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| Statement of Rights  Forensic Patients |
| You were given this document because you are a Forensic Patient and are required to receive mental health treatment.  It explains your legal rights under the *Mental Health and Wellbeing Act 2022* (the Act).These rights might be impacted by the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*. You can speak to a lawyer or advocate to find out more. |
| OFFICIAL Help with this document  * Your treating team must help you understand this information. * You can get help from a family member, friend, or advocate. * See the ‘Get Help’ section of this sheet for contact details of organisations that can help. * This document has been translated into community languages available at www.[health.vic.gov.au](https://www.health.vic.gov.au/mental-health-and-wellbeing-act). * A blue sign with white figures    Description automatically generated with low confidenceFor help in your language contact the Translating and Interpreting Service on 131 450.  What is a forensic patient? If you are a forensic patient, you can be given mental health treatment, even if you don't want it. Treatment can be medication such as tablets or injections. A forensic patient is an adult who must stay in hospital (usually Thomas Embling Hospital) for treatment and who is subject to one of the following:   * Custodial Supervision Order under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*; * Non-Custodial Supervision Order who has been apprehended under the emergency apprehension powers in the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*; * Remanded under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* while awaiting court proceedings; * Federal forensic patient under the *Commonwealth Crimes Act 1914*; * International forensic patient serving a sentence under *the Commonwealth International Transfer of Prisoners Act 1997*; * Interim disposition order made by the Magistrates’ Court because someone on an interstate supervision order did not follow its condition to not travel to Victoria; or * Interim disposition order made by the Victorian Minister after transfer to Victoria from interstate.   The length of time you’re a forensic patient depends on why you’re in hospital. Custodial supervision orders A custodial supervision order is made by a court. This order means you must stay in hospital (usually Thomas Embling Hospital) while receiving compulsory treatment. It can be made if you are found:   * not guilty due to mental impairment; or * unfit for trial and have committed the offence(s).   You will be given a copy of your order.  You can speak with a lawyer for more information about your custodial supervision order and how to appeal it. How long is the order? Your order does not have a fixed end date. It will end when you can show the court that it would be safe for you and the community if you come off the order.  There will be a ‘nominal term’ date on your order, but this is not the end date. It’s the date the court must review your order by.  The court will review your progress three months before the end of your ‘nominal term’, and then at least every 5 years after that date. The court can also decide to review your progress before your ‘nominal term’ date. How do I get off the order? Coming off a custodial supervision order takes a few steps. Usually, you must complete each step before moving to the next. Step 1: Ask the Forensic Leave Panel for leave. They make decisions about what leave you can have in the area around the hospital (known as the ‘surrounds’) and outside the surrounds. Step 2: Ask the court for extended leave. You can usually do this after you’ve had leave from the Forensic Leave Panel. The court can grant you up to 7 nights per week away from the hospital or treatment facility. Your extended leave will likely have conditions and must not exceed 12 months. Step 3: Ask the court to change your order to a non-custodial supervision order. You can usually do this after you’ve had at least 12 months of extended leave. The court will think about:   * whether you followed your extended leave conditions; and * whether the public would be safe if your order is changed.   If the court approves, you can live in the community on a non-custodial supervision order with conditions. If they don’t approve, you can appeal or apply for further extended leave again. Step 4: The court can cancel your non-custodial supervision order. They can do this when they think it would be safe for you and the community if you come off the order. How do I ask the Forensic Leave Panel for leave? People on custodial supervision orders can apply for:   * **On-ground leave -** allows you to go outside the hospital unit, but only in the hospital surrounds; or * **Limited off-ground leave -** allows you to leave the hospital surrounds between 6am and 9pm or overnight for a maximum of three nights per week.   Grants of leave can last up to 6 months. There are often conditions on your leave.  Your treating team will help you prepare an application and leave plan.  Before the hearing:   * You can view the application and other documents the panel will look at; and * Your psychiatrist must give you access to the documents at least 24 hours before the hearing but can apply to prevent you seeing a document if they think it could cause serious harm to you or others, or because it has confidential information. If they do this, the panel might let your lawyer see the document instead.   You can attend the hearing and get support from anyone you choose, including a lawyer. Independent Mental Health Advocacy can help you prepare for the hearing.  At the hearing, the panel will think about:   * Your application; * Whether your treating team support your application; and * What you and your treating team have to say.   