

Seventh edition

Patients' rights

A self-help guide to the Victorian *Mental Health Act*



Mental Health Legal Centre Inc.



Victoria
Legal Aid

Lawyers And
Legal Services



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Introduction

If you know about the law you are better able to stand up for your rights and have greater control over your life.

This booklet is a general guide only. It is not a substitute for legal advice. Check how the law applies to your individual situation before you take action. You can seek legal advice and assistance about any aspect of your treatment, whether you are an informal (voluntary) or an involuntary treatment order patient. The Mental Health Legal Centre and Victoria Legal Aid may be able to give you free legal advice and other assistance.

See 'Where to get help'.

This booklet is about the law in Victoria. The *Mental Health Act 1986* (the Act) is the most important part of the law related to the care and treatment of people receiving mental health services. A current copy of the Act should be available for you to read at the hospital or the community mental health clinic.

Taking legal action can be complex and expensive and you should always seek legal advice. There may be questions you want answered that are not covered by this booklet. At the end of the booklet there is a list of other organisations which might help you with further information.

This guide does not focus on the rights of people who are involved with mental health services through the criminal justice system. If you are in this situation, get a copy of the booklet *Mental Illness and the Criminal Justice System in Victoria – your rights* from the Mental Health Legal Centre and contact a lawyer.

Mental Health Legal Centre Inc. (MHLC)

The Mental Health Legal Centre is an independent community legal centre that provides a free and confidential legal service to people having or labelled as having a mental illness, where the legal problem relates directly to the mental illness.

The Centre provides community legal education services including publications and other information resources and workshops and training sessions.

The Centre also works with consumers and others to challenge practices that appear to be inconsistent with the law, and to reform the law in order to strengthen the rights of people with mental illness.

For more information about the Centre see www.communitylaw.org.au/mentalhealth or phone us on 9629 4422 or 1800 555 887 (toll free).

Victoria Legal Aid (VLA)

Our vision

Victoria Legal Aid is a leading and responsible force for community access to the legal system and for social justice.

Our values

Victoria Legal Aid is committed to: serving our clients and community professionally and ethically; acting with integrity, fairness and transparency at all times; respecting and valuing diversity, and pursuing continuous improvement across the organisation.

Our services

Victoria Legal Aid provides a broad range of legal services including:

- legal representation in courts and tribunals by qualified Victoria Legal Aid lawyers or private law firms
- legal advice, information and referral either face-to-face or via a call centre, which provides a service in 14 languages
- a family dispute mediation service
- a range of seminars and workshops on various legal topics
- an extensive range of booklets and other materials
- Victoria's only free public law library.

Some of our services are subject to guidelines and means tests. However, most of our services are provided free of charge. Application forms for legal assistance are available from Victoria Legal Aid or private lawyers.

For more information about our services and service charter see www.legalaid.vic.gov.au or phone us on 9269 0234 or 1800 677 402 (country callers).

Mental illness

The Act refers to 'mental illness' and 'mental disorder'. The vast majority of involuntary treatment order patients in Victoria are admitted and detained as involuntary treatment order patients because they have been diagnosed with a mental illness that meets the criteria for an involuntary treatment order.

See 'The five criteria for involuntary treatment order'

The *Mental Health Act* defines mental illness as a medical condition characterised by a significant disturbance of thought, mood, perception or memory.

Some examples of mental illness are depression, schizophrenia, schizo-affective disorder and bi-polar affective disorder.

Different mental illnesses are described by psychiatrists in books such as the *Diagnostic and Statistical Manual of Mental Disorders* (DSM IV) and the *International Classification of Diseases* (ICD 10). These books should be in the hospital or clinic.

Ask a doctor if you are uncertain about your diagnosis.

'Mental disorder' includes 'mental illness', plus a range of conditions which are not mental illnesses for the purposes of the Act. Some mental disorders, such as personality disorders, are not 'mental illnesses' under the Act and cannot usually be the basis for involuntary treatment.

A very small group of people who have a severe personality disorder and who engage in self-harm may be detained in hospital for a period of time because they are considered to have a mental disorder. These people must first be detained because they also have a mental illness.

The mental disorder category affects very few people.

See 'Mental disorder patient'

Things that are not mental illness

You cannot be considered to have a mental illness under the Act only because:

- you express or refuse or fail to express a particular:
 - political opinion or belief
 - religious opinion or belief
 - philosophy
 - sexual preference or sexual orientation
- you engage in or refuse or fail to engage in a particular:
 - political activity
 - religious activity
- you engage in:
 - sexual promiscuity
 - immoral conduct
 - illegal conduct
- you have an intellectual disability
- you take drugs or alcohol
- you have an anti-social personality
- you have a particular economic or social status, or
- you are a member of a particular cultural or racial group.

Getting support and treatment

If you have a mental illness or disorder, some of the ways you can seek help and treatment are by:

- admission to a hospital
- assessment by a visiting Crisis Assessment and Treatment (CAT) team, Youth Assessment Team (YAT) or Psycho-Geriatric Assessment Team (PGAT)
- assessment by a visiting Mobile Support and Treatment (MST) team

- attending a community mental health clinic or psychiatric disability rehabilitation and support service (PDRSS) – see 'Where to get help' for details of VICSERV, the umbrella group for PDRSSs
- seeing a general practitioner or private psychiatrist, psychologist, counsellor or other therapist.

Contact your local Area Mental Health Service to find out what is available. All people are entitled to be treated with dignity and respect.

If you have been refused admission to a hospital or access to a service and you think it is unfair, you can complain directly to the service or you can contact the Office of the Chief Psychiatrist or the Health Services Commissioner.

These organisations can investigate why you are not being treated. The Chief Psychiatrist can direct that you are admitted or given treatment.

If you are not happy about the services provided, it is important that you speak out, so people can help you get what you need.

See 'Where to get help'

Patients

You should be told what your legal status is as it affects your rights. Ask a staff member if you aren't sure.

Informal patient (voluntary)

If you have admitted yourself to a hospital you will be known as an **informal patient**. This means you are a **voluntary patient**.

If you are an informal patient, you have the right to leave the hospital at any time. You have the right to choose whether or not you have treatment.

However, if you leave or you refuse the treatment offered, your refusal may be considered as partly satisfying the criteria for an involuntary treatment order. If a doctor decides you meet the criteria, you will become an involuntary treatment order patient. If your status changes from an informal (voluntary) to an **involuntary treatment order patient**, the staff should explain what has occurred and what your rights are.

If you are in a private hospital, you can only be treated as an informal patient. If the hospital thinks you need to be involuntary, they have to contact a public hospital and arrange for you to be transferred if necessary.

If you are an informal patient and want to leave hospital or refuse treatment you can seek legal advice before you do.

Involuntary treatment order (ITO) patient

Public mental health services have the power to take away your freedom to leave hospital or refuse treatment. However the Act sets out a formal procedure that must be followed.

You might be made an involuntary treatment order (ITO) patient as an inpatient in hospital, or living in the community on a community treatment order (CTO).

You have the right to seek legal advice if you are concerned about involuntary treatment.

How involuntary treatment orders are made

Request

The first step in the legal process for making you an involuntary patient is for a **request** to be made for your involuntary treatment. Anyone in the community over the age of 18 can request that you be assessed for involuntary treatment. A request form must be filled out and signed. This assessment will determine whether you meet the criteria for being treated on an ITO, either in hospital or in the community on a CTO. If you do not meet the criteria no order can be made.

Recommendation

A **recommendation** form must also be filled out. The recommendation can only be signed by a doctor. It is unlawful for a person who is not a doctor to sign a recommendation. The doctor must not be the same person who signed the request.

Before making a recommendation an adequate mental health examination must be made, which explores the reasons why you may not want to consent to treatment. The doctor can only sign the recommendation if they believe all of the criteria for involuntary treatment set out below apply to you.

The recommendation must be based upon the doctor's personal examination of you. The doctor must specify the facts the recommendation is based on, and distinguish between personal observation and information communicated by others. The doctor can make a recommendation if they have reasonable grounds for relying on those facts and have personally observed a fact which supports the recommendation. Or the doctor can rely upon facts personally observed within 28 days of the recommendation by another doctor and communicated to the recommending doctor directly. If a doctor does not comply with these requirements they may be charged with professional misconduct.

There is no age limit on who can be recommended as an involuntary treatment order patient.

If mental health practitioners (these may be nurses, psychologists, social workers or occupational therapists) visit you at home, and they believe you meet the criteria for an ITO or a CTO, they must take reasonable steps to find a doctor to assess you at home or in the community. If the doctor thinks you meet the five criteria for an ITO, they can sign the recommendation form.

If the mental health practitioner can't find a doctor within a reasonable time and after taking all reasonable steps, they can authorise your transport to hospital without a recommendation.

See 'Authority to transport without a recommendation'

A request and recommendation lasts for up to 72 hours. If an ITO is not signed within that time the request and recommendation lapse.

The five criteria for an involuntary treatment order

You can only be obliged to have involuntary treatment if you meet **all** of the following five criteria:

- you appear to be mentally ill (see 'Introduction' for an explanation of mental illness), and
- your mental illness requires immediate treatment and that treatment can be obtained by being on an ITO, and
- because of your mental illness, you require involuntary treatment for your health or safety (whether to prevent a deterioration in your physical or mental condition or otherwise) or for the protection of members of the public, and
- you have refused or are unable to consent to the necessary treatment for the mental illness, (the Mental Health Review Board may take into account your level of insight or understanding about the illness they have diagnosed you with and the treatment they say you need), and
- you cannot receive adequate treatment for the mental illness in a manner less restrictive of your freedom of decision and action.

All five criteria must apply, not just one, for an involuntary treatment order to be made.

Making an ITO

If there is a valid request and recommendation, a mental health practitioner or a doctor must either make an ITO in the community or transport you to hospital.

