

## Your Mental Health Rights

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## Compulsory and Voluntary Treatment

You can receive treatment as a voluntary patient or a compulsory patient.

A voluntary patient can be admitted to hospital, but is free to leave whenever they want. It is the service providers' responsibility to provide the patient with information about the treatment(s) so that they may provide informed consent to the treatment options they choose. A voluntary patient may also be given treatment where consent is given in an advanced health statement or by another person who is legally able to consent on behalf of the person. A voluntary patient has the right to refuse treatment. (A guardian appointed by the State Administrative Tribunal, a parent or guardian in the case of a child and in some cases a family member, or person of close relation to the person who has been chosen by the patient.)

A compulsory patient is a person who has been assessed by a psychiatrist and put on a treatment / temporary treatment order. They can receive treatment against their wishes while they are in the community or as an inpatient in hospital. Each case is unique and assessed individually. For more information go to; <https://www2.health.vic.gov.au/mental-health/practice-and-service-qualit...>

Initial inpatient treatment orders cannot last more than 21 days for an adult and 14 days for a child. An initial community treatment order last 3 months and a continuation order also last 3 months and 28 days for a child.

Main reasons that you may be made a compulsory patient (This is not a conclusive list please see the Mental Health Act to see the reasons in full.)

- Have a mental illness and there is a significant risk to your health and safety or that of others, or significant risk of self-harm.
- You are not well enough to make decisions about your treatment.
- Treatment in the community would not be sufficient.
- You have a mental illness and are at risk or considered a vulnerable person from situations such

as: physical, sexual, emotional, social, financial abuse or neglect by others.

- You have a mental illness and are a risk to others with includes: harassment, stalking or predatory intent, violence and aggression, damage to property, public nuisance and reckless behaviour that endanger others.

You can read more in depth about the rules that must be followed before someone can be placed on a compulsory treatment order, by clicking on the link below.

Consumer Handbook to the Mental Health Act 2014

<https://www.google.com.au/search?q=consumer+handbook+to+the+mental+healt...>

<https://www2.health.vic.gov.au/mental-health/practice-and-service-quality/mental-health-act-2014-handbook>.

Victoria Legal Aid [www.legalaid.vic.gov.au/find-legal-answers/mental-health-and-your-rights](http://www.legalaid.vic.gov.au/find-legal-answers/mental-health-and-your-rights) 2016.

Independent Mental Health Advocacy (to help support mental health consumers to understand and advocate for their rights) [www.imha.vic.gov.au](http://www.imha.vic.gov.au) 1300 974 820

Mental Health Act 2014

<http://www.legalaid.vic.gov.au/information-for-lawyers/practice-resources/mental-health-law/introduction-to-mental-health-act-2014>

Victorian State Government

<https://www2.health.vic.gov.au/mental-health/practice-and-service-qualit...>

<https://www.imha.vic.gov.au/search?query=compulsory+treatment>

## Nominated Person

A nominated person is a person that you select to support you, represent your interest and rights, and receive information about your condition and treatment while you are receiving compulsory treatment. This person is often your primary carer, such as a spouse or parent. Your nominated person may assist you in keeping up with your treatment program especially if you are under a compulsory treatment order in the community.

<https://www.imha.vic.gov.au/search?query=Nominated+Persons>

## Advance Statements

Advance Statement writing is a process in which a person describes treatment preferences prior to becoming unwell.

An Advance Statement can form part of advanced care planning, and seeks to achieve one or both of the following:

- appoint a decision maker to act on a person's behalf should that person lose decision making capacity in the future
- document a person's treatment preferences for future treatment providers should that person

lose their capacity to articulate those preferences in the future

Currently in Victoria, Advance Statements can be overridden in a number of circumstances and it is important to be aware that they are NOT legally binding. However, Advance Statement planning and Advance Statements remain very useful and proactive ways to engage with your treatment and treating team.

