

Just... Saying



A Guide to Your Rights as a Voluntary Consumer of In-Patient Services



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The Just Saying Project is inspired by the many Victorian consumers who receive voluntary treatment in hospital but who are unsure about their rights or where to go for help when they feel like their rights may have been breached.

People receiving compulsory treatment have many rights that are underpinned by the Mental Health Act 2014, however there is considerably less information available to voluntary consumers in relation to their rights when receiving in-patient treatment. Almost half of all those in in-patient care are treated on a voluntary basis, however the knowledge that we could be made compulsory at any time often means that we are often either unaware of our rights or scared that asserting them may well lead to compulsory treatment.

According to Victoria Legal Aid:

‘A voluntary patient can be admitted to hospital but is free to leave whenever they want. A compulsory patient is a person who has been assessed by a psychiatrist and put on a compulsory treatment order. They can receive treatment against their wishes while they are in the community or as an inpatient in hospital.’

For this reason, VMIAC initiated the ‘Just Saying’ project in order to ensure that voluntary consumers are aware of their rights and how to exercise them, hopefully even before they are at risk of being put on a compulsory treatment order. Our project began with a request for legal advice from Victorian Legal Aid. We want to ensure that consumers who are receiving voluntary treatment within a mental health service are aware of their rights and know what to do if a service does not uphold these rights. We have carefully framed this advice into a question-and-answer format for ease of understanding.

This information is on our website and also provided within mental health services as a series of postcards and via a ‘slap band’ memory stick for those consumers with computer access. VMIAC hopes that all consumers will find this information useful and that it will help to ensure that voluntary consumers are treated only with their fully informed consent and without fear of coercion.

You have the right not to be detained.

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2. Won't I be put on an assessment order?

You have the right to make decisions about the treatment you receive.

3. What if I don't like the treatment I am receiving?
4. What if I don't understand my treatment options?
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You have the right to be treated in the least restrictive way possible.

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1. Can I leave?

As a voluntary consumer, you can leave the hospital at any time. The hospital may have rules that prevent you from leaving, or your doctor may tell you that you cannot have leave at certain times. If you are concerned about being allowed to leave, you may contact Independent Mental Health Advocacy or make a complaint to the Mental Health Complaints Commissioner. Alternatively, you may choose to discharge yourself from the hospital at any time.

2. Won't I be put on an assessment order?

You have the right to be treated in the least restrictive way possible, and voluntary treatment should always be preferred. If the hospital tells you that you will be made involuntary if you request to discharge or want to leave, you should contact Victoria Legal Aid or the Independent Mental Health Advocate in order to get advice and advocacy.

You can only be made compulsory if the service is providing treatment to you. This means that the hospital cannot detain you simply as a preventative measure if they are not providing treatment to you.

You have the right to make decisions about the treatment you receive.

3. What if I don't like the treatment I am receiving?

As a voluntary consumer, you have the right to decide whether to consent to any treatment that your treating teams suggests. You should be supported to make decisions about your own treatment and your recovery. You may withdraw your consent or refuse treatment at any time

4. What if I don't understand my treatment options?

Any treatment provided to you must be given with your informed consent. 'Informed consent' means that your doctor must have:

- Given you enough time to make your decision, including time to discuss it with your family, friends or support persons;
- Given you adequate information about the treatment, including answers to any questions that you have, support to make your decision, alternative treatment options, and a copy of your statement of rights;
- You shouldn't be pressured or forced into making a treatment decision or told you that you will be made involuntary if you do not consent.

Additionally, if you withdraw your consent to treatment at any time as a voluntary consumer, your doctor is not allowed to continue to administer that treatment to you. You should seek advice/assistance if you feel threatened or coerced into making a decision.

5. Can I be given treatment without my consent?

As a voluntary consumer, you must provide your fully informed consent to any treatment that you receive.

If you refuse treatment, or your doctor believes that you do not have capacity to provide free and fully informed consent, and they believe that you require immediate treatment, the doctor may put you on a temporary treatment order. This means that you are no longer a voluntary consumer, and they can administer treatment to you without your consent. A temporary treatment order can be made for a maximum of 28 days and you have the right to contact the Mental Health Tribunal at any time in order to request that the temporary treatment order be revoked. In these circumstances, Independent Mental Health Advocacy or Victoria Legal Aid can assist you in dealing with the Mental Health Tribunal and in advocating for you while you are in hospital.

For specific treatments such as Electroconvulsive Therapy (ECT), your doctor must provide you with a statement of rights and they are not allowed to perform these treatments without your fully informed consent. You cannot be given treatment, including electroconvulsive therapy (ECT), without your consent whilst you remain a voluntary consumer.