After the hearing, the panel will give you a copy of its decision and explain why it made it. You can ask for the reasons why the panel made their decision in writing. They then must do this within 14 days.  The panel may:   * approve your leave if they decide it's helpful for your rehabilitation and it doesn't seriously endanger you or others safety. They may impose conditions such as staff supervision; or * reject your leave application. You can then ask your treating team to help you make a new application. You can request leave from the panel at any time, but they may not be able to look at your application right away.   The Chief Psychiatrist can temporarily stop your leave if they think the safety of you or others will be in serious danger. They will tell you this in writing. If the Chief Psychiatrist then thinks that the reason they stopped your leave no longer applies, they must restart your leave straight away. How do I ask the court for extended leave? People on custodial supervision orders can apply for extended leave to live in the community for up to 12 months. Your treating team or a lawyer can help you with the application.  If the court grants your application, conditions will likely be applied to your leave. You have the right to attend the court hearing. You can appeal if the court doesn’t approve your leave.  The Chief Psychiatrist can temporarily stop your leave if they think that the safety of you or others will be in serious danger. If this happens:   * They will tell you this in writing; * They must restart your leave straight away if they think there is no more serious danger; * If they don’t restart your leave within 48 hours, they will apply to court to ask to cancel your leave; and * At the court hearing, you can explain your case. The court will decide whether to restart your leave or cancel it.  Can I have other leave for an important reason? You can ask your psychiatrist for special leave for an important reason such as:   * medical treatment; * court appearances; or * important events such as funerals.   Special leave is for a maximum of 24 hours, or up to 7 days for medical treatment.  A psychiatrist can grant you special leave if they think there are special circumstances, and the safety of the public will not be put in serious danger. Your treating team, support person, or advocate can help you.  If your psychiatrist doesn’t approve special leave, you can appeal to the Forensic Leave Panel. Non-custodial supervision orders A non-custodial supervision order (NSCO) is made by a court. This order means you can live in the community while on the order. A condition of your order may be that you need to receive mental health treatment. Why am I in hospital on a non-custodial supervision order? You can be apprehended and taken to the hospital when on a NCSO if you:   * don’t follow condition/s of your order; and * would put the safety of yourself or someone else in serious danger if not apprehended.   You can get help from a lawyer or advocate if this happens.  When you arrive at hospital, the treating team and your NCSO team will look at whether they can discharge you.  They will then decide if they think it’s safe to discharge you. If they don’t think you can be discharged, they can apply to court to change your order to a custodial supervision order so you will remain in hospital.  They must apply for a court hearing to vary your NCSO to a custodial supervision order within 48 hours.   * If they don’t apply in time, you must be discharged; or * If they do apply you can seek help from a lawyer.  Other forensic patients If you’re on remand, a federal or international forensic patient, or on an interim disposition order, you can speak to your treating team or a lawyer for more information. They can explain your rights specific to your situation. Your rights Forensic patients receiving compulsory treatment under the *Mental Health and Wellbeing Act 2022 (Vic)* have rights.  These rights might be impacted by the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*. You can speak to a lawyer or advocate to find out more. You have the right to least restrictive assessment and treatment This means compulsory assessment and treatment should be given in a way that gives you as much freedom and choice as possible. What you want, your recovery goals and available alternatives should be considered. What is restrictive for one person might not be restrictive for someone else. You have the right to be asked to give informed consent for treatment Even if you are receiving compulsory treatment, your psychiatrist should still check if you can give informed consent to treatment.  Giving informed consent means that you have understood and considered the information you need to make a decision about receiving treatment.  You can only give informed consent if you have capacity to do so. Your psychiatrist should start by assuming that you do have capacity.  You will have capacity to give informed consent to a particular treatment if you can:   * understand the information you’re given about that treatment; * remember that information; * use or weigh that information; and * communicate your decision   If you are a forensic patient and your psychiatrist thinks you have capacity, they can still give you compulsory treatment but only if they think it’s:   * clinically appropriate; and * the least restrictive option.  You have the right to information Your treating team must explain why you are a forensic patient. They must give you information about your:   * assessment; * proposed treatment; * alternatives; and * rights.   Information can be in writing or spoken, and in your preferred language. They must give clear answers to your questions. Information should be given at a time that’s right for you to consider it. You have the right to support You can choose someone to help you, including someone who speaks your language. Your team must help you contact a support person.  