

A GUIDE FOR PEOPLE IN THE ROLE OF THE NOMINATED PERSON UNDER THE MENTAL HEALTH ACT 2014



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 significant people in the consumer's life.

If a consumer becomes unwell and needs to be treated on a compulsory order¹ then the act provides them with different ways to say what treatment they would like and participate in decisions about their treatment. These include making an Advance Statement², getting a second psychiatric opinion or seeking support from their nominated person or a carer.

This brochure provides information to people who may be asked to assume the role of a nominated person. It describes how someone becomes a nominated person, what the role involves and what they can expect from mental health services.

WHAT DOES A NOMINATED PERSON DO?

The nominated person is someone the consumer chooses to support them if they are put on a compulsory order, (A person on a compulsory order is termed a patient under the Act). The nominated person must be consulted about treatment decisions, given information and provided with copies of compulsory orders. The nominated person's role is to help present the consumer's views and support the consumer to make or participate in decisions about treatment. They cannot make decisions on behalf of the consumer. The nominated person can also help the consumer to understand and exercise their rights under the Act.

HOW IS THE ROLE ESTABLISHED?

It is helpful if the consumer 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 you to be consulted about their treatment and given health information.

Ideally they should discuss 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 has a mental health practitioner, he/she might help by calling a meeting with the consumer, you and any other significant people in their life so that you can discuss the role together.

CAN I BE A NOMINATED PERSON IF I AM UNDER 18?

Yes. There is no age restriction, for example a parent with mental illness may wish to appoint their teenage son

or daughter who already has caring role for the parent. The main thing is that you are willing, available and able to fulfil the functions and responsibilities of the nominated person. You might like to talk about the advantages and disadvantages of being a nominated person with members of the treating team and other people you trust and to think about 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:

- a statement signed by the consumer identifying you as the person they want to be the nominated person
- your name and contact details
- a statement signed by you agreeing to be the nominated person
- a statement signed by an authorised witness (a medical practitioner, a mental health practitioner, or a person who can sign a statutory declaration, such as a general practitioner, lawyer, pharmacist or justice of the peace). The witness must write that they believe the consumer understands what a nomination is, the consequences of making a nomination, that they saw the consumer sign the statement and that they are an authorised witness.

1,2. Refer to definitions on page 5

REVOKING A NOMINATION AND CHOOSING A NEW NOMINATED PERSON

If a consumer wants to appoint a new nominated person, they should follow the steps under 'Making it official'. The new nomination will cancel (revoke) any previous nomination. A consumer can only have one nominated person.

If a consumer wants to revoke a nomination without choosing a new nominated person, they must write, sign and date a statement that identifies the nominated person and revokes their nomination. It must be signed by an authorised witness who must write that they believe the consumer understands what a revocation is, the consequences of making a revocation, they saw the consumer sign the revocation and they are an authorised witness.

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

WHAT IF I WANT TO WITHDRAW FROM THE ROLE?

If you decide to withdraw from the role for any reason, you must take reasonable steps to tell the consumer. If the consumer is a patient at this time, you should also inform the consumer's psychiatrist or mental health practitioner that you are no longer the nominated person. It's best if you do these things in writing or by email.

WHO SHOULD KNOW?

Anyone who helps in the care and treatment of the consumer will need to know that you have been appointed as the nominated person. This may include family, friends, a mental health practitioner, doctor or solicitor. It is recommended that you and the consumer keep a list of the names and contact details of these people. If anything changes, such as your contact details, these people should be told.

WHEN DOES THE NOMINATED PERSON ROLE APPLY?

The requirements to consult with you and give you information only become 'active' if the consumer becomes a patient under the Act. However, good practice would suggest that psychiatrists or mental health practitioners, with the agreement of the consumer, seek to maintain regular contact with the significant people in the consumer's life including the nominated person even when the person is not on a compulsory order.

WHEN AND HOW SHOULD I EXPECT TO BE CONTACTED AS THE NOMINATED PERSON?

You must be consulted or informed at important points in the patient's treatment. These include when an Assessment Order or a Temporary Treatment Order is made, varied or revoked; the authorised psychiatrist makes treatment or medical treatment decisions for the person; there is a restriction on the person's right to communicate; leave of absence is granted, varied or revoked; the person is transferred to a different service; or a restrictive intervention is used on the consumer, including the nature of the restrictive intervention and the reason for using it. You will also be given copies of compulsory orders when they are made and the relevant Statement of Rights.

WHERE TO GET MORE INFORMATION

Department of Health
www.health.vic.gov.au/mentalhealth/mhact2014

Mental Health Complaints Commissioner
www.mhcc.vic.gov.au

Tandem-representing Vic mental health carers
www.tandemcarers.org.au

Victorian Mental Illness Awareness Council
www.vmiac.org.au

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 AGREE TO BE THE NOMINATED PERSON.**

SIGNED: (NAME OF NOMINATED PERSON)

DATE:



WITNESS STATEMENT

I AM AN AUTHORISED WITNESS AND I AM NOT THE PERSON BEING NOMINATED. I AM OF THE OPINION THAT AT THE TIME OF MAKING THIS NOMINATION, (NAME OF PERSON MAKING NOMINATION)

UNDERSTANDS WHAT A NOMINATION IS AND THE CONSEQUENCES OF MAKING THE NOMINATION. I OBSERVED THE PERSON SIGN THIS NOMINATION.