They can make an ITO whether they think you meet the criteria for an ITO or not, but they must notify one of the psychiatrists authorised under the Act (an 'authorised psychiatrist') as soon as possible if they think the criteria are not met.

An ITO can be signed at a hospital or in the community. Where it is signed depends on where you are going to be treated.

The ITO must be made within 72 hours of your request and recommendation. An authorised psychiatrist must confirm or discharge the ITO within 24 hours or it lapses. They can only confirm it if all of the five criteria above are met.

The ITO must include a treatment plan (see 'Treatment plans').

Interim treatment under an ITO

As soon as the ITO is made the mental health service may give you interim psychiatric treatment.

But if an authorised psychiatrist has not yet approved the ITO, treatment can only be given if:

- a public mental health system doctor considers it is required immediately
- you cannot consent
- it would not be in your best interests to wait for an authorised psychiatrist's assessment.

Only a nurse or doctor should administer medication.

Transport to hospital

You should be transported to hospital in a safe and dignified way. You can ask to be taken to hospital by staff of a mental health service, by a family member, a friend or by ambulance.

Department of Human Services policy states that department staff should arrange for transport in an ambulance rather than a police vehicle whenever they can.

Some 'prescribed' people (police, ambulance officers, nurses, psychologists, doctors, social workers, occupational therapists) have the power to use as much force as is reasonably necessary to transport you to hospital.

This includes the power to enter your home and use restraint if it is reasonably necessary. If you feel the force was unreasonable you can complain to the Ombudsman, the Office of Police Integrity, the Office of the Chief Psychiatrist or the Health Services Commissioner. You can also get legal advice.

See 'Where to get help'

Authority to transport without a recommendation

If, after they have taken reasonable steps, a mental health practitioner can't find a doctor they can make a decision to take you to a hospital without a recommendation being signed.

To do this they must fill out a form called an **authority to transport without a recommendation**. The person who signs your authority to transport must not be the same person who signs your request.

If you are taken to a hospital in this way, you must be seen by a doctor as soon as possible after you arrive and they will assess whether you meet the criteria for an ITO.

Sedation for transport to hospital

You may be given drugs which will sedate you, but only if it is necessary to get you safely to hospital. Drugs can only be given by a doctor.

If you are sedated, you must be taken to the hospital in an ambulance so that your medication can be monitored. When you arrive at the hospital, you should be seen as soon as possible.

Police power to apprehend

The police also have a separate power to apprehend you if you appear to be mentally ill, and:

- you have recently attempted suicide, or
- you have tried to cause serious physical harm to yourself or others, or
- you are likely to attempt suicide or cause serious physical harm to yourself or others.

In these circumstances the police must arrange for you to be assessed by a mental health practitioner or a doctor. Mental health practitioners can arrange transportation, make a recommendation or suggest that the police release you.

A magistrate can also issue a warrant to police to visit you with a doctor if you seem to be incapable of caring for yourself.

An assessment or examination should happen as soon as possible after the police apprehend you.

If the doctor examines you and believes that you meet all the five criteria, the doctor will sign a recommendation and you can be placed on an ITO in the community or taken to hospital to be placed on an ITO, subject to the 24-hour review.

If you are unhappy with police action, you can make a complaint to the Office of Police Integrity.

See 'Where to get help'

Treatment as an inpatient

If the request and recommendation are still valid, either a mental health practitioner or a doctor must make an ITO when you are admitted to hospital.

They must consider whether you meet all the five criteria for an ITO set out above ('The five criteria for an involuntary treatment order'). If they don't believe you meet all of the five criteria, they must notify an authorised psychiatrist as soon as possible and before the 24-hour review.

An authorised psychiatrist must review the ITO whether it is made before or after you arrive at hospital. It must be reviewed within 24 hours of being made. Once made the ITO allows interim treatment to be approved by a doctor before the 24-hour review if the five criteria are met (see 'The five criteria for an involuntary treatment order'). A doctor can release you from hospital while you are waiting for the 24-hour review.

The ITO should specify the time and date you arrived. The ITO must be made within 72 hours of your request and recommendation, if not, the request and recommendation lapse.

The staff have certain powers if you leave without permission, once a request and recommendation have been made (see 'How involuntary treatment orders are made').

24 hour review

Within 24 hours of being placed on an ITO, whether in hospital or the community, you must have an examination by an authorised psychiatrist.

At this review the psychiatrist must be satisfied that you meet all the five criteria for involuntary treatment before they confirm the order. If they do not believe you meet all of the five criteria you must be discharged as an involuntary treatment order patient. If they consider that you meet the criteria but believe that you can get the required treatment under a community treatment order (CTO) they must put you on one, so you can be treated in the community.

Mental Health Review Board reviews and appeals

An ITO or CTO that has been confirmed by an authorised psychiatrist must be automatically reviewed within eight weeks by the Mental Health Review Board (Board). You don't have to do anything to make this happen.

You can also put in an appeal and ask to have a Board hearing at any time. Putting in an appeal when you are first admitted may mean the automatic eight-week review happens sooner. 'Reviews and appeals' covers your rights at the Board, such as your right to seek a lawyer or advocate to assist you, and the powers of the Board.

Discharge

If at any time you don't meet one or more of the five criteria, you must be discharged as an involuntary treatment order patient, whether as an inpatient or on a CTO.

Department of Human Services' policy requires you to be given an appropriate **discharge plan** before you are discharged from being an involuntary treatment order patient. If you have been formally discharged, a discharge form should be completed and placed on your file. You can ask for a copy of the form.

If you require ongoing care from a community mental health service and you don't already have a case manager, you should be assigned one. Your case manager is responsible for looking after your interests and helping you to recover. They should develop an Individual Service Plan in collaboration with you, which sets out the plan for your treatment and support. Upon discharge you should also be given phone numbers of people you can contact for support.

[See 'Case management and individual service plans'](#)

Statement of rights

If you are an involuntary treatment order patient in hospital or on a CTO you must be told and given written statements of your rights when you are admitted. It is important that information about your rights is given to you in a language and a way that you understand.

If you do not understand, you should ask questions. Staff of mental health services have a responsibility to tell you about your rights.

You have the right to complain about your treatment or anything you are unhappy about. You should be able to do this without fear of punishment from anyone.

[See 'Complaints and other rights'](#).

Always ask staff about your rights when you are admitted and throughout your treatment, as you need to. Remember, though, the service has to give you a statement of your rights on admission whether or not you ask for it.

Notifying guardians

If you are made an involuntary treatment order patient your guardian must be informed, whether it is a guardian appointed by the Victorian Civil and Administrative Tribunal, by you or by your parents if you are under 18.

Organising your affairs

If you are admitted to hospital the following may need to be done:

- organise child care
- arrange to pay bills and debts
- arrange to lodge Centrelink forms or notify Centrelink
- tell staff or case manager of any court appearances
- notify work of your absence.

Money, possessions and mail

If you give some money to the staff when you are admitted to hospital they must hold it in a trust account for you. There may also be interest, which you should get. You can spend the money and any interest as you please, unless you have an Administrator appointed by VCAT to handle your financial affairs.

If your possessions are stored for you then you must get receipts for these items.

If you are in hospital you have the right to send and receive letters without anyone looking at them.

Leave

If you are an involuntary treatment order patient in hospital you may request leave from the hospital. If you want to go home or attend to personal issues you should speak to your doctor, nurse or case manager. An authorised psychiatrist must approve leave.

Absent without leave

If you leave the hospital before the ITO is made you can be transported back while the request and recommendation are still valid. If you leave after the ITO but before the 24-hour review you can be transported back within the 24 hours.

[See 'Transport to hospital'](#)

You can also be apprehended and taken back to hospital if you leave without permission before the confirmed ITO has been discharged or if you have been granted leave and have not returned by the agreed time.

You can be apprehended by police, ambulance officers or public mental health workers and transported back.

If you are away for 12 months you will be automatically discharged unless the Chief Psychiatrist or an authorised psychiatrist successfully applies to the Board for an order that you not be discharged.

[See 'Interstate treatment, apprehension and transfers'](#)

Transfer

You can only be transferred to another hospital in Victoria if:

- it is of benefit to you, or
- it is necessary for your treatment, and
- one of the authorised psychiatrists at the new hospital agrees.

If you don't agree with the decision to transfer you, you can contact the Board to appeal against this decision.

Interstate treatment, apprehension and transfers

If you are on a CTO and go to New South Wales, New South Wales mental health workers can give you treatment. If you are receiving involuntary treatment either on a CTO or as an inpatient and you go to New South Wales you may be apprehended and either returned to Victoria or hospitalised in New South Wales.

If you are an involuntary inpatient you can be transferred from Victoria to New South Wales, but only if it is for your benefit or necessary for your treatment. The Board automatically reviews and must approve all interstate transfers.

It is expected that similar agreements with Queensland and the ACT will be in place soon. South Australia is also likely to begin negotiations with Victoria shortly. Get legal advice if you have questions about being involuntary in any of these places.

Community treatment order (CTO)

A CTO is an order requiring you to comply with treatment for mental illness against your will while you are living in the community. You can't be on a CTO if you are in a prison or are an inpatient in a psychiatric hospital.

The Act states that wherever possible you should be able to receive treatment in the community. It also states that the treatment should always be provided in the least restrictive way.

A CTO is considered to be less restrictive than being an inpatient in hospital. If you are on a CTO, you are still an involuntary patient (and still on an involuntary treatment order).

When a request and recommendation have been completed, an ITO has been made, and an authorised psychiatrist has reviewed you within 24 hours then a CTO can be made. This can happen in two ways:

1. you are taken to hospital and are assessed as needing an ITO, but an authorised psychiatrist believes that you can be treated in the community
2. you have not been taken to hospital, but meet the criteria for involuntary treatment in the community.

You should be told the reasons a CTO is being made. If you are placed on a CTO you must also receive a statement of rights.

