

## Information for consumers – Know your rights

People who are on an order for compulsory mental health treatment have a range of rights under the Victorian *Mental Health and Wellbeing Act 2022*. These include the right to:

- **Be informed about why you have been placed on a compulsory order.**
- **Be presumed to have capacity** to make decisions about your treatment.
  - your informed consent to treatment must be sought wherever possible
  - you can refuse electroconvulsive treatment (ECT) when you have capacity to make this decision
- **Be involved in, and supported to make, decisions** about your mental health assessment, treatment and recovery, including:
  - having your views and preferences respected
  - being given reasonable time without being unduly pressured or forced to make decisions
  - having an opportunity to discuss your treatment options with your psychiatrist, and
  - being supported to get other advice or assistance
- **Be provided appropriate support to make and participate in decisions**, understand information and your rights, and communicate your views, preferences, questions, or decisions.
- **Be communicated with in a way that meets your needs**, such as in your preferred language, an appropriate physical or sensory environment, and having appropriate spaces for you to communicate with your family, kin, carers, supporters, or advocates.
- **Be informed about your treatment**, including an explanation of:
  - any proposed treatment, its purpose, advantages and disadvantages (eg. risks or side effects), and
  - any other treatments available, including advantages and disadvantages

This information is to be provided in a way that you can understand and that answers your questions. You can ask for this information in writing and request an interpreter if you need one.
- **Make decisions about your treatment and recovery that involve a degree of risk.**
- **Receive the least restrictive treatment, in the least restrictive way possible**, taking into account your treatment preferences, recovery goals and available alternative treatments.
  - Least restrictive means you need to be given **as much freedom** as you can, based on your individual circumstances. What is restrictive for one person might not be restrictive for someone else.
  - You must only be kept in hospital for treatment when you **cannot be treated in the community**.
  - An order for compulsory treatment should not be made if the **possible harm** from it is likely to be more than the harm it's intended to prevent.

- Only be **secluded or restrained** after all resources less restrictive options have been tried or considered.
  - **Feel safe and respected**, including:
    - having your gender identity, sexual orientation, sex, ethnicity, language, race, religion (faith or spirituality), class, socioeconomic status, age disability, neurodiversity, culture, residency status and geographic disadvantage recognised and responded to,
    - having your medical and other **health needs** recognised and responded to,
    - having your **dignity, autonomy and rights** respected and promoted, and
    - receiving mental health and wellbeing services supporting your **recovery** and full participation in community life
  - Have your unique **culture and identity** respected if you are a **First Nations** person,
    - You have the right to assessment and treatment that promotes your **self-determination**.
    - Your **connection** to family, in, community, country, and water should be respected.
  - **Receive information about your rights** under the *Mental Health and Wellbeing Act 2022* from your mental health and wellbeing service, including:
    - a **written statement** and **spoken explanation** at an appropriate time, and
    - **answers to your questions** that are as complete and clear as possible.
  - **Have your health and personal information recorded accurately and respectfully.**
    - You can ask for **corrections** to your health information.  
If the mental health and wellbeing service denies your request, you can create a **health information statement** that explains the changes you want. This must be include in your file.
  - **Make an Advance Statement of Preferences** that sets out in writing your mental health treatment, care, and support preferences.
    - your psychiatrist must consider your treatment preferences, and
    - if your psychiatrist does not follow a preferred treatment in your statement, they must tell why in writing within 10 business days.
  - **Appoint a Nominated Support Person** who can support you, advocate for what your want, help you receive information, and assist you to exercise your rights.
    - there are times when your Nominated Support Person must be notified about your treatment.
  - **Seek a Second Psychiatric Opinion**
    - from any psychiatrist, including from the mental health and wellbeing service where you are receiving treatment or from the free and independent Second Psychiatric Opinion Service
    - if your psychiatrist does not adopt all changes recommended in a Second Psychiatric Opinion, they should explain the reasons why. You should receive a written explanation within 10 business days. You also have the right to ask the Chief Psychiatrist to review your treatment
  - **Help with communication.** When in hospital, your right to communicate may be restricted if necessary for safety.
    - If your communication is restricted, this must be put in writing.
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- But you can't be restricted from contacting a **lawyer**, a **mental health advocate**, the **Mental Health and Wellbeing Commission**, the **Mental Health Tribunal**, the **Chief Psychiatrist**, or the **Office of the Public Advocate community visitor**.
- Communicate with a **lawyer** to seek legal assistance.
- Communicate with an **IMHA advocate** to seek advocacy support. IMHA will be notified at key points when you are receiving compulsory mental health treatment. IMHA will contact you unless you have told them not to.
- **Ask for support** from an advocate, community visitor or any other person you choose.
- **Appeal against an order for compulsory treatment** by asking for a Mental Health Tribunal hearing.
  - you can ask a lawyer or another person to represent or support you at a Mental Health Tribunal hearing
- **Make a complaint about a mental health and wellbeing service** by speaking to the service and/or the Mental Health and Wellbeing Commission. This included a complaint about the mental health and wellbeing principles, or other principles not being followed.

## About IMHA

IMHA services are independent, free and confidential.

If you are receiving compulsory treatment, our IMHA advocates can:

- Listen to what you want and talk to you about your options
- Give you information and support to act on your rights
- Work with you so you can be involved in your treatment and recovery
- Refer you to other services if you want

## Contact IMHA

**Telephone:** 1300 947 820 between 9.30am - 4.30pm, seven days a week  
(excluding public holidays)

**Email:** [contact@imha.vic.gov.au](mailto:contact@imha.vic.gov.au)

**Website:** [www.imha.vic.gov.au](http://www.imha.vic.gov.au)



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If you are in hospital and cannot access a phone, you can ask a staff member or support person to get in touch with IMHA on your behalf.

Disclaimer: The material in this fact sheet was last updated September 2016 and relates to the law as it applies in the state of Victoria. It is intended as a general guide only. Readers should not act on the basis of any material in this fact sheet without getting legal advice about their own particular situation. IMHA is a non-legal advocacy service delivered by Victoria Legal Aid. Victoria Legal Aid disclaims any liability caused to any person in respect of any action taken in reliance of the contents of this fact sheet.