



# Patients' Rights

A self-help guide to the  
Victorian Mental Health Act

**Mental Health Legal Centre**

Sixth Edition August 2002

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Victorian Mental Health Act

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# Introduction

If you know about the law you are better able to stand up for your rights and have greater control over your life.

This booklet is about the law in Victoria. The *Mental Health Act 1986* is the most important part of the law related to the care and treatment of people receiving mental health services.

A current copy of this Act should be available for you to read at the hospital or the clinic.

This guide does not focus on the rights of people who are involved with mental health services through the criminal justice system. If you are in this situation, you should contact a solicitor or get a copy of the booklet *Your Rights – Mental Illness and the Criminal Justice System* from the Mental Health Legal Centre.

This booklet is a general guide only. It is not a substitute for legal advice. Check how the law applies to your individual situation before you take action.

Taking legal action can be stressful and time consuming. There may be questions you want answered that are not covered by this booklet. At the end of the booklet there is a list of other organisations which might help you with further information.

You can seek legal advice and assistance about any aspect of your treatment, whether you are voluntary or involuntary. The Mental Health Legal Centre and Victoria Legal Aid can give you legal advice and assistance (see p.47).

The Mental Health Legal Centre works with consumers and other organisations mentioned in this booklet to challenge practices that appear to be inconsistent with the law. It also works to reform the law in order to strengthen the rights of people with mental illness or disorder.

## ***Mental illness and mental disorder***

The Mental Health Act ("the Act") refers to "mental illness" and "mental disorder". The vast majority of involuntary patients in Victoria are admitted and detained as involuntary patients because their mental illness meets the criteria for involuntary detention, see p.9.

The Act defines mental illness as a medical condition characterised by a significant disturbance of thought, mood, perception or memory.

Some examples of mental illness are depression, schizophrenia, schizo-affective disorder and bi-polar affective disorder. There are others as well.

Different mental illnesses are described by psychiatrists in books such as the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) and the International Classification of Diseases (ICD 10). These should be in the hospital or clinic.

Ask a doctor if you are uncertain about your diagnosis.

"Mental disorder" includes "mental illness", plus a range of conditions which are not mental illnesses for the purposes of the Act. Some mental disorders, such as personality disorders, are not "mental illnesses" under the Act and cannot usually be the basis for involuntary treatment.

A very small group of people who have a severe personality disorder and who engage in self-mutilation may be detained in hospital for a period of time because they are considered to have a mental disorder. These people must first be detained because they also have a mental illness.

The mental disorder category affects very few people. The process for this is set out at p.21.

## ***Things that are not mental illness***

You cannot be considered mentally ill under the Act **only** because:

- you express or refuse or fail to express a:
  - ★ particular political opinion or belief,
  - ★ particular religious opinion or belief,
  - ★ particular philosophy,
  - ★ particular sexual preference or sexual orientation,
- you engage in or refuse or fail to engage in a:
  - ★ particular political activity,
  - ★ particular religious activity,
- you engage in:
  - ★ sexual promiscuity,
  - ★ immoral conduct,
  - ★ illegal conduct,
- you are intellectually disabled,
- you take drugs or alcohol,
- you have an anti-social personality,
- you have a particular economic or social status, or
- you are a member of a particular cultural or racial group.

## ***Getting support and treatment***

If you have a mental illness or disorder, some of the ways you can seek help and treatment are by:

- admission to a hospital,
- assessment by a visiting Crisis Assessment and Treatment (CAT) team or Psycho-Geriatric Assessment Team (PGAT),
- assessment by a visiting Mobile Support and Treatment (MST) team,
- attending a community mental health clinic or disability support service, or
- seeing a general practitioner or private psychiatrist, psychologist, counsellor or other therapist.

If you have a mental illness or disorder, you should expect to receive the same standard of health care that people get for other illnesses. Contact your local Area Mental Health Service to find out what is available. All people are entitled to be treated with dignity and respect.

If you have been refused admission to a hospital or access to a service and you think it is unfair, you can complain directly to the service or you can contact the Office of the Chief Psychiatrist or the Health Services Commissioner (see pp.47-48).

These organisations can investigate why you are not being provided with treatment. The Chief Psychiatrist can direct that you are admitted.

The phone numbers are at the back of this booklet.

If you are not happy about the services provided, it is important that you speak out so people can help you get what you need.



# 1 Patients

## ***Informal patient***

If you have admitted yourself to a hospital you will be known as an informal patient. (Under the Act informal patients used to be called voluntary patients.) It is important to know what your legal status as a patient is, because this affects your rights. Ask a staff member if you aren't sure.

If you are an informal patient, you have the right to leave the hospital at any time. You have the right to choose whether or not you have treatment.

If you want to leave or if you refuse the treatment offered, the doctors may consider whether you meet the criteria for involuntary admission. If a doctor decides you meet the criteria, you will become an **involuntary patient**. If your status changes from an informal to an involuntary patient, the staff should explain what has occurred and what your rights are.

If you are in a private hospital, you can only be treated as an informal patient. If the hospital thinks you need to be involuntary, they have to contact a public hospital and arrange for you to be transferred if necessary.

## ***Involuntary patient***

If you are required to accept treatment against your will, then you are an **involuntary patient**. An involuntary patient can be an inpatient in a hospital or on a Community Treatment Order.

Public mental health services have the power to take away your freedom to leave hospital or refuse treatment.

However, the Act sets out a formal procedure which must be followed when making you an involuntary patient. You have the right to seek legal advice if you are concerned about your involuntary treatment.

## Request

The first step in the legal process for making you an involuntary patient is to make a **request** for your admission. Anyone in the community over the age of 18 can request that you be assessed for admission to a hospital for treatment. A request form must be filled out and signed.