Mental Health Review Board reviews and appeals

You will have an automatic review within eight weeks whether you are an inpatient or on a CTO. Putting an appeal in may make it happen sooner than eight weeks. You can also put in an appeal and have another Board hearing at any time. 'Reviews and appeals' covers your rights at Board hearings, such as your right to seek legal representation or advocacy, and the powers of the Board.

Criteria for a CTO

The Act states that you can only be put on a CTO if:

- you appear to be mentally ill ([see](#) 'Mental illness'), and
- your mental illness requires immediate treatment and that treatment can be obtained on a CTO, and
- because of your mental illness, you should be on a CTO for your health or safety (whether to prevent a deterioration in your physical or mental condition or otherwise) or for the protection of members of the public, and
- you have refused or are unable to consent to the necessary treatment for the mental illness, (the Board may take into account your level of insight or understanding about the illness they have diagnosed you with and the treatment they say you need), and
- you cannot receive adequate treatment for the mental illness in a manner less restrictive of your freedom of decision and action.

All five criteria must apply – not just one. If at any time your doctor thinks you no longer meet all five criteria, they must raise it with an authorised psychiatrist who must discharge you if they agree you don't meet all the five criteria.

Conditions of a CTO

You must be given a copy of the order.

The length of your order will be written on the form. Your CTO may also require that you live in a particular place. This is called a residence condition. This can only be used if it is necessary for the treatment of your illness. It cannot be used for the convenience of staff or other people.

The CTO must include a treatment plan which contains details such as who will be your treating doctor and what your treatment will be.

[See](#) 'Treatment plans'

Length of a CTO

The maximum length of a CTO is 12 months. It can be shorter. Your doctor should tell you before it expires.

If at any point you no longer meet all five criteria for a CTO your authorised psychiatrist must discharge you. Your supervising doctor must regularly assess whether or not you need to stay on the CTO.

Extension of a CTO

Your psychiatrist can extend your CTO. If your CTO is extended, the Board must review your situation again within eight weeks to make sure you still meet the criteria.

The extension cannot be for more than 12 months. Before your CTO is due to expire, your psychiatrist should either discharge you from the order, or extend it if they believe you still meet all the criteria for a CTO.

You must have an examination before your CTO is extended. There is no limit to the number of times a CTO can be extended. You must get a copy of any extension of the order.

Expiry of a CTO

If your order expires without being extended by an authorised psychiatrist you are no longer an involuntary treatment order patient. A CTO cannot be extended after it has expired.

You then have a choice about your treatment, including whether you will continue with it. It is possible the service will try to make you involuntary again (by requesting an assessment for a new order) if you stop treatment and they are worried enough about you.

Changes to the conditions of a CTO or treatment plan

If you want any of the CTO conditions or treatment plan issues changed (varied) you should ask your treating team or the Board at your Board hearing.

The authorised psychiatrist can change any of the conditions of your order, or your treatment plan. These conditions include the length of the CTO and any condition about where you live ('residence condition'). The treatment plan includes who the doctors are, what your treatment will be and other issues.

See 'Treatment plans' and 'Changing your treatment plan'

The Board can change the length of time that the order has been made for, and also has the power to change or remove the residence condition if you have one. The Board can order the authorised psychiatrist to review and change the issues in the treatment plan.

Not complying with a CTO – revocation

If you refuse to follow (comply with) the CTO either by not taking your medication or not turning up for appointments your mental health service must take reasonable steps to get you to comply. If you still refuse they can revoke your CTO. This means you may be apprehended and returned to hospital.

Your CTO can only be revoked if the treating team has reasonable grounds for believing that your refusal means that there is a significant risk that your health will get worse. Your CTO may also be revoked if your treating team believe you need to go to hospital because you can't be treated under a CTO. The team must inform you that your order has been revoked and that you have to go to a mental health service.

Mental disorder patient

The admission, detention and appeal process for mental disorder is different from the process for mental illness.

If you have been detained on an involuntary treatment order for mental illness and you no longer meet the criteria but you still have a mental disorder, you can be detained in a hospital for up to three months if your situation meets all of the following three criteria for continuing detention and treatment:

- you appear to have a mental disorder
- having regard to your recent behaviour, if you did not continue to be detained and treated, you would cause serious physical harm to yourself
- treatment for the mental disorder can be obtained at the approved mental health service.

The Board must review you within 14 days and each and every time your detention is extended. You can also appeal to the Board at any time.

Your continued detention will end if:

- the order expires without a new application being made and approved
- the Chief Psychiatrist discharges the order
- the Board discharges the order.

If you are detained in this way the provisions set out on previous pages about notifying guardians, money, possessions, mail, leave, absence without leave and transfer apply to you.

If you are detained in this way seek legal advice.

See 'Where to get help'

Treatment and consent

How you should be treated

The *Mental Health Act* states that all mental health services should be provided in accordance with certain principles. These apply whether you are an informal (voluntary) or involuntary treatment order patient, with a mental illness or disorder. You should receive treatment in accordance with these principles whether you are using a public or a private service.

- You should be provided with timely and high quality treatment and care in accordance with professionally accepted standards.
- Wherever possible, you should be treated in the community.
- Your treatment and care should be designed to assist you to, wherever possible, live, work and participate in the community.
- Your treatment and care should promote and assist self-reliance.
- You should be provided with appropriate and comprehensive information about your mental illness or disorder, proposed and alternative treatments, including medication, and services available to meet your needs. If you are in hospital this includes telling you who your contact nurse is and how frequently staff will be observing you.
- You should be treated near your home or the homes of relatives or friends wherever possible.
- Your age-related, gender-related, religious, cultural, language and other special needs should be considered when receiving treatment and care.
- The prescription of medication should meet your best health needs and should be given only for therapeutic or diagnostic purposes and never as a punishment or for the convenience of others.
- Treatment and care should be provided by appropriately qualified people and within a multi-disciplinary framework.

- Every effort that is reasonably practicable should be made to involve you in the development of an ongoing treatment plan. Your treatment and care should be based on this plan. The plan should be reviewed regularly and revised as necessary.
- You should be given the best possible treatment and care appropriate to your needs, in the least restrictive and intrusive way possible, involving the minimum necessary interference with your rights, privacy, dignity and self-respect.
- Mental health services should:
 - in all possible respects be of at least equal standard to other health services
 - provide for early intervention
 - co-ordinate with other community services
 - provide information on and access to complaints mechanisms, and
 - encourage service users to participate in developing and operating the services.

Definition of treatment

Treatment is defined as things done with professional skill to remedy the illness or disorder or to lessen its ill effects or the pain and suffering it causes. Treatment includes things like medication, counselling, psychotherapy, monitoring, support, assessment and case management.

Consent to treatment

If you have been given sufficient information about a treatment and you freely agree that the treatment can go ahead, you are giving your **consent** to the treatment.

You must be given information about:

- why the treatment is believed to be necessary
- the type of proposed treatment
- possible side effects, and what to do if they occur
- alternative treatments.

This is so you can give **informed** consent. The information **must** be explained to you in a way that you can understand. If the staff explain it in a way you don't understand they may say you are unable to consent and should be made involuntary. So if you are unsure, always ask for simpler language to be used or an interpreter if you need it.

You need to have some insight, or understanding, about why you are being treated, rather than simply agreeing. You are not expected to understand the treatment as well as medical staff do but you must demonstrate some understanding of its benefits and risks.

It cannot be assumed that you consent to treatment simply because you do not object to it.

Informal (voluntary) patients and consent to psychiatric treatment

If you are in a private hospital you are informal (voluntary). If you are in a public hospital you may be informal or involuntary.

If informal, treatment can only be given with your **informed** consent.

See 'Consent to treatment'

You can refuse treatment or change your mind about treatment and withdraw your consent if you decide you don't like it. You have the right to seek a second opinion from another doctor at this or any time.

You should remember, though, that your withdrawal or refusal of consent may mean that someone treating you might consider whether you should be put on an ITO, which would make you involuntary. It is important to think about what might happen if you refuse, and you should seek legal advice.

Involuntary treatment order patients and consent to psychiatric treatment

If you are an involuntary treatment order patient in a hospital or on a CTO you must be given sufficient information about your psychiatric treatment. Your preference must be considered, but you **will not** be required to give informed consent.

You are legally required to accept the psychiatric treatment which is given to you. However, you must still be informed about what the treatment is and what it does. You should be told about possible side effects and alternative treatments.

You may ask for a second opinion from a psychiatrist about the treatment. You should be able to get one for free in the public system. You will usually have to pay for a second opinion from a private psychiatrist.

Informed consent for ECT, major non-psychiatric treatment and psychosurgery

If the treatment proposed for you includes:

- electroconvulsive therapy (ECT),
See 'Electroconvulsive therapy' for more details
- major non-psychiatric treatment (including operations, anaesthetics, contraception, radiotherapy and chemotherapy)
- psychosurgery

then staff must follow certain steps to seek your informed consent, whether you are voluntary or involuntary.

The staff **must** do all of the following:

- give you a clear explanation with sufficient information for you to make a balanced judgment
- give you an adequate description of the benefits, discomforts and risks without exaggeration or concealment
- advise you of any beneficial alternative treatments
- answer any of your questions in a way that you understand
- tell you about any financial relationship between the service where the treatment will be given and any doctor who is seeking your consent or who will perform the treatment.

You must also be given a written statement of your rights. These include the right to legal and medical advice, a second opinion, representation before you consent and the right to withdraw consent and stop the treatment even after it has started.

The statement must be explained to you in a language or in a way that you can understand, and printed, if possible, in the language that is best for you.

Your consent must be in writing. You can withdraw your informed consent at any time, in which case the treatment must not proceed. If you have a complaint about your consent not being properly obtained you should seek legal advice.

Special procedures' like sterilisation, abortion, transplants and research treatment are not covered by the *Mental Health Act*, but whether you are involuntary or not, the same sort of high level consent set out above must be obtained, if you are able to consent.

