

# SUPPORTED DECISION-MAKING: LEGAL MECHANISMS

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Formal decision-making support may be available to assist people receiving treatment for mental health challenges. Examples of formal mechanisms include advance statements, nominated persons, second opinions and advocacy.

## Advance statements

Advance statements allow people to set out their treatment preferences should they become unwell and receive compulsory treatment for mental health challenges. Advance statements can also include additional information that people would like the team treating them to know about, such as arrangements that need to be made to look after their children or a pet.

There may be formal requirements relating to the making of advance statements. For example, in Victoria, they must be in writing and witnessed by an authorised person (*Mental Health Act 2014*, section 20). The preferences expressed can be overridden if a psychiatrist is satisfied that the preferred treatment is not clinically appropriate (section 73). Research indicates that advance statements are effective in reducing the risk of compulsory admission to hospital. [1]

In Victoria, an advance statement sets out a person's treatment preferences in case they become unwell and need compulsory mental health treatment. Much of the current research has focused on advance directives (which are sometimes also called a "living will") and joint crisis plans, but there are similarities and differences in these approaches to advanced care planning. [2]

This link provides a template and advice on how to complete an advance statement: <https://www2.health.vic.gov.au/mental-health/practice-and-service-quality/mental-health-act-2014-handbook/recovery-and-supported-decision-making/advance-statements>

## Nominated persons

A person may be able to nominate another person to support him or her in making decisions about treatment and help represent his or her interests in relation to mental health treatment. For example, in Victoria, a nominated person must be consulted about treatment (*Mental Health Act 2014*, section 23(c)), but cannot make decisions on behalf of the person being treated.

Any person who is willing, available and able to fulfil the obligations can be a nominated person. This can include young people.

Read about people's experiences and views of the nominated person role in Victoria at: <http://research.healthtalkaustralia.org/supported-decision-making/how-to-increase-participation-in-decision-making>

Treating clinicians are required to make reasonable efforts to notify the nominated person when significant changes are made to a person's treatment conditions. Learn more about the nominated person role at: <https://www2.health.vic.gov.au/mental-health/practice-and-service-quality/mental-health-act-2014-handbook/recovery-and-supported-decision-making/nominated-persons>

## Second psychiatric opinions

Any person who is subject to a Temporary Treatment Order or Treatment Order in Victoria, or is a security patient or a forensic patient, can request a second psychiatric opinion. Second psychiatric opinions may enable people to participate in decisions about their treatment by promoting discussion between the authorised psychiatrist, the treating team, the person, carers and family about the person's treatment.

Information about the rights and responsibilities associated with second psychiatric opinions in Victoria can be found at: <https://www2.health.vic.gov.au/mental-health/practice-and-service-quality/mental-health-act-2014-handbook/recovery-and-supported-decision-making/second-psychiatric-opinions>

## Mental health advocates

People who receive treatment in hospital or in the community may be supported by a mental health advocate. Advocacy can be sought from the Independent Mental Health Advocacy service and other mental health community support services. Mental health advocates can support people in various ways to participate in decisions about their assessment, treatment and recovery; represent their views and preferences about their treatment and recovery; support people to develop skills and confidence in decision-making; and help them to access legal and other services if needed.

In Victoria, the Independent Mental Health Advocacy service can be contacted at 1300 947 820 between 9.30am and 4.30pm Monday to Friday or by email at [contact@imha.vic.gov.au](mailto:contact@imha.vic.gov.au).

This Fact Sheet is part of a series of resources designed to improve supported decision-making practices for people experiencing mental health challenges and to assist families and other supporters' participation in supported decision-making. These resources can be used individually, as an aid to policy development, and as a training tool.

See also:

- What Is Supported Decision-Making? Fact Sheet
- Practices To Improve Supported Decision-Making In Mental Health Services Fact Sheet
- Resources To Assist With Supported Decision-Making Fact Sheet
- Guidelines For Supported Decision-Making For Mental Health Services
- Introduction To Supported Decision-Making For People Experiencing Mental Health Challenges And Their Families And Other Supporters
- Report – Options For Supported Decision-Making To Enhance The Recovery Of People Experiencing Severe Mental Health Problems
- Online Resources – <http://research.healthtalkaustralia.org/supported-decision-making/support-in-treatment-decisions>

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## References

1. de Jong MH, Kamperman, AM, Oorschot, M, et al. (2016) Interventions to reduce compulsory psychiatric admissions: A systematic review and meta-analysis *JAMA Psychiatry* 73(7): 657-664.
2. Henderson C, Swanson JW, Szmukler G, et al. (2008) A typology of advance statements in mental health care *Psychiatric Services* 59(1): 63-71.

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