.au

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Sample written statement for appointing a Nominated Person under the Mental Health Act 2014

Name of person making this nomination: _____

Address of person making this nomination : _____

I nominate: *(name of Nominated Person)* _____

Of: *(address of Nominated Person)* _____

to be my Nominated Person under the *Mental Health Act 2014*.

Signed : *(name of person making nomination)* _____

Date: _____

Acceptance of nomination

I : *(name of Nominated Person)* _____

Of: *(address of Nominated Person)* _____

understand the role of the Nominated Person under the *Mental Health Act 2014* and accept this nomination to undertake this role.

Signed: *(name of Nominated Person)* _____

Date: _____

Witness certificate

I certify that I am of the opinion that at the time of making this nomination, *(name of person making nomination)* _____

understands the effect of nominating a person to be their Nominated Person under the Mental Health Act

2014. I hereby witness his/her signature. _____

Name of witness: _____

Address of witness: _____

Date: _____

Authorisation of witness: *(Occupation/category that enables the witness to act as an authorised witness)*

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Definitions

The Act: The *Mental Health Act 2014* (effective from 1 July 2014)

Advance Statement: A document that sets out a person's preferences for treatment in the event that they become unwell and require compulsory mental health treatment.

Authorised witness: A registered medical practitioner; a mental health practitioner; a person who may witness the signing of a statutory declaration under section 107A of the Evidence (Miscellaneous Provisions) Act 1958. Some of these will include a lawyer, a minister of religion authorised to celebrate marriages, a school principal, a member of the police force.

Carer: A person, including a person under the age of 18 years, who provides care to another person with whom he or she is in a care relationship.

Compulsory patient: A person who is subject to an Assessment Order; Court Assessment Order; Temporary Treatment Order; or Treatment Order under the Act.

Consumer: A person who:

- a) has received mental health services from a mental health service provider; or
- b) is receiving mental health services from a mental health service provider; or
- c) was assessed by an authorised psychiatrist and was not provided with treatment; or
- d) sought or is seeking mental health services from a mental health service provider and was or is not provided with mental health services.

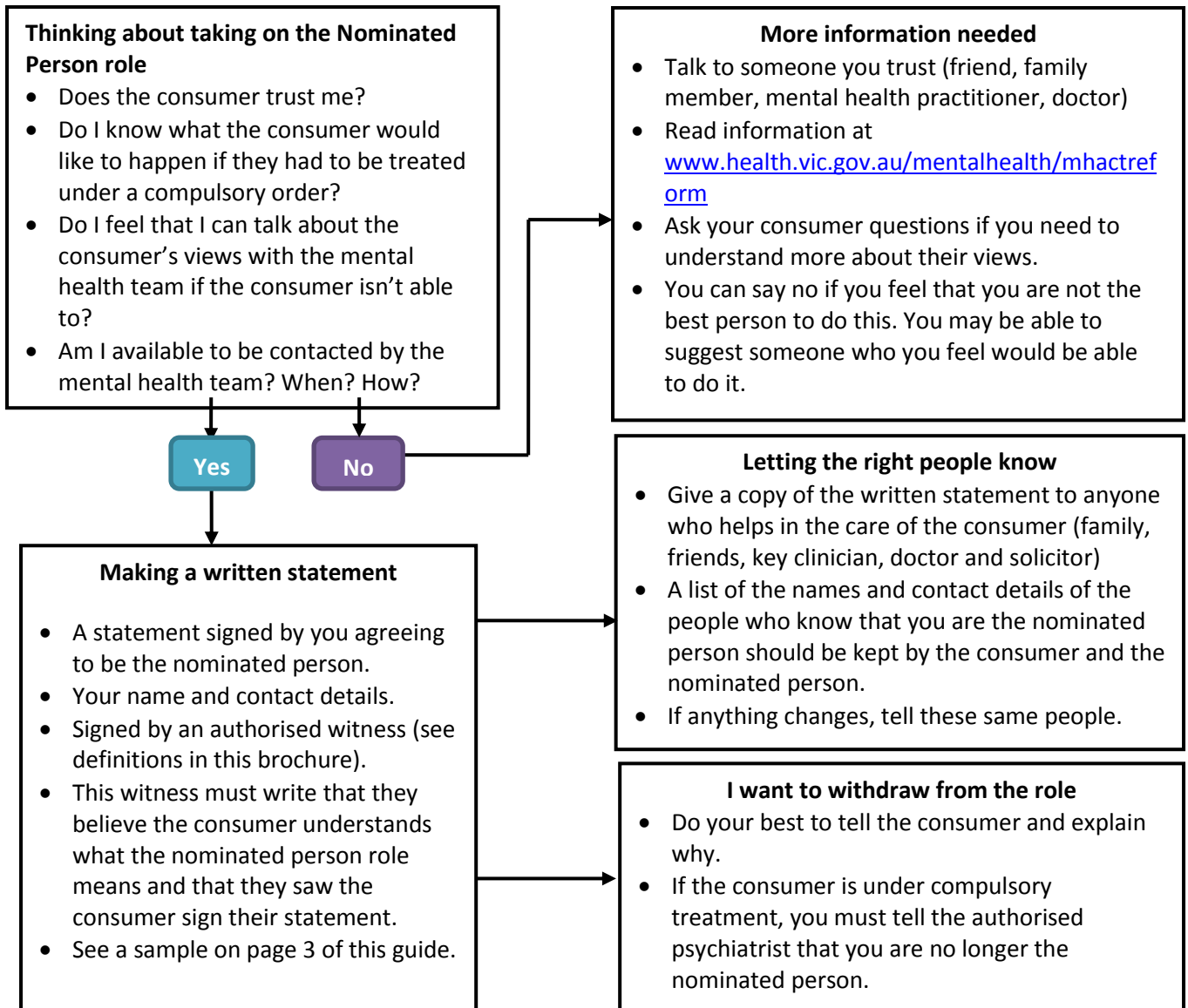
Mental health practitioner: A person who is employed or engaged by a designated mental health service and is a registered psychologist, registered nurse, social worker or registered occupational therapist.

Nominated Person: A person who is chosen by a consumer to help represent their interests and be a support in the event that the consumer becomes a patient (compulsory, security or forensic) under the *Mental Health Act 2014*.

Within the terms of the Act, the role of a nominated person is to:

- a) provide the patient with support and to help represent the interests of the patient
- b) receive information about the patient in accordance with this Act
- c) be one of the persons who must be consulted in accordance with this Act about the patient's treatment
- d) assist the patient to exercise any right that the patient has under this Act

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The Nominated Person role becomes active if the consumer becomes a compulsory patient.

When and how will I be contacted?

The authorized psychiatrist must:

- hear and think about your views
- tell you about treatment decisions and
- provide you with a copy of certain documents at critical points in the patient's treatment

For a full description of what must happen at these points in care, see page 2 of this guide.

Reviewing your role

You might like to talk with the consumer and someone else who helps in the care of the consumer at a regular time (perhaps once a year) to review your role.

- Are you still able and willing to be the Nominated Person?
- Does the consumer want to change their treatment preferences?
- Are all contact details up to date? If you need to update your details, make sure everyone that has a copy of your nominated person statement is provided with these.