See 'Special procedures'

Electroconvulsive therapy

Electroconvulsive therapy (ECT) is sometimes called shock treatment. Treatment consists of you being given a brief general anaesthetic and a muscle relaxant. A regulated electrical current will then be passed through your brain (usually once, or sometimes more often to identify the appropriate dose) until a therapeutic fit or seizure occurs. Many people are apprehensive about this form of treatment.

If you are capable of giving your informed consent staff must complete the steps outlined above. If you are not capable of giving informed consent, the authorised psychiatrist may approve the treatment if the requirements set out below are met.

See 'ECT when unable to consent'

If it is proposed as a treatment for you, you should be well informed about it so you can properly decide whether or not you want to consent.

You must be given a printed statement of your rights. Department of Human Services' guidelines also recommend that you be given a statement in writing setting out the nature of the treatment, the procedure involved and the expected benefits, discomforts and risks.

ECT with consent can be performed at public hospitals and private hospitals licensed for ECT under the Act.

Withdrawing consent

Even if you agree to have ECT, you have the right to change your mind and withdraw your consent at any time. However, this may not have the effect of stopping the ECT. If you are on an ITO or are made involuntary after being informal (voluntary) the staff may argue that you are unable to consent or that it is urgently required and give it to you anyway.

See 'ECT when unable to consent'

Second opinion

If you are concerned about the treatment, you have the right to ask for a second opinion about it from another psychiatrist. Tell staff if you want a second opinion.

Length of ECT

You can only agree to have one course of ECT at a time. A course involves a series of treatments.

One course must not include any more than six treatments. No more than seven days can pass between two treatments. If there are more than seven days between any two treatments in the course, your informed consent must be sought again.

ECT when unable to consent

ECT can be performed at a public hospital without staff seeking your informed consent if you are an involuntary treatment order patient and an authorised psychiatrist decides you are incapable of giving informed consent.

However, the psychiatrist must still be satisfied that all the following apply:

- the ECT has clinical merit and is appropriate, and having regard to the benefits, discomforts and risks, it should be performed
- any beneficial alternatives have been considered
- without it your physical or mental condition will significantly deteriorate
- all reasonable efforts have been made to notify your guardian or primary carer.

ECT without consent can only be given in public hospitals.

ECT without consent if urgently required

Seeking your informed consent is not necessary if the doctor decides that ECT is urgently needed. What 'urgent' means is not set out in the Act or otherwise defined. The power to perform urgent ECT without consent is rarely used. If it is used, the steps above do not have to be followed, however they should always be followed if possible.

If you don't want ECT

If you don't want ECT which is proposed or has already commenced you can do all or any of the following:

- get legal advice or representation
- get a second opinion on your need for the treatment from another doctor
- contact the Office of the Chief Psychiatrist
- appeal to the Mental Health Review Board.

The Chief Psychiatrist has the power to stop the hospital giving you ECT.

The Board cannot directly review the ECT, but can:

- discharge you as an involuntary treatment order patient
- order the doctors to revise your treatment plan
- make recommendations to your treating doctors.

Any of these might have the effect of stopping the treatment.

Complaints about ECT

It is unlawful (an offence) to perform ECT on you without having obtained your informed consent if you were capable, or to breach the other ECT provisions. If a mental health service does these things it could be prosecuted and ordered to pay fines.

If you have a complaint about ECT which has already taken place you can contact the Office of the Chief Psychiatrist, the Health Services Commissioner, a lawyer or advocate.

[See Where to get help](#)

Consenting to ECT if you are on a CTO

If you are on a CTO and agree to have ECT in hospital you should be admitted as a voluntary patient for this purpose. Your CTO should not be revoked.

Non-psychiatric treatment

Non-psychiatric treatment is treatment which is not related to a mental illness or mental disorder.

Although people in the mental health system can decide what psychiatric treatment you must have, you may have more control over consenting to non-psychiatric treatment, even if you are involuntary.

Informal (voluntary) patients

If you are an informal (voluntary) patient, you have the same rights as any member of the community to consent to or refuse non-psychiatric treatment.

Involuntary treatment order patients

If you are involuntary, the doctors have to get your written consent to non-psychiatric treatment if you are able to consent. This does not apply if it is urgently required to save your life, or to prevent serious damage to your health or significant pain or distress.

The Act makes different rules for involuntary treatment order patients about how you consent, depending on whether the treatment is major non-psychiatric treatment or not.

Special procedures

Special procedures are very serious procedures such as sterilisation, abortion, transplants and research treatment. Under the *Guardianship and Administration Act* they can only be performed without your consent if the Guardianship List at the Victorian Civil and Administrative Tribunal (VCAT) appoints a guardian and approves the procedure. They can only approve the procedure if the treatment is urgently required to save your life, or is to prevent serious damage to your health or significant pain or distress.

Major non-psychiatric treatment

Major non-psychiatric treatment includes operations, anaesthetics, contraception, radiotherapy or chemotherapy. If you are involuntary but can consent to this treatment, written consent must be obtained. [See](#) 'Informed consent for ECT, major non-psychiatric treatment and psychosurgery' for the requirements. This does not apply if treatment is urgently required to save your life, or to prevent serious damage to your health or significant pain or distress.

If you are involuntary and considered unable to consent, the first person out of the following list who is able to, can consent to the treatment on your behalf:

- someone you have appointed as a medical power of attorney
- someone appointed by VCAT including a guardian or an enduring guardian you have appointed
- an authorised psychiatrist.

Guardians and enduring guardians have to act in your best interests and consider your wishes. It is not so clear that people holding medical power of attorney must do this, so you may want to consider appointing an enduring guardian when you are well.

Department of Human Services guidelines state that when making such decisions the authorised psychiatrist must act in your best interests, consider your wishes and should always consider whether the treatment can wait until you recover and are capable of consenting.

If you are under 18, a parent, guardian, person appointed under the *Children and Young Persons Act* or other relevant legislation or an authorised psychiatrist may consent to the treatment on your behalf.

Other non-psychiatric treatment

For treatment that is not major non-psychiatric treatment or a special procedure, if you are involuntary and can give informed consent, your consent must be written, free and voluntary. This consent is informed if you have been given a clear explanation of the proposed treatment, and you have been advised as to why it is necessary. You can withdraw your consent to this kind of treatment at any time.

If you are involuntary and are considered unable to consent, other people can consent on your behalf. The procedure is the same as for major non-psychiatric treatment where you are involuntary and unable to consent.

[See](#) 'Major non-psychiatric treatment'

Psychosurgery

In the rare case that psychosurgery is proposed, as well as getting consent as set out above ([see](#) 'Informed consent for ECT, major non-psychiatric treatment and psychosurgery'), the Psychosurgery Review Board also has to approve it. If you cannot give informed consent, then the psychosurgery cannot be performed.

Experimental medication

Your informed consent must be obtained before you take part in the clinical trial use of any new drug on the market.

Restraint and seclusion

Sometimes staff have the power to restrain or seclude you in a hospital. The Act does not authorise the use of restraint or seclusion in private hospitals. You should get legal advice if you are in a private hospital and staff are proposing to restrain or seclude you.

Restraint

Under the Act, restraint means applying devices, such as belts, harnesses, manacles, sheets and straps to your body to restrict your movement. It does not include using furniture that makes it hard for you to get off the furniture, such as beds with cot sides and chairs with tables fitted on the arms. You can only be restrained if it is necessary:

- for your medical treatment, or
- to prevent you from hurting yourself or others, or
- to prevent you from persistently destroying property.

If you are restrained you must be continually observed by a nurse or doctor, as well as the other requirements below.

Seclusion

Seclusion means confinement on your own in a room where the doors and windows are locked. Seclusion may also be referred to as 'time out'. A seclusion room is often in a high-dependency unit.

The only reasons you can be secluded are if it is necessary to either:

- protect you or any other person from immediate or imminent risk to health or safety
- prevent you from leaving the hospital.

Requirements of restraint and seclusion

You cannot be secluded or restrained for punishment and it should not be used as a threat. It would be very rare for a hospital to be able to lawfully restrain or seclude you if you are not an involuntary treatment order patient. Speak to a lawyer.

Even if you agree to restraint or seclusion:

- you must be given appropriate food, drink, bedding, clothing and have adequate toilet arrangements
- staff must record in your file the reasons you were restrained or secluded and how often you were monitored
- the restraint or seclusion must be reviewed as clinically appropriate at least every fifteen minutes by a registered nurse.

You must also be examined by a doctor at least every four hours. It is possible for the psychiatrist to extend or reduce the length of time that you are restrained or secluded.

Once staff are satisfied that the reasons for restraint or seclusion no longer apply to you, you must be released without delay.

The Department of Human Services has a guideline that recognises how restraint and seclusion can be intrusive and that staff should talk to you about it during and after if it occurs.

It is unlawful (an offence) to restrain someone or keep someone in seclusion if it is not in line with the Act. There are fines that could apply if the service was prosecuted.

If you have a complaint about restraint or seclusion you can contact the Office of the Chief Psychiatrist.

See 'Where to get help'

The Chief Psychiatrist has the power to stop the restraint or seclusion.

If you have an appeal or review at the Mental Health Review Board, the Board might also make a decision or recommendation which has the effect of ending the restraint or seclusion.

Case management and individual service plans (ISPs)

If you are in the public mental health system, Department of Human Services' policy requires you to have a case manager appointed and an individual plan. An Individual Service Plan (ISP) is a written summary listing your aims and ways to achieve them. This should be created by you and your case manager in consultation with your psychiatrist. ISPs are different from treatment plans and don't just deal with the treatment you will receive but other issues as well. They have to be made for both involuntary and voluntary patients.

If you are using a psychiatric disability rehabilitation and support service, it may develop a similar plan known as an Individual Program Plan (IPP).

You should be consulted about what you want in your plan. It should be reviewed regularly with you.