## Criteria for involuntary detention

You can only be admitted and held if you meet all of the following five criteria:

- you appear to be mentally ill (mental illness is explained on p.5), and
- your mental illness requires immediate treatment and that treatment can be obtained by admission to and detention in an approved mental health service, and
- because of your mental illness, you should be admitted and detained as an involuntary patient 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 refused or are unable to consent to the necessary treatment for the mental illness, and
- you cannot receive adequate treatment for the mental illness in a manner less restrictive of your freedom of decision and action.

All five criteria must apply, not just one, for involuntary detention to occur.

## Recommendation

The second step is that a **recommendation** form must be filled out and signed by a doctor. It is unlawful for a person who is not a registered medical practitioner to sign a recommendation. The doctor must not be the same person who signed the request.

Before making a recommendation an adequate mental health examination must be made, which explores the reasons why you may not want to consent to treatment.

The doctor must examine you no more than three days before making the recommendation to confirm that you meet the five criteria for detention as an involuntary patient. (There is no age limit on who can be recommended as an involuntary patient.)

If staff from a CAT team visit you at home, and they believe you meet the criteria for an involuntary patient, they must take reasonable steps to find a doctor to assess you at home or in the community.

If the doctor thinks you meet the five criteria for detention as an involuntary patient he or she can sign the recommendation form.

It may be possible for a doctor to sign a recommendation form without personally observing something about you to enable them to state you meet the five criteria.

The doctor can rely on some fact observed by another doctor who has examined you in the last 28 days.

The doctor who signs the recommendation must have very good reasons to rely on the facts from another doctor and must clarify on the recommendation what was personally observed and what was observed by someone else.

The name and address of the doctor who decides you meet the five criteria must be recorded on the recommendation form. It is unlawful to state something in the admission and recommendation process without valid reasons for doing so.



## **Authority to transport without a recommendation**

If the CAT team cannot find a doctor after taking reasonable steps to get one, they can take you to a hospital where you will be examined by a doctor to see if you meet the criteria for involuntary detention.

To do this they must fill out a form called an **Authority to transport without a recommendation**.

If you are taken to a hospital in this way, you must be seen by a doctor as soon as possible after you arrive.

## **Transport to hospital**

You should be transported to hospital in a safe and dignified way. You can ask to be taken to hospital by staff of a mental health service, a family member, friends or in an ambulance.

Department of Human Services policy states that staff should arrange for transport in an ambulance rather than a police vehicle whenever they can.

Some prescribed people (police, ambulance officers and employees of public mental health services) have the power to use as much force as is reasonably necessary to transport you to hospital.

This includes the power to enter your home and use restraint if it is reasonably necessary.

## **Sedation for transport to hospital**

You may be given drugs which will sedate you, but only if it is necessary to get you safely to the hospital. Drugs can only be given by an authorised medical person.

If you are sedated, you must be taken to the hospital in an ambulance so that your medication can be monitored. When you arrive at the hospital, you should be seen as soon as possible.

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## Police power to apprehend

The police also have a separate power to apprehend you if you appear to be mentally ill, and:

- you have recently attempted suicide, or
- you have tried to cause serious physical harm to yourself or others, or
- you are likely to attempt suicide or cause serious physical harm to yourself or others.

In these circumstances the police must arrange for you to be examined by a doctor as soon as practicable after they apprehend you. If the doctor examines you and believes that you meet all the five criteria, the doctor will sign a recommendation and you will be made an involuntary patient subject to the 24 hour review, see below.

## Upon admission

When you are admitted to a mental health service a medical practitioner (usually the medical registrar) must consider whether you meet all the five criteria for an involuntary patient.

If they don't believe you meet the five criteria, they must notify one of the psychiatrists authorised under the Act as soon as possible so that they can review you.

## 24 hour review

Within 24 hours of being admitted to a hospital you must have an examination by one of the psychiatrists authorised under the Act to confirm that you meet all of the five criteria for an involuntary patient. If they do not believe you meet all of the five criteria, you must be released without delay.

## Statement of rights

If you are an involuntary patient you must be given a written and a spoken statement of your rights upon admission. It is important that information about your rights is given to you in a language and a way that you understand.

If you do not understand, you should ask questions. Staff of the mental health service have a responsibility to inform you of your rights.

You have the right to complain about your treatment or anything you are unhappy about. You should be able to do this without fear of punishment from anyone. See chapter 4 'Complaints & other rights'.



## Automatic review by the Mental Health Review Board

All involuntary patients have an automatic review of their involuntary status within eight weeks of their admission. You do not have to do anything to make this happen.

All reviews of involuntary patients are conducted by the Mental Health Review Board. The Mental Health Review Board is an independent tribunal.

You should receive a Notice of Review from the Mental Health Review Board with details of the time and location of your hearing. If you have been in a hospital or on a Community Treatment Order for more than eight weeks and have not had a review, you should ring the Board and seek legal advice.

If you do not want to wait for the automatic review, you can appeal against your involuntary status at any time to the Mental Health Review Board. See chapter 3 'Reviews & Appeals'.

## Leave

If you are admitted as an involuntary patient you may request leave from the hospital. If you want to go home or attend to some other business you should speak to your doctor, nurse or case manager. Leave must be approved by one of the psychiatrists authorised under the Act.

## Absent without leave

If you are an involuntary patient and you leave the hospital without permission from the staff, you will be considered absent without leave. If you have not been discharged, you will continue to be an involuntary patient absent without leave and you may be brought back to hospital at any time.

You can be apprehended by police, ambulance officers or public mental health workers and taken back to hospital.

If you are away for 12 months you will be automatically discharged unless the Chief Psychiatrist or one of the psychiatrists authorised under the Act successfully applies to the Mental Health Review Board for an order that you not be discharged.

## Transfer

You can only be transferred to another hospital if:

- it is of benefit to you,
- it is necessary for your treatment, and
- one of the psychiatrists authorised under the Act at the new hospital agrees.