The psychiatrist must notify, and can consider, input from people at certain points in your assessment and treatment. This can include your:   * nominated support person; * mental health advocate; * guardian; * carer; or * parent (if under 16).   You can tell your treating team if there’s somebody you don’t want them to contact. Sometimes your information might be legally shared when you don't want it to be. You have the right to help with making decisions You can choose someone to help you with decisions.  Even if you’re receiving compulsory treatment, your treating team must give you information about your options. They must give you enough information and time to make decisions and answer your questions in a way you understand. They should allow you to make decisions, even if they think there’s some risk. You have the right to feel safe and respected Compulsory assessment and treatment should be provided in a way that respects and protects your individual needs and identity. This can include your culture, communication needs, age, disability, gender identity, religion, and sexual orientation. Your other health needs should be recognised and supported. Your dignity, autonomy, and rights should be upheld. You have rights if you are a First Nations person First Nations people should have their unique culture and identity respected.  You have the right to assessment and treatment that promotes your self-determination.  Your connection to family, kin, community, country, and water should be respected.  You can get help from the:   * Aboriginal Liaison Officer at your mental health service. * Victorian Aboriginal Legal Service.  You have the right to help with communication Your treating team must respect and support how you communicate. This includes:   * using an interpreter if you want one; * communicating in the best possible environment for you; and * providing spaces for you to speak with family, carers, support people, or advocates.   When in hospital, your right to communicate with anyone may be restricted if necessary for safety. But you can’t be restricted from contacting:   * a lawyer; * the Mental Health and Wellbeing Commission; * the Mental Health Tribunal; * the Chief Psychiatrist; * your mental health advocate; or * the Office of the Public Advocate community visitor.  You have rights if restrictive interventions are used Restrictive interventions that can be used if you are in hospital are:   * **Seclusion:** when kept by yourself in a room. * **Bodily restraint:** when physically prevented from moving your body. * **Chemical restraint**: when given a medication to stop you moving your body.   They can only be used if it’s the least restrictive option and are necessary to prevent serious and imminent harm, except:   * Bodily restraint can be used to give you treatment for mental illness or a medical condition; and * Chemical restraint can be used to transport you to hospital.   When restrictive interventions are used you must:   * have access to things you need to uphold your basic human rights. This can include things like food, water, bedding, clothing, and being able to use the toilet and wash; and * be checked on regularly by medical or nursing staff.   Restrictive interventions must be stopped when no longer necessary, and their use must be documented. The psychiatrist must offer you time to discuss what happened afterwards.  If you are in hospital (usually Thomas Embling Hospital) your psychiatrist may apply for an intensive monitored supervision order to keep you in a special unit where your interactions with other people are restricted for a maximum of 28 days. You have the right to advocacy support You can contact Independent Mental Health Advocacy (IMHA) for independent and free advocacy support at any time. They can help you know your rights and have your say.  IMHA are notified automatically if you are taken to hospital (usually Thomas Embling Hospital) and will contact you unless you have told them not to, but you can contact them any time. You have the right to legal advice You have the right to communicate with a lawyer to seek legal assistance about mental health or other legal issues. There are free legal services you can contact. You have the right to a second psychiatric opinion This assesses if your treatment needs to change.  To get a second opinion, you can:   * use the Second Psychiatric Opinion Service which is free and independent; * ask staff for another psychiatrist within your service; or * contact a private psychiatrist. They may bulk bill or require payment.  You have the right to make an advance statement of preferences This is a document you can make that explains what you want to happen if you receive compulsory assessment or treatment. It can include what kinds of treatment, support or care you want. You can make one at any time.  The mental health service must try to do what’s in your statement, but they are not legally bound to do so. If they don’t follow a preferred treatment, they must tell you why in writing within 10 business days. You have the right to choose a nominated support person This is a person you formally choose to support and advocate for you if you receive compulsory assessment or treatment. They must advocate for what you say you want, not what they want. The mental health service must help them support you and inform them about your treatment. You have the right to make a complaint You can complain directly to your service or to the Mental Health and Wellbeing Commission (MHWC). You have the right to access your information and request changes You can submit a Freedom of Information request directly to the public mental health service.  You can ask for corrections to your health information. If the mental health service denies your request, you can create a health information statement that explains the changes you want. This must be included in your file. |