If the doctor does not accept your decision to refuse treatment, you might be made involuntary. If this happens, you should seek further advice and advocacy.

6. What if I change my mind after giving consent?

Your doctor is not allowed to force or pressure you into consenting to treatment. As a voluntary consumer, you have the right to withdraw your consent to treatment at any time. You may withdraw consent verbally, in writing, or by doing or saying anything that suggests you want to withdraw consent.

You have the right to be treated in the least restrictive way possible.

7. What if my treating team do not agree with my decision about treatment?

Your doctor must consider your preferences and views about treatment, which includes your right to make a decision about treatment that involves some level of risk, even if your doctor thinks that decision is unwise.

Your doctor should discuss available treatment options with you and should support you to make your own decision about which treatment is best for you, and to help you to find the least restrictive treatment. This could include helping you to make a pros and cons list.

Your treating team must not pressure or coerce you into accepting treatment, even if they believe it is what is best for you. If you feel like you are being pressured or coerced to consent to a particular treatment, you should contact IMHA or you may seek legal advice.

You have the right to be presumed to have capacity.

8. What does capacity mean?

Capacity is your ability to make a specific decision. Under the law of the Mental Health Act you are assumed to have capacity, or the ability to make a decision about your treatment for yourself.” your doctor must presume that you have capacity to make decisions about your treatment.

You doctor cannot decide that you do not have capacity just because they don't agree with your decision about treatment.

If your treating team believe you do not have capacity to make a decision about your treatment, they must be able to provide good evidence of this.

You should be supported to make decisions about your treatment yourself. Under the legislation, decision making power should only be removed from you if:

- You cannot understand the information needed to make a decision about your treatment, including the nature, purpose and effect of the treatment;
- That you cannot remember that information;
- You cannot weigh it up when making your decision, and
- You cannot communicate your decision.

Under the Mental Health Act, you are assumed to have capacity, or the ability to make decisions about your treatment for yourself. Your treating team cannot assume that you lack capacity simply because you disagree with them about your diagnosis, or the best treatment for you, or because they believe you lack insight.

If you are concerned that your doctor doesn't realise you are able to make your own treatment decisions, you may want to remind them of the Mental Health Act presumption of capacity. You can also ask them for more information about different treatment options or more time to consider your options before making decisions.

You have the right to communicate.

9. Can I use my phone?

While you are in hospital, you have a right to communicate with any person, although you may have to follow hospital rules in relation to what times you are allowed to use public phones, or you may have to wait for a phone to become available. Similar to hospital rules in relation to leave, if you do not wish to abide by these rules then you may discharge yourself.

You have unlimited rights to communicate with your lawyer (or any legal services, such as Victoria Legal Aid), the Mental Health Tribunal, the Mental Health Complaints Commissioner, the Office of the Chief Psychiatrist and the Independent Mental Health Advocate. The hospital must take reasonable steps to assist you in communicating with these organisations if you need help doing so.

These organisations can provide advocacy, advice and help in relation to any concerns that you have about your rights or treatment while you are in hospital, whether you are a voluntary patient or not.

You have the right to privacy

10. What if I don't want my family involved in my treatment?

The hospital is bound by privacy laws and so if there are people you do not want them to speak to about you or your treatment, you should tell your doctor. Privacy laws are complex, and sometimes your information might be disclosed against your wishes. If you are unsure about whether your rights have been breached, you can contact VLA, IMHA and/or make a complaint to the MHCC.

You have additional rights under the Mental Health Act

11. Do I have rights under the Mental Health Act as a voluntary consumer?

Under the Mental Health Act, consumers have some additional rights. These include:

1. the right to have a nominated person
2. The right to make an advance statement, which must be taken into account in your treatment if you are placed on a treatment order.
3. the rights of carers to have their role recognised and to participate in decisions about treatment; although, the rights of carers are generally subject to your right to privacy. If you do not consent to a carer being involved, the hospital is usually required to respect your wishes in this regard. You may seek legal advice or make a complaint to the Mental Health Complaints Commissioner if you believe that your privacy has been breached.

While these rights are usually only relevant to compulsory patients, it is important that you are aware of them because advance statements are usually made before you are made involuntary so that your treating team is aware of your preferences in relation to treatment in the event that you are made involuntary. You may not change an advance statement once it has been made, however you are allowed to make a new advance statement as long as you can understand what an advance statement is and its consequences. If you wish to have a nominated person, you must also be able to understand what a nominated person is and the consequences of having a nominated person.

