

Forensic patients

About your rights

When you are a forensic patient 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 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*.

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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.

About your rights

This booklet provides information about being a forensic patient and your legal rights and entitlements under the *Mental Health Act 1986*.

The booklet also provides information about rights and entitlements some forensic patients have under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* and the *Crimes Act 1914* of the Commonwealth.

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 manner that you can understand. This booklet is also translated into a number of languages. You can ask a member of the treating team if it is available in your preferred language.

Copies of this booklet in other languages are available online at www.health.vic.gov.au/mentalhealth

Copies of the *Mental Health Act* and the *Crimes (Mental Impairment and Unfitness to be Tried) 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 Crimes (Mental Impairment and Unfitness to be Tried) 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.

You have been admitted to a mental health service as a forensic patient so you can receive treatment for a mental disorder.

You were admitted in one of several ways. A member of the treating team will tell you which of the following applies to you and tick the correct box.

Most forensic patients are admitted under:

a **custodial supervision order**. A court has placed you on a custodial supervision order. The order is not for a fixed period of time, but will end when the court decides.

Some forensic patients are admitted under:

a **non-custodial supervision order**. You have been admitted as a forensic patient because you failed to comply with your non-custodial supervision order and your safety or the safety of the public was at serious risk, or you left Victoria without permission and have been arrested and returned to the mental health service.

a **federal forensic patient order**. A court has placed you on an order under the Crimes Act of the Commonwealth for the time specified in the order.

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 coordinator 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.

Seclusion and restraint

Seclusion is when a person is kept alone in a room in which 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 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.

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.

Security conditions

While you are in the mental health service, your psychiatrist may apply any security conditions that are considered necessary, for example, limiting your phone calls or opening your mail. Security conditions are applied to ensure your health or safety or for the protection of members of the public.

Letters and telephone calls

You can contact people by letter or telephone, unless your psychiatrist has applied a security condition to you.

Transfer

You may be transferred to a different mental health service if the Chief 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 Forensic Leave

Panel. If you are transferred before the appeal is heard, the panel will decide whether you should be returned to the original service when it hears the appeal.

If you are a federal forensic patient, you can be transferred to another hospital or prison if:

- there are urgent medical or security reasons
- the Commonwealth Attorney-General orders a transfer.

Reports to court

If you are on a custodial supervision order or a non-custodial supervision order, a report about your treatment and progress must be sent to the court that made your supervision order at least every 12 months.

Leave of absence allows forensic patients to leave the mental health service for a variety of purposes. Leave is always subject to security conditions and time limits. There are three types of short-term leave: special leave of absence, on-ground leave and limited off-ground leave. Forensic patients on custodial supervision orders can also apply for long-term leave called extended leave. If at any time you would like to have leave, you should talk to your psychiatrist or a member of the treating team about how to make an application.

Special leave

Your psychiatrist can grant special leave of absence. Special leave of absence is for specific purposes, such as medical treatment, court appearances or special events (such as funerals). Special leave cannot exceed 24 hours, or seven days, in the case of medical treatment.

You, or someone on your behalf, can apply to your psychiatrist stating the special circumstances for which you need special leave. If your psychiatrist is satisfied there are special circumstances and the safety of members of the public will not be seriously endangered, the special leave must be granted. If your psychiatrist refuses to grant you special leave, you can appeal to the Forensic Leave Panel (see below).

On-ground leave and limited off-ground leave

To obtain on-ground leave or limited off-ground leave, you must make an application to the Forensic Leave Panel (see below).

On-ground leave allows forensic patients to leave the mental health service, but the leave is limited to a defined area around the mental health service known as the surrounds.

Limited off-ground leave allows forensic patients to go beyond the surrounds of the mental health service. Generally, limited off-ground leave is only permitted during the day between the hours of 6.00 am and 9.00 pm. It can be granted outside these hours, but only for a maximum of three days in any seven-day period. Leave can be granted for a period of up to six months. At the end of this time, an application can be made to the Forensic Leave Panel to have the leave renewed.

The purpose of on-ground leave and limited off-ground leave is to help with the treatment and rehabilitation of forensic patients.

Forensic Leave Panel

This section of the booklet has information about your rights and entitlements to apply for leave of absence or appeal to the Forensic Leave Panel.

The Forensic Leave Panel is an independent tribunal that hears:

- applications for on-ground and limited off-ground leave from forensic patients

- appeals from forensic patients who have been refused special leave of absence by their psychiatrist
- appeals from forensic patients who do not want to be transferred to a different mental health service.

If you would like on-ground leave or limited off-ground leave, you should talk to the treating team. They will be able to give you advice and discuss your choices. If your treating team believes you are ready for leave, they will update your treatment plan and prepare a leave plan. It is important the treating team is involved because the Forensic Leave Panel will want to know whether they support your application, and how it relates to your treatment plan and your leave plan.

