

# Assessment orders Diagnosis, assessment and treatment orders

About your rights

## In summary

When you are on an assessment order, or a diagnosis, assessment and treatment order, you:

- will have a treatment plan and can be involved in planning your treatment
- have a right to obtain a second opinion from a psychiatrist about your treatment
- have a right to appeal to the Mental Health Review Board against being on the order
- have a right to obtain legal advice and have a lawyer represent you
- can talk to and have a friend or family member represent you
- can complain about your treatment
- have rights under the *Charter of Human Rights and Responsibilities*.

You can ask a member of the treating team, a friend, a family member, a lawyer, an advocate or a community visitor to help you do these things, or contact one of the organisations described at the end of this booklet.

## Assessment orders Diagnosis, assessment and treatment orders

### About your rights

This booklet provides information about being on an assessment order, or a diagnosis, assessment and treatment order, and your legal rights and entitlements under the *Mental Health Act 1986*. A member of the treating team will talk to you about this information and answer your questions.

The information must be explained in a language or way that you can understand. This booklet may be translated into other languages. You can ask a member of the treating team if it is available in your preferred language.

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## Telephone information line

You can listen to recorded information about the Mental Health Review Board in a number of languages by calling the telephone information line.

Telephone numbers are listed on the back of this booklet.

The lines are open 24 hours a day, seven days a week.

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Copies of the Mental Health Act are available at the mental health service.

If at any time you have questions about this information or your rights, ask someone to explain.

You can ask a member of the treating team, a friend, a family member, a lawyer, an advocate or a community visitor.

### ***Charter of Human Rights and Responsibilities***

The *Victorian Charter of Human Rights and Responsibilities Act 2006* seeks to promote and protect certain human rights. The charter defines the protected rights and requires public mental health services to act compatibly with these rights.

The charter also specifies when and how rights can be limited by law. For example, under the Mental Health Act you may be detained in a mental health service if it is necessary to protect your health or safety or the safety of others. However, any restrictions on your liberty and any interference with your rights, privacy, dignity and self-respect must be kept to the minimum necessary in the circumstances.

If you have any questions about the charter or how it might affect your treatment, contact one of the organisations described at the end of this booklet.

## **Assessment orders and diagnosis, assessment and treatment orders**

‘Assessment orders’ and ‘diagnosis, assessment and treatment orders’ are made by a court under the *Sentencing Act 1991*. If a person with a mental illness is found guilty of an offence, the court may decide that the person should first be assessed and treated in a mental health service under one of these orders before it gives the person a sentence or makes another order.

Mental illness is defined in the Mental Health Act as a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory.

You have been admitted to a mental health service as an involuntary patient under the following court order. A member of the treating team will tell you which order applies to you and will tick the correct box.

### **An assessment order**

The court ordered that you be assessed in a mental health service for up to 72 hours before being returned to court.

### **A diagnosis, assessment and treatment order**

The court ordered that you be diagnosed, assessed and treated in a mental health service for up to three months before being returned to court.

The court made the order after deciding that all of the following criteria for assessment and treatment apply to you:

- you appear to be mentally ill; and
- your mental illness needs treatment which can be obtained through an assessment order or a diagnosis, assessment and treatment order; and
- because of your mental illness, involuntary treatment is necessary for your health or safety (whether to prevent a deterioration in your physical or mental condition or otherwise) or for the protection of members of the public.

Once you are admitted on an assessment order, or diagnosis, assessment and treatment order, you must remain in the mental health service and receive treatment for mental illness.

## **Treatment**

Your psychiatrist will prepare a treatment plan that is designed to meet your specific needs. You can be involved in planning your treatment and your psychiatrist will consider your preferences and concerns. The psychiatrist will also take into account the wishes of any guardian, family member or primary carer who is involved in providing ongoing care to you (unless you object), any beneficial alternative treatments and any significant risks of the treatment.

If your psychiatrist believes a particular psychiatric treatment is necessary, that treatment can be given to you, even if you refuse. If this happens, your psychiatrist will explain why the treatment is necessary. Your psychiatrist or another member of the treating team will discuss your treatment plan with you and give you a copy.

Your psychiatrist and other members of the treating team will regularly discuss with you your diagnosis, medication, methods of treatment, alternative treatments and available services. They will review and update your treatment plan on a regular basis.

You may have a friend or advocate with you when you are discussing your treatment with your psychiatrist.

Family members and other caregivers can provide valuable support and care to you while you are receiving treatment for your illness. Generally, they will only be given information about your treatment and care if you agree. However, if a guardian, family member or your primary carer needs information to care for you, a member of the treating team can give them the information, even if you don't agree.

