

NSW DEPARTMENT OF HEALTH

MENTAL HEALTH ACT 2007

Section 72

NOMINATION OF PRIMARY CARER

I certify that I **am/am not** a person with a guardian appointed under the Guardianship Act 1987.

If you have a guardian, that person is your primary carer for the purposes of this Act. You cannot make another nomination of a primary carer but you may, if you wish, nominate persons to be excluded from receiving information about your treatment in the mental health facility.

I certify that I **am/am not** a person under the age of 18 years.

If you are under the age of 18, your parents are your primary carers for the purposes of this Act. Unless your parents* are not living, you cannot make another nomination of a primary carer but you may, if you wish, nominate persons (other than your parents) to be excluded from receiving information about your treatment in the mental health facility.

* Parent includes any person having parental responsibility as defined in the *Children and Young Persons (Care and Protection) Act 1998*.

I would like to nominate as my primary carer
(provide full name)

He/she can be contacted at
(please provide address and/or telephone number)

You also have the right to nominate persons who are to be excluded from being provided with information and/or consulted about your treatment.

I wish to exclude
(provide full name/s)

I understand that my nominations above will be valid for a period of twelve months, unless varied or revoked by me.

Patient's signature

Patient's full name

Date of signature: 20 ..

IMPORTANT INFORMATION

- Your nominations will not be accepted if, at the time they are made, you are considered incapable of making a nomination, or if it is considered that accepting your nomination would put you or any other person at risk of serious harm.
- If there is no nomination of primary carer in effect, your primary carer will be determined by reference to section 71 of the Mental Health Act 2007 (see over page).
- A nomination may be made or varied or revoked at any time.

EXTRACTS FROM THE MENTAL HEALTH ACT 2007

Section 71 Primary carer

The "**primary carer**" of a patient is:

- (a) the guardian of the patient, or
- (b) the parent of a patient who is a child (subject to any nomination by a patient referred to in paragraph (c)), or
- (c) if the patient is over the age of 14 years and is not a person under guardianship, the person nominated by the patient as the primary carer under this Part under a nomination that is in force, or
- (d) if the patient is not a patient referred to in paragraph (a) or (b) or there is no nomination in force as referred to in paragraph (c):
 - (i) the spouse of the patient, if any, if the relationship between the patient and the spouse is close and continuing, or
 - (ii) any person who is primarily responsible for providing support or care to the patient (other than wholly or substantially on a commercial basis), or
 - (iii) a close friend or relative of the patient.

"Close friend or relative" of a patient means a friend or relative of the patient who maintains both a close personal relationship with the patient through frequent personal contact and a personal interest in the patient's welfare and who does not provide support to the patient wholly or substantially on a commercial basis.

Section 72 Nomination of primary carer

- (1) A person may nominate a person to be the person's primary carer for the purposes of this Act.
- (2) A person may nominate persons who are excluded from being given notice or information about the person under this Act and may revoke or vary any such nomination.
- (3) A person who is over the age of 14 years and under the age of 18 years may not exclude the person's parent by a nomination under subsection (2).
- (4) A nomination, variation or revocation is to be made in writing and may be given to an authorised medical officer at a mental health facility or a director of community treatment.
- (5) A nomination remains in force for the period prescribed by the regulations or until it is revoked in writing.
- (6) An authorised medical officer or a director of community treatment is, in carrying out his or her functions under this Act or the regulations, to give effect to a nomination or a variation or revocation of a nomination, if notified of the nomination, variation or revocation.
- (7) An authorised medical officer or a director of community treatment is not required to give effect to a nomination, or a variation or revocation of a nomination, if the officer or director reasonably believes:
 - (a) that to do so may put the patient or nominated person or any other person at risk of serious harm, or
 - (b) that the person who made the nomination, variation or revocation was incapable of making the nomination, variation or revocation.