

Eighth edition
July 2010

Patients' rights

A self-help guide to
Victoria's Mental Health Act



Mental Health Legal Centre Inc.



Lawyers And
Legal Services

Patients' rights

A self-help guide to Victoria's Mental Health Act

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Produced by Victoria Legal Aid and Mental Health Legal Centre Inc.

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Changes to the law

The law changes all the time. To check for changes you can:

- call the Victoria Legal Aid Legal Information Service on 9269 0120 or 1800 677 402 (country callers)
- read the 'new law' section on the Victoria Legal Aid website at www.legalaid.vic.gov.au/648.htm
- contact a community legal centre. Call the Federation of Community Legal Centres on 9652 1500 to find your nearest community legal centre.

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Mental Health Legal Centre Inc.

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 and the legal problem has arisen in Victoria or in relation to Victorian mental health services.

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 a 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

We are a state-wide organisation that helps people with their legal problems. We focus on helping and protecting the rights of socially and economically disadvantaged Victorians.

We have lawyers in offices in most major metropolitan and country regions. We also fund private lawyers to provide legal services to the public.

We can help you with your legal problems about criminal matters, family breakdown, family violence, child support, immigration, social security, mental health, debt and traffic offences.

Call us to find out how we can help you on 9269 0120 or 1800 677 402 (country callers).

Introduction

About this booklet

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, and only covers the law in Victoria. The rights covered in this booklet are your legal rights. You may have other 'rights' in a broad way but the focus here is on the law and the rights it recognises. Reading this booklet is not the same as getting legal advice. Check how the law applies to your individual situation before you act.

You can seek legal advice and assistance about any aspect of your treatment, whether you are a voluntary (informal) 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. For contact details, see 'Where to get help' at the back of this booklet.

This booklet is about the *Mental Health Act 1986* (the Act), which 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.

This booklet does not focus on the rights of people who are involved with mental health services through the criminal justice system.

Getting more legal help

Taking legal action can be complex and expensive and you should always seek legal advice. Though the mental health system should be there to help you, it may be confusing and distressing when issues about your legal status and rights arise. Try not to feel pressured to make decisions too quickly and always ask for the opportunity to get advice or support if you feel you have questions or concerns. There may be questions you want answered that are not covered by this booklet.

Go to the back of this booklet to 'Where to get help' for contact details for services that can help you with legal advice and other support.

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Getting mental health support and treatment

Mental health problems are common human experiences. You have the right to treatment and support, to be treated with dignity and respect, and to be protected from abuse and neglect when you get treatment.

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

- getting admitted to a hospital
- getting assessed by a visiting Crisis Assessment and Treatment (CAT) team, Youth Assessment Team (YAT) or Psycho-Geriatric Assessment Team (PGAT)
- getting assessed 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' at the back of this booklet for details of VICSERV, the umbrella group for PDRSSs
- seeing a general practitioner, private psychiatrist, psychologist, counsellor or other therapist.

Contact your local Area Mental Health Service to find out what is available.

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 Chief Psychiatrist or the Office of 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.

For contact details, see 'Where to get help' at the back of this booklet.

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. For information about making a complaint, see the chapter 'Complaints and other rights' on [page 51](#).

The Victorian Charter of Human Rights and Responsibilities (the Charter)

The Charter is a Victorian law which seeks to protect the human rights of all Victorians.

Charter rights which are relevant to people receiving psychiatric treatment are:

- right to equality before the law including the right to be free from discrimination
- right to life
- right to protection from cruel, inhuman or degrading treatment
- right to freedom from medical treatment without full, free and informed consent
- freedom of movement
- right to privacy and protection of reputation
- freedom of thought, conscience, religion, belief and expression
- protection of families and children
- right to liberty and security of the person
- right to humane treatment when deprived of liberty
- right to a fair hearing.

These rights are not absolute and can sometimes be limited or restricted where it can be shown that the restriction, taking relevant factors into account, can be justified.

Staff and organisations in the public mental health system must comply with the Charter as far as possible. This includes:

- all public mental health services and the staff who work for them
- the Mental Health Review Board (the Board)
- the state government, when making mental health laws
- the Chief Psychiatrist, the Office of the Health Services Commissioner and similar bodies
- the police
- ambulance services
- all other government departments and public services and public service workers

In some circumstances some non-government organisations that are predominantly publicly funded may also be bound by the Charter.

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Private psychiatrists who are acting under the Act, such as those providing treatment under a community treatment order, also probably have to comply.

In particular cases, the treatment someone is receiving might breach the Charter if, for example, the undesirable or harmful effects outweigh the benefits, or seclusion is used in an excessive or unnecessary way. For more information on what seclusion is, [see 'Restraint or seclusion' on page 33](#) in the chapter 'Treatment and consent'.

Using the charter

Whenever you are trying to get a better deal from the mental health or legal system or are making a complaint, you can raise any rights under the Charter which you think might be relevant and which support your argument. The Charter might strengthen your arguments at a Board or Victorian Civil and Administrative Tribunal (VCAT) hearing.

If a Charter right is breached, VCAT or the Supreme Court can make a declaration of this, while hearing appeals from the Board.

Using the Charter can be technical, so get legal advice.

Patients

Definition of mental illness

The Mental Health Act 1986 (the 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. The Act says mental disorder includes mental illness, plus a range of conditions which are not mental illnesses. 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 patients' on page 8.](#)

As indicated, many of the rights set out in this booklet apply to people diagnosed with a mental illness, a mental disorder or both.

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Things that are not mental illness

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

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

What your legal rights are depend on your legal status and whether you are voluntary or involuntary. You should be told what your legal status is as it affects your rights. Ask a staff member if you are not sure.

Voluntary (informal) patients

If you have admitted yourself to a hospital or are receiving treatment from a community mental health service voluntarily, you will be known as a voluntary (informal) patient. If you are a voluntary patient, you have the right to leave the hospital at any time and/or 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 (ITO) and the staff may have the power to bring you back. If a doctor decides you meet the criteria, you will become an ITO patient. Whether or not the doctor does this depends upon how unwell they think you are. See the next chapter 'Orders' on page 10 for more information.

If you are a voluntary patient and want to leave hospital or refuse treatment you can seek legal advice before you go.

If your status changes from a voluntary patient to an ITO patient, the staff should explain to you what has occurred and what your rights are.

If you are in a private hospital or only getting treatment from a private psychiatrist or other therapist, you must be a voluntary patient. If those treating you think you need to be involuntary, they have to contact a public hospital or community mental health service and arrange for you to be transferred if necessary.

If you are voluntary, many of the rights set out in the Act and the Victorian Charter of Human Rights and Responsibilities (the Charter) (see page 3) apply to you. The rights that may be relevant to voluntary patients include:

- rights about money, possessions and mail (see page 18)
- the rights in the chapter 'Treatment and consent' including the rights outlined in the section 'How voluntary and involuntary patients should be treated' (see page 24)
- consent to treatment including for electroconvulsive therapy (ECT), non-psychiatric treatment, special procedures, psychosurgery, experimental treatment, and restraint and seclusion (see pages 25-34)
- case management and Individual Service Plans (see pages 35-37)
- some of the rights set out in the flow charts on pages 48-50
- all of the rights in the chapter 'Complaints and other rights' (see pages 51-60).

Involuntary patients

One of the objectives of the Act is to provide care, treatment and protection for people who do not or cannot consent to that care, treatment or protection. This objective is weighed against other objectives, such as keeping restrictions on your liberty at a minimum.

