

Mental Health Law



**BARBARA SHALIT
&
CAMERON NOLAN**

MENTAL HEALTH LEGAL CENTRE

Mental health in Victoria



- Approximately 60,000 Victorians are currently registered as patients of public mental health services
- Approximately 9,000 registered patients were subject to involuntary orders for some period during 2008–09
- The most common diagnoses of involuntary patients are schizophrenia (42.7%), paranoid schizophrenia (17.3%), schizoaffective disorder (15.1%) and bipolar affective disorder (8.9%)

Types of involuntary orders under the *Mental Health Act 1986 (Vic)*



- Involuntary in-patients: required to stay at a Mental Health Service to receive treatment.
- Community Treatment Orders (**CTO**): required to receive treatment in the community through the operation of a treatment plan.

Community Treatment Orders



- Treatment plans may require a patient to take certain medications and attend regular appointments at a mental health clinic.
- May include a residency condition.
- The maximum length of a CTO is 12 months, which can be extended by the authorised psychiatrist.
- If at any point the patient no longer meets the criteria for a CTO, the authorised psychiatrist must discharge the patient.

Criteria for involuntary treatment



- (a) the person appears to be mentally ill; and
- (b) the person's mental illness requires immediate treatment and that treatment can be obtained by the person being subject to an involuntary treatment order; and
- (c) because of the person's mental illness, involuntary treatment of the person is necessary for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and
- (d) the person has refused or is unable to consent to the necessary treatment for the mental illness; and
- (e) the person cannot receive adequate treatment for the mental illness in a manner less restrictive of his or her freedom of decision and action.

How are involuntary treatment orders made?



- Step 1- someone makes a “request” that a person be examined by a medical practitioner to see if they meet the grounds for an involuntary order.
- Step 2: if the medical practitioner decides that the person meets the grounds for an involuntary order, they may make a “recommendation” that the person be further examined either at a mental health service or in the community.

How are involuntary treatment orders made?



- Step 3: within 72 hours a medical practitioner or a mental health practitioner further examines the person and decides whether to put them on an interim involuntary treatment order (either as an inpatient or in the community).
- Step 4: the authorised psychiatrist or their delegate must examine the person within 24 hours of the involuntary treatment order being made and confirm or reject the involuntary treatment order.

How are involuntary treatment orders made?



- Step 5: within eight weeks of the involuntary treatment order being made, the Mental Health Review Board reviews the order to determine if the person meets the criteria for involuntary treatment.
- Step 6: the order automatically expires after 12 months unless extended by the authorised psychiatrist. The Mental Health Review Board must review any extension.

Enforcement powers- transportation



- **Transport for examination:** a police officer, ambulance officer or prescribed professional can use reasonable force to enter premises and restrain the person if this is reasonably necessary to take the person safely to the mental health service for an examination.
- **Sedation:** a prescribed medical practitioner can authorise sedation if they believe it is necessary for the safe transport of the person.

Enforcement powers- inpatients



- An inpatient may be secluded if it is necessary to protect the person or others from an imminent risk to their health or safety or to prevent the person from absconding. It is only used when other ways of ensuring safety have failed.
- An inpatient may be mechanically restrained to enable a person to be medically treated, to prevent the person from injuring themselves or others, or to prevent the person from persistently destroying property.

Enforcement powers- CTOs



- Failure to comply with a community treatment order may result in the person being made an involuntary inpatient and forcibly taken to hospital.

Patient rights- treatment



- Right to obtain a second opinion from a psychiatrist
- Right to be treated in the community wherever possible
- Right to be involved in the formation of the treatment plan
- Right to have the treatment plan regularly reviewed
- Right to regular reviews from the psychiatrist to ensure that the criteria for the involuntary order is still satisfied
- Right to access medical files

Patient rights- Mental Health Review Board



- Involuntary treatment orders must be reviewed by the Mental Health Review Board within eight weeks of the order being made.
- Right to appeal to the Mental Health Review Board at any time during the operation of the order.
- Right to have any extension of the order reviewed by the Mental Health Review Board.

Patient rights- Mental Health Review Board



- Right to have an advocate or legal representative present at a Mental Health Review Board hearing.
- Right to an interpreter.
- Right to appeal decisions of the Mental Health Review Board to VCAT.

The Mental Health Review Board



BARBARA SHALIT

SOLICITOR, MENTAL HEALTH LEGAL CENTRE

Mental Health Legal Centre



ADDRESS: 9TH FLOOR, 10 - 16 QUEEN STREET, MELBOURNE

PHONE: (03) 9629 4422 OR 1800 555 887

FREE AND CONFIDENTIAL TELEPHONE ADVICE IS
AVAILABLE ON THE ABOVE NUMBERS DURING THE
FOLLOWING TIMES:

MONDAY, WEDNESDAY AND FRIDAY: 3:00PM - 5:00PM

TUESDAY AND THURSDAY: 6:30PM - 8:30PM