# VMIAC Policy Position Paper #1: Compulsory treatment

## Purpose

To eliminate compulsory mental health treatment in Victoria.

## What is Compulsory Treatment?

Under the *Mental Health Act 2014* (Vic) someone on a compulsory treatment order can be treated against their will, either in the community, or while detained in a hospital. This usually means that the law allows force to be used to ensure that a person accepts medications (as tablets or injections), electro-convulsive treatment and psychosurgery.

## The Problem

Treating someone against their will because of a 'mental illness'[1] is an issue because compulsory treatment:

- breaches a person's human rights to equality before the law and legal capacity under the United Nations' Convention on the Rights of People with a Disability ("CRPD").[2]
- has questionable evidence and effectiveness.[3]
- can be psychologically harmful and traumatic, particularly for people with a past history of trauma.[4]

Despite this, on the limited data that is collected and released, Victoria has some of the highest rates of compulsory treatment in Australia.[5]

## Our Position

There is no place for compulsory mental health treatment, unless it is specifically requested by a person.

Compulsory mental health treatment is an inappropriate and ineffective response to mental and emotional distress. It violates our human rights and discriminates against us by treating us differently based on a diagnosis of mental illness.[6]

Consumers should have the right to make informed decisions about their own bodies and not be forced to take medication which might cause undesirable side effects such as movement symptoms, metabolic and cardiovascular conditions, hormonal or sexual changes, cognitive impairment, or other side effects which distress the person.

We acknowledge the diversity of perspectives on compulsory treatment within the consumer community, and that without other appropriate voluntary supports, some people have found, in retrospect, compulsory treatment helpful or, even lifesaving.

However, VMIAC's position is that the current system forces people into states of distress where no appropriate or less restrictive alternatives are provided. This makes compulsory treatment appear as if the only viable option.

---

[1] A "mental illness" is defined in the law as 'a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory': *Mental Health Act 2014* (Vic) s 4. For more inclusive language informed by Victorian consumers and our members, see the Declaration: https://www.vmiac.org.au/declaration/ .

[2] Christopher Maylea & Asher Hirsch, The right to refuse: The Victorian Mental Health Act 2014 and the Convention on the Rights of People with Disabilities' (2017) 42(2) *Alternative Law Journal* 149-155.

[3] Daniel Maughan, Andrew Molodynski, Jorun Rugkasa & Tom Burns, 'A systematic review of the effect of community treatment orders on service use' (2014) 49(4) Social Psychiatry and Psychiatric Epidemiology, 651-663; Lisa Brophy, David Ring, 'The efficacy of involuntary treatment in the community: Consumer *and service provider perspectives' (2004) 2(2-3) Social Work in Mental Health* 157-174.

[4] Edwina Light, Michael Robertson, Phillip Boyce, Terry Carney, Alan Rosen, Michelle Cleary, Glenn Hunt, Nick O'Connor, Christopher Ryan, and Ian Kerridge, 'The lived experience of involuntary community treatment: a qualitative study of mental health consumers and carers' (2014) 22(4) *Australasian Psychiatry* 345-351; State of Victoria, Royal Commission into Victoria's Mental Health System, Interim Report, *Parl Paper No. 87* (2018-2019), 230.

[5] Edwina Light, Ian Kerridge, Christopher Ryan and Michael Robertson, et al, 'Community Treatment Orders in Australia: Rates and Patterns of Use' (2012) 20(6) *Australasian Psychiatry* 478-481.

[6] Dr Christopher Maylea, 'Witness Statement 31 March 2020 to the Royal Commission into Victoria's Mental Health System' (2020) [8].

**We need the immediate funding of voluntary, trauma-based and peer-led alternatives**

We must have access to voluntary services that meet their personal strengths, needs, culture and match how we understand our own mental and emotional distress.[7] This means that there should be voluntary peer-led services, increased step-up and step-down services, more trauma-focused services (within and outside the clinical mental health system), and diverse and well-trained psychological supports.[8] Funding of these supports will reduce the reliance on compulsory mental health treatment, and illustrate to clinical services the benefits of trauma-focused care and Supported Decision-Making.

Consumers must have choices of voluntary, psychological, trauma-based and peer-led alternatives. These services should be either co-produced or peer or consumer-led. Access to these services should not be controlled by psychiatrists.

While compulsory treatment is permitted, all consumers should have access to independent legal and non-legal advocates as well as supports that they need. Independent advocates and supports are critical to ensure that consumers are supported to raise their voice and that mental health services promote and uphold consumer rights. This should be free and readily available to consumers, meaning that these services must be adequately funded.

