

4: Appointing a nominated person

Who is a nominated person?

A nominated person is someone, identified by you, that can help when you are unwell. The role of a nominated person is to help you express your interests and choices if you need treatment, care or support for your mental illness or mental disorder. A nominated person does not have the power to make decisions for you or give consent on your behalf but can support your treating team in relaying your preferences about your treatment, care or support and assist in matters described in your Advance Agreement (if you have one).

A nominated person can be a close relative, friend, carer, or anyone else you choose if they are an adult (over 18 years of age), can undertake the functions of the role and agree to the nomination, and their role is:

- to ensure that your interests are respected
- to receive information about your treatment, care, and support; and
- to be consulted about decisions on the treatment, care or support for your mental illness or disorder.

How do I appoint a nominated person?

A form for appointing a nominated person is available on request from your treating team or from the ACT Mental Health Consumer Network's *My Rights My Decisions Form Kit*.

You must have decision-making capacity when you choose someone to be your nominated person, and their appointment must be made in writing.

You can also nominate a second person as an alternate nominated person. The person you choose does not have to accept the role.

When will my nominated person be contacted?

If you are receiving treatment, care, or support at an approved mental health facility, you will be given access to facilities, such as a phone, to contact your nominated person, or they may be contacted on your behalf.

There are a range of situations where your nominated person will be consulted, including:

- by ACAT, before making a Mental Health Order
- by the Chief Psychiatrist, Care Coordinator (or their delegate) before providing treatment, care or support under a Mental Health Order
- by the Chief Psychiatrist, Care Coordinator (or their delegate) if they believe that you should no longer be subject to a Mental Health Order.

If you are detained, the Chief Psychiatrist (or their delegate) will take all reasonable steps to give information about the detention to your nominated person.

If you make an Advance Agreement or an Advance Consent Direction, your nominated person should be recorded in these documents.

Your nominated person may attend and give evidence at hearings or proceedings held by ACAT or the Supreme Court.

Ending a nomination

A nomination can be ended by:

- the person who made the nomination (you), if you have decision-making capacity, you can tell a member of your treating team

- that you no longer want the nominated person to perform the role
- the nominated person can tell a member of your treating team that they are unable to do the job; or
- the Chief Psychiatrist, if they decide on reasonable grounds that the nominated person is unable to perform the role, e.g. they are not providing advice or support that is in your best interest.

If you tell your treating team you want a nomination to end, they will:

- ensure information about the end of the nomination is entered into your clinical record, as soon as possible
- tell you when the information has been entered in your record; and
- give you a copy of the information entered in your record.

If the Chief Psychiatrist ends your nomination, they must advise you, the nominated person and a member of your treating team and record their reasons for doing so. They will also advise you on advocacy services and, if you have decision-making capacity, ask if there is another person you wish to nominate.

Regardless of who ends the nomination, it ends on the day verbal or written notice is given, or later if specified in writing.

Protection from liability

Your nominated person is not liable for anything they do (or don't do) honestly and without recklessness under the Act. This is designed to help the nominated person perform their role effectively.

Enduring Power of Attorney

An Enduring Power of Attorney (EPOA) is a legal document that gives a person the authority to act for you, and to make legally binding decisions on your behalf.

When you have the capacity to do so, you can choose someone to make decisions about your health in case you lose the capacity to make those decisions yourself.

A person appointed under an EPOA is called an 'attorney' and they can make decisions about a wide range of matters. These matters must be specified in the document that is written when the person is appointed. These can include

- decisions about your finances and property
- decisions about your mental health, treatment, care, and support.

Your attorney can only make decisions about your health matters when you don't have capacity to do so.

How does an attorney differ from a nominated person?

A nominated person supports and advocates for you by telling your treating team and the ACAT what your wishes or choices are, whereas an attorney can give consent on your behalf when you don't have decision-making capacity but only if you are willing to accept treatment, care, and support

If you do not have decision-making capacity and you are refusing mental health treatment, care, and support, then a Mental Health Order must be made by ACAT before treatment can be given.