

Major non-psychiatric treatment

About your rights

In summary

If your psychiatrist or doctor recommends you have major non-psychiatric treatment you:

- will be provided with information about the treatment and can ask questions about it
- have a right to refuse the treatment if you are capable of giving informed consent to the treatment
- have a right to obtain medical and legal advice
- have a right to obtain a second opinion from a doctor or specialist about your treatment
- have a right to have a friend, family member or lawyer 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 has been given to you because your doctor or psychiatrist has recommended that you would benefit from a particular major non-psychiatric treatment. It provides information about your legal rights and entitlements under the *Mental Health Act 1986*.

Your psychiatrist or a member of the treating team will talk to you about this information and your rights and answer your questions.

This 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 your treating team if it is available in your preferred language.

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

If at any time you have questions about major non-psychiatric treatment 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.

Major non-psychiatric treatment

The treatment your doctor has recommended is described as a **major non-psychiatric** treatment. It is primarily intended to treat a physical condition and not your mental illness. The treatments in the following list are major non-psychiatric treatments:

- any surgery performed under a general or regional anaesthetic
- the use of general or regional block anaesthetic for any purpose
- chemotherapy
- radiotherapy.

Major non-psychiatric treatment does not include ‘special procedures’ or ‘medical research procedures’ within the meaning of the *Guardianship and Administration Act 1986*.

Special procedures include:

- any procedure that is intended to make a person permanently infertile (sterilisation)
- termination of pregnancy (abortion)
- removal of tissue for transplantation to another person.

If a doctor recommends you have a ‘special procedure’, you should seek advice from the Public Advocate or one of the other organisations described at the end of this booklet.

A medical research procedure is any procedure carried out for the purposes of medical research, including the administration of medication or the use of equipment or a device as part of a clinical trial. It does not include any non-intrusive examination, observing a person’s activities, undertaking a survey or collecting or using information.

Treatment

Your psychiatrist or doctor will talk to you about your medical condition, explain the proposed treatment, discuss possible side effects and alternative treatments, ask your views and answer any questions you might have about the treatment.

Advocacy

When you are discussing the major non-psychiatric treatment with your psychiatrist or doctor, you can have someone with you for support. It is your right to have a friend, relative, lawyer or an advocate represent you before you consent to the treatment.

Advice and second opinions

It is your right to get legal and medical advice. It is also your right to get a second opinion about whether you need the major non-psychiatric treatment. Your case manager or psychiatrist can help you arrange the second opinion or you can choose your own doctor. If you choose a private doctor you may have to pay a fee.

Consenting to treatment

If you are able to give informed consent, you can only be given the major non-psychiatric treatment if you agree. This means that if you are able to give informed consent, you have the right to refuse the treatment.

Informed consent

Informed consent is when you agree to have the treatment after you have been told:

- what the treatment involves
- the benefits, discomforts and risks of the treatment
- any beneficial alternative treatments

- the answers to any questions you have about the treatment and you have understood the answers
- whether the person recommending the treatment or the doctor who will perform the treatment has any financial relationship with the service, hospital or clinic where the treatment will be given or performed
- your legal rights and other entitlements.

Before you decide whether you want to have the treatment, it is important that you are well informed. If you have any questions, you should ask your psychiatrist, doctor or other specialist or seek advice from a friend, family member, lawyer or an advocate, or one of the organisations described at the end of this booklet.

If you agree to have the major non-psychiatric treatment, you will be asked to sign a form to say that you have given informed consent.

Withdrawing consent

If you agree to have a major non-psychiatric treatment, but then change your mind, it is your right to withdraw your consent at any time and the treatment will not proceed. If you want to withdraw your consent, you should talk to your treating doctor.

Treatment if you are not able to give informed consent

If you are not able to give informed consent and a major non-psychiatric treatment is necessary, you may be given the treatment, even if you refuse.

If you are 18 years or older, consent can be given by the first person listed below who is available, willing and able to make a decision about the proposed treatment (if there is no one in the first category, go to the second and so on):

- a medical enduring power of attorney (if you have appointed one)

- a person appointed by the Victorian Civil and Administrative Tribunal to make decisions about the proposed treatment (if someone has been appointed)
- a guardian (if you have one)
- an enduring guardian (if you have appointed one)
- the authorised psychiatrist.

If you are under the age of 18 years and you are not able to give informed consent, consent can be given by any one of the persons listed below who is available, willing and able to make a decision about the proposed treatment:

- a parent
- a guardian
- a person appointed under s. 597 of the *Children, Youth and Families Act 2005*
- the authorised psychiatrist, but only if there is no parent, guardian, custodian or child protection manager who is available, willing and able to make the decision.

Urgent treatment

If any major non-psychiatric treatment is needed to save your life, to prevent serious damage to your health or to prevent you from suffering or continuing to suffer significant pain or distress, it can be given to you without your consent.

Complaints

You should be treated with dignity and respect and be protected from abuse when you receive treatment and care for your medical condition.

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, your doctor or psychiatrist 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.

- **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 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

- 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

- 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

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.

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.

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