The Act refers to 'mental illness' and 'mental disorder'. The vast majority of ITO patients in Victoria are admitted and detained because they have been diagnosed with a mental illness that meets the rules for an ITO. More information about ITOs is given in the chapter 'Orders' on page 10.

As an involuntary patient, you do not have the freedom to leave hospital or refuse treatment. You can also be given psychiatric treatment without your consent. You might be made an ITO patient as an inpatient in hospital or as a patient living in the community on a community treatment order (CTO).

Public mental health services have the power to make you an ITO patient. However, the Act sets out a formal procedure that must be followed for these services to follow in putting a person onto an ITO.

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Mental health services must comply with the Charter in making ITOs, treating a person under them and making decisions about whether to change an ITO or discharge a person from their ITO.

Your Charter rights must be respected in relation to all aspects of your time as an inpatient. For example, your Charter rights to humane treatment in detention, privacy, freedom from discrimination, a fair hearing, freedom of movement, security of person, and freedom from inhuman and degrading treatment may be relevant when you are an inpatient.

See 'the Charter' on [page 3](#) for more information about your rights and how they can be limited.

Mental disorder patients

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

If you have been detained on an ITO 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. Your situation must meet all of the following three criteria for continuing detention and treatment:

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

The Mental Health Review Board (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. For more information on the Board, see 'Reviews and appeals' on [page 38](#).

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 [pages 18-20](#) 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' at the back of this booklet.

What your legal rights are depends on your legal status, and whether you are voluntary or involuntary. You should be told what your legal status is as it affects your rights. Ask a staff member if you are not sure.

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Orders

Involuntary treatment order (ITO)

Request for an ITO

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 Community Treatment Order (CTO). If you do not meet the criteria, no order can be made.

Recommendation for an ITO

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 any of the following:

- the same person who signed the request or
- the same doctor who performs the 24-hour examination or
- your relative or guardian.

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 in 'The five criteria for an ITO' on [page 12](#) 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 ITO patient.

If mental health practitioners 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 cannot 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' on [page 14](#).

A mental health practitioner is someone who is qualified to treat your illness and works for a public mental health service but they do not have to be a doctor. They can be a community mental health nurse, a psychologist, an occupational therapist or a social worker. If named as the person who will be looking after you on a day-to-day basis, they could also be called a case manager.

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

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The five criteria for an ITO

All five criteria must apply, not just one, for an ITO to be made and for you to have involuntary treatment.

The Mental Health Review Board (the Board), a tribunal which is independent of the mental health service, will review an ITO within eight weeks of the ITO being made.

Requirement	What the Board considers
1. You appear to be mentally ill AND	See page 5 for a definition of mental illness. The Board does not need to agree with your diagnosis. They will decide on whether it is likely or not that you appear to be mentally ill.
2. Your mental illness requires immediate treatment and that treatment can be obtained by being on an ITO AND	See page 24 for a definition of treatment.
3. 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 for the protection of members of the public AND	This criterion is more often met because of a risk to your health, not a risk to others. The undesirable or harmful effects of involuntary treatment must be weighed up against the positive benefits.
4. You have refused or are unable to consent to the necessary treatment for the mental illness AND	The Board may take into account your level of insight or understanding about the illness you have been diagnosed with and the treatment they say you need.
5. You cannot receive adequate treatment for the mental illness in a manner less restrictive of your freedom of decision and action.	The Board may take into account your support networks in the community.

For more information about the Board, see 'Mental Health Review Board reviews and appeals' on page 16 or see the chapter 'Reviews and appeals' on page 38.

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 where an ITO must be made.

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 (called 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 are met.

The ITO must include a treatment plan. See 'Treatment plans' on page 35 in the chapter 'Treatment and consent'.

Interim treatment under an ITO

As soon as the ITO is made, the mental health service may give you interim psychiatric treatment. However, 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 and
- you cannot consent and
- it would not be in your best interests to wait for an authorised psychiatrist's assessment.

Only a nurse or doctor should administer medication.

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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 or a friend, or by ambulance.

Department of Health policy states that department staff should arrange for transport in an ambulance rather than a police vehicle whenever they can. Police transport should only be used as a last resort.

Some 'prescribed' people (police, ambulance officers, nurses, psychologists, doctors, social workers or 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 this happens, ask for time to pack things and for help to make any other necessary arrangements. If you feel the force was unreasonable you can complain to Ombudsman Victoria, Victoria Police Ethical Standards Department, the Office of Police Integrity, the Chief Psychiatrist or the Office of the Health Services Commissioner. You can also get legal advice. For contact details, see 'Where to get help' at the back of this booklet.

Authority to transport without a recommendation

If, after they have taken reasonable steps, a mental health practitioner cannot 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 for the 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 Victoria Police Ethical Standards Department and/or the Office of Police Integrity, see the chapter 'Where to get help' at the back of this booklet.

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. If they do not 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. 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.

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The staff have certain powers if you leave without permission once a request and recommendation have been made, [see 'Absent without leave' on page 19](#). Once an ITO is made you are legally obliged to accept the psychiatric treatment which is given to you.

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. They must not be the same doctor who completed the recommendation.

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 from your ITO. If they consider that you meet the criteria but believe that you can get the required treatment under a 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 Board. You do not 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 will mean the automatic eight-week review happens sooner.

The chapter 'Reviews and appeals' on [page 38](#) 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 at any time

If at any time you do not meet one or more of the five criteria, you must be discharged from your ITO, whether as an inpatient or on a CTO. You can be discharged by the authorised psychiatrist at your treating service.

You will be given an appropriate discharge plan before you are discharged. 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 do not 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. [See 'Case management' and 'Treatment plans' on page 35](#) in the chapter 'Treatment and consent'.

Upon discharge, you should also be given phone numbers of people you can contact for support.

Statement of rights

When an ITO is first made in hospital or in the community, you must be told about your rights 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. The authorised psychiatrist at the mental health service is responsible for ensuring staff do this. They have a responsibility to make sure you understand.

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. For more information about making a complaint, [see the chapter 'Complaints and other rights' on page 51](#).

Always ask staff about your rights when you are admitted and throughout your treatment, as you need to. Remember though that 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 ITO patient, your guardian must be informed, whether it is a guardian appointed by the Victorian Civil and Administrative Tribunal (VCAT), by you, or by your parents if you are under 18.

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Organising your affairs

If you are admitted to hospital, you may need to:

- organise child care
- arrange to pay bills and debts
- arrange to lodge Centrelink forms or notify Centrelink
- tell staff or your case manager of any court appearances (the court must be told the reason why you cannot attend so your case does not go against you)
- notify work of your absence.

Ask for whatever help you need from staff, friends and family, or your administrator, guardian or power of attorney if you have one.

Money, possessions, mail, visits, voting and useful organisations

If you give some money to the staff when you are admitted to hospital they must hold it in a trust account for you. They can only keep up to \$5000 in the trust account for you – any amount over that must be paid back to 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.

You also have the right at the hospital to:

- have personal possessions. If your possessions are stored for you, then you must get receipts for these items
- send and receive mail without anyone looking at them
- receive visitors and communications.

In rare circumstances, the above rights may be limited if necessary for your treatment.

All patients have the right to vote in local, state and Commonwealth elections.

The service must also give you access to the contact details for agencies like the Board, Victoria Legal Aid, the Chief Psychiatrist, Community Visitors from the Office of the Public Advocate, and the Health Services Commissioner.