To apply for on-ground leave or limited off-ground leave or to appeal against the refusal of special leave of absence, ask a member of your treating team for the appropriate form, fill it in and ask the team member to send it to the panel. If no forms are available, you can write a letter to the panel setting out your name, the name of the mental health service and the type of leave you want. The application or letter should be mailed or faxed to:

Executive Officer
Forensic Leave Panel
50 Lonsdale Street, Melbourne 3000
Toll free: 1800 222 987
Fax: 9096 6130

If you need help to fill in the form or help 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.

Preparing for the panel hearing

The panel will arrange for you to be given a notice advising the date, time and place at which your application will be heard. It is your right to attend the hearing and present your case, and you are encouraged to do so. You can have someone attend to offer support or speak for you; for example, an advocate, a lawyer, a friend or a family member. If you are unable to attend the hearing, you should tell the panel as soon as possible.

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

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 panel. The panel will arrange an interpreter if necessary.

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

You or your representative will be given the opportunity to read any documents to be given to the panel for your hearing at least 24 hours before the hearing. These will include your clinical file, your psychiatrist's report, a profile about you and your leave plan. However, your psychiatrist can apply to the panel 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 panel will make the final decision about whether you see the whole document or part of the document or none of the document. If the panel decides you should not see a document or part of any document, it may allow your representative to see it instead.

Your hearing will be held at the mental health service. The panel members are a judge, a community member, the Chief Psychiatrist and a medical practitioner.

The hearing will be informal and private, unless the panel decides it is in your best interests or the public interest for the hearing to be open. The panel is not bound by strict rules of practice, such as those in a court, and can inform itself in any way it thinks fit. Your psychiatrist and other members of the treating team will give information to the panel. You and your representative will be able to ask questions and explain your side of the case; for example, why you believe you should be given leave of absence.

Approval of leave

If the panel is satisfied the proposed leave will help your rehabilitation and your safety or the safety of members of the public will not be seriously endangered, it may grant your leave. It will place conditions on the leave; for example, that members of staff escort you at all times. You and your representative will be given a copy of the order, which will list the type of leave granted and the conditions of the leave.

Leave can be granted for a period of up to six months. At the end of this time, you can apply to the panel to have the leave renewed. You can also apply at any time to have the conditions of the leave varied if your circumstances have significantly changed; for example, if a new rehabilitation program has become available.

Refusal of leave

If the panel refuses your application for leave, you should talk to your case coordinator or another member of the treating team and discuss the reasons. They may be able to help you make another application that is more likely to be granted. While you remain a forensic patient you can apply for leave to the panel at any time. Your psychiatrist and other members of the treating team will also regularly review your progress to see whether to make a new application for leave.

Special leave

If you have appealed to the panel because you have been refused special leave by your psychiatrist, the panel may grant the special leave if it believes there are special circumstances and the safety of members of the public will not be seriously endangered.

Transfer

If you have appealed to the panel against a transfer to another mental health service, the panel will decide whether you should be transferred or not. If you are transferred before the appeal is heard, the panel will decide whether you should be returned to the original mental health service when it hears the appeal.

At the end of the hearing, the panel 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 panel's decision, you must request them in writing from the panel and the panel must provide you with a statement of reasons within 14 days of your request.

Suspension of leave

If at any time the Chief Psychiatrist believes your safety or the safety of members of the public will be seriously endangered, your leave or part of your leave can be suspended. You will be told if your leave is suspended.

If you are not already in the mental health service, you must return there. You will be given written notification of the suspension from the Chief Psychiatrist. If you do not return, police or other prescribed people can apprehend you at any time.

Extended leave

Extended leave allows forensic patients on custodial supervision orders to leave the mental health service and live in the community for a period of up to 12 months.

If you have successfully used on-ground leave and limited off-ground leave over time, you may be ready to apply for extended leave. If you want extended leave, you must make an application to the court that made your custodial supervision order. You will need a lawyer to help you make the application because the procedures are complex and you will need a legal representative at the court.

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

You should also talk to your treating team. They will be able to give you advice and discuss your choices. Your psychiatrist will prepare a leave plan for the court. You can be involved in planning the extended leave and your preferences will be taken into consideration. The plan will include an assessment about your need for continuing treatment and support in the community, and the best way these can be met. It will also state whether the treating team supports your application or not.

Your psychiatrist will send a clinical report and the leave plan to the court. Copies will be given to you or your representative. It is your right to attend the court hearing and to have a lawyer represent you. Your psychiatrist and other members of the treating team will give evidence at the court hearing. You and your representative will also be able to give evidence.

The court may grant your application if it is satisfied that granting you leave will not seriously endanger your safety or the safety of members of the public. The court will apply conditions to the leave – for example, the place you will live, and where and how often you should receive treatment.

Extended leave may be given for a period of up to 12 months. At the end of this time, you can apply to the court to renew your extended leave. You should make your application for renewal well before the extended leave is due to expire.

If the court refuses your application, it is your right to appeal against the court's decision to the Court of Appeal.

If at any time the Chief Psychiatrist believes your safety or the safety of members of the public will be seriously endangered, your extended leave may be suspended. The Chief Psychiatrist will notify you in writing about the suspension and you must return to the mental health service. If you do not return, police or other prescribed people can apprehend you at any time.