If you don't agree with your transfer you may contact the Mental Health Review Board to appeal against the decision.

## Discharge

If at any time you don't meet one or more of the five criteria, you must be discharged from hospital. Department of Human Services policy requires you to be given an appropriate discharge plan before you are discharged from the hospital. If you have been formally discharged, a discharge form should be completed and placed on your file. You can ask for a copy.

If you require ongoing care from a community mental health service and you don't already have a case manager, one will be assigned to you. Your case manager is responsible for looking after your interests and helping you to recover. They should develop an Individual Service Plan (see p.31) in collaboration with you, which sets out the plan for your treatment. Upon discharge you should also be given phone numbers of people you can contact for support.

## ***Community treatment order***

If you are living in the community and you are required to accept treatment against your will, you may be on a **Community Treatment Order**. This is often referred to as a CTO.

The Act states that wherever possible people should be able to receive treatment in the community. It also states that the treatment should always be provided in the least restrictive way. A CTO is considered to be less restrictive than being an inpatient in hospital.

If you are on a CTO, you are still an **involuntary** patient.

There are two ways a CTO can be made.

1. If you are an inpatient and one of the psychiatrists authorised under the Act believes that you can be treated in the community they may discharge you from hospital on a CTO.
2. If you meet the criteria for involuntary treatment on a CTO, you can be placed on a CTO by one of the psychiatrists authorised under the Act without having been admitted to a hospital as an inpatient.

## Criteria for a community treatment order (CTO)

The Act states that you can only be put on a CTO if:

- you appear to be mentally ill (mental illness is explained on p.5), and
- your mental illness requires immediate treatment and that treatment can be obtained on a CTO, and
- because of your mental illness, you should be on a CTO 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 refused or are unable to consent to the necessary treatment for the mental illness, and
- you cannot receive adequate treatment or care for the mental illness in a manner less restrictive of your freedom of decision and action.

All five criteria must apply – not just one. If at any time your doctor thinks you no longer meet all five criteria, they must discharge you. The Mental Health Review Board must automatically review your case within eight weeks of when you became an involuntary patient (see p.14).



## Conditions of a CTO

The conditions of your order will be written on the form and you should be given a copy of the order. The order should tell you who the doctor will be, where you will receive treatment and the length of the order.

Your CTO may also require that you live in a particular place. This is called a residence condition. This can only be used if it is necessary for the treatment of your illness. It cannot be used for the convenience of staff or other people.

## Length of a CTO

The maximum length of a CTO is 12 months. It can be shorter. Your doctor should advise you before it expires.

If at any point you no longer meet the criteria for a CTO, your psychiatrist must discharge you.

## Extension of a CTO

A CTO can be extended by your psychiatrist. If your CTO is extended, the Mental Health Review Board must review your situation again within eight weeks to make sure you still meet the criteria for involuntary treatment.

The extension cannot exceed 12 months. Before your CTO is due to expire, your psychiatrist should either discharge you from the order, or extend it if they believe you still meet the criteria to be involuntary. There is no limit to the number of times a CTO can be extended.

## Expiry of a CTO

If your order expires without being extended by the psychiatrist you are no longer an involuntary patient. You then have a choice about your treatment, including whether you will continue with it.



## Variations to the conditions of a CTO

You can ask the Mental Health Review Board if it can vary any of the conditions of your CTO. The Board can order a different treating doctor, such as a general practitioner or private psychiatrist.

They may change the length of time that the order has been made for. You can also ask the Board to change or remove the residence condition if you have one.

## Not complying with a CTO – revocation

If you are on a CTO and you don't take your medication or turn up for appointments, the order can be revoked. This means that you are deemed to be an involuntary patient who is absent from hospital without leave and you may be apprehended and returned to hospital.

Even if you are complying with your treatment, your CTO can be revoked and you can be returned to hospital if one of the psychiatrists authorised under the Act believes you can no longer receive adequate treatment without being in hospital.

## Appeals

If you are unhappy about being on a CTO, or wish to have it varied, you can appeal to the Mental Health Review Board at any time.

The Board has the power to discharge you from the order or vary the conditions of the order.

You have the right to ask an advocate or a lawyer to help you at the Mental Health Review Board. (See chapter 3 'Reviews & Appeals')

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## ***Mental disorder patient***

The admission, detention and appeal process for mental disorder is different from the process for mental illness.

If you have been detained as an involuntary patient for mental illness and you no longer meet the criteria for involuntary detention but you still have a mental disorder, you can be detained in a hospital for up to three months if your situation meets the following criteria:

- you appear to have a mental disorder, and
- having regard to your recent behaviour, if you did not continue to be detained and treated, you would cause serious physical harm to yourself, and
- treatment for the mental disorder can be obtained at the approved mental health service.

The application to detain you is made by one of the psychiatrists authorised under the Act to the Chief Psychiatrist. A committee of three psychiatrists including the Chief Psychiatrist then makes a decision within seven days about whether you meet these criteria.

Within 14 days of being detained in this manner the Mental Health Review Board will conduct a hearing to review whether you meet the criteria. The Mental Health Review Board must also notify the Office of the Public Advocate.

There is no limit on how many times this detention can be extended, but each period of detention cannot be for more than three months.

Each time an extension is made you must have another hearing at the Mental Health Review Board within 14 days.

You can appeal to the Mental Health Review Board against this detention at any time.

# 2 Treatment & Consent

## ***Principles of treatment and care***

The Act states that all mental health services, whether for informal or involuntary patients, should be provided in accordance with the following “Principles of Treatment and Care”. You should receive treatment in accordance with these principles whether you are using a public or a private service.

