

Know your rights: I want leave from the hospital

Receiving compulsory mental health treatment can be lonely and distressing. Sometimes it feels like you have no say in what happens to you.

Independent Mental Health Advocacy (IMHA) is a non-legal advocacy service that supports you to understand and exercise your rights. This factsheet is designed to tell you what the Victorian *Mental Health and Wellbeing Act 2022* (the law) says about leave from hospital and how you may talk to your treating team about it.

Can I be kept in the hospital against my will?

Under the law, the hospital can keep you against your will if you are on an inpatient treatment order. This means the service may decide to keep you there to treat you, even if you want to go home.

However, you may be granted a “leave of absence” by the psychiatrist to temporarily leave the hospital.

Do I have a right to leave of absence?

Yes. The Office of the Chief Psychiatrist, which provides leadership to mental health services, says that leave is a *right*, not a *privilege*. The only way that the treating team can refuse you leave is by following the law.

In making leave decisions, the law says psychiatrists must consider:

- **Least restrictive assessment & treatment** – you must receive your assessment and treatment in the least restrictive way possible. You may want to tell your psychiatrist that leave is the least restrictive option for you
- **Supporting you to make decisions** – you must be supported to make or participate in the decision about your leave. This means letting you know about your rights, giving you information about your options, and supporting you to make your own decisions
- **Degree of risk** – the psychiatrist must allow you to make decisions about your assessment, treatment and recovery, even where they involve a degree of risk. Risks are a normal part of everyday life, and you therefore can be supported to make positive and thought-out risks
- **Your reasons** – the psychiatrist must consider why you want leave. For example, you may have practical tasks (e.g. bills, pets, Centrelink) you need to attend to, or believe that a break from the hospital environment would be therapeutic.

How can I make a request for leave?

You can make a request for leave to any staff member, however it is a psychiatrist who makes the decision. Some tips when you are asking for leave:

- **Think about your reasons**– be clear about the purpose of your leave, and how it will be helpful to you
- **Ask questions** – ask your psychiatrist how their decisions about leave are consistent with your rights
- **Bring a support person** – you may want to bring someone to support you at the meeting. This could be a family member, friend or peer, staff member, nominated support person or advocate.

Why might my leave be refused?

Your leave may be refused because:

- **Risk** – a psychiatrist might decide that there is a serious risk to you or others if you have leave. Common risks that are raised by psychiatrists are a risk of not returning to the hospital, that nobody is available to go on leave with you, or that in their view you are too unwell
- **Staff** – your leave request may not be processed because your psychiatrist is not available. If so, you may ask for a specific time-frame for this to be reviewed or ask for another psychiatrist to assess your leave.

What about “risk”?

Sometimes people talk about “risk” as the reason for why you are not given leave. If so, you might ask mental health staff:

- What risks are they concerned about?
- Why are such risks serious enough to stop me getting leave?
- How can we work together to solve the concerns about risk?
- How have you considered my rights in making this decision?

How to contact IMHA and find out more

- Visit the website www.imha.vic.gov.au or send an email to contact@imha.vic.gov.au
- Call the IMHA phone line **1300 947 820**, which is staffed by IMHA advocates 9:30am – 4:30pm seven days a week (except public holidays)
- Call the IMHA rights line on **1800 959 353** to hear a recording about your rights
- Ask a mental health service provider, carer, kin or other support person to assist contacting IMHA.



imha.vic.gov.au