Treatment plans

If you are an involuntary treatment order patient, in hospital or on a CTO, you have the right to a treatment plan. They are an opportunity to put your wishes to the treating team and the Board for them to consider. Plans should be prepared, reviewed and revised on a regular basis as required. A treatment plan should be a brief clear statement of the treatment to be provided by your Area Mental Health Service and which staff are responsible for providing it.

In preparing your treatment plan your doctor must take into account all of the following:

- your wishes
- the wishes, if you don't object, of a guardian, family member or carer involved in your ongoing care or support
- whether the treatment is only to promote or maintain your health or well-being
- any beneficial alternative treatments available
- the nature and degree of any significant risks associated with the treatment or any alternative treatments.

For both inpatients and CTOs the plan must contain an outline of the treatment you are to receive and may contain anything else the authorised psychiatrist thinks is appropriate.

If you are on a CTO it must also state:

- which doctor will monitor your treatment
- which doctor will supervise your treatment
- the name of your case manager; and where you are to receive the treatment
- what time you are required to attend for treatment
- how often the supervising doctor must submit a report to the monitoring psychiatrist.

You must be given a copy of the treatment plan and have it explained to you. If the plan changes you should also be given a copy of the changes.

Your treating team should ask you what your wishes are, and you should make them very clear, when the plan is first made and each time it is due to be reviewed.

Think carefully about issues such as the treatment you would prefer. If you don't want the service to consider the wishes of your guardian, family member or primary carer, you should make that very clear to your treating team. If you don't object they have to consider the wishes of those people if they are giving you ongoing care or support.

Changing your treatment plan

You should ask the treating team to change the treatment plan if you believe it should be changed, including if there are issues that should be added. The treatment in the plan should only be for the purpose of your health or well-being. You can also challenge the plan if your psychiatrist failed to consider your wishes, alternative treatments or the risks of the treatment.

Your treating team should review and update the treatment plan regularly. It can only be changed by an authorised psychiatrist. An authorised psychiatrist must review treatment plans regularly.

If you are not happy with your treatment plan you can also appeal against your ITO or CTO to the Board. The Board can order the authorised psychiatrist to revise the treatment plan if the treating team has not followed the Act in making the plan because it:

- did not consider your wishes
- did not consider the wishes of a guardian, family member or primary carer who will be providing ongoing care or support (unless you objected to their wishes being considered)
- did not consider beneficial alternative treatments or significant risks
- used the plan for something other than your health and well-being.

If a plan can't be implemented, the Board can also order the authorised psychiatrist to revise it.

You can also ask the Office of the Chief Psychiatrist to intervene or you can seek legal advice if you want your treatment plan changed, or you want to challenge the way it was developed.

See 'Where to get help'

Reviews and appeals

Mental Health Review Board

The Board is an independent tribunal. It has the legal power to decide if involuntary treatment order patients (including people on CTOs) should remain as involuntary patients or be discharged, or whether their treatment plans should be revised. It does this by holding **review hearings** and **appeal hearings**.

See 'Where to get help' for contact details for the Board

Ask for an interpreter if you or any of your support people need one. The Board will arrange an interpreter at no cost, if one is requested.

Notification of hearing

You should receive a written notice at least seven days before your hearing from the Board. It will include details of the time and place of your hearing. Your authorised psychiatrist must inform your case manager about your hearing. If you have been in a hospital or on a CTO for more than eight weeks and have not had a review, you should seek legal advice and ring the Board to arrange a hearing.

Review hearing

The Board must automatically review the status of all involuntary treatment order patients within eight weeks of their becoming involuntary, to ensure that they meet all the relevant criteria for continued involuntary treatment. Putting an appeal in when you are first made involuntary and asking for a hearing as soon as possible may mean the hearing happens sooner.

The Board also automatically reviews involuntary treatment order patients at least every 12 months after that to determine if they should continue to be involuntary. Sometimes the Board will decide at the end of the hearing that the automatic review should happen sooner than 12 months later.

Appeal hearing

If you are an involuntary treatment order patient and you do not believe you meet the criteria for involuntary status, you have the right to appeal to the Board at any time. There is no limit to the number of times you can appeal.

You or anyone with a genuine concern for you like a friend, relative, partner, carer, community visitor or advocate can appeal against your ITO or CTO. You can simply write a letter saying you want to appeal or you can get appeal forms from mental health service staff or the Board. You can ask staff for help in putting in the form.

You can send in the appeal form to the Board by:

- post
- fax
- submitting the online form on the Board's website
- emailing a copy.

See 'Where to get help' for the Board's details

You don't have to detail the grounds for your appeal when you first send it in. If you prefer, you can simply say that you don't want to be on an ITO or CTO. You can then think about your reasons and get legal advice or assistance while you wait for your hearing date.

Once your request for an appeal has been received by the Board, it must arrange a hearing without delay. You should not have to wait more than about two weeks. You can call the Board when you put in the appeal to find out when the hearing will be held or to ask that it be held as soon as possible. At a few places the Board only sits every four weeks, but you can still ask the Board to give you an earlier hearing. This may be possible via video-conference, or at another service.

Mental Health Review Board appeal form

Mental Health Act 1986 Sections 29		Local Hospital Patient Number: <input type="text"/>
Mental Health Statewide Patient Number <input type="text"/>		Family Name: <input type="text"/> Given Names: <input type="text"/> Date of Birth: <input type="text"/> Sex: <input type="text"/> Alias: <input type="text"/>
APPEAL TO THE MENTAL HEALTH REVIEW BOARD		
TO THE EXECUTIVE OFFICER MENTAL HEALTH REVIEW BOARD		
<p>Notes to completing this form</p> <p>Appeals A patient may appeal to the Board at any time.</p> <p>A community visitor or any other person who satisfies the Board of a genuine concern for the patient may make an appeal on behalf of an involuntary or security patient.</p> <p>Further information To find out more about the Board: • Ask your case manager or another member of the treating team for the relevant patients' rights booklet. • Call the Board on the number below. • Visit the Board's website at www.mhrb.vic.gov.au</p> <p>Privacy Statement The information being collected on this form will be used by the Mental Health Review Board to schedule your appeal. The Board will notify you and the approved mental health service that a hearing has been scheduled. It will request the service to provide information about you and your treatment. The Board will use this information to help it decide your appeal. The exchange of information between the Board and your treating mental health service is authorised under the Mental Health Act 1986.</p> <p>The Board will keep your information secure and not disclose it for any other purpose unless there is a legal requirement for it to do so. You can access information held about you by the Board by contacting the Executive Officer at the address shown.</p>	GIVEN NAME/S <input type="text"/> FAMILY NAME (BLOCK LETTERS) of patient <input type="text"/> address of patient if living in the community <input type="text"/> I am a patient of: <input type="text"/> approved mental health service <input type="text"/> I wish to appeal against: (please cross <input type="checkbox"/>) <input type="checkbox"/> being an involuntary inpatient. <input type="checkbox"/> my community treatment order. I want to be discharged off the order. <input type="checkbox"/> the conditions of my community treatment order. I want the conditions changed. <input type="checkbox"/> my transfer to: <input type="text"/> another approved mental health service <input type="text"/> <input type="checkbox"/> my restricted community treatment order. I want to be discharged off the order (hospital order patients only). <input type="checkbox"/> being a security patient. <input type="checkbox"/> the refusal of the Chief Psychiatrist to grant me special leave (security patients only). I wish to appeal because: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> Signed: <input type="text"/> Date: <input type="text"/>	
TO BE COMPLETED IF A PERSON MAKES AN APPEAL ON BEHALF OF A PATIENT		
I wish to appeal on behalf of the abovenamed patient.		
GIVEN NAME/S <input type="text"/> FAMILY NAME (BLOCK LETTERS) of person making appeal <input type="text"/> of: <input type="text"/> address of person making appeal <input type="text"/> Signed: <input type="text"/> Relationship to patient: <input type="text"/> Date: <input type="text"/> eg. community visitor, spouse, friend etc.		
Fax, mail or email your appeal to: The Executive Officer Mental Health Review Board Level 30, 570 Bourke Street Melbourne 3000 T hone: 8604 5270 Facsimile: 8601 5299 Toll Free: 1800 242 703 Email: mhrb@mhrb.vic.gov.au You may ask a member of staff to send your appeal to the Board.		
White - ADMIN (send/fax copy to MHRB) Yellow - PATIENT FILE Green - PATIENT/APPLICANT		

Legal and other help and representation

You can get free legal advice by ringing the Mental Health Legal Centre or Victoria Legal Aid. You have the right to have an advocate or lawyer at your hearing. An advocate can be a lawyer, family member, friend or anyone of your choice. You might be able to get free legal representation through one of the following:

- the Mental Health Legal Centre
- Victoria Legal Aid - lawyers will visit most hospitals the day before Board hearings
- your nearest community legal centre
- a private solicitor (if you are eligible VLA can provide a grant of legal assistance to a lawyer of your choice. Or, if you are able to, you can pay for private representation).

See 'Where to get help' for contact details

Your lawyer or advocate is there to help you, to tell you what your options are and what your choices might mean. Lawyers must act on your instructions.

Access to your records before a hearing

You have the right to read, and get a copy of, any documents that the Board will consider at your hearing. The hospital or clinic must make these documents available to you at least 24 hours before your hearing. Usually this means your patient file. Your file might be at the hospital or the clinic.

The documents will include a 'Report on Involuntary Status' prepared by the doctor for the Board. The report should set out the issues relevant to the criteria for involuntary treatment (see 'The five criteria for an involuntary treatment order') and the treatment plan, such as your diagnosis, the treatment that you are being given and the treatment that the doctor plans for the future. You may request a delay (adjournment) to get an independent assessment or legal advice.

If the hospital or clinic does not want some part or parts of a file released to you, they must apply to the Board. The Board may order that you cannot have access to a document or part of it, if it would:

- cause serious harm to your health or the health or safety of another person
- involve the unreasonable disclosure of information relating to the personal affairs of any person
- breach the confidentiality requested by a person who supplied information set out in the documents.

