



wellways helping families & friends find better ways

The mental health legal framework in Victoria

Mental Health Act (1986)

The Mental Health Act (1986) is the law in Victoria which governs the treatment and protection of people who have a mental illness. Some important features of this Act are:

- **Informal status** means the person agrees to be hospitalised
- **Involuntary status**
For involuntary admission to occur a person must meet all five of the following criteria:
 - the person appears to be mentally ill
 - the mental illness requires immediate treatment and that treatment can be obtained by admission to and detention in an approved mental health service
 - because of the mental illness, the person should be admitted and detained as an involuntary patient for their health and safety (whether to prevent a deterioration in their physical or mental condition or otherwise) or for the protection of members of the public
 - the person has refused or is unable to consent to the necessary treatment for the mental illness
 - the person cannot receive adequate treatment for the mental illness in a manner less restrictive of their freedom of decision and necessary treatment

- **Informed consent** occurs where the person with a mental illness provides permission for a specific treatment to occur. For consent to be informed, the person with a mental illness needs information which enables them to understand the procedure or treatment, the risks involved, the consequences of not having or agreeing to the treatment and also alternative treatments. The person with a mental illness must also be deemed well enough to be able to give informed consent.
- **Community Treatment Orders (CTOs)** enable some involuntary patients to live in the community while receiving treatment. A psychiatrist monitors the CTOs.
- **Confidentiality** generally means that information about a person with a mental illness is not given to people outside the service agency without the person's permission. However, families and carers can obtain information that may be reasonably required to care for and support a family member or friend who has a mental illness. Section 120A of the Act stipulates that the primary carer may have access to information that is reasonably required to care for a family member or friend who has mental illness.

Protective bodies

A number of public bodies and appointed individuals protect the rights of people within the mental health system.

The **Guardianship and Administration Board** legally protects the personal and financial affairs of a person who has lost the capacity to make decisions for themselves. Guardians are appointed to help manage personal affairs, and administrators manage financial matters. Carers can apply to have a guardian or administrator appointed.

The **Mental Health Review Board** reviews and hears appeals from involuntary and community treatment order patients.

Community Visitors are volunteers who visit mental health services to inquire into the adequacy of services and facilities. They investigate complaints from anyone with concerns about standards.

The **Chief Psychiatrist** is the senior Department of Human Services official who has the power to investigate complaints and other matters and take necessary action.

The **Office of the Public Advocate** provides advice on, assists with, and takes appropriate action regarding complaints about services.

Other Acts of Parliament, the Medical Treatment Act, anti-discrimination legislation and privacy legislation also protect the rights of people with mental illness or psychiatric disabilities. The Mental Health Legal Centre advocates for these people.

The mental health legal framework in Victoria continued...

Useful references

Mental Illness Fellowship of Australia
www.mifa.org.au

Mental Illness Fellowship Victoria
www.mifellowship.org

Mental Health Legal Centre
www.vicnet.net.au/~mhlc
03 9629 4422 or
Toll free 1800 555 887

Victoria Legal Aid
www.legalaid.vic.gov.au
03 9269 0234 or
Toll free 1800 677 402

Mental Health Review Board
www.mhrb.vic.gov.au
03 8601 5270 or
Toll free 1800 242 703

Community Visitors Program
www.communityvisitors.vic.gov.au
03 9819 6087

Chief Psychiatrist
Department Human Services
03 9616 7777

Office of the Public Advocate
03 9603 9500

Mental Illness Fellowship of Australia fact sheets

Signs of Mental Illness and What to do

Understanding Violence and Mental Illness

Cannabis and Psychosis



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