Leave

If you are an ITO 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' on page 14. You can also be apprehended and taken back to hospital if you leave without permission before the confirmed ITO is 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 the section 'Interstate treatment, apprehension and transfers' below.

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 do not agree with the decision to transfer you, you can contact the Board to appeal against this decision.

If you want to be transferred and the doctors refuse, you can ask the Chief Psychiatrist to help. See 'Where to get help' at the back of this booklet.

Interstate treatment, apprehension and transfers

If you live near the border of New South Wales or South Australia, there are cross-border agreements which mean you may be treated as an inpatient or under a CTO over the border.

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If you are an involuntary inpatient in Victoria or your CTO has been revoked and you are absent without leave in New South Wales or South Australia, you can be apprehended and put in hospital there or returned to a Victorian hospital.

If you are an involuntary inpatient you can be transferred to a hospital in New South Wales or South Australia. However, a reason must be given for the transfer and it must be reviewed and approved by the Board. The Board can only approve a transfer if it is for your benefit or necessary for your treatment and it should consider your wishes.

A similar agreement may be in place with Queensland soon. Get legal advice if you have questions about being treated involuntarily in any of these places as the laws and agreements are quite technical and may change.

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. The Board views a CTO as less restrictive than being an inpatient in 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.

You cannot be on a CTO if you are in a prison or are an inpatient in a psychiatric hospital.

If you are on a CTO, you are still an involuntary patient (and still on an ITO).

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 and given a copy of the order.

If you are placed on a CTO you must also be given a statement of rights.

Mental health services must comply with the Victorian Charter of Human Rights and Responsibilities (the Charter) in making CTOs, treating you and making decisions about whether to change a CTO or discharge you from your CTO. See page 3 for more information about your Charter rights and how they can be limited.

The five criteria for a CTO

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

Requirement	What the Board considers
1. You appear to be mentally ill AND	See 'Definition of mental illness' on page 5. The Board does not need to agree with your diagnosis. They will decide on whether it is likely or not that you appear to be mentally ill.
2. Your mental illness requires immediate treatment and that treatment can be obtained by being on an ITO AND	See page 24 for a definition of treatment.
3. 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 for the protection of members of the public AND	This criterion is more often met because of a risk to your health, not a risk to others. The undesirable or harmful effects of involuntary treatment must be weighed up against the positive benefits.
4. You have refused or are unable to consent to the necessary treatment for the mental illness AND	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.
5. You cannot receive adequate treatment for the mental illness in a manner less restrictive of your freedom of decision and action.	The Board may take into account your support networks in the community.

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 do not meet all the five criteria.

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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' on page 35 in the chapter 'Treatment and consent'.

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 your CTO or extend it if they believe you still meet all the criteria.

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 and be told why it was extended.

Expiry of a CTO

If your CTO expires without being extended by an authorised psychiatrist, you are no longer an ITO 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 residence condition. The treatment plan includes who the doctors are, what your treatment will be and other issues. See 'Treatment plans' on page 35 in the 'Treatment and consent' chapter.

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 and having it revoked

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 become an involuntary inpatient and 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 cannot 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 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 in an appeal may make it happen sooner than eight weeks. You can also put in an appeal and have another Board hearing at any time. The chapter 'Reviews and appeals' on page 38 covers your rights at Board hearings, such as your right to seek legal representation or advocacy, and the powers of the Board.

Treatment and consent

Definition of treatment

Treatment is defined as things done with professional skill to remedy your 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. Under the Victorian Charter of Human Rights and Responsibilities (the Charter), treatment must not be cruel, inhuman or degrading.

How voluntary and involuntary patients should be treated

The *Mental Health Act 1986* (the Act) states that all mental health services should be provided in accordance with certain principles. These apply whether you are a voluntary (informal) or involuntary treatment order (ITO) patient, with a mental illness or a mental disorder.

You should receive treatment in accordance with the following principles when using a public or a private service:

- 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
- 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 mental 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.

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
- encourage service users to participate in developing and operating the services.

All the actions and decisions of public mental health services must also comply as far as possible with the Charter, unless it would not be reasonable under the Act or general laws such as duty of care for the Charter to be complied with. See [page 3](#) for more detailed discussion of your rights under the Charter and how they can be limited.

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 undesirable or harmful effects and what to do if they occur
- alternative treatments.

You need to be given this information so you can give informed consent.

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The information must be explained to you in a way that you can understand. If the staff explain it in a way you do not 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 the expert way that medical staff do but you must demonstrate some understanding of the benefits and risks of the treatment.

It cannot be assumed that you consent to treatment simply because you do not object to it or that if you refuse treatment you are unable to consent.

Depending on the type of treatment and whether you are voluntary or involuntary certain types of requirements must be met before you can say consent is given or not.

Voluntary (informal) patients and consent to psychiatric treatment

If you are in a private hospital you are a voluntary patient. If you are in a public hospital, you may be a voluntary or involuntary patient.

If you are a voluntary (informal) patient, you can expect that:

- treatment is only given with your informed consent, [see 'Consent to treatment'](#), on [page 25](#)
- you can refuse treatment
- you can change your mind about treatment and withdraw your consent if you decide you do not like it
- you can seek a second opinion from another doctor at this or any time. For more information, [see 'Second opinions'](#) on [page 51](#) in the chapter 'Complaints and other rights'.

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 patients and consent to psychiatric treatment

If you are an ITO patient in a hospital or on a community treatment order (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 undesirable or harmful 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. For more information about second opinions, [see 'Second opinions'](#) on [page 51](#) in the chapter 'Complaints and other rights'.

Informed consent for Electroconvulsive Therapy (ECT), major non-psychiatric treatment and psychosurgery

Staff must follow certain steps to seek your informed consent, whether you are voluntary or involuntary, if the treatment proposed for you includes:

- ECT, [see page 28](#)
- major non-psychiatric treatment, [see page 31](#)
- psychosurgery, [see page 32](#).

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.

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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.

If you consent, 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 such as sterilisation, abortion, transplants and research treatment are not covered by the Act. Whether you are involuntary or not, a high level of consent must be obtained, if you are able to consent. See also 'Special procedures' on page 31 and 'Experimental treatment' on page 33.

ECT

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.

Consent requirements for ECT

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.

You must be given a printed statement of your rights. Department of Health 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 stop the ECT. If you are on an ITO or are made involuntary after being voluntary, the staff may argue that you are unable to consent or that it is urgently required and give it to you anyway.

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.

Second opinions can be provided by another psychiatrist from the service or an independent private psychiatrist. You may have to pay for a private opinion and they can be difficult to arrange. See 'Second opinions' on page 51 in the chapter 'Complaints and other rights'.

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 ITO 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 **AND**
- any beneficial alternatives have been considered **AND**
- without it your physical or mental condition will significantly deteriorate **AND**
- all reasonable efforts have been made to notify your guardian or primary carer.

ECT without consent can only be given in public hospitals.

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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 do not want ECT

If you do not want ECT, which is proposed or has already commenced, you can do all or any of the following:

- get legal advice or representation, including about whether you can get a court order (an injunction) to hold back the ECT
- get a second opinion on your need for the treatment from another doctor
- contact the Chief Psychiatrist
- appeal to the Mental Health Review Board (the 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 from your ITO
- 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 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 Chief Psychiatrist, the Office of the Health Services Commissioner, a lawyer or advocate. See 'Where to get help' at the back of this booklet.