## Second opinion

It is your right to get a second opinion about your psychiatric condition and treatment. Your case manager or psychiatrist can arrange this from within the mental health service, or they can help you choose your own psychiatrist. If you choose a private psychiatrist you may have to pay a fee. You can discuss the second opinion with your treating psychiatrist; however, your treating psychiatrist is responsible for making the final decision about the treatment you receive.

## Access to information

It is your right under freedom of information laws to apply for access to documents about your personal information that the mental health service holds. If you wish to access the information, you can ask a member of the treating team or the mental health service's freedom of information officer to help you make an application.

Organisations that may be able to help you with a freedom of information application are described at the end of this booklet.

## Leave of absence

You may be allowed to leave the mental health service for a short time (for example, a few hours, overnight or a weekend) to visit family or friends or for

some other purpose. If you would like to have leave, you should talk to a member of the treating team. Your psychiatrist will make the final decision about a request for leave.

## Seclusion and restraint

### Seclusion

Seclusion is when a person is kept alone in a room where the doors and windows are locked from the outside. This only happens if it is necessary to protect the person or others from an immediate or imminent risk to their health or safety or to prevent the person from absconding. It is only used when other ways of ensuring safety have failed.

### Mechanical restraint

Mechanical restraint is the use of a device, such as a harness or straps, to restrict a person's freedom to move about. Restraint may be used to enable a person to be medically treated, to prevent the person from injuring themselves or others, or to prevent the person from persistently destroying property.

### Approval and monitoring of seclusion and mechanical restraint

Seclusion and restraint can be approved by your psychiatrist or, in an emergency, authorised by the senior nurse on duty. They can only be used for as long as the above reasons apply.

If you are put in a seclusion room or are restrained, staff must give you appropriate bedding, clothing, food and drink at the appropriate times. You can ask staff for food and drink when you want them. They must also provide you with adequate toilet arrangements, including the opportunity to wash.

A nurse must review your physical and mental condition at least every 15 minutes. A doctor must also examine you at least every four hours, unless your psychiatrist thinks less frequent examinations are appropriate. If you are being restrained you must be monitored continuously.

## Letters and telephone calls

You can contact people by letter or telephone. Your mail will not be opened.

## Transfer

You may be transferred to a different mental health service if your psychiatrist believes that you would benefit from the transfer or if it is necessary for your treatment. If you do not want to be transferred, you should talk to your psychiatrist or you can appeal to the Mental Health Review Board. If you are transferred before the appeal is heard, the board will decide whether you should be returned to the original service when it hears the appeal.

## Discharge from the order

At the end of the time specified in the assessment order or the diagnosis, assessment and treatment order, you will be discharged from the order and returned to the court for sentencing or another order.

If the Chief Psychiatrist or the Mental Health Review Board or the court (following an application by your psychiatrist) believes that any of the criteria for assessment and treatment no longer apply to you and your continued detention as an involuntary patient is no longer necessary, you must be discharged from the order and returned to the court for sentencing or another order.

If at any time you want to be discharged from your order, you should talk to your psychiatrist or other members of the treating team, or you can appeal to the Mental Health Review Board. Whether or not you appeal, the board will initially review the order within eight weeks of you being placed on the order and then at least every 12 months if you continue as an involuntary patient. Your psychiatrist will also regularly review you to see if you should be discharged.

## Appeal and review: Mental Health Review Board

This section of the booklet has information about your rights and entitlements to appeal and review by the Mental Health Review Board.

## Telephone information line

You can listen to a recorded summary of information about the Mental Health Review Board in a number of languages by calling the telephone information line. Telephone numbers are listed on the back of this booklet. The lines are open 24 hours a day, seven days a week.

## The functions of the board

The Mental Health Review Board is an independent tribunal that:

- hears appeals from involuntary patients who want to be discharged
- reviews all involuntary patients within eight weeks of being placed on an order to decide if they can be discharged
- reviews all involuntary patients at least every 12 months to decide if they can be discharged
- hears appeals from patients who do not want to be transferred to a different mental health service.

At each appeal or review, the board will also review your treatment plan.

## Your right to appeal to the board

It is your right to appeal to the Mental Health Review Board at any time. If you want to appeal, ask a member of the treating team for an appeal form, fill it in and ask the team member to send it to the board. If no appeal form is available, you can write a letter or email an appeal to the board that sets out your name, the name of the mental health service and what you want to appeal about. The board must hear your appeal without delay.

If you need help to fill in the form or with anything else, you should ask a member of the treating team, a friend, a family member, a lawyer or a community visitor to help you.