- People with a mental illness or disorder should be provided with timely and high quality treatment and care in accordance with professionally accepted standards.
- Wherever possible, people with a mental illness or disorder should be treated in the community.
- The provision of treatment and care should be designed to assist people with a mental illness or disorder to, wherever possible, live, work and participate in the community.
- The provision of treatment and care for people with a mental illness or disorder should promote and assist self reliance.
- People with a mental illness or disorder should be provided with appropriate and comprehensive information about their mental illness or disorder, proposed and alternative treatments, including medication, and services available to meet their needs.
- People with a mental illness or disorder should be treated near their homes or the homes of relatives or friends wherever possible.

- When receiving treatment and care the age-related, gender-related, religious, cultural, language and other special needs of people with a mental illness or disorder should be taken into consideration.
- The prescription of medication should meet the best health needs of the person with a mental illness or disorder and should be given only for therapeutic or diagnostic purposes and never as a punishment or for the convenience of others.
- Treatment and care should be provided by appropriately qualified people and within a multi-disciplinary framework.
- Every effort that is reasonably practicable should be made to involve a person with a mental illness or disorder in the development of an ongoing treatment plan. Treatment and care of a person with a mental illness or disorder should be based on this plan. The plan should be reviewed regularly and revised as necessary.

## ***Definition of treatment***

Treatment is defined as things done with professional skill to remedy the illness or disorder or to lessen its ill effects or the pain and suffering which it causes. Treatment includes things like medication, counselling, psychotherapy and monitoring to see how you are going.

## ***Consent to treatment***

If you have been given sufficient information about a treatment and you agree that the treatment can go ahead, you are giving your consent to the treatment.

As an informal patient you can refuse treatment or change your mind about treatment and withdraw your consent if you decide you don't like any of the treatment. You have the right to get a second opinion from another doctor at this time.

If you are in a private hospital you are an informal (or voluntary) patient. Treatment can only be given with your full consent.

## ***Involuntary patients and consent to psychiatric treatment***

If you are an involuntary patient in a hospital or on a CTO you must still be given sufficient information about your psychiatric treatment.

Your preference will be considered, but you will not be required to give informed consent. You are legally required to accept the psychiatric treatment which is given to you.

You must be informed about what the treatment is and what it does. You should be told of the possible side effects of the treatment.

You may ask for a second opinion from a psychiatrist about the treatment, which you should be able to get free in the public system.

## ***Consent for particular types of treatment***

### **Procedure for section 53B informed consent**

Whether or not you are an involuntary patient there are some treatments (see p.25) where the staff must do all the following tasks in order to seek your informed consent.

To seek your informed consent the staff must:

- give you a clear explanation with sufficient information for you to make a balanced judgement, and
- give you an adequate description of the benefits, discomforts and risks without exaggeration or concealment, and
- advise you of any beneficial alternative treatments, and
- answer any of your questions in a way that you understand, and
- tell you about any financial relationship between the service where the treatment will be given and any doctor who is seeking your consent or will perform the treatment.

You must also be given a written statement of your rights. These include the right to legal and medical advice, a second opinion, representation before you consent and the right to withdraw consent and stop the treatment even after it has started.

The statement must be explained to you in a language or in a way that you can understand, and printed, if possible, in the language that is best for you.

### **Treatments requiring section 53B informed consent**

Staff must carry out section 53B where it is proposed you have:

- electroconvulsive therapy (ECT)
- a type of non-psychiatric treatment which is major non-psychiatric treatment (such as, operations, anaesthetics, contraception and chemotherapy) or a special procedure (such as, abortion, sterilisation and donating kidneys)
- psychosurgery

For all these procedures, your consent must be in writing.

You can withdraw your informed consent at any time after giving it, in which case the treatment must not proceed. If you have a complaint about your consent not being properly obtained you should seek legal advice.

### **Electroconvulsive therapy**

Electroconvulsive Therapy (ECT) is sometimes called shock treatment. Many people in the community are apprehensive about this form of treatment.

Staff must obtain your section 53B informed consent if you are capable of giving it (see p.24).

If it is proposed as a treatment for you, you should be well informed about it so you can properly decide whether or not you want to consent.

You must be given a printed statement of your rights. Department of Human Services guidelines also recommend that you be given a statement in writing setting out the nature of the treatment, the procedure involved and the expected benefits, discomforts and risks.

ECT with consent can be performed at public hospitals and private hospitals licensed for ECT under the Act. ECT without your consent can only be performed in public hospitals.

### **WITHDRAWING CONSENT**

If you agree to have ECT and you have given your informed consent, you have the right to change your mind and withdraw your consent for the ECT at any time.

### **SECOND OPINION**

If you are concerned about the treatment you have the right to ask for a second opinion about the treatment from another psychiatrist.

### **LENGTH OF ECT**

You can only agree to have one course of ECT at a time. A course involves a series of treatments. One treatment consists of you being given a brief general anaesthetic and muscle relaxant.

A regulated electrical current will then be passed through your brain (usually once, or sometimes more often to identify the appropriate dose) until a therapeutic fit or seizure occurs.

One course must not include any more than six treatments. No more than seven days can pass between two treatments. If there are more than seven days between any two treatments in the course, your informed consent must be sought again. Staff must also seek your informed consent for each new course of treatment.

### **ECT WITHOUT INFORMED CONSENT IF YOU ARE NOT CAPABLE OF GIVING INFORMED CONSENT**

ECT can be performed at a public hospital without seeking your informed consent if you are an involuntary patient and one of the psychiatrists authorised under the Act decides you are incapable of giving informed consent.

However, the psychiatrist must be satisfied that all the following apply:

- the ECT has clinical merit and is appropriate, and
- having regard to the benefits, discomforts and risks it should be performed, and
- any beneficial alternatives have been considered, and
- without it your physical or mental condition will significantly deteriorate, and
- all reasonable efforts have been made to notify your guardian or primary carer.