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 treating professionals 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.

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

If you are involuntary, the doctors have to get your 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.

Special procedures

Special procedures are very serious procedures such as sterilisation, abortion and transplants. Under the *Guardianship and Administration Act 1986*, special procedures can only be performed without your consent if the Victorian Civil and Administrative Tribunal (VCAT) appoints a guardian and approves the procedure. VCAT 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:

- anaesthetics
- any surgery carried out under anaesthetic
- radiotherapy
- chemotherapy.

If you are involuntary but can consent to major non-psychiatric treatment, written consent must be obtained. You must be given the booklet *Major non-psychiatric treatment* and information explained. See 'Informed consent for Electroconvulsive Therapy (ECT), major-non psychiatric treatment and psychosurgery' on [page 27](#) 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.

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

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If you are involuntary and considered unable to consent, the first person from 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.

Medical powers of attorney, guardians and enduring guardians have to act in your best interests, make the same decision you would have made wherever possible, and avoid conflicts of interest. You have appeal rights to VCAT, and VCAT automatically reviews guardians it has appointed at least every three years. Get legal advice if you have any concerns.

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, other people may consent to the treatment on your behalf:

- a parent, guardian or person appointed under the *Children, Youth and Families Act 2005* or other relevant legislation
- an authorised psychiatrist.

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 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.

Psychosurgery

In the rare case that psychosurgery is proposed, as well as getting informed consent, as set out above in 'Consent requirements for ECT' on [page 28](#), the Psychosurgery Review Board also has to approve it. If you cannot give informed consent, then the psychosurgery cannot be performed.

Experimental treatment

If you can consent, your informed consent must be obtained before you take part in the clinical trial use of any new drug on the market. If someone wants you to participate in a clinical trial and you are unable to consent, they must follow approval procedures under the Guardianship and Administration Act.

Restraint or seclusion

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 harder for you to get off, 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.

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 or
- prevent you from leaving the hospital.

Who can authorise restraint or 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.

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For restraint or seclusion to be lawful it must be:

- approved in advance by the authorised psychiatrist or
- in the case of an emergency, approved by the authorised senior registered nurse on duty and notified to a registered medical practitioner without delay.

Requirements for restraint or seclusion

You cannot be restrained or secluded 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 ITO patient. Speak to a lawyer.

If you are restrained or secluded:

- 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 15 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. Restraint or seclusion can be intrusive and staff should talk to you about it during and after if it occurs.

It is unlawful (an offence) to restrain or seclude someone 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 Chief Psychiatrist. See 'Where to get help' at the back of this booklet. The Chief Psychiatrist has the power to stop the restraint or seclusion. If you have an appeal or review at the Board, the Board might also make a decision or recommendation which ends the restraint or seclusion.

The rights to humane treatment in detention and liberty, freedom of movement, and freedom from inhumane and degrading treatment under the Charter may be violated by extreme forms of treatment like restraint or seclusion – for example, using seclusion solely to prevent a person from leaving may be a breach of the Charter. If the legal requirements of restraint or seclusion are not met, this would be a breach of the Charter as well as the Act. See page 3 for more information about Charter rights and how they can be limited.

Case management

If you are in the public mental health system, you may have a case manager appointed. You can ask about this. Case managers should be able to advise you about things like employment, study or social activities, and your finances or at least point you in the right direction for any help available from others. Even if you are involuntary and do not want to be, you may be able to get things other than treatment which you do want or better access to staff. You are made more of a priority.

Individual Service Plans (ISPs)

You should also have an ISP – this 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 deal with the treatment you will receive but other issues as well. They have to be made for both voluntary and involuntary 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 ITO 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. Treatment 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.

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

- your wishes
- the wishes, if you do not 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 wellbeing
- 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 people on 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 do not 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 do not object they have to consider the wishes of those people if they are giving you ongoing care or support.

Your treating team and the Board have to comply with the Charter when they develop and review your treatment plan. See page 3 for more details about the rights under the Charter and how they can be limited.

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 wellbeing. 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 wellbeing.

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

You can also ask 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. For contact details, see 'Where to get help' at the back of this booklet.

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Reviews and appeals

Mental Health Review Board

The Mental Health Review Board (the Board) is an independent tribunal. It has the legal power to decide if involuntary treatment order (ITO) patients, including people on community treatment orders (CTOs), should remain as involuntary patients or be discharged, or whether their treatment plans should be revised. The Board makes its decisions by holding review hearings and appeal hearings.

See 'Where to get help' at the back of this booklet for contact details for the Board.

The Board has to comply with the rights in the Victorian Charter of Human Rights and Responsibilities (the Charter) in the following ways:

- make and develop all of its decisions, actions and processes in regards to the Charter
- ensure that the hearing process is as fair as possible. This includes:
 - giving you access to your file
 - providing an interpreter if required
 - letting you arrange to have a lawyer, advocate or support person
 - giving you information about hearings, letting you bring witnesses you want to and being fair about when the hearing takes place. This includes making sure there is no unreasonable delay in when your case is heard
- conduct hearings by:
 - clearly telling you what is going on and explaining things you do not understand
 - giving you a chance to read a document you have not yet read
 - protecting your privacy
 - letting you ask questions
 - making sure you can fully present your case
- consider the Act in the way it applies to your case, including, for example, when it weighs up the pros and cons of treatment and considers whether there is a less restrictive way for you to get adequate treatment
- strictly comply with time limits under the Act.

See page 3 for more information about your Charter rights and how they can be limited.

Interpreters

Ask for an interpreter if you or any of your support people need one. Make sure the booking is for an adequate length of time. Your hearing may take longer if you have an advocate. 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 ITO patients within eight weeks of their becoming involuntary, to ensure that the ITOs meet all the relevant rules for continued involuntary treatment. Inpatient stays are very often much less than eight weeks.

Putting an appeal in when you are first made involuntary and asking for a hearing as soon as possible usually means the hearing happens sooner. You can always withdraw the appeal so you may want to appeal as soon as possible to be on the safe side. If you would like a legal advocate, you should try and contact one as soon as you receive your notice of a hearing. The notice has the date of your hearing on it.

The Board also automatically reviews ITO 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 ITO patient and you do not believe you meet the rules 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 to put in the form.

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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' at the back of this booklet for the Board's details.

You do not have to give reasons for your appeal when you first send it in. If you prefer, you can simply say that you do not 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. Under particularly urgent circumstances, the Board may give you a special hearing sooner than the next fortnightly hearing.

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.

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. 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, not anyone else's views or wishes at Board hearings. Advocates might increase your chances of discharge or the likelihood of other improvements such as changes to treatment or an early review and can make the hearing fairer.

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, Victoria Legal Aid 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' at the back of this booklet for contact details.

Access to your records before a hearing

You have the right to see any of the documents the Board sees. You have the right to see these at least 24 hours before the hearing. It is a good idea to read these as soon as possible. Try to do this a week or more before the hearing so you have time to take in the views of the clinicians and to make the hearing process easier.

There are usually two main documents involved, your file and the *Report on Involuntary Status*.

Your file

If you have a hearing, the hospital or clinic must make your file available unless they have made an application for non-disclosure. They should give you all volumes if you ask for them.

Your Report on Involuntary Status

You must get a copy of the *Report on Involuntary Status*, prepared by the doctor for the Board. This report should set out the issues relevant to the rules for involuntary treatment (see 'The five criteria for an ITO' on page 12 in the chapter 'Orders') as well as your diagnosis, the treatment that you are being given and the treatment that the doctor plans for the future. You should also get a copy of your treatment plan.