For further information go [www.health.vic.gov.au](http://www.health.vic.gov.au)

Advance Statement

<http://www.health.vic.gov.au/mentalhealth/mhact2014/recovery/advance-statements.htm>

<https://www.mindaustralia.org.au/resources/about-mental-ill-health/advance-statement.html>

<https://www.imha.vic.gov.au/search?query=Advance+statements>

Independent Mental Health Advocacy (to help support mental health consumers to understand and advocate for their rights) [www.imha.vic.gov.au](http://www.imha.vic.gov.au) 1300 974 820

## The Mental Health Tribunal of Victoria

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

1800 242 703

The Mental Health Tribunal (the Tribunal) is an independent statutory tribunal established under the Mental Health Act 2014. The Tribunal is an essential safeguard under the Act to protect the rights and dignity of people with mental illness. The primary function of the Tribunal is to determine whether the criteria for compulsory mental health treatment as set out in the Mental Health Act 2014 apply to a person. The Tribunal makes a Treatment Order for a person if all criteria in the legislation apply to that person

The Tribunal will determine:

- Whether Electroconvulsive Treatment (ECT) can be performed on a compulsory patient if they are considered to not have capacity to give informed consent to ECT, or if they are under the age of 18.
- A variety of matters relating to security patients.
- Transfers of treatment to other mental health services.
- Applications to perform neurosurgery for mental illness.

Mental Health Tribunal <http://www.mht.vic.gov.au/> 2016

## Consumer rights

A consumer of mental health services has fundamental rights. These rights are protected by Australian legislation: Mental Health Statements of Human Rights and Responsibilities and are acknowledged by the United Nations Declaration of Humans Rights and the CRPD - Convention on the Rights of Persons with Disabilities.

<https://www.un.org/development/desa/disabilities/convention-on-the-right...>

Independent Mental Health Advocacy (to help support mental health consumers to understand and

advocate for their rights) [www.imha.vic.gov.au](http://www.imha.vic.gov.au) 1300 974 820

Consumers have the right to:

- respect for individual human worth dignity and privacy
- health care, education, income maintenance, employment, housing, legal services, transport, equitable health and other insurances, and leisure
- appropriate and comprehensive information, education, and training about mental illness, treatment options and available support services
- timely and high quality treatment
- interact with health care providers, particularly when making decisions regarding treatment, care, and rehabilitation
- make complaints, requests, advocate and refuse treatment (unless subject to mental health legislation)
- have access to relatives and friends
- have cultural background and gender taken into consideration in the provision of mental health care
- contribute to, and participate in, the development of mental health policy and the provision of mental health care
- live, work, and fully participate in the community free from discrimination

For the whole statements of rights and responsibilities please go to the links provided below.

Mental Health Statement of Rights and Responsibilities 2012

<http://www.health.gov.au/internet/main/publishing.nsf/Content/mental-pub...>

The United Nations Declaration of Humans Rights [www.un.org/en/universal-declaration-human-rights/](http://www.un.org/en/universal-declaration-human-rights/).

Additional rights of compulsory patients (This is a summary and not a conclusive list. Please access the Mental Health Act for a full list of your rights)

<http://www.legalaid.vic.gov.au/information-for-lawyers/practice-resources/mental-health-law/introduction-to-mental-health-act-2014>

- As a compulsory patient your doctor can only provide you with treatment after explaining the treatment, has asked you about your wishes and preferences, however this will not apply in the case of an emergency.
- If you have an advance health directive doctors are to consider this, but are not required to follow it. If the doctor's decision is inconsistent with your advance directive the doctor must report their decision and course of treatment to you, your personal support person, the Chief Psychiatrist and the Mental Health Advocacy Service.
- You have the right to be involved in developing your treatment, support and discharge plans.
- The Mental Health Tribunal, mental health advocates, your personal support person and lawyers can help protect your rights. Within 7 days or 24hours if you are a child, you will be contacted by a mental health advocate.
- You have the right to a further opinion about your diagnosis and treatment from an independent psychiatrist. If you do not have your own, the Chief Psychiatrist must arrange for one.

Confidentiality

Means that information about the consumer may not be give out without the consumer's permission. An exception may be made in the case when families and carers have a reasonable need so that they

may care and support the consumer.

## Informed Consent

Informed consent is when the consumer gives permission for specific treatment to occur. The consent must be 'informed' meaning the consumer has been provided with information that helps them understand the procedure or treatment, the risks involved in having the treatment, the consequences of not having or agreeing to the treatment, and other available treatments.

## Accessing Medical Records

You have the right to read and obtain a copy of the whole or part of your medical records from any medical health service that has treated you. You can request your records while you are a patient of after discharge.

Very limited circumstances may restrict some of your records if the psychiatrist deems that: Providing the information creates a significant risk to your health and safety or the health and safety of others, providing certain information could create significant risk of self-harm, or information may reveal personal information about another person that you are not entitled to know, or the information was provided in confidence and is confidential.