ECT without consent can only be given in public hospitals.

### **ECT WITHOUT CONSENT IF URGENTLY REQUIRED**

Seeking your informed consent is not necessary if the doctor decides that ECT is urgently needed. What ‘urgent’ means is not defined. The power to perform urgent ECT without consent is rarely used. If it is used, the steps above do not have to be followed, however, they should always be followed if possible.

### **COMPLAINTS ABOUT ECT**

It is an offence to perform ECT on you without having obtained your informed consent if you were capable. The service could be penalised.

If you have a complaint about ECT you can contact the Office of the Chief Psychiatrist, the Health Services Commissioner or other agencies (see pp.47-48). The Chief Psychiatrist has the power to stop the hospital giving the ECT.

## **Non-psychiatric treatment**

### **INFORMAL PATIENTS**

Non-psychiatric treatment is treatment which is not related to a mental illness or mental disorder. If you are an informal patient, you have the same rights as any member of the community to consent to or refuse non-psychiatric treatment.

**INVOLUNTARY PATIENTS**

If you are involuntary, the doctors have to get your written consent to non-psychiatric treatment if you are able to consent. This does not apply if it is emergency treatment that is necessary to save your life.

In early 2003, changes to the Act will mean a broader range of urgent non-psychiatric treatment may be given without consent. Check with a lawyer.

The Act makes different rules for involuntary patients about how you consent and what happens if you cannot consent, depending on whether the treatment is major non-psychiatric treatment (see below) or not.

**MAJOR NON-PSYCHIATRIC TREATMENT**

If you are involuntary but can consent to the major non-psychiatric treatment, written section 53B consent (see p.24) must be obtained. This does not apply if it is emergency treatment that is necessary to save your life.

In early 2003, changes to the Act will mean a broader range of urgent non-psychiatric treatment may be given without consent. Check with a lawyer.

If you are considered unable to consent, a psychiatrist or a guardian may consent to the treatment on your behalf unless the treatment is a special procedure.

In early 2003, changes to the Act will mean other people can consent, including someone you have appointed as enduring guardian or medical power of attorney. Speak to a lawyer.

**OTHER NON-PSYCHIATRIC TREATMENT**

For treatment which is not major non-psychiatric treatment, the informed consent requirements set out at p.24 do not apply.

In this situation, your consent is informed if you have been given a clear explanation of the proposed treatment, and you have been advised as to why it is necessary. If you are involuntary and are considered incapable of consenting to the non-psychiatric treatment, a psychiatrist or a guardian may consent on your behalf.

In early 2003 changes to the Act will mean other people can consent, including someone you have appointed as enduring guardian or medical power of attorney. Speak to a lawyer.

### **SPECIAL PROCEDURES**

A guardian and the Guardianship List of the Victorian Civil and Administrative Tribunal have to consent to a special procedure. Special procedures are explained on p.25.

## **Psychosurgery**

In the rare case that psychosurgery is proposed, as well as getting section 53B consent, as set out on p.24, the Psychosurgery Review Board has to approve it. If you cannot give informed consent, then the psychosurgery cannot be performed.

## ***Experimental medication***

Your informed consent must be obtained before you take part in the clinical trial use of any new drug on the market.

## ***Restraint and seclusion***

Sometimes staff have the power to restrain or seclude you in a hospital. The Act does not authorise use of restraint or seclusion in private hospitals. You should get legal advice if you are in a private hospital and staff are proposing to restrain or seclude you.

### **Restraint**

Under the Act, restraint means applying devices, such as belts, harnesses, manacles, sheets and straps to your body to restrict your movement.

It does not include using furniture that makes it hard for you to get off the furniture, such as beds with cot sides and chairs with tables fitted on the arms.

You can only be restrained if it is necessary:

- for your medical treatment,
- to prevent you from hurting yourself or others, or
- to prevent you from persistently destroying property.

## Seclusion

Seclusion means confinement on your own in a room where the doors and windows are locked. Seclusion may also be referred to as “time out” or high dependency unit (HDU).

The only reasons you can be secluded are if it is necessary to:

- protect you or any other person from immediate or imminent risk to health or safety, or
- to prevent you from absconding from the hospital.

## Requirements of restraint and seclusion

You cannot be secluded or restrained for punishment and it should not be used as a threat.

It would be very rare for a hospital to be able to lawfully restrain or seclude you if you are not an involuntary patient. Speak to a lawyer.

Even if you agree to restraint or seclusion, the following procedures must be followed:

- you must be under continuous observation by a nurse or doctor. Restraint and seclusion must be reviewed as clinically appropriate at least every fifteen minutes by a registered nurse. You must also be examined by a doctor at least every four hours. It is possible for the psychiatrist to extend or reduce the time of your restraint or seclusion,
- you must be given food, drink, bedding, clothing and have adequate toilet arrangements, and
- staff must record in your file the reasons you were restrained or secluded and how often you were monitored.

Once staff are satisfied that the reasons for restraint or seclusion no longer apply to you, you must be released without delay.

The Department of Human Services has a guideline which recognises that restraint and seclusion can be intrusive and that staff should talk to you about it during and after the experience.

It is an offence to restrain someone or keep someone in seclusion if it is not in line with the Act, and the service can be prosecuted and fined.

If you have a complaint about restraint or seclusion you can contact the Office of the Chief Psychiatrist (see p.48). The Chief Psychiatrist has the power to stop the restraint or seclusion.

## ***Case management and individual service plan***

If you are in the public mental health system, Department of Human Services policy requires you to have a case manager appointed and an individual plan for your treatment. This is known as an Individual Service Plan (ISP). This plan is a written summary listing your aims and ways to achieve them. This should be created by you and your case manager in consultation with your psychiatrist.

If you are using a non-government organisation they may develop a similar plan known as an Individual Program Plan (IPP).