If you do not receive the report at least 24 hours before your hearing, the Board may delay (adjourn) the hearing. You may also request an 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 and tell you about it. Your case manager, doctor or the person who organises the hearings should tell you. The report for the Board should say whether documents have been withheld.

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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 or you can ask that the Board not see them. For information on accessing your file for reasons other than a Board hearing [see](#) the section 'Information privacy rights generally' on [page 56](#) in the chapter 'Complaints and other rights'.

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 can direct any questions you have about the hearing to your case manager or lawyer/advocate if you have one.

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. Victoria Legal Aid may pay for a second opinion if you have a hearing and they think your case has merit.

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 your ITO or CTO, 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 rehabilitation and support services (PDRSSs)), 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. The Board can recommend changes, so it can be worth the hearing even if you are not discharged. You can call witnesses. 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 cannot 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

Where the hearing happens

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.

Who the Board members are

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

The Board may be made up of only one of those people when the hearing is either:

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

In special circumstances, you may be able to ask for a different Board, for example:

- if you know the Board members personally and/or
- you are concerned that one member Board would not represent all perspectives of the legal and medical professions and the community and/or
- if you have had a decision made by those members before.

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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.

It is Board policy that the members tell you their names and what their role is in the hearing. You can ask them if they do not do this.

What happens in the hearing

The Board members will have your hospital file and the *Report on Involuntary Status* prepared by the doctor on your continued involuntary status. The Board will ask the doctor why it is necessary for you to remain an ITO 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. You can ask to take your turn to speak and answer questions before the doctor if you prefer. 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.

Tell the Board if there is anything about your treatment, the treatment plan or how the plan was developed that you are not happy with. 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.

Length of the hearing

There is no set time for a hearing as each case is different. It could take 10 minutes or much longer. You may also have to wait a while for your hearing to start.

What the Board can decide

The Board has the same powers whether your hearing is an appeal or review.

Confirm

The Board may simply confirm the ITO or CTO, if all the criteria are met.

Discharge

If you are an ITO 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. You do not need to argue against all five. You only need to show you do not meet one.

If you are an ITO patient in hospital, and do not 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. You will be able to leave hospital on a CTO but will still be on an order.

For more information on ITOs and CTOs, see 'Orders' on page 10, especially 'The five criteria for an ITO'.

Putting inpatients on 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. The Board 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.

Varying CTOs

If you are on a CTO, the Board can change (vary) the length of the CTO, or vary or remove the residence condition. If it 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' on page 37.

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Clarifying treatment and making recommendations

Sometimes the Board might also make recommendations to the doctors about how to improve your treatment or clarify something important to you, for example, that the risk is to your health not to other people. You may benefit if you raise any changes you would like made.

Early reviews

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 ITO, 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 ITO 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 a written *Statement of Reasons*

You can ask the Board for a written *Statement of Reasons* for their 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 Board

Appeals to the 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. New information could affect the Board's decision.

Appeals to the Victorian Civil and Administrative Tribunal (VCAT)

If you disagree with the decision of the Board you can also appeal to VCAT. You must appeal within 28 days of the Board's decision or when you get the Statement of Reasons you have requested, or whichever is later. You can appeal by writing to the Registrar of the General List at VCAT. It is a good idea to get legal advice and assistance. Victoria Legal Aid has a lawyer at VCAT every day and the lawyer may be able to help with the appeal procedure.

Appeals to the Supreme Court

Under some circumstances, you can appeal to the Supreme Court about questions of law but not questions of fact, from VCAT to the Supreme Court. Time limits apply and you should get legal advice. It is also possible under some circumstances to appeal straight from the Board to the Supreme Court on questions of law. Time limits apply here too. It is particularly important that you get legal advice and assistance with Supreme Court appeals.

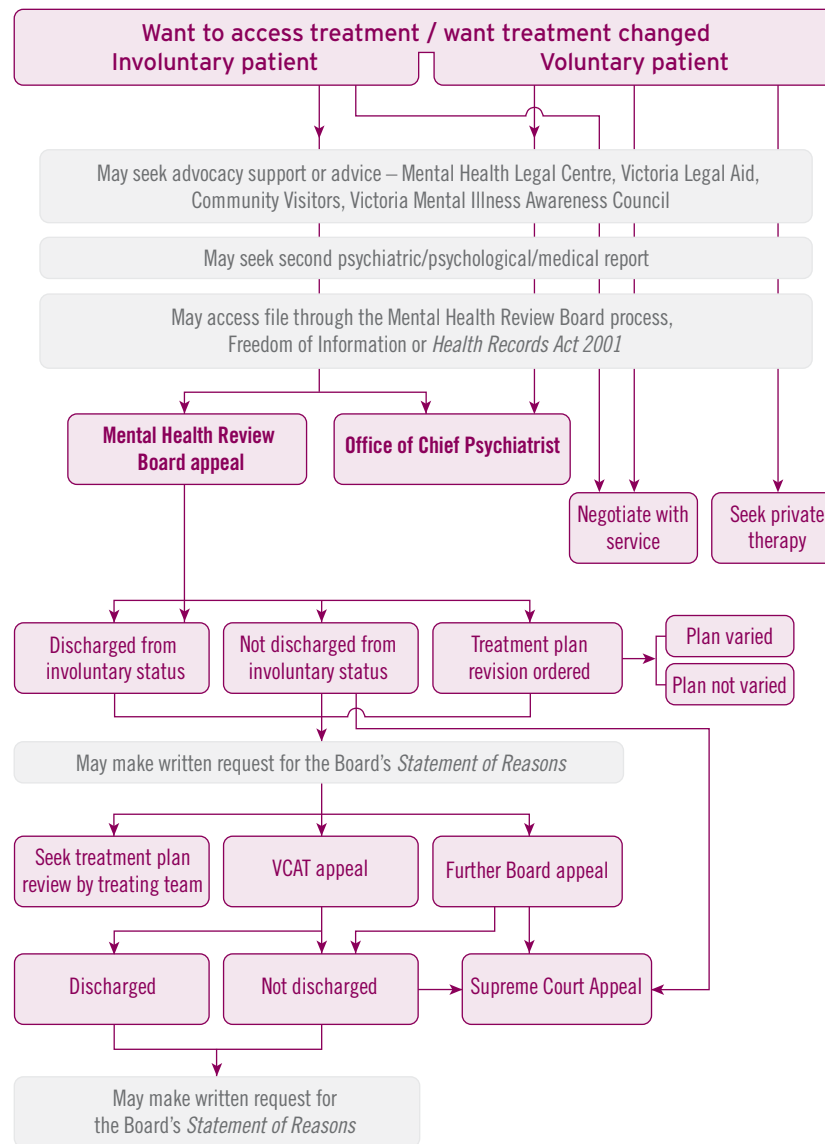
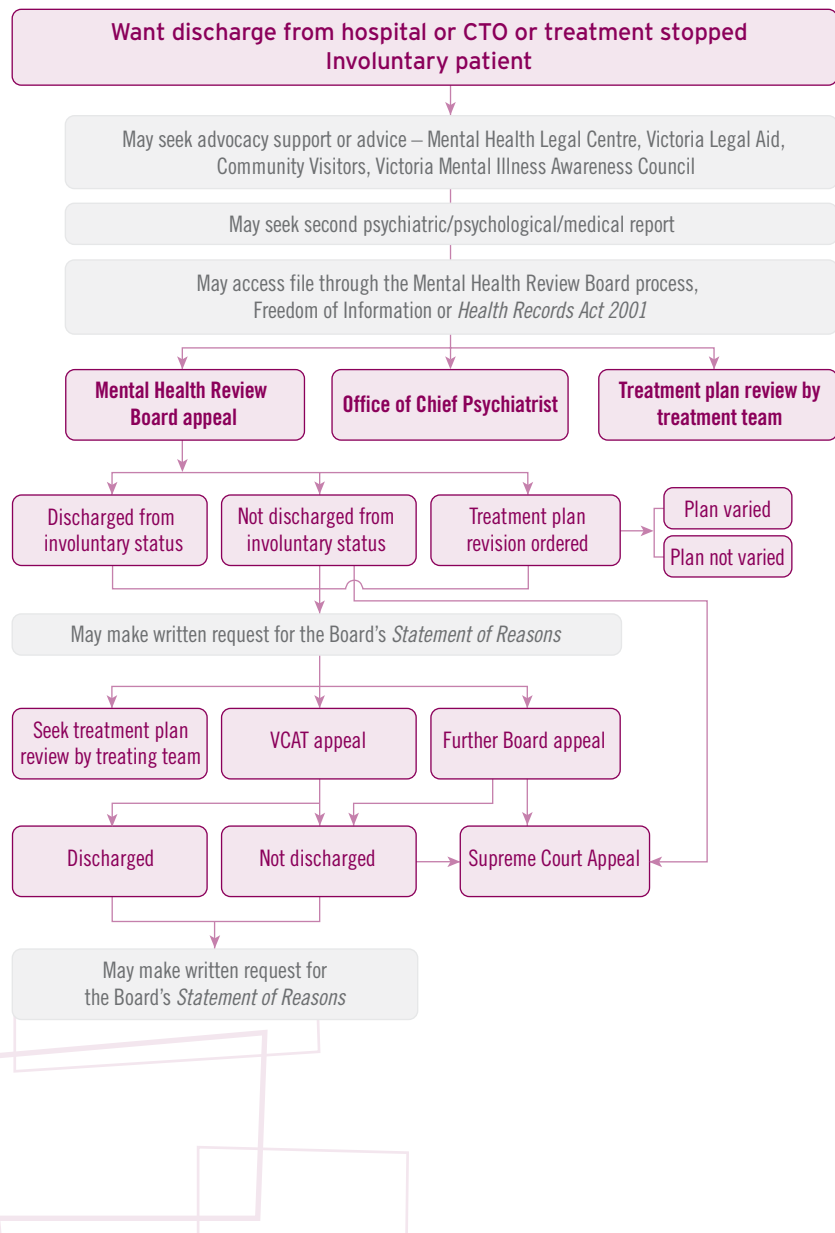
Getting help with your appeal