## The board's contact details

To fax, mail or email an appeal to the board, or to find out further information, use the contact details below:

Executive Officer

Mental Health Review Board

Level 30, Marland House

570 Bourke Street, Melbourne, Victoria, 3000

Telephone: 8601 5270

Toll free: 1800 242 703

Fax: 8601 5299

Email: [mhrb@mhrb.vic.gov.au](mailto:mhrb@mhrb.vic.gov.au)

Website: [www.mhrb.vic.gov.au](http://www.mhrb.vic.gov.au)

## Preparing for the board hearing

The board will send you a notice advising the date, time and place at which your review or appeal will be heard. Your psychiatrist and case manager will also be notified of the hearing. It is your right to attend the hearing unless the board decides that this would be bad for your health. You are encouraged to attend and present your case and you can have someone attend to offer support or speak for you, for example, an advocate, a lawyer, a private doctor, a friend or a family member. If you are unable to attend the hearing, you should tell the board as soon as possible.

Before the hearing, read the documents that will be given to the board for your hearing (see next column) and think about what you are going to say to the board. You may also want to give the board written information. Your family and friends or someone you respect may wish to write letters or come to the hearing in support of your appeal or review.

If you have special needs, such as the need for an interpreter, you should discuss these with a member of the treating team or contact the board. The board will arrange an interpreter if necessary.

Organisations that may be able to help you with your appeal or review are described at the end of this booklet.

## Access to documents for the hearing

You or your representative will be given the opportunity to read any documents to be given to the board for your hearing, including your clinical file and your psychiatrist's report to the board, at least 24 hours before the hearing. However, your psychiatrist can apply to the board to prevent you from seeing a document or part of a document if it is believed that:

- seeing the document will cause serious harm to your health or the health or safety of another person or
- the information in a document was given in confidence or is personal information about another person.

If an application is made to prevent you seeing a document or part of a document, a member of the treating team will tell you and explain the process. The board will make the final decision about whether you see the whole document, part of the document or none of the document.

If the board decides you should not see any document or part of any document, it may allow your representative to see it instead.

## The board hearing

Hearings will be held at the mental health service. Your hearing will usually be heard by three board members: a lawyer, a psychiatrist and a community member. If the hearing is the annual review of you being an involuntary patient, it may be conducted by one person: a lawyer, a psychiatrist or a community member of the board.

The hearing will be informal and private, unless the board decides that it is in your best interests or the public interest for the hearing to be open. Your doctor and other members of the treating team will give information to the board. You and your representative will be able to ask questions and explain your side of the case, for example, why you believe you should not be an involuntary patient.

The board will primarily consider your current mental condition and will also consider your medical and psychiatric history and your social circumstances when making its decision.

If you are too ill to attend the hearing, the board may visit you in your ward.

### **The board's decision on appeal or review of involuntary status**

The board must decide whether all the criteria for assessment and treatment still apply to you and whether your continued detention in the mental health service as an involuntary patient is still necessary.

### **Discharge from involuntary status**

If the board decides that your continued detention is not necessary, the board must discharge you from your order and you will be returned to the court to receive a sentence or other order.

### **Continuation of involuntary status**

If the board decides that your continued detention is necessary, the board will confirm your order and you must stay at the mental health service.

The board will also review your treatment plan to decide whether the proper procedures have been followed in making the plan. For example, were your wishes taken into account and did the psychiatrist consider alternative treatments? The board must be satisfied that the mental health service can implement the plan.

At the end of the hearing, the board will tell you its decision and the reasons for it. You will be given a written copy of the decision. If you want written reasons for the decision, you must request these in writing from the board within 28 days and the board must provide you with a statement of reasons within 14 days of your request. You can appeal again to the board at any time.

### **Review of the board's decision**

If you disagree with the board's decision you can apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the board's decision. VCAT is an independent tribunal with the power to confirm or overturn the decision of the board.

Applications must be made in writing within 28 days of receiving the board's decision or, if you requested a statement of reasons from the board, within 28 days of receiving that statement, to:

Victorian Civil and Administrative Tribunal  
General List  
55 King Street, Melbourne, Victoria, 3000

Telephone: 9628 9755

Fax: 9628 9788

Organisations that may be able to help you with an application are described at the end of this booklet.

### **Complaints**

You should be treated with dignity and respect, and be protected from abuse when you receive treatment and care from the mental health service. If you are unhappy about any part of your treatment or care, you can complain. A good place to start is with your case manager, primary nurse or another member of the treating team, the complaints liaison officer or consumer consultant in the hospital or the Director of Psychiatry at the mental health service.

You can also complain directly to the Health Services Commissioner on telephone 8601 5200 or the Chief Psychiatrist on 1300 767 299.

If you need help with your complaint, you can ask someone you trust to assist you. This might be a member of the treating team, a friend, a family member, a lawyer or a community visitor.