# Get help

Services you can contact for help using your rights

| Service | Details | Contact details |
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| Independent Mental Health Advocacy | Independent advocacy service | 1300 947 820  [www.imha.vic.gov.au](http://www.imha.vic.gov.au) |
| Victoria Legal Aid | Free legal assistance | 1300 792 387  [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) |
| Mental Health Legal Centre | Free legal assistance | 9629 4422  [www.mhlc.org.au](http://www.mhlc.org.au) |
| Victorian Aboriginal Legal Service | Free legal assistance for Aboriginal and Torres Strait Islander peoples | 9418 5920  [www.vals.org.au](http://www.vals.org.au) |
| Community Visitors | Visit mental health services | 1300 309 337  [www.publicadvocate.vic.gov.au/opa-volunteers/community-visitors](http://www.publicadvocate.vic.gov.au/opa-volunteers/community-visitors) |
| Mental Health and Wellbeing Commission | Independent complaints service | 1800 246 054  [www.mhwc.vic.gov.au](http://www.mhwc.vic.gov.au) |
| Mental Health Tribunal | Makes and reviews treatment orders | 1800 242 703  [www.mht.vic.gov.au](http://www.mht.vic.gov.au) |

# Find out more

* Mental Health and Wellbeing Act 2022

[www.legislation.vic.gov.au/as-made/acts/mental-health-and-wellbeing-act-2022](http://www.legislation.vic.gov.au/as-made/acts/mental-health-and-wellbeing-act-2022)

* Office of the Chief Psychiatrist guidelines   
  [www.health.vic.gov.au/chief-psychiatrist/chief-psychiatrist-guidelines](http://www.health.vic.gov.au/chief-psychiatrist/chief-psychiatrist-guidelines)
* Victoria Legal Aid website  
  [www.legalaid.vic.gov.au/mental-health-and-your-rights](http://www.legalaid.vic.gov.au/mental-health-and-your-rights)
* Mental Health and Wellbeing Act handbook

[www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook](http://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook)

* Victorian Charter of Human Rights and Responsibilities   
  [www.legislation.vic.gov.au/in-force/acts/charter-human-rights-and-responsibilities-act-2006/015](http://www.legislation.vic.gov.au/in-force/acts/charter-human-rights-and-responsibilities-act-2006/015)
* Independent Mental health Advocacy know your rights information

[www.imha.vic.gov.au/know-your-rights](http://www.imha.vic.gov.au/know-your-rights)

* Victorian Department of Health Statement of Rights

<https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/statement-of-rights>



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