If you appeal to VCAT or are considering legal action in the Supreme Court, you should always seek legal advice and assistance. Also consider any arguments based on the Charter. It may be possible to obtain a declaration from VCAT or the Supreme Court that a Charter right has been breached. See 'Where to get help' at the back of this booklet for contact details.

Patients' rights

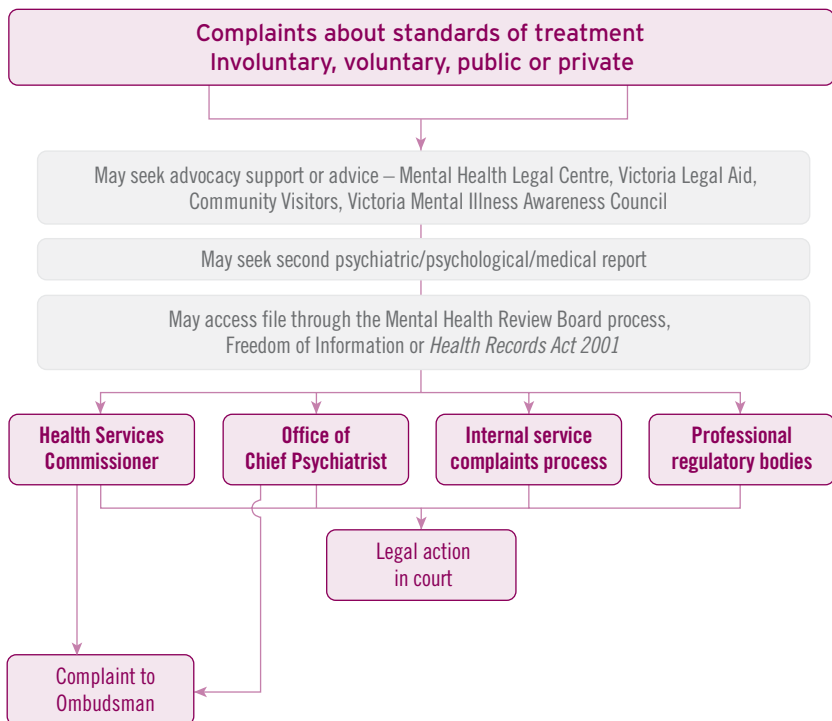
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Possible actions if unhappy with mental health services



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Complaints and other rights

Rights about treatment

Medication and other treatment

It is important to be informed about your treatment, including 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 undesirable or harmful effects. You may want to try to reduce the dosage, change or stop the medication (see the chapter 'Review and appeals' on page 38).

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. If you have had several admissions, there may be several opinions already on your file.

You may want to speak to your general practitioner about getting a referral to an independent private psychiatrist. If you get a second opinion from a private psychiatrist outside the hospital or clinic you may have to pay.

An independent second opinion is likely to be more helpful if you have seen the psychiatrist before and they know about your treatment with the public system. Even if the private psychiatrist agrees with the public service about something such as your diagnosis, they may have some other ideas for improvement such as changes to your treatment. It might also be possible to arrange to have your treatment transferred to a private psychiatrist.

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You may be able to get names of psychiatrists who bulk bill through the Royal Australian and New Zealand College of Psychiatrists or ethnic-specific psychiatrists through the Victorian Transcultural Psychiatry Unit. See 'Where to get help' at the back of this booklet. Bulk billing psychiatrists usually charge for the report but not the appointment.

You can talk to a lawyer about whether Victoria Legal Aid may be able to pay for the cost of a report. Sometimes you may be able to get a letter or a note after your visit to a psychiatrist, or arrange for the psychiatrist to talk to the public mental health service, which might avoid the cost of a report.

Requesting a new psychiatrist, doctor or case manager

It is important that the people treating and assisting you 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 the people who are treating or assisting you 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 the people treating or assisting you, you can write or complain to the Director of Clinical Services in your area or the Chief Psychiatrist. See 'Where to get help' at the back of this booklet.

Right to a support person, advocate or interpreter

You have a right to have someone of your choice with you when you are discussing your treatment with your psychiatrist or doctor. This may be a family member, close friend, advocate or other support person.

Annual health examination

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

Investigations into a patient's death

If someone dies while they are an involuntary patient in hospital or on a CTO, the psychiatrist in charge must notify the Coroner and the Chief Psychiatrist. The Coroner must also be notified 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, in some cases, an inquest as well.

You can report any death you think should be looked into, such as someone dying after they have been discharged or someone dying who was or should have been receiving any type of mental health service, and an investigation or inquest might be conducted.