SIGNATURE OF WITNESS:

NAME OF WITNESS:

ADDRESS OF WITNESS:

DATE:

DESIGNATION OF WITNESS:

(SPECIFY 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 are put on a compulsory order and given compulsory mental health treatment.

AUTHORISED WITNESS:

A registered medical practitioner; a mental health practitioner; or 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, or 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 ORDERS:

This phrase is used in this guide as a collective term for orders made under the Act or related legislation that enable a person to be compulsorily assessed or treated for mental illness. They include 'Assessment Orders', 'Temporary Treatment Orders', 'Treatment Orders', 'Secure Treatment Orders', 'Court Secure Treatment Orders' and 'Custodial Supervision Orders'.

CONSUMER:

A person who:

1. has received mental health services from a mental health service provider; or
2. is receiving mental health services from a mental health service provider; or
3. was assessed by an authorised psychiatrist and was not provided with treatment; or
4. 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 under the Act. Within the terms of the Act, the role of a nominated person is to:

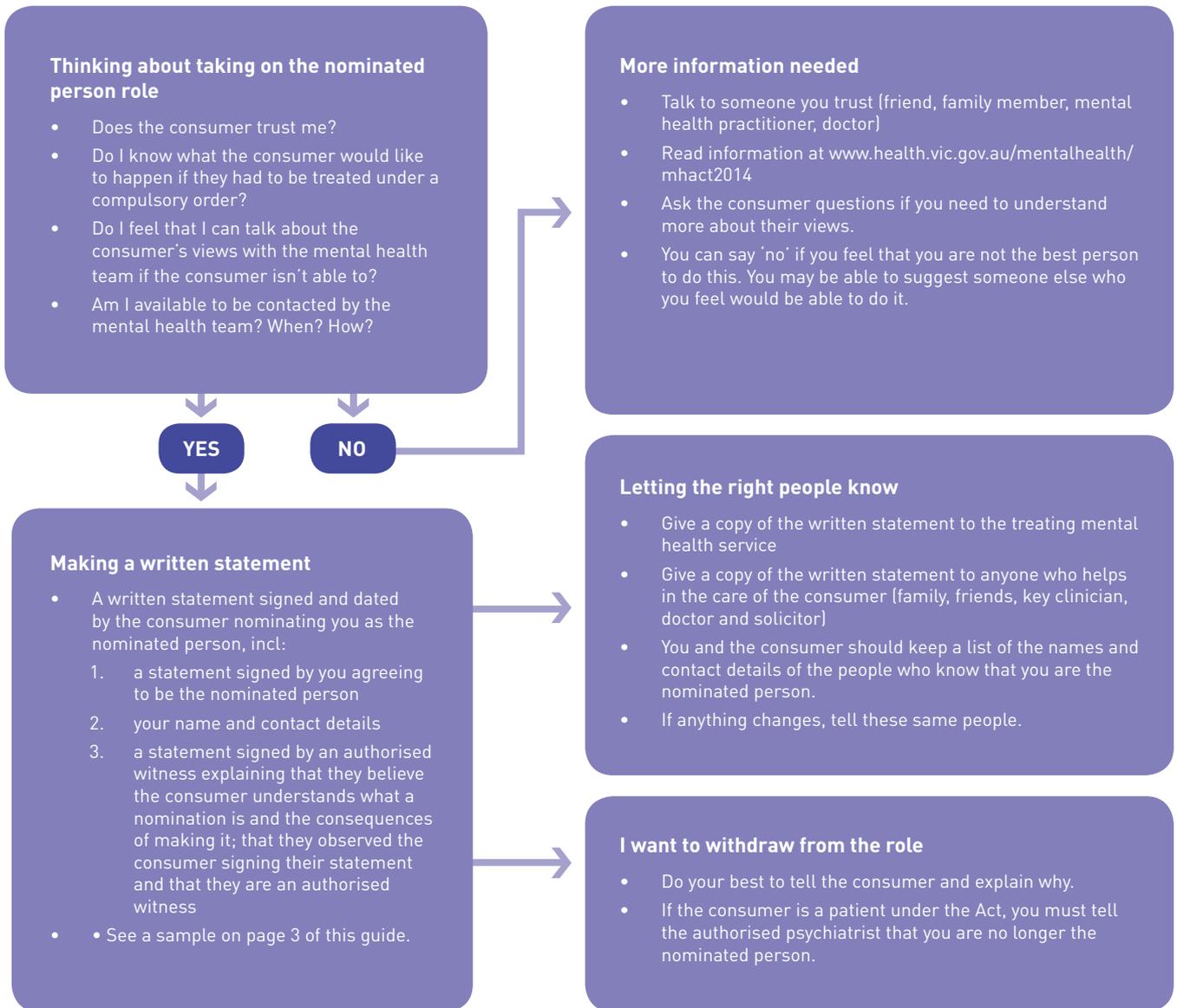
1. provide the patient with support and to help represent the interests of the patient
2. receive information about the patient in accordance with this Act

3. be one of the persons who must be consulted in accordance with this Act about the patient's treatment
4. assist the patient to exercise any right that the patient has under this Act

PATIENT:

A compulsory patient, security patient or forensic patient.

A FLOW CHART FOR THE NOMINATED PERSON ROLE



The nominated person role becomes active if the consumer becomes a patient.

What the authorised psychiatrist must do

The authorised psychiatrist must:

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

For a 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 the nominated person statement is provided with these.