You should be consulted about what you want in your plan. It should be reviewed regularly with you.



# 3 Reviews & Appeals

## ***Mental Health Review Board***

The Mental Health Review Board is an independent tribunal. It has the legal power to decide if involuntary patients (including people on CTOs) should remain as involuntary patients or be discharged. It does this by holding **review hearings** and **appeal hearings**.

You should receive a notice of appeal or review at least seven days before your hearing. Contact details for the Board are at the back of this booklet.

## ***Review hearing***

The Board must automatically review the status of all involuntary patients within eight weeks of their becoming involuntary, to ensure that they meet the relevant criteria for continued involuntary treatment.

The Board also reviews involuntary patients at least every 12 months after that to determine if they should continue to be involuntary.

Although the Board has no power to prescribe treatment, sometimes it may make recommendations to the doctors about how to improve your treatment.

## ***Appeal hearing***

If you are an involuntary patient and you do not believe you meet the criteria for involuntary status, you have the right to appeal to the Mental Health Review Board at any time.

The Board will make an independent decision.

If it decides you do not meet any one of the criteria it must discharge you. (See chapter 1 'Criteria for involuntary detention' or 'Criteria for a Community Treatment Order')

You or anyone on your behalf can appeal. You can lodge the appeal or you can get someone you trust like a friend, relative, partner, carer or advocate to lodge it by:

- asking the nurse, doctor, or case manager for an appeal form and faxing or posting it to the Board, or
- writing a letter to the Board, asking for a hearing to appeal against your detention.

Once your request for an appeal has been received by the Board, it must arrange a hearing without delay. You should not have to wait more than about two weeks. You can call the Board when you put in the appeal to find out when the hearing will be held.

At the few services where the Board only sits every four weeks, you can ask the Board to give you an earlier hearing. This may be possible via video conference, or at another service.

You will be told the date, time and place of the hearing.



## **Representation**

You have the right to have an advocate or legal representative at your hearing. An advocate can be a lawyer, family member, friend or anyone of your choice. You might be able to get legal help through one of the following:

- the Mental Health Legal Centre
- Victoria Legal Aid
- your nearest community legal centre
- a private solicitor

Some of these phone numbers are at the back of this booklet.

## **Looking at your file before a Board hearing**

The hospital or clinic must make your file available to you at least 24 hours before your hearing. Your file might be at the hospital or the clinic. The file will include a **Report on Continued Detention** prepared by the doctor for the Board.

If the hospital or clinic does not want any part of a file released to you, they must make an application to the Board. The Board may order that you cannot have access to a document or part of it, if it would:

- cause serious harm to your health or the health or safety of another person,
- involve the unreasonable disclosure of information relating to the personal affairs of any person, or
- breach a confidentiality provision imposed by a person who supplied information contained in the documents.

For information on accessing your file for reasons other than a Board hearing see 'Access to records' on p.43.

## ***Preparing for the hearing***

It is up to you whether you attend your hearing or not, but attending your hearing will allow you to ask questions and might improve your chances of being discharged.

You are entitled to a second psychiatric opinion about your condition from the public mental health service you are with. You could also ask a private psychiatrist but you may have to pay.

You, or your advocate, should talk to the staff to make sure that you are not being given strong medication which will make it difficult for you to concentrate on the day of the hearing.

It is important to show the Board that you will be able to live independently, with or without support. There are services and programs available in the community such as disability support services, mobile support and treatment teams, community health centres, community mental health centres and neighbourhood houses.

There are also financial and accommodation services available. Ask a social worker at the hospital or clinic for assistance.

Your family, friends or someone you respect could write letters or come to the hearing with you to say that they will assist you.

People you want to have input may also be able to participate over the telephone.

If you intend to seek treatment from a clinic or a private doctor, or if there are alternative treatments that you think will help you, tell the Board about this.

## ***The hearing***

The Board will come to the hospital or the clinic. If you are unable to get out of bed, the Board may hold the hearing in the ward.

If the hearing is:

- the first automatic review of your involuntary status (that is, within eight weeks),
- an appeal against your involuntary status (whether you are an inpatient or on a CTO), or
- an appeal against transfer or leave,

the Board will be made up of three members (a lawyer who chairs the Board, a psychiatrist and a community member).

If the hearing is:

- an annual review of your involuntary status, or
- an extension of your CTO,

the Board may be made up of only one of those people.

The hearings are closed to the public. The only people who have a right to be at the hearing are the treating psychiatrist, other health professionals and you.

Other people can only attend with your consent or if the Board gives them permission. If you do not want someone to attend the hearing, let the Board know.

The Board members will have your hospital file and the report prepared by the doctor on your continued detention.

The Board will ask the doctor why it is necessary for you to remain an involuntary patient. You and/or your representative can ask the doctor questions about what has been said or other things that you think are important.

The Board will ask you or your representative some questions. You could talk about services that you would use in the community or supports which you have arranged for yourself.

After listening to everyone, the Board will ask everybody to leave the room so it can consider the issues and make a decision. The Board will then call everyone back into the room and announce the decision.

In special circumstances, for example if you knew the Board members personally, or if you have had a decision made by those members before, you may be able to ask for a different Board.

## ***After the hearing***

If the Board decides you should be discharged, you can then choose for yourself whether you stay in hospital if you are an inpatient, or whether you continue with treatment if you are on a CTO.

If the Board decides that you should remain as an involuntary patient in hospital or on a CTO, you will have to stay in the hospital or remain on the order.

You can ask the Board for a statement of their reasons for the decision. The request must be in writing and sent to the Board within 28 days of the decision.

If you do not agree with the Board's decision, you have the right to appeal to the Board and have another hearing at any time. There is no limit to the number of times you can appeal or how often.

Everybody's circumstances change over time and new information could affect the Board's decision.

