
Mental health laws and your rights

Summary

- All of Victoria's health laws apply to you as a person with mental illness, meaning your rights and privacy are protected.
 - The *Mental Health Act* is the law that governs compulsory mental treatment in Victoria.
 - If you need compulsory treatment, you must receive a statement of **rights** from your mental health service.
 - Compulsory assessment and treatment can only occur if you are on an order made by a doctor, mental health practitioner, psychiatrist or the Mental Health Tribunal.
 - Call the Mental Health Legal Centre on (03) 9629 4422 or 1800 555 887 if you need legal advice.
 - If you feel like any of your patient rights have been ignored during treatment, you can give feedback to the service or make a complaint.
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As a person with a mental illness in Victoria, you are protected by the same laws that protect everyone else within the Victorian healthcare system. The Health Records Act relates to the privacy and protection of your health information. The Carer's Recognition Act acknowledges the role that carers play in treatment and recovery. However, there are some situations where mental health treatment becomes compulsory. The Mental Health Act 2014 is the law governing compulsory mental health treatment in Victoria. Mental health professionals have to abide by and be guided by these laws.

The Mental Health Act 2014

The Mental Health Act 2014 provides specifically for the mental health assessment, detention and compulsory treatment of people with severe mental illness. It makes sure that compulsory treatment is only used where necessary to prevent serious harm to the person or to others.

Statement of Rights

The Mental Health Act 2014 requires every compulsory patient must be given a written statement of their patient rights as soon as they become a compulsory patient or receive electroconvulsive treatment or neurosurgery for mental illness under the Act. A compulsory patient is a person on an Assessment Order, a Temporary Treatment Order or Treatment Order. If they need help to exercise those rights, they can ask someone of their choice to help them – for example: a staff member, case manager, nominated person, friend, relative, advocate, lawyer or doctor.

A mental health patient statement of rights includes information about your rights to :

- communicate lawfully
- seek a second psychiatric opinion about whether you should be on an order and to review treatment under that order
- make an advance statement
- apply to the Mental Health Tribunal at any time to revoke a compulsory treatment order
- make a decision about whether to give informed consent for electroconvulsive treatment
- choose a 'nominated person' to support you if you must have compulsory treatment
- make a complaint to the Mental Health Complaints Commissioner (this is a free service)
- be legally represented and be supported by a carer, family member or friend at a hearing of the Mental Health Tribunal
- seek help from community visitors.

Compulsory mental health treatment

If a doctor diagnoses you with a particular mental illness or if you have a mental illness escalate . and as a result, you might hurt yourself or others, and you refuse treatment, the doctor can force you to be referred for another mental health assessment or for treatment.

Medical practitioners in Victoria have the power to force a person to be assessed and treated for a mental illness if they believe it is needed in order to prevent serious deterioration in the person's mental or physical health, or serious harm to the person or another person.

Mental health assessment and treatment orders

Mental health assessment and treatment orders are the steps put in place to make sure that compulsory mental health treatment is used only as a last resort.

Assessment orders can only be made by a registered doctor or mental health practitioner (for example, a registered nurse, registered occupational therapist, registered psychologist or social worker employed or engaged by a designated mental health service).

An assessment order allows a psychiatrist to examine you, even if you do not want to be assessed, to decide if you have a mental illness and need treatment.

If a mental health assessment finds that treatment is needed, a treatment order will be required. You must fit all of the following criteria before any treatment order (temporary or longer) can be made:

- you have a mental illness
- because you have a mental illness, you 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
- you will get immediate treatment if you are made subject to a Temporary Treatment Order or Treatment Order and
- there is no less restrictive way for you to get 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 a maximum of 28 days. A Temporary Treatment Order can authorise compulsory treatment as an inpatient or in the community.

Before the 28 days is up, the Mental Health Tribunal will conduct a hearing. If the tribunal is satisfied that the treatment criteria apply, it may make a Treatment Order (Inpatient or Community) to authorise ongoing compulsory mental health treatment.

The duration of a Treatment Order is up to six months for an In-patient Treatment Order, up to 12 months for a Community Treatment Order or up to three months if the person is aged under 18.

Victoria Legal Aid

If you or someone you know needs legal advice, **Victoria Legal Aid** can provide free legal assistance. If you need a lawyer to represent you in court, you can apply for a grant for free legal assistance from Victoria Legal Aid. If your grant application is not successful, you will probably need to pay a lawyer to represent you.

Call 1300 792 387 between 8:15 am to 5:15 pm, Monday to Friday for free advice.

The Law Institute of Victoria – Referral Service

The **Law Institute of Victoria Referral** manages a referral service that can connect you with a legal practitioner. With a referral from the Law Institute of Victoria, your introductory meeting (up to 30 minutes) will be free of charge. After that, standard legal fees will apply.

Mental health carers and the law

The Mental Health Act 2014 recognises and supports the important role of carers and other key support people that care for people with mental illness.

The Act says that as a carer, you should be informed of events that directly affect you and your care relationship with the patient.

Carers are also acknowledged under the Carer's Recognition Act 2012. The principles of the Act apply to public and publicly-funded healthcare services.

If you think your rights as a carer have been breached, you should first discuss your complaint directly with the healthcare professional involved. Read more on the [Making a complaint about a mental health service](#) page.

Privacy and confidentiality and mental health

There are laws that protect the privacy and confidentiality of your communication with healthcare professionals, as well as your healthcare records.

The Mental Health Act 2014 prevents the disclosure of patient's health information except in prescribed situations where certain requirements are met. The Health Records Act 2001 regulates the collection and handling of health information and protects the confidentiality of your healthcare information. For example, there are strict guidelines on access to your healthcare information. If you want your carer to be able to access your healthcare records, you need to give your written consent to authorise their access.

See also [the Mental Health Act 2014 handbook](#).

Where to get help

- [IMHA](#) service
- Mental Health Legal Centres, call [\(03\) 9629 4422](#) or [1800 555 887](#) (toll-free)
- [Victoria Legal Aid](#), call [1300 792 387](#)
- [Office of the Public Advocate](#), call [1300 309 337](#)
- [Everyday-Law - Mental health rights](#)

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