If the suspension is not lifted within 48 hours, the Chief Psychiatrist will make an application to the court to revoke your extended leave. The court must have a hearing as soon as possible. It is your right to attend the court hearing and to have a lawyer represent you. Your psychiatrist and other members of the treating team will give evidence at the court hearing. You and your representative will also be able to give evidence and explain your side of the case.

The court will make its decision and will:

- lift the suspension. You will then be released to live in the community again on extended leave. The court may also change the conditions of the leave

or

- revoke your extended leave. You must then remain in the mental health service as a forensic patient.

This section of the booklet has information about your rights and entitlements under the Crimes (Mental Impairment and Unfitness to be Tried) Act or the Crimes Act of the Commonwealth in relation to leaving the service to live in the community. The way in which you will be released from the mental health service depends on how you were admitted to the service.

Custodial supervision orders

If you have completed at least 12 months of extended leave, you can apply to the court that made your supervision order to have it varied to a **non-custodial supervision order**. The court may make a non-custodial supervision order if it is satisfied your safety and the safety of members of the public will not be seriously endangered. The court will take into account whether you have complied with the conditions of the extended leave.

If the court releases you on a non-custodial supervision order, you will be able to live in the community, subject to conditions decided by the court.

If the court refuses your application, you cannot apply again for at least three years, unless the court sets a shorter period. You have the right to appeal against the court's decision to the Court of Appeal.

Your psychiatrist, the Secretary to the Department of Human Services, the Director of Public Prosecutions or the Victorian Attorney-General can also apply to have your order varied.

When the court made your custodial supervision order, it set a time called the nominal term. At least three months before the end of the nominal term the court must conduct a major review of your progress. The major review will only occur if you are still subject to a supervision order at the end of the nominal term. If the court has released you from supervision before the end of the nominal term, there is no need for a major review.

The purpose of the major review will be to decide whether you can be released from the custodial order on to a **non-custodial supervision order**. The court must change your order to a non-custodial supervision order unless it is satisfied your safety or the safety of members of the public will be seriously endangered.

If the court releases you on a non-custodial supervision order, you will be able to live in the community subject to conditions decided by the court.

If the court does not release you on a non-custodial supervision order, you have the right to appeal to the Court of Appeal.

The court will automatically review you at least every five years after your first major review, while you remain on a supervision order.

Non-custodial supervision orders

If you were admitted to the mental health service because you did not comply with your non-custodial supervision order, you must be released within 48 hours unless an application is made to the court to vary the order.

If an application is made, the court must have a hearing as soon as possible. It is your right to attend the court hearing and to have a lawyer represent you. Your psychiatrist and other members of the treating team will give evidence at the court hearing; for example, how you failed to comply with your non-custodial supervision order. You and your representative will also be able to give evidence and explain your side of the case.

The court will make its decision and will:

- release you from the mental health service back onto your non-custodial supervision order. It may also change the conditions of the order
or
- place you on a **custodial supervision order**. If the court places you on a custodial supervision order, you must remain in the mental health service as a forensic patient.

Federal forensic patient

If you are a federal forensic patient, you will be discharged from the court order at the end of the time specified in the order and you will no longer be a federal forensic patient. You can then discuss continuing treatment with your psychiatrist or case coordinator on a voluntary basis.

While you remain a federal forensic patient, the Commonwealth Attorney-General will review you at least once every six months to see whether you can be released from the mental health service on a **release order**.

Release orders allow federal forensic patients to live in the community, subject to any conditions imposed by the Commonwealth Attorney-General.

In deciding whether to make a release order, the Attorney-General must be satisfied you are not a threat or danger to yourself or to the community.

The Attorney-General will obtain reports about you from a psychiatrist or psychologist, a doctor and from anyone else the Attorney-General chooses. You, or someone on your behalf, can also send information to the Attorney-General; for example, to explain why you should be allowed to live in the community on a release order. You can ask a member of the treating team, a friend or family member, a lawyer or a community visitor to help you do this.

If the Attorney-General makes a release order for you, it will last for the rest of the time specified in your court order or for five years, whichever is shorter. Your release order will also have conditions, such as where you must live and what treatment you must receive.

The Attorney-General can revoke your release order if you do not comply with the conditions of the order. If this happens, you will be arrested and either taken to a hospital or a prison.

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 coordinator, primary nurse or another member of the treating team, the complaints liaison officer or patient representative 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.

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

- **Forensic Leave Panel** is an independent panel. Its main function is to hear applications for leave of absence by forensic patients.
50 Lonsdale Street, Melbourne 3000
Telephone: 1800 222 987 (free call)
www.health.vic.gov.au/mentalhealth/forensic
- **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
- 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 Forensic Leave Panel 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

- **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 Forensic Leave Panel hearings.

350 Queen Street, Melbourne 3000

Telephone: 9269 0120

Telephone: 1800 677 402 (free call–rural areas only)

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

- 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

- 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

- 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

- 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

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

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

Selected booklets are also available in other languages.

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