
Mental health laws and compulsory patients

Summary

- Every compulsory patient has rights.
 - There are independent organisations that can help you.
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If you are a compulsory patient under the *Mental Health Act 2014*, you have rights. You should be aware of these rights and know who to contact if you need help.

Your basic rights as a compulsory patient

You have the right to:

- make or participate in decisions about your treatment
- apply to the Mental Health Tribunal to revoke your Temporary Treatment Order or Treatment Order
- make an advance statement
- nominate a nominated person
- seek a second psychiatric opinion
- ask for legal advice
- communicate with people by letter or telephone, and to have visitors
- make a complaint to the Mental Health Complaints Commissioner about your treatment.

Reasons for compulsory assessment

An Assessment Order allows a psychiatrist to examine you to decide if you have mental illness, even if you do not want to be assessed. A doctor or a mental health practitioner (a nurse, occupational therapist, psychologist or social worker employed or engaged by a designated mental health service) can make an Assessment Order. You can be assessed in the community (Community Assessment Order) or at a hospital (Inpatient Assessment Order).

If an Assessment Order is made for you, it is because the doctor or a mental health practitioner believes that:

- you appear to have mental illness
- because you appear to have mental illness, you need immediate treatment to stop serious deterioration in your mental or physical health or to stop serious harm to you or another person
- if an Assessment Order is made, you can be assessed, and there is no less restrictive way for you to be assessed.

Reasons for compulsory treatment

Within 24 hours of a Community Assessment Order being made or 24 hours of your admission to an inpatient mental health service if an Inpatient Assessment Order has been made for you, a psychiatrist from the mental health service will examine you to decide if you have a mental illness and whether:

- you have mental illness
 - because you have mental illness, you need immediate treatment:
 - to stop serious deterioration in your mental or physical health
 - to stop serious harm to you or another person
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- immediate treatment will be provided if a Temporary Treatment Order is made for you and there is no less restrictive way for you to receive immediate treatment.

If all the above reasons apply to you, the psychiatrist will make a Temporary Treatment Order and you must remain a compulsory patient. A Temporary Treatment Order can only last for 28 days.

You may have to stay in hospital for mental health treatment on an Inpatient Temporary Treatment Order, even if you don't want to.

Your psychiatrist may decide that you can receive the treatment you need at home or when you visit a community clinic on a Community Temporary Treatment Order. However, you are still a compulsory patient.

Making or participating in treatment decisions

A psychiatrist must talk to you about what mental health treatment you would like. You can ask a psychiatrist questions about your treatment. The psychiatrist must answer your questions in a way that you can understand.

A psychiatrist or another member of the treating team will help you to make decisions about your mental health treatment. You can also ask a family member, nominated person, guardian, carer or mental health advocate to help you to make decisions about your mental health treatment.

A psychiatrist may make a decision about your treatment if:

- you do not agree to the treatment that the psychiatrist thinks will help you get better
- you are unable to make a decision about your treatment when the decision needs to be made.

If you are unable to make a decision about your treatment, the psychiatrist will still listen to what treatment you would like before making a decision about your treatment.

Mental Health Tribunal

The Mental Health Tribunal is an independent tribunal that:

- makes Treatment Orders
- makes decisions about whether a person can have electroconvulsive treatment (ECT) or neurosurgery for mental illness
- hears applications from patients who want to be taken off their order
- hears applications from patients against being transferred to another service.

If you are on a Temporary Treatment Order, the Mental Health Tribunal will hold a hearing to decide if you need compulsory treatment for mental illness for longer than 28 days. The Tribunal can make a Treatment Order for up to 12 months if you are on a Community Treatment Order, up to six months if you are on an Inpatient Treatment Order, or up to three months if you are aged under 18.

Your order will finish at the end of the term set by the Tribunal. Your psychiatrist can cancel the order at any time if they believe that you no longer need compulsory treatment. If your psychiatrist thinks you still need compulsory treatment, they must make an application to the Tribunal for a further Treatment Order before your current order ends.

Your right to apply to the Mental Health Tribunal

It is your right to apply to the independent Tribunal to revoke your order at any time. If you want to apply to the Tribunal, ask a member of your treating team for an application form. The team member can send it to the Tribunal for you. You can contact the Tribunal on Tel. (03) 9032 3200 or toll free on 1800 242 703.

Making an advance statement

betterhealth.vic.gov.au

You can make an advance statement at any time. An advance statement is written by you and says what treatment you would like when you are unwell.

You can make an advance statement by writing it down, and signing and dating it. Your advance statement must be signed by a witness who says you understand what the advance statement is and what it means to make the advance statement. The witness must be a doctor, a member of your treating team, or someone who is allowed to witness statutory declarations.

Choosing a nominated person

You can ask someone to be your nominated person at any time. A nominated person is someone you can choose to support you if you have to have compulsory treatment. Your nominated person can be a family member, a carer, a partner, or anyone else you choose.

Your nominated person gets information about your mental health treatment. Because of this, you should choose someone who knows you well and who you can trust.

You can make a nomination by writing it down, and signing and dating your nomination. The person needs to agree to be your nominated person.

Your nomination must be signed by a witness who says you understand what the nomination is and what it means to make a nomination. The witness must be a doctor, a member of your treating team, or someone who is allowed to witness statutory declarations. The witness cannot be the person you choose to be the nominated person.

Your right to seek a second opinion

It is your right to seek a second opinion about your psychiatric condition or treatment. You can ask your case manager or clinician to help you arrange this.

Your treating psychiatrist must consider the recommendations made in a second psychiatric opinion report. If they decide not to adopt any or all of the recommendations in the report, you can ask the Chief Psychiatrist to review your treatment. The Chief Psychiatrist can direct that changes are made to your treatment if they think it is appropriate.

Your right to legal advice

It is your right to obtain legal advice and have a lawyer to represent you. Call Victoria Legal Aid on 1800 792 387.

Your right to communicate with family and friends

You can have people visit you at the mental health service and you can contact people by letter or phone. You can have someone of your choice with you when you discuss your treatment with your doctor.

Your right to complain

If you are unhappy about anything that happens when you are a compulsory patient, you have the right to complain. A good place to start is with your case manager or the complaints officer at the mental health service. You can also complain to the Mental Health Complaints Commissioner.

Where to get help

- Your case manager or another member of your treating team can tell you about other helpful organisations and groups
- Community Visitors/Public Advocate Tel. 1300 309 337
- Mental Health Complaints Commissioner Tel. 1800 246 054
- Mental Health Tribunal Tel. (03) 9032 3200 or toll free 1800 242 703

- Victoria Legal Aid Tel. 1800 792 387

Things to remember

- Every compulsory patient has rights.
- There are independent organisations that can help you.

This page has been produced in consultation with and approved by:

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