## ***Appealing a decision of the Mental Health Review Board***

If you disagree with the decision of the Board you can also appeal to the General List at the Victorian Civil and Administrative Tribunal.

It is recommended that you do this with the help of a lawyer. You must lodge an appeal to the General List within 28 days of the Board's decision, or within 28 days of receiving written reasons from the Board if you ask for them.

You can appeal by writing to the Registrar at the General List. The address is at the back of this booklet.

# 4 Complaints & other rights

## ***Complaints about treatment***

It is important to be informed about your treatment and medication. Your doctor should give you information about your treatment and listen to any concerns you have.

If the doctor does not give you information on your treatment or medication, ask for it.

The Royal Australian and New Zealand College of Psychiatrists Code of Ethics directs psychiatrists to take great care in giving information on treatment and medication.

If you do not want to take your medication talk to your doctor. You should tell the doctor if you experience side-effects. You may want to try to reduce the dosage, change or stop the medication. (See also chapter 3 'Reviews & Appeals')

## ***Second opinions***

If you have concerns about your treatment, you have the right to get a second opinion from another psychiatrist. If you would like to get a second opinion ask your doctor, nurse or case manager to arrange it.

It is a good idea to put your request for a second opinion in writing so it can be placed in your file. You may want to speak to your general practitioner about getting a referral to another psychiatrist. If you get a second opinion from a private psychiatrist outside the hospital or clinic there may be a cost involved.

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## ***Requesting a new psychiatrist, doctor or case manager***

It is important that your workers are people you can communicate with and feel comfortable with. If you are unhappy about any of your workers, you can speak to them about it. If you need support you could take an advocate. You may be able to change workers.

This does not necessarily mean you will get a different diagnosis or treatment.

Some hospitals employ a complaints liaison officer. They can investigate any concerns you may have. Many Area Mental Health Services employ consumer consultants who may be able to help you.

If you are still unhappy with your workers, you can write or complain to the Director of Clinical Services in your area or the Office of the Chief Psychiatrist.

Limitations on the public health system mean you may not always have a choice of a worker or continue to see the same doctor or psychiatrist.

## **Complaints mechanisms**

If you want to make a complaint about the service you are receiving or your treatment, the following people may be able to help. Complaints can be made about public or private services.

The contact details of the following services and other service providers are listed at the back of this booklet.

### **The Chief Psychiatrist**

- has wide powers to investigate a complaint. They can stop or change treatment or direct a mental health service to provide treatment. They also have overall responsibility for the medical care and welfare of people receiving treatment or care for a mental illness or disorder.

### **The Office of the Public Advocate**

- can advise and assist with complaints about services, care and treatment of people with disabilities.

### **Community Visitors**

- can investigate complaints about services. They regularly visit public mental health facilities.

### **The Health Services Commissioner**

- can investigate and assist in resolving complaints about any health service provider and complaints about health records access and privacy. Time limits may apply so speak to a lawyer.

### **Professional regulatory bodies**

If you have a complaint about a particular worker their professional body may investigate it. For example, the professional regulatory body for doctors and psychiatrists is the Medical Practitioners Board of Victoria, for nurses it is the Nurses Board of Victoria and for psychologists it is the Psychologists Registration Board of Victoria.

Time limits may apply. Speak to a lawyer.

## Access to records

### Freedom of information

Whether or not you have a Mental Health Review Board hearing, if you are being treated by public mental health services and you would like to see your file or parts of your file, you can request the information through freedom of information laws.

You can ask to look at your file or to have photocopies of it.

Some of the information may be withheld in certain circumstances, but you have the right to challenge this. If you know where the file is kept you should contact the freedom of information officer at the hospital or clinic.

If you do not know where the file is kept and your local clinic or hospital can't help you, contact:

The Manager  
Freedom of Information  
Department of Human Services  
GPO Box 4057  
Melbourne 3001

You can ask to have details in your file amended if they are incomplete, inaccurate, out of date or misleading. You can appeal against a decision not to give you access to some of the information or not to amend your personal records. Time limits apply to appeals and you should contact a lawyer.

The decision on whether to give you access to the information must be made within 45 days of the request reaching the department or agency. There may be a charge involved, but fees may be waived or reduced if you are on a low income.



## **Access to private health system and other records**

New laws in 2002 mean that you now have an enforceable right to access private health records and records not about health held by almost any organisation or service provider. This includes:

- records held by any private health service provider such as a GP, private psychiatrist, private hospital, psychologist or counsellor, and
- records held by any psychiatric disability support service such as an employment, recreation or housing support service.

These laws also give you the right to correct records which are wrong.

If it is information about a health or disability service, the Health Services Commissioner could help you to get access.

You may also be able to get help from the Victorian or Federal Privacy Commissioners about health or disability service records or any other records (see p.48).

The laws are complex and time limits may apply. You should see a lawyer to help you work out the best course of action.

## **Confidentiality and privacy**

### **Confidentiality in the public mental health system**

As a general rule, the staff of a public mental health service or government-funded psychiatric disability support service are obliged to keep your personal information confidential.

If they want to release some of this information, they must ask your permission. However, there are some exceptions to this. For example, information may be released:

- when it is related to your psychiatric treatment and is required by other staff who are on the treatment team,
- when it is related to your ongoing care and is reasonably required by your primary carer,
- when it is required for a court in the course of criminal proceedings.

A person may be prosecuted for breaching confidentiality. Punishments can include a fine of up to \$5,000. If you need further information you should contact a lawyer.

## **Information privacy rights**

New laws in 2002 mean you can take action if almost any type of organisation, service provider or therapist breaches your privacy in relation to information they hold about you.

These laws apply to public and private service providers and organisations and not just health services.

You can get assistance from the Health Services Commissioner or the Victorian or Federal Privacy Commissioner (see pp.47-48) about the best action to take.