Family members also have a special right to report deaths of people who died within three months of being discharged from public mental health services, whether they were voluntary or involuntary, under the *Coroners Act 1985*.

Laws about accessing records

Laws about access to records, such as files, are complex and time limits may apply. Contact a lawyer to help you work out the best course of action. See 'Where to get help' at the back of this booklet.

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 Freedom of Information (FOI) laws. Sometimes the service might give you access informally but usually you will have to apply under FOI.

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 FOI 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 cannot help you, contact the Freedom of Information Unit within the Department of Human Services. See 'Where to get help' at the back of this booklet.

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Changing details on your file

You can ask to have details in your file amended if they are incomplete, inaccurate, out-of-date or misleading. If the staff refuse to make the changes, you can still ask that your statement be attached to the file. Your request can be a letter (or a form) explaining what information needs correcting and why. It is a good idea to provide supporting evidence. If you have a second opinion from another doctor, you can ask that it be attached to your file.

You cannot delete or erase what is written on your medical file but you can attach documents that you believe more accurately explain your circumstances or experiences.

Getting copies of documents through FOI

You can ask to look at your file or to have photocopies of it. Remember to ask for the photocopying fees to be waived and provide your pension card. You can get legal advice. See 'Where to get help' at the back of this booklet.

Appeals against FOI

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. The application fee must not be charged in relation to your own records and the other 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.

Getting 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, and
- records held by any community support service.

You also have the right to correct other 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.

Other non-health records

The Federal or Victorian Privacy Commissioners may be able to help you access records other than health records. For contact details, see 'Where to get help' at the back of this booklet.

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 must 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.

Some of the most common exceptions where information may be released without your permission are:

- 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. 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
- when it is released to police for transportation to treatment
- when there is a belief that a child is in need of protection and information is given to child protection
- when information is given to a psychiatric disability rehabilitation and support service (PDRSS) in connection with further treatment.

A person may be prosecuted for breaching confidentiality. Punishments can include a fine of up to \$5,841 (based on the value of a penalty unit at time of publication). It should be noted that the penalty unit may actually increase by the time this goes to publication, as the current penalty unit of \$116.82 is for this financial year ending 30 June 2010. If you need further information you should contact a lawyer.

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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 Office of 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. For contact details, see 'Where to get help' at the back of this booklet.

Making a complaint

You may have a complaint about:

- a hospital
- an Area Mental Health Service
- a Crisis Assessment and Treatment (CAT) team
- a GP, specialist, dentist, physiotherapist, occupational therapist, social worker, nurse or ambulance officer.

How to make a complaint

Start by making your complaint to the service itself. If the service does not address it satisfactorily or you want to complain to an outside body from the start you can contact a relevant complaint body such as the Office of the Health Services Commissioner or the Chief Psychiatrist. Complaints can be made about public or private services.

Public mental health services and all the people who work for them like case managers, doctors, psychiatrists and administrative staff have to respect your rights under the Victorian Charter of Human Rights and Responsibilities (the Charter) in all their dealings with you. See page 3 for more details about those rights and how they can be limited.

Police, ambulance workers, government departments and bodies like the Chief Psychiatrist and the Office of the Health Services Commissioner must comply with the Charter, and private doctors treating you under the *Mental Health Act 1986* (the Act), such as under a CTO, are probably also bound. So you may be able to use rights under the Charter to strengthen a complaint.

General complaints

Chief Psychiatrist

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 also has overall responsibility for the medical care and welfare of people receiving treatment or care for a mental illness or a mental disorder.

The Chief Psychiatrist can take up complaints and concerns on behalf of clients and is responsible for electroconvulsive therapy licensing. They can recommend that the Department of Health, which is responsible for public mental health services, be prosecuted for breaching the the Act. They have the power to direct a public service to commence, cease or vary treatment.

They might help to:

- change a treating clinician
- assist with communication problems
- resolve issues with follow-up care
- plan a discharge
- resolve disagreements about proposed treatments and differences of opinion about diagnosis and related aspects of treatment
- solve complaints about medication including undesirable or harmful effects and dose levels.

For example, following the 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.

Health Services Commissioner

The Health Services Commissioner can investigate and help resolve complaints about any health service provider such as:

- unsatisfactory care
- being denied your respect, dignity or privacy
- being negligent
- being unprofessional staff
- anything else.

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Remedies through conciliation may include:

- an apology
- compensation
- an acknowledgment of harm
- changes in policies or practices at services.

The Health Services Commissioner also has the power to make recommendations to the Chief Psychiatrist and other government departments. They can help you access health records and advise on health privacy problems. Time limits may apply so speak to a lawyer.

Office of the Public Advocate (OPA) and Community Visitors

OPA can advise and assist with complaints about services, care and treatment of people with a disability, including psychiatric disability.

OPA also runs a Community Visitors program. Community Visitors are official, independent trained volunteers who visit public inpatient and residential mental health services to enquire into the adequacy of the services and to promote your rights, dignity and safety. They can help resolve issues. They may offer support at your Board hearing. They will not necessarily act on your wishes but may advocate for your best interests. If you want to meet with a Community Visitor, contact OPA. See 'Where to get help' at the back of this booklet.

Professional regulatory bodies

If you have a complaint about a particular worker, their professional regulatory body may investigate it. 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.

Ombudsman Victoria

The Ombudsman can enquire into or investigate complaints about government departments such as the Department of Health. It can also investigate the way the Chief Psychiatrist and the Office of the Health Services Commissioner handle complaints. The Ombudsman can make recommendations and is required to report to parliament. Part of the Ombudsman's role is to investigate whether government departments like the Department of Health or public statutory bodies like the Mental Health Review Board breach the Charter.

Complaints about discrimination

You should not be discriminated against because of your mental illness or mental disorder, or because someone thinks you have one.

The Commonwealth *Disability Discrimination Act 1992* and the Victorian *Equal Opportunity Act 1995* 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 these acts, you can contact the Victorian Equal Opportunity & Human Rights Commission or seek legal advice. Time limits apply. You should contact a lawyer. For contact details, see 'Where to get help' at the back of this booklet.

Patients' rights

A self-help guide to Victoria's Mental Health Act

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 1958* 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' at the back of this booklet.

Complaints about police conduct

If you wish to make a complaint about the police, this can be made to Victoria Police Ethical Standards Departments and/or the Office of Police Integrity. You can find their details at the back of this book, in 'Where to get help'.

Where to get help



If you need an interpreter:

Call the Translating and Interpreting Service for an interpreter to help you speak to any of the agencies in this section. Ask the interpreter to put you through to the agency you need. This is free if you call Victoria Legal Aid. It is also free for most government agencies and community organisations.

Tel: 131 450



If you are deaf or have a hearing or speech impairment:

Use the National Relay Service to phone any of the agencies (including Victoria Legal Aid) in this section. This is a free service. For more information see www.relayservice.com.au

TTY users: Call 133 677 and then ask for the phone number of the agency you need. Include the area code

Speak and Listen users: Call 1300 555 727 and then ask for the phone number of the agency you need. Include the area code

Internet relay users: Connect to www.iprelay.com.au/call/index.aspx and then ask for the phone number of the agency you need. Include the area code

Victoria Legal Aid

Legal Information Service

Tel: 9269 0120 or 1800 677 402 (country callers)

Arabic	9269 0127	Persian (Farsi)	9269 0123
Croatian	9269 0164	Polish	9269 0228
Greek	9269 0167	Serbian	9269 0332
Italian	9269 0202	Ukrainian	9269 0390

Monday to Friday, 8.45 am to 5.15 pm

You can also get an interpreter from the Translating and Interpreting Service if you speak another non-English language that we do not cover. Call 13 14 50 and ask to be put through to Victoria Legal Aid.