If you are denied access for one of these reasons your lawyer or advocate can see the restricted documents and can ask the Board to show them to you.

For information on accessing your file for reasons other than a Board hearing see 'Information privacy rights generally'.

Preparing for the hearing

It is up to you whether you attend your hearing or not, but attending your hearing will allow you to ask questions and might improve your chances of being discharged. It is also a chance to say what you think about the treatment plan.

You are entitled to a second psychiatric opinion about your condition from the public mental health service you are with. You could also ask a private psychiatrist but you may have to pay.

You, or your lawyer or advocate, should talk to the staff to make sure that you are not being given strong medication which will make it difficult for you to concentrate on the day of the hearing.

To be discharged from involuntary status it is important to show the Board that you will be able to manage as a voluntary patient, with or without support or treatment.

Seeking out help may demonstrate to the Board that you understand your illness and are taking steps to manage it. As well as services funded by mental health (such as mobile support and treatment teams and psychiatric disability support and rehabilitation services), you could contact services and programs such as drug and alcohol counsellors, parenting programs, transitional, crisis and public housing, financial counsellors and private therapists.

You can make a written submission to the Board about what you would like to see happen with your treatment and why. Your family, friends or someone else you respect could write letters or come to the hearing with you to say that they will assist you. If they can't attend the hearing the Board might be able to phone them.

If you intend to seek treatment from a clinic or a private doctor, or if there are alternative treatments that you think will help you, tell the Board. You should also ask those people to help with the hearing by writing a letter to the Board, or attending and speaking at the hearing, in person or by phone.

The hearing

The Board will come to the hospital or the clinic. If you are unable to get out of bed, the Board may hold the hearing in the ward.

If the hearing is:

- the first automatic review of your involuntary status (that is, within eight weeks)
- an appeal against your involuntary status (whether you are an inpatient or on a CTO)
- an appeal against transfer to another hospital.

then the Board will be made up of three members (a lawyer who chairs the Board, a psychiatrist and a community member).

If the hearing is either:

- an annual review of your involuntary status
- a review of the extension of your CTO

then the Board may be made up of only one of those people.

In special circumstances, for example if you knew the Board members personally, or if you have had a decision made by those members before, you may be able to ask for a different Board.

The hearings are closed to the public. The only people who have an automatic right to be at the hearing are you and members of your treating team.

Other people can only attend with your consent or if the Board gives them permission. If you do not want someone to attend the hearing, let the Board know.

The Board members will have your hospital file and the report prepared by the doctor on your continued involuntary status.

The Board will ask the doctor why it is necessary for you to remain an involuntary treatment order patient. You and/or your lawyer or advocate can ask the doctor questions about what has been said or other things that you think are important.

The Board will ask you or your lawyer or advocate some questions. Tell the Board anything which helps to show there will not be a significant risk of harm to you or anyone else if you are taken off the ITO or CTO. If there is anything about your treatment, the treatment plan or how the plan was developed that you are not happy with, tell the Board. You could talk about services that you would use in the community or supports that you have arranged for yourself.

After listening to everyone, the Board will ask everybody to leave the room so it can consider the issues and make a decision. The Board will then call everyone back into the room and announce the decision.

The Board and everyone present at the hearing must respect your confidentiality outside the hearing.

What the Board can decide

Discharge

The Board has the same powers whether your hearing is an appeal or review. If you are an involuntary treatment order patient on a CTO, the Board must discharge you completely if it believes that you do not meet one or more of the five criteria. If you are an involuntary treatment order patient in hospital, and don't meet all the five criteria, the Board can discharge you completely or put you on a CTO if you meet all the criteria for a CTO.

See 'The five criteria for an involuntary treatment order'

Orders to make, vary or discharge CTOs

If you are being treated in hospital as an inpatient the Board can confirm the ITO but order an authorised psychiatrist to make a CTO within a reasonable period of time. It can do this if it thinks a CTO is a less restrictive alternative to being a patient in hospital. An authorised psychiatrist can ask the Board to reconsider this if things change during the time they are given to make the CTO, for example if your health deteriorates. It is up to the Board to decide how long a reasonable period is in your case, but it should only be as long as it takes to arrange accommodation and community support for you.

If you are on a CTO, the Board can discharge you, vary the length of the CTO, or vary or remove the residence condition. If it changes (varies) the CTO, the Board must tell you that it has been changed, give you written details and inform you of the reasons.

Review of treatment plan

For both inpatients and people on CTOs, although the Board has no power to change or prescribe treatment itself, it must review your treatment plan and can order your psychiatrist to revise it.

See 'Changing your treatment plan'

Also, it might sometimes make recommendations to the doctors about how to improve your treatment. For both inpatients and people on CTOs, the Board can order that your automatic review take place earlier than 12 months.

Transfers

If the hearing deals with your transfer to another hospital the Board can order that the transfer not take place.

Releasing files

The Board can also order that you can see parts of the file your treating team do not want you to see.

After the hearing

If the Board decides you should be discharged from your involuntary treatment order, you can then choose for yourself whether you stay in hospital if you were an inpatient, or whether you continue with treatment if you were on a CTO. It is possible that if you stop your treatment the service may try to make you involuntary again.

If the Board decides that you should remain as an involuntary treatment order patient in hospital or on a CTO by confirming the ITO, you will have to stay in the hospital or remain on the CTO.

Asking for written reasons

You can ask the Board for a written statement of their reasons for the decision. This is not automatic so your request must be in writing and sent to the Board within 28 days of the decision. They should provide the statement within two weeks.

Appealing a decision of the Mental Health Review Board

If you do not agree with the Board's decision, you have the right to appeal to the Board and have another hearing at any time. There is no limit to the number of times you can appeal or how often.

Everybody's circumstances change over time and new information could affect the Board's decision.

If you disagree with the decision of the Board you can **also** appeal to the Victorian Civil and Administrative Tribunal (VCAT).

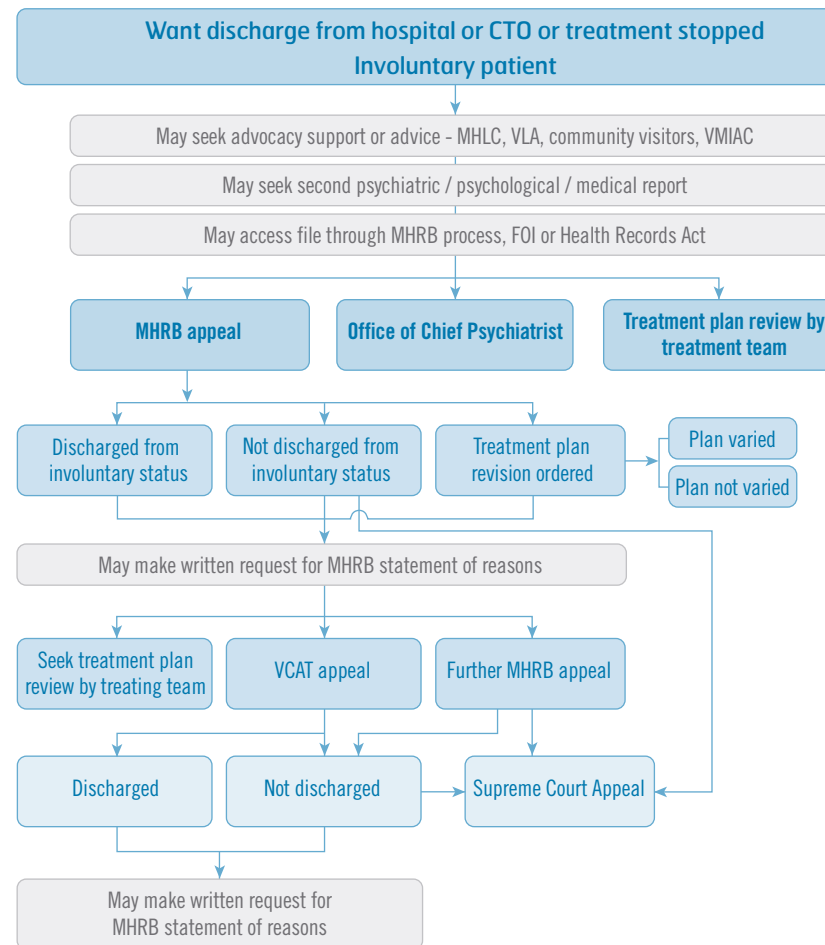
You must lodge an appeal to VCAT within 28 days of the Board's decision, or within 28 days of receiving written reasons from the Board if you ask for them, whichever is latest. You can appeal by writing to the Registrar of the General List at VCAT.