## Mental Health Complaints Commissioner (MHCC)

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

1800 246 054

The Mental Health Complaints Commissioner is an independent voice working for positive change in Victoria's mental health system.

We are an independent specialist statutory body established under the [Mental Health Act 2014](#).

We deal with complaints about Victorian public mental health services.

We:

- assist people to speak up about their concerns
- listen and work to resolve complaints about Victorian public mental health services
- support Victorian public mental health services to develop effective responses to the concerns and complaints of people accessing their services
- use what we learn from complaints to assist mental health services make positive changes

You should expect us to:

- value the voices of individuals, carers, families and services and use them to guide what we do
- act with integrity and respect at all times and with all people
- safeguard the rights, dignity and autonomy of people with mental illness
- provide and promote fair and effective resolution processes
- resolve complaints in ways that support people's recovery and improve services

Mental Health Complaints Commissioner [www.mhcc.vic.gov.au](http://www.mhcc.vic.gov.au)

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

This document states the rights and responsibilities of the Australian Government, service providers and service users in the Australian Mental Health System.

## Consumer advocacy

Independent Mental Health Advocacy (to help support mental health consumers to understand and advocate for their rights) [www.imha.vic.gov.au](http://www.imha.vic.gov.au) 1300 974 820

### What is advocacy?

Disability Advocacy Resource Unit [www.daru.org.au/what-is-advocacy](http://www.daru.org.au/what-is-advocacy)

Disability Advocacy (physical or mental) ensures the human and legal rights of people with disabilities are promoted and protected so that people with disabilities can fully participate in the community.

An advocate in the disability sector works to ensure the rights of people with disabilities are upheld and supports people with disabilities to make decisions affecting their lives.

### Types of advocacy

#### Self- Advocacy

A self-advocate is someone with a disability (physical or mental) who is able to speak up and represent themselves. There are a number of community based groups providing support and training to enable and empower people with disabilities to speak up for themselves.

#### Individual advocacy

Individual advocacy is when a person with a disability (physical or mental) is assisted by an advocate who takes action on their behalf and in their best interests. This can be:

- providing information and advice so that the person with a disability can advocate for themselves
- supporting the person with a disability to take action on any matter related to discrimination

This type of advocacy can be undertaken by a relative, friend or professional advocacy service. Currently, there are no formal training requirements involved in being an individual advocate.

#### Group advocacy

Group advocacy is similar to individual advocacy but involves representing a group of people with disabilities (physical or mental).

#### Citizen advocacy

Citizen Advocacy is when a community member voluntarily enters a relationship with a person with an intellectual disability to represent the interests of that person and develops a long term relationship that offers new experiences and opportunities. Citizen Advocates are recruited, trained and supported through a community based Citizen Advocacy agency and then matched up to a person with a disability.

## Systemic advocacy

Systemic advocacy is about social change. It addresses discrimination affecting a number of people with disabilities (physical or mental) by advocating for change to legislation, policies and practices. Systemic advocacy includes lobbying politicians, campaigning and public awareness rising in order to build an inclusive community.

## Helpful links

Health Vic. <https://www2.health.vic.gov.au/mental-health/rights-and-advocacy>

VALID Victorian Advocacy Services [www.valid.org.au/documents/services.pdf](http://www.valid.org.au/documents/services.pdf)

IMHA Independent Mental Health Advocacy 1300 947 820 [www.imha.vic.gov.au](http://www.imha.vic.gov.au)

Mental Health Complaints Commission [www.mhcc.vic.gov.au](http://www.mhcc.vic.gov.au)

Mental Health Review Board of Victoria [www.mhrb.vic.gov.au](http://www.mhrb.vic.gov.au)

Mental Health Tribunal of Victoria [www.mht.vic.gov.au](http://www.mht.vic.gov.au)

The Tipping Foundation [www.tipping.org.au](http://www.tipping.org.au)

VMICA (03) 9380 3900 [www.vmiac.org.au](http://www.vmiac.org.au)

Our Consumer Place (A resource centre for mental health consumer developed initiatives)  
[www.ourconsumerplace.com.au](http://www.ourconsumerplace.com.au)

Victorian Legal Aid [www.legalaid.vic.gov.au/about-us/news/new-independent-mental-health-advo...](http://www.legalaid.vic.gov.au/about-us/news/new-independent-mental-health-advo...)

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