You have human rights

12. What human rights do I have?

Everyone has human rights, and people who are inpatients in mental health units are not excepted from these rights.

While you are an inpatient, the health service must respect your human rights. These rights include:

- The right to be treated humanely and not subjected to cruel treatment or punishment;
- The right to have any medical or other health needs met and attended to, including drug and alcohol problems;
- The right to have individual needs responded to, such as culture, language and communication, age, disability, religion, gender, sexuality and any other similar needs; and
- The right to equality and non-discrimination.

13. What if I become physically unwell while I am an inpatient?

If you become unwell and require medical treatment while you are an inpatient, or if you have a pre-existing physical health condition that requires ongoing treatment, the service has an obligation to ensure that your needs are met. This includes medical requirements in relation to drug or alcohol issues.

14. Do I have the right to have my cultural or religious needs met while I am an inpatient?

You have the right under the law that your identity and individual needs will be respected and responded to. This includes your gender identity, sexuality and religion. For example, the treating service should respect your wishes in relation to your preferred pronouns or religious beliefs and practices. This could include responding to cultural needs in relation to gender and language (including providing you with access to an interpreter if required), or allowing you leave to attend a religious event.

15. What if the service does not respect or acknowledge my gender identity?

The service must respect your gender identity and your wishes in relation to disclosure of your gender identity, preferred pronouns and any other needs that you have in relation to your gender.

16. Can I be put in seclusion or restrained?

While the Mental Health Act currently permits the use of restrictive practices such as seclusion and restraint, including the use of these practices on voluntary consumers, you also have rights in relation to these practices. These rights include:

- The right to have your dignity protected
- The right to have your needs met, including regular observations while the practice is ongoing; and
- The right for the practice to cease when it is no longer necessary
- The right to refuse treatment that you do not consent to while you are being subjected to restrictive practices, as long as you remain voluntary (staff must not give you treatment without your consent while you are voluntary, even if you are subjected to restrictive practices)

Restrictive practices are only to be used as a last resort in order to prevent serious or imminent harm from occurring. As a voluntary consumer, you have the right to request discharge and the right to communicate even if you are placed in seclusion or restraint. The hospital needs a legal basis to detain you, so if they say that you cannot leave, you must be provided with a copy of the Assessment or Temporary Treatment Order and a Statement of Rights as you are no longer voluntary.

If you believe that the hospital staff have breached any of your rights, you can contact IMHA, VLA, seek legal advice or make a complaint to one of the relevant complaints bodies.

Further Resources

We would like to thank all of the support and advice we have received on this project from both Independent Mental Health Advocacy (IMHA) and Victorian Legal AID (VLA)

IMHA

IMHA is a state-wide advocacy service for people at risk of or receiving compulsory treatment under the Mental Health Act 2014 (Vic). IMHA advocates support and assist eligible people to make, and be involved in, decisions about their mental health assessment, treatment and recovery.



This may include: talking with a person to discuss and clarify their preferences and wishes, providing information about the mental health system and assisting a person to understand their rights and to act on them e.g. in respect of Advance Statements and/or Nominated Persons, engaging directly with a person's treating team, support people or other services, or providing support and coaching for a person to self-advocate and referring people to other support services, if the person requests this.

Contact IMHA at 1800 959 353 or visit www.imha.vic.gov.au

Victoria Legal Aid

Victoria Legal Aid (VLA) helps people with their legal problems. It provides free legal advice, information and education to all Victorians, with a focus on prevention and early resolution of legal problems.



VLA's Mental Health and Disability Law service provides advice and representation in relation to laws that impact the liberty, dignity and autonomy of people with a mental health diagnosis or cognitive disability, including for hearings at the Mental Health Tribunal. We work to minimise restrictions on these rights as well as help to ensure the justice and health systems operate fairly.

Contact VLA on 1300 792 387 or visit www.legalaid.vic.gov.au/

About VMIAC

VMIAC's vision was developed in partnership with our community of consumers/survivors across Victoria. It's our shared dream for the future, and it drives everything we do. VMIAC strives to help provide a voice for all consumers of Victoria's mental health services. Everything we do is lead by community, through consultation and discussion with those who have a lived experience of mental health and emotional distress.

Our Vision

A world where all mental health consumers stand proud, live a life with choices honoured, rights upheld and these principles are embedded in all aspects of society.

What we do.

VMIAC provides a number of services from advocacy to peer support for those currently living with a psycho-social disability and those navigating Victoria's mental health and community services. We also work on advocating for the rights of consumers of mental health services at all levels.

Contact.

To find out more call us on (03) 9380 3900 or visit our website at www.vmiac.org.au