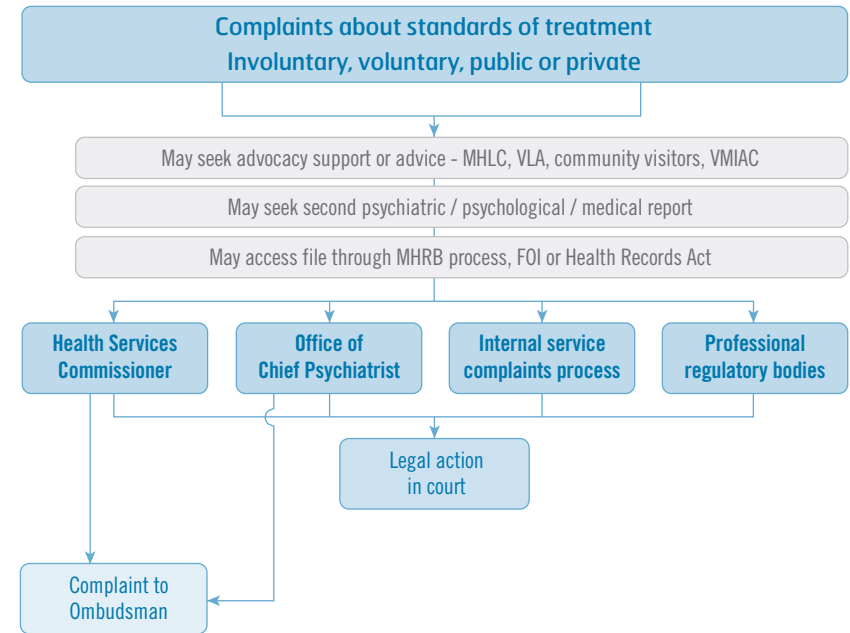
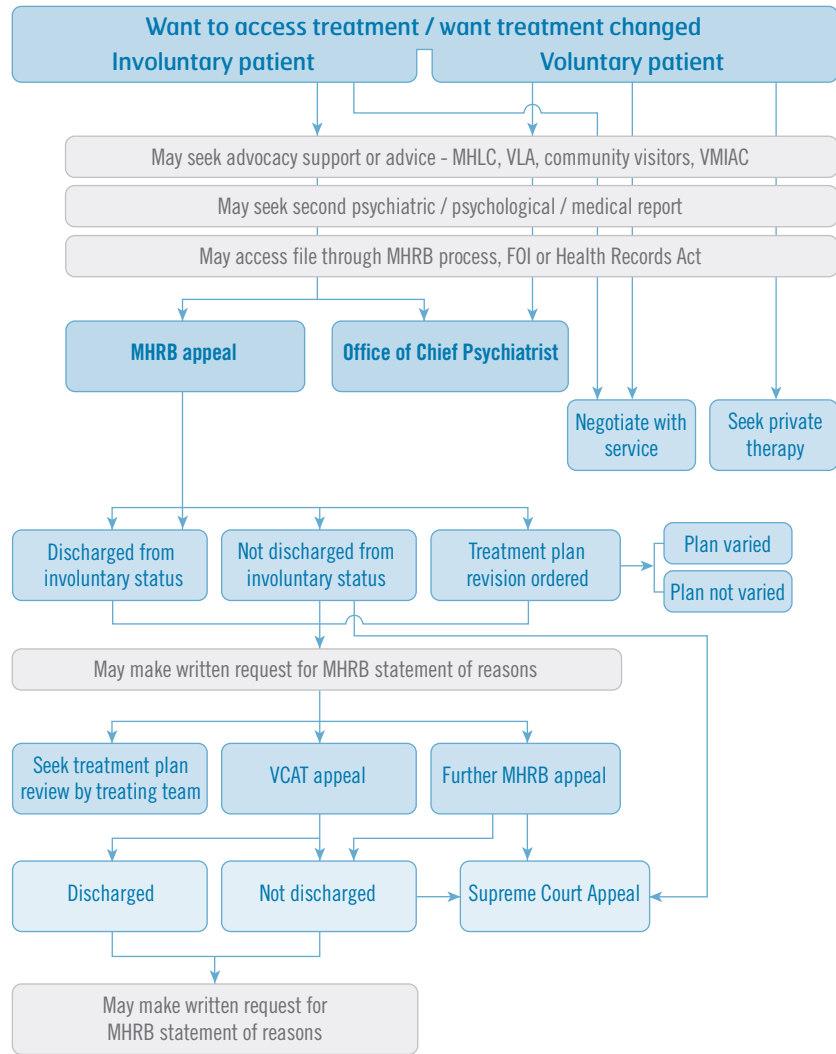
Victoria Legal Aid has a lawyer at VCAT every day. The lawyer may be able to help you with the appeal procedure.

You should always seek legal advice and assistance if appealing to VCAT or if you are considering legal action in the Supreme Court.

See 'Where to get help'

Possible actions if unhappy with mental health services





Complaints and other rights

Complaints about treatment

It is important to be informed about your treatment and medication. Your doctor should give you information about your treatment and listen to any concerns you have. If the doctor does not give you information on your treatment or medication, ask for it.

The Royal Australian and New Zealand College of Psychiatrists Code of Ethics directs psychiatrists to take great care in giving information on treatment and medication.

If you do not want to take your medication, talk to your doctor. You should tell the doctor if you experience side effects. You may want to try to reduce the dosage, change or stop the medication (see also 'Review and appeals').

Second opinions

If you have concerns about your treatment, you have the right to get a second opinion from another psychiatrist. If you would like to get a second opinion ask your doctor, nurse or case manager to arrange it. It is a good idea to put your request for a second opinion in writing so it can be placed in your file. You may want to speak to your general practitioner about getting a referral to a private psychiatrist. If you get a second opinion from a private psychiatrist outside the hospital or clinic you may have to pay.

Requesting a new psychiatrist, doctor or case manager

It is important that your workers are people you can communicate and feel comfortable with. If you are unhappy about any of your workers, you can speak to them about it. If you need support you could take an advocate. You may be able to change workers. However, limitations on the public health system mean you may not be able to change. Also, changing workers does not necessarily mean you will get a different diagnosis or treatment.

Health services usually employ a complaints liaison officer. They can investigate any concerns you may have. Many Area Mental Health Services employ consumer consultants who may be able to help you.

If you are still unhappy with your workers, you can write or complain to the Director of Clinical Services in your area or the Office of the Chief Psychiatrist.

See 'Where to get help'

Right to a support person or advocate

You have a right to have someone of your choice with you when you are discussing your treatment with your psychiatrist or doctor.

Annual health examination

Each year if you are still an involuntary treatment order patient, in hospital or on a CTO, you must receive an examination of your general mental and physical health and a report must be sent to the Chief Psychiatrist.

Coronial investigation

The psychiatrist in charge must notify the Coroner and the Office of the Chief Psychiatrist of the death of any people who were recently involuntary treatment order patients, whether inpatients or on CTOs, and of any death which appears to have been unexpected, unnatural or violent or to have resulted directly or indirectly from accident or injury. The Coroner will conduct an investigation, and possibly an inquest. You can also ask the Coroner to conduct an investigation or inquest into the death of anyone who was or should have been receiving any type of mental health service.

Where to complain

If you want to make a complaint about the service you are receiving or your treatment to someone outside the service, the following people may be able to help. Complaints can be made about public or private services.

The contact details of the following services and other service providers are listed at the back of this booklet.

See 'Where to get help'

The Chief Psychiatrist

Has broad powers to investigate a complaint in the public mental health sector and some powers in the private sector. The Chief Psychiatrist can take up complaints and concerns on behalf of clients and is responsible for ECT licensing. The Chief Psychiatrist also has overall responsibility for the medical care and welfare of people receiving treatment or care for a mental illness or disorder.

Following investigation of a complaint, the Chief Psychiatrist will take necessary action, which might include directing the mental health service to stop or change a treatment or to provide a treatment.

The Office of the Public Advocate (OPA)

Can advise and assist with complaints about services, care and treatment of people with disabilities, including psychiatric disability.

Community Visitors

Are independent, trained volunteers who visit inpatient and residential mental health services to inquire into their adequacy and to promote your rights, dignity and safety. They can advocate to help resolve issues. They may offer support at your Board hearing. If you want to meet with a Community Visitor you should call the Office of the Public Advocate.

The Health Services Commissioner (HSC)

Can investigate and help resolve complaints about any health service provider and about health records access and privacy. Time limits may apply so speak to a lawyer.

Resolving a complaint may involve conciliation between you and the service provider and can be by an apology, compensation, an acknowledgment of harm or changes in policies or practices at services. The HSC also has the power to make recommendations to the Office of the Chief Psychiatrist and other government departments.

Professional regulatory bodies

If you have a complaint about a particular worker their professional body may investigate it. For example, the professional regulatory body for doctors and psychiatrists is the Medical Practitioners Board of Victoria, for nurses it is the Nurses Board of Victoria and for psychologists it is the Psychologists Registration Board of Victoria. Time limits may apply. Speak to a lawyer.

The Ombudsman's Office

The Ombudsman can enquire into or investigate complaints about government departments such as the Department of Human Services, which is responsible for public mental health services. It can also investigate the way the Office of the Chief Psychiatrist and Health Services Commissioner handle complaints. The Ombudsman can make recommendations and is required to report to parliament.

Office of Police Integrity

If you wish to make a complaint about the police, this can be made to the Office of Police Integrity.

[See Where to get help](#)

Getting copies of documents

You can ask to look at your file or to have photocopies of it. It is up to the service to decide, it may tell you that you have to apply under freedom of information laws. You can get legal advice.

Freedom of information (FOI)

Whether or not you have a Board hearing, if you are being treated by public mental health services and you would like to see your file or parts of your file, you can request the information through FOI laws.

Some of the information may be withheld in certain circumstances, but you have the right to challenge this. If you know where the file is kept you should contact the freedom of information officer at the hospital or clinic. You can make a request in writing, or by using the website:

www.foi.vic.gov.au

If you do not know where the file is kept and your local clinic or hospital can't help you, contact the:

Freedom of Information Unit
Department of Human Services
GPO Box 4057
Melbourne 3001
tel: 9096 8449
fax: 9096 8848

You can ask to have details in your file amended if they are incomplete, inaccurate, out-of-date or misleading. You can appeal against a decision not to give you access to some of the information or not to amend your personal records. Time limits apply to appeals and you should contact a lawyer.

The decision on whether to give you access to the information must be made within 45 days of the request reaching the department or agency. There may be a charge involved, but fees should be waived or reduced if you are on a low income, so provide a copy of your pension or healthcare card with your FOI request.

Access to private health system and other records

You have an enforceable right to access private health records held by any organisation or service provider. This includes:

- records held by any private health service provider such as a GP, private psychiatrist, private hospital, psychologist or counsellor
- records held by any community support service.

These laws also give you the right to correct records that are wrong. If it is information about a health or disability service, the Health Services Commissioner or Federal Privacy Commissioner could help you to get access.

The Federal or Victorian Privacy Commissioners may be able to help you access records other than health records.