## Important contacts

The organisations you can contact for assistance and more information are listed below.

- The **Mental Health Review Board** is an independent tribunal that hears appeals from involuntary patients, patients on restricted involuntary treatment orders and security patients who want to be discharged from their involuntary treatment status. It also automatically reviews these patients.  
Level 30, 570 Bourke Street, Melbourne 3000  
Telephone: 8601 5270  
Telephone: 1800 242 703 (free call)  
[www.mhrb.vic.gov.au](http://www.mhrb.vic.gov.au)
- **Community visitors** are people who visit mental health services at least once a month to inquire into the adequacy of services and facilities for the treatment and care of patients, investigate complaints and report on their inquiries and investigations.  
Level 5, 436 Lonsdale Street, Melbourne 3000  
Telephone: 1300 309 337 (cost of local call)  
[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)
- The **Mental Health Legal Centre** is an independent legal service that specialises in mental health legal issues. It may be able to arrange representation for you at Mental Health Review Board hearings or give advice about other legal matters.  
Level 9, 10-16 Queen Street, Melbourne 3000  
Telephone: 9629 4422  
Telephone: 1800 555 887 (free call–rural areas only)  
[www.communitylaw.org.au/mentalhealth](http://www.communitylaw.org.au/mentalhealth)
- **Victoria Legal Aid** provides free legal advice about a range of issues. It may also provide legal assistance if you cannot afford a private solicitor and may be able to assist with legal representation at Mental Health Review Board hearings.  
350 Queen Street, Melbourne 3000  
Telephone: 9269 0120  
Telephone: 1800 677 402 (free call–rural areas only)  
[www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)
- The **Public Advocate** assists, advises and advocates for people with serious complaints about mental health and disability services and treatment.  
Level 5, 436 Lonsdale Street, Melbourne 3000  
Telephone: 1300 309 337 (cost of local call)  
[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)
- The **Victorian Equal Opportunity and Human Rights Commission** helps people to resolve complaints about discrimination, has specific functions in relation to the *Charter of Human Rights and Responsibilities* and can give advice about the charter.  
Services include an enquiry line and a confidential, free and impartial complaint resolution service.  
Level 3, 380 Lonsdale Street, Melbourne 3000  
Telephone: 9281 7100  
Telephone: 1800 134 142 (free call–rural areas only)  
[www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au)
- The **Chief Psychiatrist** is a senior Department of Human Services official appointed under the Mental Health Act, with special responsibilities in relation to people receiving mental health services. These include the power to investigate complaints and other matters and to take necessary action.  
50 Lonsdale Street, Melbourne 3000  
Telephone: 9096 7571  
Telephone: 1300 767 299 (cost of local call)  
[www.health.vic.gov.au/chiefpsychiatrist](http://www.health.vic.gov.au/chiefpsychiatrist)
- The **Health Services Commissioner** is an independent commissioner who investigates and helps to resolve complaints by health care consumers about health services, including mental health services. The Commissioner can help patients access their health information.  
Level 30, 570 Bourke Street, Melbourne 3000  
Telephone: 8601 5200  
Telephone: 1800 136 066 (free call)  
[www.health.vic.gov.au/hsc](http://www.health.vic.gov.au/hsc)
- The **Ombudsman** investigates complaints about government departments.  
Level 9, 459 Collins Street, Melbourne 3000  
Telephone: 9613 6222  
Telephone: 1800 806 314 (free call–rural areas only)  
[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)

You can also ask your case manager or any member of the treating team about other local organisations and support groups that may be able to help you.

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## Printed booklets in the 'About your rights' series:

- Involuntary patients
- Restricted involuntary treatment orders
- Security patients
- Forensic patients
- Electroconvulsive therapy
- Major non-psychiatric treatment
- Non-custodial supervision orders

## Other booklets in the 'About your rights' series:

- Forensic (remand and interim disposition order) patients
- Continuing treatment (section 12A-12D) involuntary patients
- Assessment orders and diagnosis, assessment and treatment orders
- Psychosurgery

These and other booklets are available online at [www.health.vic.gov.au/mentalhealth](http://www.health.vic.gov.au/mentalhealth) in large print. Selected booklets are also available in other languages.

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English	9679 9838
Arabic	9679 9825
Cambodian	9679 9826
Cantonese	9679 9827
Croatian	9679 9828
Greek	9679 9829
Italian	9679 9830
Macedonian	9679 9831
Mandarin	9679 9837
Serbian	9679 9834
Somali	9679 9832
Spanish	9679 9833
Turkish	9679 9835
Vietnamese	9679 9836

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## Do you require this booklet in another format?

If you require this booklet in another format please speak to your case manager or any member of your treating team and request that they contact us.