

# A GUIDE FOR CONSUMERS, CARERS AND FAMILIES ABOUT THE ROLE OF NOMINATED PERSONS AND CARERS 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 order<sup>1</sup> 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 Statement<sup>2</sup>, getting a second psychiatric opinion or seeking support from their nominated person or a carer.

This brochure gives information about how a nominated person or a carer can help a consumer to make or participate in decisions if they are on a compulsory order.

## WHAT IS A NOMINATED PERSON?

A nominated person is someone the consumer chooses who will support them if they are on a compulsory order. (A person on a compulsory order is termed a patient under the Act). This person will be contacted by the consumer's psychiatrist or mental health practitioner at important points during treatment, for example when a compulsory order is made. The nominated person will 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 will also help the consumer to understand and exercise their rights under the Act.

## 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 patient. The consumer can choose to appoint their carer as the nominated person. The consumer might want to discuss the options with their mental health practitioner, a support worker or a trusted family member or friend.

## CHOOSING A NOMINATED PERSON

If a consumer decides that they would like to have a nominated person they should choose someone who understands what that means and can agree to take on the role. They should discuss their expectations about how they want the

nominated person to respond to contacts from the treating team and the way they want their personal information handled. The nominated person should know what treatment the consumer would prefer if they become a patient including preferred medications, times and ways of receiving medication, sleep and rest patterns, and views about treatments such as electroconvulsive treatment (ECT). The consumer must feel comfortable with the nominated person receiving their health information. A consumer may also choose to write down their treatment preferences in an Advance Statement.

The consumer may choose a carer, friend, relative or neighbour – the main thing is that the nominated person will be available, willing and able to help the consumer present their views and preferences to members of the treating team and exercise their rights under the Act if the person becomes a patient. The consumer may like to talk to their family, friends, doctor or case manager about who could do this role, but it is their decision.

A consumer can appoint a nominated person at any time as long as they understand what a nomination is and what it means to appoint someone as their nominated person.

## 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. Even if a carer is not appointed as the nominated person, if the psychiatrist or mental health practitioner believes that a decision they make will affect the carer or care relationship, they must give the carer

1,2. Refer to definitions on page 6

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, for example a parent with mental illness may wish to appoint their teenage son or daughter as a nominated person. The consumer should talk with the young person about what the role might mean for the young person. They could also get the views of other family members or other people they trust. This will be helpful in considering how the young person might carry out the role and what support they might need.

If a young person is already identified as a parent's carer, the psychiatrist or mental health practitioner must talk to them if they feel that any decisions will affect the carer and the care relationship, even if the young person is not appointed as the nominated person.

### 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:

- a statement signed by the consumer identifying the nominated person as the person they want to take on this role
- the name and contact details of the nominated person
- a statement signed by the nominated person 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.

### WHAT HAPPENS IF THE CONSUMER CHANGES THEIR MIND ABOUT HAVING A 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 cancel (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, that 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 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 on a compulsory order at the time 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. This may 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 patient so that they can provide support to the consumer as soon as possible.

### HOW WILL CARERS BE INVOLVED?

The psychiatrist or mental health practitioner may disclose information to carers if the consumer consents. They will talk to the consumer about whether they are willing for them to talk to their carer and the extent of those discussions.

If a consumer becomes a compulsory patient, the treating psychiatrist or mental health practitioner must contact the consumer's carer at important points during treatment. The carer must be consulted about treatment decisions, given information and provided with copies of compulsory orders (in the same way as the nominated person) if the psychiatrist or mental health practitioner think that the decisions being made will affect the carer and the care relationship. In making this decision, the kind of things that they might think about may 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 isn't satisfied that the carer or the care relationship will be affected by their treatment decisions, then they do not have to inform the carer.

A carer may also be given other information if the carer needs the information to provide care or to determine the nature and scope of care to be provided to the patient and to make the necessary arrangements in preparation for their caring role.

In making a decision to provide information in these circumstances, the psychiatrist or mental health practitioner must have regard to the patient's views and preferences about the disclosure, including any preferences expressed in an advance statement.

### WHERE TO GET MORE INFORMATION

Department of Health  
[www.health.vic.gov.au/mentalhealth/mhact2014](http://www.health.vic.gov.au/mentalhealth/mhact2014)

Mental Health Complaints Commissioner  
[www.mhcc.vic.gov.au](http://www.mhcc.vic.gov.au)

Tandem-representing Vic mental health carers  
[www.tandemcarers.org.au](http://www.tandemcarers.org.au)

Victorian Mental Illness Awareness Council  
[www.vmiac.org.au](http://www.vmiac.org.au)

# SAMPLE WRITTEN STATEMENT FOR APPOINTING A NOMINATED PERSON UNDER THE MENTAL HEALTH ACT 2014

**NAME OF PERSON MAKING THIS NOMINATION:**

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**ADDRESS OF PERSON MAKING THIS NOMINATION:**

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**I NOMINATE:** (NAME OF NOMINATED PERSON)

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**OF:** (ADDRESS OF NOMINATED PERSON)

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**TO BE MY NOMINATED PERSON UNDER THE MENTAL HEALTH ACT 2014.**

**SIGNED:** (NAME OF PERSON MAKING NOMINATION)

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**DATE:**

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**ACCEPTANCE OF NOMINATION**

**I:** (NAME OF NOMINATED PERSON)

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**OF:** (ADDRESS OF NOMINATED PERSON)

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**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)

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**DATE:**

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**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)

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

**SIGNATURE OF WITNESS:**

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**NAME OF WITNESS:**

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**ADDRESS OF WITNESS:**

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**DATE:**

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**DESIGNATION OF WITNESS:**

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(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'.

## 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:

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.