Laws about access to records are complex and time limits apply. You should contact a lawyer to help you work out the best course of action.

See 'Where to get help'

Confidentiality and privacy

Confidentiality in the public mental health system

As a general rule, the staff of a public mental health service or community support service are obliged to keep your personal information confidential.

If they want to release some of this information, they must ask your permission. They should only give it to the specific people or for the specific purposes you have authorised. However, there are some exceptions to this. For example, information may be released without your permission:

- when it is related to your psychiatric treatment and is required by other staff who are on the treating team. This includes electronic records, which are required for your treatment. Access to these electronic records is restricted to public mental health workers.
- when it is related to your ongoing care and is reasonably required by your primary carer
- when it is required for a court in the course of criminal proceedings or other proceedings where a court order has been made (you may be able to argue against such an order being made and should get legal advice)
- to lessen or prevent a serious and imminent threat to your life, health, safety or welfare or a serious threat to the public's health, safety or welfare.

A person may be prosecuted for breaching confidentiality. Punishments can include a fine of up to \$5,000. If you need further information you should contact a lawyer.

Information privacy rights generally

You can take action if any type of organisation, service provider or therapist breaches your privacy in relation to health information or other information they hold about you.

Conciliation may take place. You may be entitled to compensation or other orders protecting your privacy if there has been a breach.

These laws apply to public and private service providers and organisations and not just health services.

You can get assistance from the Health Services Commissioner or the Federal or Victorian Privacy Commissioner about the best action to take. It is always a good idea to speak to a lawyer about this if you can, because the laws are complex and time limits may apply.

See 'Where to get help'

Discrimination

You should not be discriminated against because of your mental illness or disorder, or because someone thinks you have one. The *Federal Disability Discrimination Act* and the *Victorian Equal Opportunity Act* say you should receive fair treatment in:

- employment and work-related areas
- education
- access to public places
- using goods, services and facilities
- accommodation
- transfer and sale of land

- clubs and associations
- sport
- commonwealth laws and programs.

There are some limited exceptions in each of these areas where it might be shown that the discrimination was not unlawful. If you think you have been discriminated against, or would like to know more about the exceptions described in the Acts, you can contact the Victorian Equal Opportunity Commission or seek legal advice.

See 'Where to get help'

Time limits apply. You should contact a lawyer.

Sexual and physical assault

It is a criminal offence for a person who provides medical or therapeutic services to a person who has a mental illness or disorder to engage in an act of sexual penetration or an indecent act with that person. This includes outpatients.

The *Victorian Crimes Act* makes this behaviour unlawful, whether or not the patient consents to it. You should contact the police if you wish to report an assault as soon as possible. You should also contact a doctor immediately because it is important to collect evidence. Staff also have a duty to maintain a safe environment and to offer you support if you confide in them that you have been assaulted.

If you have been assaulted and you do not want to proceed with charges you can say so, but the staff must report incidents to their supervisors. If you have been assaulted, you may be entitled to some type of counselling and financial compensation. Time limits apply.

You should contact a lawyer.

You might also wish to get support from a Centre Against Sexual Assault (CASA).

See 'Where to get help'

Where to get help

Mental Health Legal Centre

Level 4, 520 Collins St
Melbourne 3000

tel: 9629 4422 toll free: 1800 555 887

fax: 9614 0488

email: mental_health_vic@clc.net.au

www.communitylaw.org.au/mentalhealth

Victoria Legal Aid - Human Rights and Civil Law Service

350 Queen St
Melbourne 3000

tel: 9269 0416 toll free: 1800 677 402

www.legalaid.vic.gov.au

Federation of Community Legal Centres

Suite 11, 1st Floor 54 Victoria St
Carlton South 3053

tel: 9654 2204

fax: 9654 5204

email: fedclc@vicnet.net.au

www.communitylaw.org.au

The Federation will be able to give you the phone number of the community legal centre nearest you.

Mental Health Review Board

Level 30, Marland House
570 Bourke St
Melbourne 3000

tel: 8601 5270 toll free: 1800 242 703

fax: 8601 5299

email: mhrb@mhrb.vic.gov.au

www.mhrb.vic.gov.au

Victorian Civil and Administrative Tribunal (VCAT) – General List

7th floor, 55 King St
Melbourne 3000

tel: 9628 9755

fax: 9628 9788

email: vcat@vcat.vic.gov.au

www.vcat.vic.gov.au

Office of the Chief Psychiatrist

Department of Human Services
Floor 17, 50 Lonsdale St
Melbourne 3000

tel: 9096 7571 general inquiries: 1300 767 299

fax: 9096 7697

www.health.vic.gov.au/chiefpsychiatrist

Health Services Commissioner

Level 30, 570 Bourke St
Melbourne 3000

tel: 8601 5200 toll free: 1800 136 066

fax: 8601 5219

TTY: 1300 550 275

email: hsc@dhs.vic.gov.au

www.health.vic.gov.au/hsc

Ombudsman Victoria

Level 9, 459 Collins St
Melbourne 3000

tel: 9613 6222 toll free: 1800 806 314

fax: 9614 0246

email: ombudvic@ombudsman.vic.gov.au

www.ombudsman.vic.gov.au

Victorian Mental Illness Awareness Council

23 Weston St
Brunswick 3056

tel: 9387 8317

fax: 9388 1445

email: info@vmiac.com.au

www.vmiac.com.au

Office of the Public Advocate (including Community Visitors Program)

5th floor, 436 Lonsdale St
Melbourne 3000

tel: 9603 9500 toll free: 1300 309 337

fax: 9603 9501

tty: 9603 9529

email: publicadvocate@justice.vic.gov.au

www.publicadvocate.vic.gov.au

Office of Police Integrity

Level 3, 459 Collins St
Melbourne 3000

tel: 8635 6188 toll free: 1800 818 387

fax: 8635 6185

email: opi@opi.vic.gov.au

www.opi.vic.gov.au

Victorian Equal Opportunity and Human Rights Commission (formerly Equal Opportunity Commission Victoria)

3rd floor, 380 Lonsdale St
Melbourne 3000

tel: 9281 7111 toll free: 1800 134 142

tty: 9281 7110

fax: 9281 7171

email: veohrc@vicnet.net.au

www.eoc.vic.gov.au

Centre Against Sexual Assault (CASA) House

tel: 1800 806 292 (24 hours) or 9635 3610 (counselling line)

www.rwh.org.au/CASA

Crisis support and referral for victims of sexual assault.

Office of the Victorian Privacy Commissioner

Level 11, 10-16 Queen St
Melbourne 3000

tel: 1300 666 444

fax: 1300 666 445

email: enquiries@privacy.vic.gov.au

www.privacy.vic.gov.au

Office of the Federal Privacy Commissioner

GPO Box 5218
Sydney NSW 2001

tel: 1300 363 992

tty: 1800 620 241

fax: (02) 9284 9666

email: privacy@privacy.gov.au

www.privacy.gov.au

Psychiatric Disability Services of Victoria (VICSERV) Inc.

Level 2, 22 Horne Street
Elsternwick VIC 3185

tel: 9519 7000

fax: 9519 7022

email: vicserv@vicserv.org.au

www.vicserv.org.au

VICSERV can give you details of local psychiatric disability rehabilitation and support services which can assist with issues like getting work, studying or finding a social club or drop-in centre.

Victorian Interpreting and Translating Service

tel: 13 14 50

www.immi.gov.au

Other useful resources

Mental illness and the criminal justice system in Victoria - your rights

Mental Health Legal Centre Inc.

Your rights: police powers in Victoria

Flemington and Kensington Community Legal Centre and Victoria Legal Aid.

Take Control - a guide to powers of attorney and guardianship

Office of the Public Advocate and Victoria Legal Aid.

You can order all these publications (including Patients' rights) at www.legalaid.vic.gov.au or by phoning 9269 0223.

Patients' rights

A self-help guide to the Victorian *Mental Health Act*

Mental Health Legal Centre

Level 4, 520 Collins St
Melbourne 3000
Tel: 9629 4422 / 1800 555 887

Victoria Legal Aid offices

MELBOURNE
350 Queen St
Melbourne VIC 3000
Tel: 9269 0234 / 1800 677 402

BAIRNSDALE
101A Main St
Bairnsdale VIC 3875
Tel: 5153 1975

CENTRAL HIGHLANDS
Area A, Level 1
75 Victoria St
Ballarat VIC 3350
Tel: 5329 6222

LODDON-CAMPASPE
424 Hargreaves St
Bendigo VIC 3550
Tel: 5448 2333 / 1800 254 500

NORTH WESTERN SUBURBS
Level 1, Building 1
Broadmeadows Station Centre
1100 Pascoe Vale Rd
Broadmeadows VIC 3047
Tel: 9302 8777

WESTERNPORT
Level 1, 9-15 Pultney St
Dandenong VIC 3175
Tel: 9767 7111

PENINSULA
Cnr O'Grady Ave & Dandenong Rd
Frankston VIC 3199
Tel: 9784 5222

BARWON
Level 1, Busport,
48 Brougham St
Geelong VIC 3220
Tel: 5226 5666 / 1800 196 200

WIMMERA
29 Darlot St
Horsham VIC 3400
Tel: 5381 6000 / 1800 177 638

GIPPSLAND
Cnr Chapel & George St
Morwell VIC 3840
Tel: 5134 8055

NORTH EASTERN SUBURBS
42 Mary St
Preston VIC 3072
Tel: 9416 6444

OUTER EASTERN SUBURBS
23 Ringwood St
Ringwood VIC 3134
Tel: 9879 5500

GOULBURN
36-42 High St
Shepparton VIC 3630
Tel: 5823 6200

WESTERN SUBURBS
1/474 Ballarat Rd
Sunshine VIC 3020
Tel: 9300 5333

Roundtable Dispute Management

MELBOURNE
338 La Trobe St
Melbourne VIC 3000
Tel: 9269 0500 / 1800 136 832