It is always a good idea to speak to a lawyer about this if you can, because the laws are complex and time limits may apply.

## ***Discrimination***

You should not be discriminated against because of your mental illness or disorder, or because someone thinks you have one. The *Federal Disability Discrimination Act* and the *Victorian Equal Opportunity Act* say you should receive fair treatment in:

- employment and work related areas
- education
- access to public places
- using goods, services and facilities
- accommodation
- sale of land
- clubs and associations
- sport
- commonwealth laws and programs

There are some limited exceptions in each of these areas where it might be shown that the discrimination was not unlawful.

If you think you have been discriminated against, or would like to know more about the exceptions described in the Acts, you can contact the Victorian Equal Opportunity Commission or seek legal advice. See 'Useful Organisations' at the back of this booklet.

Time limits apply. You should contact a lawyer.

## ***Sexual and physical assault***

It is a criminal offence for a person who provides medical or therapeutic services to a person who has mental illness or disorder to engage in an act of sexual penetration or an indecent act with that person. This includes outpatients.

This behaviour is prohibited under the *Crimes Act*, whether or not the patient consents to it.

If you wish to report an assault to the police you should do so as soon as possible. It is important to collect evidence and you should contact a doctor immediately.

If you confide in a health professional that you have been assaulted they have a duty to offer you support. Staff also have a duty to maintain a safe environment.

If you have been assaulted and you do not want to proceed with charges you can say so, but the staff must report incidents to their supervisors. If you have been assaulted, you may be entitled to some type of monetary compensation. Time limits apply.

You should contact a lawyer.

# Useful Organisations

## Mental Health Legal Centre

Level 4, 520 Collins Street

Melbourne 3000

Ph: 9629 4422

Toll free: 1800 555 887

Fax: 9614 0488

Email: [mental\\_health\\_vic@fcl.fl.asn.au](mailto:mental_health_vic@fcl.fl.asn.au)

[www.vicnet.net.au/~mhlc](http://www.vicnet.net.au/~mhlc)

## Victoria Legal Aid

350 Queen Street

Melbourne 3000

Ph: 9269 0234

Toll free 1800 677402

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

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

## Mental Health Review Board

Level 30, Marland House

570 Bourke Street

Melbourne 3000

Ph: 8601 5270

Toll free 1800 242703

Fax: 8601 5299

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

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

## Federation of Community Legal Centres

First Floor, 212 King Street

Melbourne 3000

Ph: 9602 4949

Email: [fedclc@vicnet.net.au](mailto:fedclc@vicnet.net.au)

The federation will be able to give you the phone number of the community legal centre nearest you

## Health Services Commissioner

Level 30, Marland House

570 Bourke Street

Melbourne 3000

Ph: 8601 5200

Fax: 8601 5219

Toll free: 1800 136066

TTY: 1300 550 275

[www.health.vic.gov.au/hsc](http://www.health.vic.gov.au/hsc)

## Victorian Mental Illness Awareness Council

23 Weston Street

Brunswick 3056

Ph: 9603 9500

Fax: 9603 9501

Email: [admin@vmiac.com.au](mailto:admin@vmiac.com.au)

### **Community Visitors Program**

5th floor, 436 Lonsdale Street  
Melbourne 3000  
Ph: 9819 6087  
Fax: 9616 7697  
[www.communityvisitors.vic.gov.au](http://www.communityvisitors.vic.gov.au)

### **Chief Psychiatrist**

Department of Human Services  
555 Collins Street  
Melbourne 3001  
Ph: 9616 7571  
Fax: 9616 7697  
[www.health.vic.gov.au](http://www.health.vic.gov.au)

### **Victorian Equal Opportunity Commission**

3rd floor, 380 Lonsdale Street  
Melbourne 3000  
Ph: 9281 7100  
TTY: 9281 7110  
[www.eoc.vic.gov.au](http://www.eoc.vic.gov.au)

### **Office of the Public Advocate**

5th floor, 436 Lonsdale Street  
Melbourne 3000  
Ph: 9603 9500  
Fax: 9603 9501  
TTY: 9603 9529  
Email: [publicad@vdoj.vic.gov.au](mailto:publicad@vdoj.vic.gov.au)  
[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

### **Victorian Civil & Administrative Tribunal (VCAT) – General List**

7th floor, 55 King Street  
Melbourne 3000  
Ph: 9628 9755  
Fax: 9628 9788  
[www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

### **Victorian Interpreting & Translating Service**

Ph: 131450  
[www.immi.gov.au](http://www.immi.gov.au)

### **Victorian Privacy Commissioner**

Level 11, 10-16 Queen Street  
Melbourne 3001  
Ph: 8619 8719 / 1300 666 444  
Fax: 8619 8700 / 1300 666 445  
Email: [enquiries@privacy.vic.gov.au](mailto:enquiries@privacy.vic.gov.au)  
[www.privacy.vic.gov.au](http://www.privacy.vic.gov.au)

### **Federal Privacy Commissioner**

Level 8, 133 Castlereagh Street  
Sydney NSW 2000  
Ph: 1300 363 992  
TTY: 1800 620 241  
Fax: (02) 9284 9666  
Email: [privacy@privacy.gov.au](mailto:privacy@privacy.gov.au)  
[www.privacy.gov.au](http://www.privacy.gov.au)



If you would like to order more copies or download a copy of this booklet contact:

## **Mental Health Legal Centre**

Level 4, 520 Collins Street

Melbourne 3000

Phone: 9629 4422

Country callers: 1800 555 887

Web site: [www.vicnet.net.au/~mhlc](http://www.vicnet.net.au/~mhlc)

## **Victoria Legal Aid**

350 Queen Street

Melbourne 3000

Phone: 9269 0234

Country callers: 1800 677 402

Web site: [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)