

A Guide for Consumers, Carers and Families about the role of Nominated Persons & Carers

Introduction

The *Mental Health Act 2014* (Act) aims to help consumers make or participate in decisions about their treatment. It also recognises the role that can be played by family, carers, friends or other significant people in a consumer's life. If a consumer becomes unwell and needs to be treated as a compulsory patient¹, the Act provides them with different ways to say what treatment they would like and make or participate in decisions about their treatment. This includes making an Advance Statement², getting a second psychiatric opinion or seeking support from their carer. This brochure gives information about how a carer and a new role (a 'Nominated Person') can help a consumer to make or participate in decisions if they are a compulsory patient. It also gives carers information about when and how they will be contacted about the treatment of the person they care for.

What is a Nominated Person?

The nominated person is someone the consumer chooses who will support them and represent their views and interests if they become a compulsory patient. This person will be contacted by their 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 will also be told about treatment decisions and provided with copies of treatment orders. The psychiatrist or mental health practitioner must do this if the consumer is a compulsory patient. 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 will carers be involved?

The psychiatrist or mental health practitioner must involve the consumer's carer at important points in care and provide them with copies of treatment orders (in the same way they would with the nominated person) if they think that any treatment decisions will affect the carer and their caring relationship. The kinds of things that they might think about in making a decision about this include whether the consumer lives with the carer, the type of care provided and how long the carer has provided support. If the psychiatrist or mental health practitioner doesn't feel that the carer or the care relationship is affected by their treatment decisions, then they do not have to inform the carer. However, they might still talk to the consumer about whether they are happy for them to talk to their carer, or they might give the carer information that they need to be able to provide care.

Why would a consumer choose a Nominated Person?

A consumer doesn't have to have a nominated person. It is up to them. The consumer may feel they would like to have a person who can support them and help them represent their views and interests to the psychiatrist or mental health practitioner if they become a compulsory patient. The consumer may be confident that their carer will be contacted by the treating team and will represent their interests to them and so will not see a need for a nominated person. The consumer might want to discuss these options with their mental health practitioner, a support worker or a trusted family member or friend.

¹ See Definitions p. 4

² See Definitions p. 4

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Choosing a Nominated Person

If a consumer decides that they would like to have a nominated person they will need to choose someone who understands what that means and can agree to take on the role if the consumer becomes a compulsory patient. They will need to know what treatment the consumer would like if they become a compulsory patient. The consumer might like to talk to their family, friends, doctor or case manager about who could do this role, but it is their decision.

The consumer should feel comfortable with the nominated person receiving health information about them. They may choose a friend, relative, neighbour – the main thing is that they need to know what treatment the consumer would like and be able to share the consumer's views with the psychiatrist or mental health practitioner. A consumer can make a decision to have a nominated person at any time as long as they understand what a nominated person is and what it means to appoint someone as their nominated person. This is a decision probably best made when the consumer is relatively well. Some of the information that a consumer might want their nominated person to know about could include preferred medications, times and ways of receiving medication, sleep and rest patterns, or reactions to treatments such as ECT. A consumer might also choose to write down their treatment and support preferences in an Advance Statement.

Can a Nominated Person also be the consumer's carer?

Yes. The consumer can choose whoever they feel will be able to talk to their psychiatrist or mental health practitioner and who can support the consumer in sharing their views about treatment. Remember that if the psychiatrist or mental health practitioner believes that a treatment decision they make will affect the carer or care relationship, they will need to give the carer information and listen to their views in the same way they would with the nominated person.

Does a Nominated Person have to be over 18?

There is no age restriction on who can be a nominated person. If the consumer is a parent and the person proposed as a nominated person is a young person who is their son and daughter, the consumer could talk with someone they trust about what the role might mean for the young person. This may be helpful in considering how the young person might carry out the role and what support they might need. Of course as with any one who might be a nominated person, it would be important for the parent to talk to their young person about their views regarding taking on the role. If a young person is already identified as a parent's carer, the psychiatrist or mental health practitioner will need to talk to them if they feel that any treatment decisions will affect the carer and the care relationship.

Making it official (Putting it in writing)

If a consumer wants someone to be their nominated person, they must put this in writing. This must include:

1. The name and contact details of the nominated person.
2. A statement signed by the proposed 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

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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.

What happens if the consumer changes their mind about having a nominated person? (Revoking a nomination)

A consumer can change their mind at any time about whether or not they want a nominated person. The consumer can also change their mind about who they want to be their nominated person.

If the consumer wants to do either of these two things, they must make another statement in writing. This is called a 'Revocation'. A revocation must include:

1. A statement signed by the consumer identifying who they no longer want to be their nominated person.
2. This statement must be signed by an authorised witness (as above). This witness must write that they believe the consumer understands what the revocation means and that they saw the consumer sign the statement.

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

Choosing a new Nominated Person

After a consumer has revoked a nomination, if they want to choose a new nominated person, they must follow the same steps as above for 'Making it Official'. This needs to happen each time a consumer chooses a new person.

What if the Nominated Person wants to withdraw from the role?

If the nominated person decides they don't want to do the role for any reason, they must take reasonable steps to let the consumer know. If the consumer is a compulsory patient at the time that the nominated person decides they don't want to be in the role anymore, then they should tell the authorised psychiatrist or mental health practitioner that they are no longer the nominated person.

Who should the consumer tell that they have a Nominated Person?

Anyone who helps in the consumer's care and treatment will need to know if they choose or change their nominated person. They should tell people who are important to the consumer. This might include the consumer's family, carer, friends, case manager, doctor or lawyer.

It is a good idea for the consumer to keep a list of the names and contact details of the people they have told about their nominated person. That way, if the consumer makes any changes they can make sure that everyone who is involved in their care knows about these changes. This will also help to make it easier for the nominated person to be contacted if the consumer becomes a compulsory patient so that they can provide support to the consumer as soon as possible.

Where to get help

Mental Health Complaints Commissioner (MHCC)

Department of Health

www.health.vic.gov.au/mentalhealth

Victorian Mental Illness Awareness Council

www.vmiac.org.au

Tandem – representing Victorian mental health carers

www.tandemcarers.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 what a nomination of a nominated person under the *Mental Health Act 2014* is, and the consequences of making a nomination

I hereby witness his/her signature. _____

Name of witness: _____

Address of witness: _____

Date: _____

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

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.

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.

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 person to help represent their interests and be a support in the event that the person becomes a patient (Compulsory, security or forensic) under the *Mental Health Act 2014*. 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