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## Compulsory mental health patients

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### Summary

- If a doctor or a mental health practitioner is concerned that you appear to have a mental illness, they can make an Assessment Order if they think you appear to need immediate treatment to prevent a serious deterioration in your health or to prevent serious harm to you or to another person.
  - A compulsory patient is a person under an Assessment Order, Court Assessment Order, Temporary Treatment Order or Treatment Order.
  - A voluntary patient is a person not on an order who agrees to receive mental health treatment .
  - The Mental Health Act requires every compulsory patient to be given a written statement of their rights.
  - Compulsory patients have the right to seek a second psychiatric opinion from another doctor. You can also make an application to the Mental Health Tribunal at any time asking them to revoke the order that makes you a compulsory patient.
  - If you have to have compulsory treatment, you can nominate a person to support you.
  - It is a good idea to make an advance statement detailing what treatment you would like in the event you become unwell.
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If you are a compulsory mental health patient in the Victorian mental health system, you have certain patient rights that determine how you can be treated. It is important that you understand these rights and know where you can get support and advice if needed.

To get treatment as a compulsory mental health patient, you must usually give 'informed consent'. If you give informed consent to treatment you can withdraw your consent at any time, even if you have previously agreed to your treatment.

Informed consent means that you understand the medical advice you are getting and that you have the information you need to make an informed decision. Legally, you must have:

- capacity to give informed consent to the treatment or medical treatment proposed
- enough information to make an informed decision
- a reasonable opportunity to make the decision
- given your consent freely without pressure from anyone else
- not withdrawn your consent or indicated any intention to withdraw consent.

If you are under a Temporary Treatment Order or Treatment Order and you are unable to provide informed consent to treatment or do not consent to treatment then an authorised psychiatrist may make a treatment decision for you if they are satisfied that there is no less restrictive way for you to be treated other than the treatment proposed by them. The **Mental Health Act** does not permit an authorised psychiatrist to make a treatment decision about electroconvulsive treatment or neurosurgery for mental illness for a patient.

In order to decide if there is no less restrictive way for a patient to be treated the **authorised psychiatrist** must have regard, to the extent this is reasonable in the circumstances, to all of the following:

- your views and preferences about treatment
  - your views and preferences expressed in your advance statement
  - the views of your nominated person
  - the views of your guardian of the patient
  - the views of your carer, if the authorised psychiatrist is satisfied that the treatment decision will directly affect the carer and the care relationship
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- the views of your parent, if you are under the age of 16 years
- the views of the Secretary to the Department of Health & Human Services if you are under a custody or guardianship to the Secretary order
- the likely consequences for you if the proposed treatment is not performed
- any **second psychiatric opinion** about you that has been given to the authorised psychiatrist.

You can read more about informed consent and your mental health rights on the [Victoria Legal Aid website](#).

### Assessment orders

If a doctor or a mental health practitioner (a nurse, occupational therapist, psychologist or social worker employed or engaged by a designated mental health service) is concerned that you may have a serious mental illness, they can make out an assessment order. This allows a psychiatrist to examine you to decide if you need treatment. This assessment can occur even if you do not want to be assessed. You can be assessed in the community (community assessment order) or at a hospital (in-patient 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 a mental illness
- because you appear to have a mental illness, you appear to need immediate mental health 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.

### Compulsory treatment orders

Within 24 hours of a community assessment order being made, or 24 hours of your admission to a designated mental health service when an in-patient assessment order has been made for you, an authorised psychiatrist from the mental health service will examine you to decide if you have a mental illness and whether:

- because you have a mental illness, you need immediate mental health treatment:
  - to stop serious deterioration in your mental or physical health
  - to stop serious harm to you or another person
- 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.

If an Inpatient Temporary Treatment Order is made you must stay in hospital for mental health treatment, even if you do not want to.

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

### Your basic rights as a compulsory patient

The Mental Health Act states that every compulsory patient must be given a written statement of their patient rights. If they need help to exercise those rights, they can ask someone of their choice to help them – perhaps a staff member, case manager, nominated person, friend, relative, advocate, lawyer or doctor.

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 where you set out your treatment preferences
- choose a 'nominated person' to support you if you have to have compulsory treatment

- seek a second psychiatric opinion
- seek the support of an independent mental health advocate
- contact a community visitor
- ask for legal advice
- communicate with people by letter or telephone, and have visitors
- make a complaint to the **Mental Health Complaints Commissioner** about your treatment.

### **Making or participating in mental health treatment decisions**

A psychiatrist must talk to you about your mental health treatment options. You can ask a psychiatrist questions about your treatment and they 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.

If you are unable to make a decision about your treatment or do not consent to the treatment proposed, 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 about patients 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 a 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 In-patient 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 Mental Health 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 (03) 9032 3200 or toll free on 1800 242 703.

### **Your right to seek a second opinion**

It is your right to seek a second opinion about your psychiatric condition or mental health 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.

### **Making an advance statement**

An advance statement is written by you and says what treatment you would like in the event you become unwell and need compulsory treatment. You can make an advance statement at any time.

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 it 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.

However, even with an advance statement, your psychiatrist can decide on a different course of treatment if they believe the suggested treatment in the advance statement is not clinically appropriate or it is not a treatment ordinarily provided by the designated mental health service.

### **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 the support of an independent mental health advocate**

You have the right to seek the support of a mental health advocate. Advocates support compulsory patients to make or participate in decisions about their assessment, treatment and recovery and to understand and exercise their rights. Assistance may also be given to voluntary patients who are at risk of being placed on a compulsory treatment order and persons who have recently been discharged from an order.

The **Independent Mental Health Advocacy service** can be contacted on 1300 947 820 or via **email**.

### **Your right to contact a community visitor**

Community visitors assist persons receiving mental health services at prescribed premises to resolve issues, seek support from other relevant bodies or services and make complaints to the **Mental Health Complaints Commissioner**.

Prescribed premises are designated mental health services, mental health service providers in which residential services and 24 hour nursing care is provided for persons who have mental illness and Prevention Recovery and Care (PARC) services.

The Community Visitor program of **The Victorian Office of the Public Advocate (OPA)** can be contacted on 1300 309 337.

### **Your right to legal advice**

You are within your rights to get legal advice and ask a lawyer to represent you. As a first step, call **Victoria Legal Aid** on 1800 792 387.

### **Your right to communicate with family and friends**

Unless an authorised psychiatrist has made a direction restricting your right to communicate, when you are a compulsory patient you can have people visit you at the mental health service and you can contact people by letter or phone. You can also have someone of your choice with you when you discuss your mental health treatment with your doctor.

A restriction of your right to communicate can only be made if an authorised psychiatrist is satisfied the restriction is reasonably necessary to protect the health, safety and wellbeing of any person. Any restriction must be regularly reviewed and cease immediately the authorised psychiatrist is satisfied it is no longer necessary.

### **Your right to complain**

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**betterhealth.vic.gov.au**

If you are unhappy about anything that happens when you are a voluntary or compulsory mental health 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** on **1800 246 054** or fill in the **online complaint form**.

#### Where to get help

- Your GP (doctor)
- Your case manager
- **Mental Health Complaints Commissioner**, call 1800 246 054
- Independent Mental Health Advocates, call 1300 947 820
- **Victoria Legal Aid**, call 1800 792 387
- Community Visitors/Public Advocate, call 1300 309 337
- Mental Health Tribunal, call (03) 9032 3200 or 1800 242 703 (toll free)

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