

Involuntary patients

About your rights

When you are on an involuntary treatment order or a community 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.

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About your rights

This booklet provides information about being on an involuntary treatment order or a community 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 manner 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 also available online at www.health.vic.gov.au/mentalhealth

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.

Involuntary treatment orders are orders under the Mental Health Act which require people with mental illness to receive treatment for their illness. A doctor has recommended that you be placed on an involuntary treatment order so you can receive treatment for a mental illness. In the doctor's opinion **all** of the following criteria for involuntary treatment in the Mental Health Act apply to you:

- you appear to be mentally ill (mental illness is defined in the Act as a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory); and
- your mental illness requires immediate treatment and that treatment can be obtained by placing you on an involuntary 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; and
- you have either refused or are unable to consent to necessary treatment; and
- there is no less restrictive way for you to receive adequate treatment for your mental illness.

Initial review of involuntary treatment orders

Within 24 hours of being placed on the order, a psychiatrist from the mental health service will examine you to decide if all of these criteria apply to you. If they do, the psychiatrist will confirm the order and you will remain an involuntary patient under the Mental Health Act.

The psychiatrist will then either admit you to the mental health service or make a community treatment order for you. If possible, you will be treated in the community. If you are admitted as an inpatient, you must stay in the mental health service. Read the section on inpatient treatment in this booklet for more information. If the psychiatrist makes a community treatment order for you, read the section on community treatment orders.

If the psychiatrist does not believe all of the criteria for involuntary treatment apply to you, the involuntary treatment order will be discharged. You can discuss continuing treatment on a voluntary basis with your case manager or psychiatrist. If you have been an inpatient and both you and the psychiatrist think you would benefit from further treatment at the mental health service, you can ask to stay on a voluntary basis.

If you have any questions about the review by the psychiatrist, such as when the psychiatrist will come to see you, ask a member of the treating team.

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.

This section of the booklet has information about your rights and entitlements if you are admitted to a mental health service on an involuntary treatment order.

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 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.

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 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.

Community treatment orders

If your psychiatrist believes you can live in the community while you receive the treatment you need, you may be placed on a community treatment order. To find out more about these orders, read the section in this booklet on community treatment orders and ask a member of the treating team to explain them.

Discharge from involuntary patient status

If your psychiatrist believes any of the criteria for involuntary treatment no longer apply to you, you must be discharged as an involuntary patient and you will be free to leave. However, if both you and your psychiatrist think you would benefit from further treatment at the mental health service, you can ask to stay in the service on a voluntary basis.

If at any time you want to be discharged from being an involuntary patient, 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 becoming an involuntary patient 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.

This section of the booklet has information about your rights and entitlements if you are placed on a community treatment order.

Community treatment orders (CTOs) are orders under the Mental Health Act which enable involuntary patients to live in the community while they receive treatment for their mental illness.

If your psychiatrist believes you can obtain the treatment you need while you live in the community, you will be placed on a CTO. You will still be an involuntary patient on an involuntary treatment order, even though you are living in the community on a CTO.

Planning for a community treatment order

Your psychiatrist will talk to you about the CTO and prepare a new treatment plan. You can be involved in planning your order and your treatment plan. The treatment plan will include an assessment about

your needs for continuing treatment and support in the community and the best way these can be met. Your preferences will be taken into consideration. For example, you may have a particular doctor that you wish to supervise the order.

Your psychiatrist or another member of the treating team will discuss your treatment plan with you and give you a copy. The plan will include:

- an outline of your treatment
- the name of the psychiatrist who will monitor your treatment
- the name of the doctor who will supervise your treatment
- the name of your case manager
- the place and times at which you are to receive treatment
- how often the supervising doctor must report on your treatment to the monitoring psychiatrist
- anything else your psychiatrist thinks is appropriate.

Conditions of the community treatment order

You will be given a copy of the CTO. It will say how long the order will last, which can be for up to 12 months. The CTO sometimes states where you must live if this is necessary for the treatment of your illness. Your psychiatrist may vary these conditions from time to time and will discuss the reasons with you.

If you are unhappy with any of the conditions, you should talk to a member of the treating team or you can appeal to the Mental Health Review Board.

Your psychiatrist can extend the CTO if the criteria for involuntary treatment still apply to you and the treatment you need can continue to be obtained through the order. If your CTO is extended, the Mental Health Review Board will review the extension.

If your psychiatrist does not extend your CTO, it will expire and you will no longer be an involuntary patient.

Revoking the community treatment order

If you do not comply with your order or your treatment plan, members of the treating team will try to help you comply. However, if you still do not comply and there is a significant risk that your health will get worse because of your non-compliance, your psychiatrist may revoke the CTO and you must return to the mental health service for treatment.

Your CTO may also be revoked if your psychiatrist believes that your illness would be better treated in a mental health service.

If your CTO is revoked, reasonable efforts will be made to tell you and you must then go to the mental health service.

Discharging the community treatment order

If your psychiatrist believes any of the criteria for involuntary treatment no longer apply to you, you must be discharged from the CTO and from being an involuntary patient. You can discuss continuing treatment on a voluntary basis with your case manager or psychiatrist.

If at any time you want to be discharged from the CTO, 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 becoming an involuntary patient 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.

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

The functions of the board

The Mental Health Review Board is an independent tribunal that:

- hears appeals from involuntary patients on involuntary treatment orders or community treatment orders who want to be discharged from the order
- reviews all involuntary patients within eight weeks of being placed on an involuntary treatment order to decide if they can be discharged from the order
- 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
- reviews the extension of all community treatment orders.

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 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.

The board's contact details

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

Executive Officer

Mental Health Review Board

Level 30, Marland House, 570 Bourke Street, Melbourne, 3000

Telephone: 8601 5270

Toll free: 1800 242 703

Fax: 8601 5299

Email: mhrb@mhrb.vic.gov.au

Website: 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 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 below) 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 from 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 or part of the document or none of the document.

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

The board hearing

Hearings are held either at hospitals or community mental health services. 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 your involuntary treatment order or the review of the

extension of your community treatment order, 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 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 on an involuntary treatment order.

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 an inpatient and 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 involuntary treatment still apply to you.

If any one of the criteria for involuntary treatment does not apply, you will be discharged from the order and from being an involuntary patient. If you were on a community treatment order, you will also be discharged from that order. You can discuss continuing treatment on a voluntary basis with your case manager or psychiatrist. If you were an inpatient, you will be free to leave the mental health service; however, if both you and your psychiatrist think you would benefit from further treatment at the mental health service, you can ask to stay on a voluntary basis.

If the board decides all of the criteria for involuntary treatment still apply to you, you will continue to receive treatment as an involuntary patient. If you are an inpatient and the board considers that you can obtain the treatment you need through a community treatment order (CTO), it may order your psychiatrist to place you on a CTO. If you are on a CTO, the board can vary the conditions of the order. If the board revokes your CTO, you must return to 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, 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.

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.

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

- The **Mental Health Review Board** is an independent tribunal which 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

- **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 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

- **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 might 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

- 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 manager 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.

Telephone information line

You can listen to a recorded summary of some of the key information in this booklet in a number of languages by calling the telephone information line.

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

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

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.