Local offices

We have offices all over Victoria. See the back cover for office locations.

Website

www.legalaid.vic.gov.au

Patients' rights

A self-help guide to Victoria's Mental Health Act

Legal help

Mental Health Legal Centre

9th floor 10-16 Queen St Melbourne 3000

Tel: 9629 4422

Advice line open: Mon, Wed, Fri 3 pm – 5 pm
Tues, Thurs 6.30 pm – 8.30 pm

Toll free: 1800 555 887 (Reverse charges (Metro Melbourne only) 12550 1800 555 887)

Fax: 9614 0488

Email: mental_health_vic@clc.net.au

www.communitylaw.org.au/mentalhealth

Federation of Community Legal Centres

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

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

Tel: 96521500

Fax: 9654 5204

Email: administration@fcl.org.au

www.communitylaw.org.au

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@dhs.vic.gov.au

www.mhrb.vic.gov.au

Complaints/Commissions

Chief Psychiatrist

Department of Health, Floor 17, 50 Lonsdale St Melbourne 3000

Tel: 9096 7571

General enquiries: 1300 767 299

Fax: 9096 7697

www.health.vic.gov.au/chiefpsychiatrist

Office of the 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

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

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

Patients' rights

A self-help guide to Victoria's Mental Health Act

Office of the Public Advocate (including Community Visitors Program)

5th floor, 436 Lonsdale St Melbourne 3000

Tel: 9603 9500

Toll free: 1300 309 337

TTY: 9603 9529 Fax: 9603 9501

Email: publicadvocate@justice.vic.gov.au

www.publicadvocate.vic.gov.au

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

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

Royal Australian and New Zealand College of Psychiatrists

Tel: 9640 0646 or 1800 337 448

Email: ranzcp@ranzcp.org

www.ranzcp.org

Victoria Police Ethical Standards Department

Level 2, Flinders Tower, World Trade Centre, 637 Flinders St Melbourne 3005

Tel: 1300 363 101

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

Victorian Equal Opportunity & Human Rights Commission

3rd floor, 380 Lonsdale St Melbourne 3000

Tel: 9281 7111 toll free: 1800 134 142

TTY: 9281 7110

Fax: 9281 7171

Email: information@veohrc.vic.gov.au

www.humanrightscommission.vic.gov.au

Other help

Centre Against Sexual Assault (CASA) House

Crisis support and referral for victims of sexual assault.

Level 3, Queen Victoria Women's Centre, 210 Lonsdale St Melbourne 3000

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

Email: casa@thewomens.org.au

www.casahouse.com.au

Consumer Action Law Centre

Offers free legal advice and representation to vulnerable and disadvantaged consumers across Victoria about debts, credits and utilities.

Tel: 9629 6300 or 1300 881 020

Department of Human Services, Freedom of Information Unit

GPO Box 4057 Melbourne 3001

Tel: 9096 8449

Fax: 9096 8848

Lifeline 24-Hour Telephone Counselling Service

Tel: 13 1114

Patients' rights

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Psychiatric Disability Services of Victoria (VICSERV) Inc.

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.

Level 2, 22 Horne Street Elsternwick VIC 3185

Tel: 9519 7000

Fax: 9519 7022

Email: vicserv@vicserv.org.au

www.vicserv.org.au

Victorian Mental Illness Awareness Council

Building 1/22 Aintree St, East Brunswick 3056

Tel: 9380 3900

Fax: 9388 1445

Email: info@vmiac.com.au

www.vmiac.com.au

Victorian Statewide Suicide Helpline

24 hours, 7 days a week

Tel: 1300 651 251

Victorian Transcultural Psychiatry Unit

Tel: 9288 3300 fax: 92883370

Email: vtpu@svhm.org.au

www.vtpu.org.au

Patients' rights

A self-help guide to Victoria's Mental Health Act

More information

Victoria Legal Aid has free booklets for the public with legal information on topics such as intervention orders, police powers, family law and going to court.

Visit www.legalaid.vic.gov.au to order or download or telephone 9269 0223 to find out more.



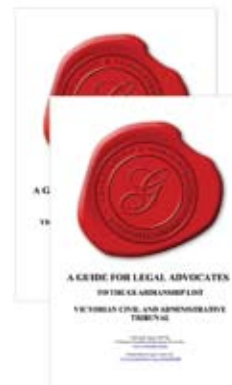
Police powers: your rights in Victoria

This booklet is a general guide to help you when you deal with the police
Flemington and Kensington Community Legal Centre and Victoria Legal Aid.

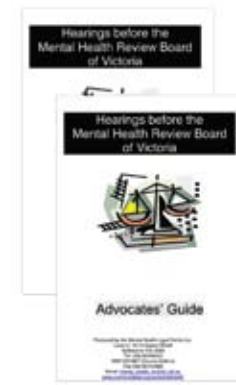


Take control

A kit for making powers of attorney and guardianship
Office of the Public Advocate and Victoria Legal Aid.



A Guide for Legal Advocates



Hearings before the Mental Health Review Board of Victoria

Patient's rights

A self-help guide to Victoria's Mental Health Act

Mental Health Legal Centre

9th Floor 10-16 Queen St
Melbourne 3000
Tel: 9629 4422 / 1800 555 887

Victoria Legal Aid

Legal Information Service

Tel: 9269 0120
Country callers: 1800 677 402

Offices

MELBOURNE

350 Queen St
Melbourne VIC 3000
Tel: 9269 0120
Country callers: 1800 677 402

Suburban offices

BROADMEADOWS

North western suburbs
Level 1, Building 1
Broadmeadows Station Centre
1100 Pascoe Vale Rd
Broadmeadows VIC 3047
Tel: 9302 8777

DANDENONG

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

FRANKSTON

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

PRESTON

North eastern suburbs
42 Mary St
Preston VIC 3072
Tel: 9416 6444

RINGWOOD

Outer eastern suburbs
23 Ringwood St
Ringwood VIC 3134
Tel: 9259 5444

SUNSHINE

Western suburbs
1/474 Ballarat Rd
Sunshine VIC 3020
Tel: 9300 5333

Regional offices

BALLARAT

Central Highlands region
Area A, Level 1
75 Victoria St
Ballarat VIC 3350
Tel: 5329 6222
Toll free: 1800 081 719

BENDIGO

Loddon-Campaspe region
424 Hargreaves St
Bendigo VIC 3550
Tel: 5448 2333
Toll free: 1800 254 500

GEELONG

Barwon region
Level 2, 199 Moorabool St
Geelong VIC 3220
Tel: 5226 5666
Toll free: 1800 196 200

HORSHAM

Wimmera region
29 Darlot St
Horsham VIC 3400
Tel: 5381 6000
Toll free: 1800 177 638

MORWELL

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

BAIRNSDALE

Gippsland region (branch office)
101A Main St
Bairnsdale VIC 3875
Tel: 5153 1975

SHEPPARTON

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

WARRNAMBOOL

South Coast region
185 Fairy St
Warrnambool VIC 3280
Tel: 5559 7222
Toll free: 1800 651 022

Publication orders

To download or order our publications in English or other languages go to www.legalaid.vic.gov.au
If you need help ordering online please call Victoria Legal Aid on 9269 0223