**Our recommendations**

**We call on the Victorian government to end the use of compulsory mental health treatment**

VMIAC calls upon the Victorian government to:

- Develop a comprehensive, funded and coordinated strategy to eliminate compulsory treatment from Victorian mental health services. This strategy should embed consumer leadership and be co-produced with diverse communities of consumers.
- Establish a framework to improve access to psychological, trauma-based and peer supports within Victoria's mental health system. This framework should include peer-led services and ensure that consumer leadership is embedded at all levels of these services.
- Increase funding for step-up and step-down inpatient and community supports, including peer-led alternatives. These alternatives should be embedded within an overall co-produced strategy to reduce and eliminate compulsory treatment.
- For people who chose to commit themselves to compulsory treatment, implement effective safeguarding mechanisms and oversight bodies to replace the existing regime. This should include:
    - Establishment of an appropriately funded opt-out system for Independent Mental Health Advocacy so that all consumers are entitled to an advocate.
    - Appropriately fund mental health legal services so that all consumers are able to access legal advice and representation at Mental Health Tribunal and Victorian Civil and Administrative Tribunal matters.

**Background**

- When the *Mental Health Act 2014* (Vic) replaced the *Mental Health Act 1986* (Vic), it was proposed as an appropriate response to Australia's obligations under the United Nations CRPD and as consistent with the *Charter of Human Rights and Responsibilities Act 2006* (Vic). However, a closer reading of the CRPD reveals that our Victorian mental health laws are incompatible with our obligations under international human rights law.

[7] VMIAC, *The Declaration*, (2019) <https://www.vmiac.org.au/declaration/> .

[8] This acknowledges that consumers prefer different types of psychological supports, such as Cognitive-Behavioural Therapy, Acceptance and Commitment Therapy, Eye-Movement Desensitisation Reprocessing treatment, Somatic Experiencing treatment.

- More recently, the United Nations' Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment states that '"psychiatric intervention" based on "medical necessity" of the "best interests" of the patient... may well amount to torture.'[9]
- Rates of compulsory mental health treatment in Victoria remain higher than other States and territories,[10] despite the explicit goal to reduce the use and duration of compulsory treatment.
- This is reflected in the Interim Report of the Royal Commission into Victoria's Mental Health System, which finds half of the people admitted to Victoria's mental health system are done so compulsorily, leading the Commission to question whether the least restrictive care is being provided.[11]
- The Royal Commission also questions the therapeutic merit of compulsory treatment stating that 'fear of compulsory treatment can affect the way in which people with lived experience of mental health challenges and emotional distress choose to engage with services. In some circumstances, this fear can deter people from seeking treatment altogether.'[12]
- People are put on compulsory treatment orders if they assessed as posing a risk of harm to themselves or others despite evidence showing that risk assessments for suicide and violence are not validated or effective.[13]
- When in services compulsorily, our members have not been safe. For example, in an investigation by the Mental Health Complaints Commissioner revealed alarming rates of sexual assault as well as inadequate responses by mental health services to disclosures and incidents of sexual assault.[14] Recommendations from this investigation - such as the funding of a single-gender ward - are yet to be actioned by the Victorian government.
- Meanwhile, many of our members fail to receive services that are voluntary, peer-led, less-restrictive, and based on step-up and step-down as well as trauma-models of care. Compulsory treatment deprives consumers of opportunities to access voluntary, less restrictive, and trauma-informed supports, such as trauma-focused psychological therapies.

[9] United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment, Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (No A/HRC/43/49, United Nations Human Rights Council, 14 February 2020) 10.

[10] Edwina Light, Ian Kerridge, Christopher Ryan and Michael Robertson, et al, 'Community Treatment Orders in Australia: Rates and Patterns of Use' (2012) 20(6) *Australasian Psychiatry* 478-481.

[11] State of Victoria, Royal Commission into Victoria's Mental Health System, Interim Report, Parl Paper No. 87 (2018-2019), 229.

[12] State of Victoria, Royal Commission into Victoria's Mental Health System, Interim Report, Parl Paper No. 87 (2018-2019), 229.

[13] Manonita Ghosh, Di Twigg, Yvonne Kutzer, Amanda Towell-Barnard, Gideon De Jong, and Mary Dodds, 'The validity and utility of violence risk assessment tools to predict patient violence in acute care settings: An integrative literature review' (2019) 28(6) *International journal of mental health nursing* 1248-1267; Matthew Large, 'The role of prediction in suicide prevention' (2018) 20(3) *Dialogues in clinical neuroscience* 197-206.

[14] Mental Health Complaints Commissioner, *Right to be safe: Ensuring sexual safety in acute mental health units* (March 2018) <https://www.mhcc.vic.gov.au/Api/downloadmedia/%7B76BF660A-3A27-4B20-A30C-448376D319C0%7D>