

Non-Custodial Supervision Order

health

Statement of rights

You have been given this booklet because you are on a Non-Custodial Supervision Order. This booklet provides information about your legal rights and entitlements under the *Mental Health Act 2014* and the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*. A member of the treating team will talk to you about this information and answer your questions.

If at any time you have questions about this information or your rights, ask someone to explain. You can ask a member of the treating team, a friend, a family member, a lawyer, an advocate or a community visitor.

Copies of this booklet are available online at: www.health.vic.gov.au/mentalhealth

What is a Non-Custodial Supervision Order?

A Non-Custodial Supervision Order is an order made by a court.

A Non-Custodial Supervision Order allows you to live in the community while receiving treatment for your mental illness.

There are three ways you may have been placed on a Non-Custodial Supervision Order:

- you were found not guilty of an offence because of mental impairment
- you were found to be unfit to stand trial
- the court changed your Custodial Supervision Order to a Non-Custodial Supervision Order.

The court making the order has also appointed a supervisor to monitor the treatment you receive.

The court will put conditions on your Order. These may require you to:

- receive treatment from a mental health service
- comply with the directions of the supervisor, your psychiatrist or doctor and members of the treating team
- have urine or blood tests when told
- tell the supervisor or your psychiatrist or doctor if you want to change where you live.

You must comply with the conditions of the Order. If you are having trouble complying with a condition, you should talk to your psychiatrist, doctor or other members of the treating team.

They will try to help you to comply with the conditions of the Order.

Monitoring by the court

The supervisor of your Non-Custodial Supervision Order will send a report about your treatment and progress to the court at least every 12 months.

The court may also set a date to review your Non-Custodial Supervision Order when it makes the Order.

Treatment for mental illness

You can make decisions about your mental health treatment. A psychiatrist or doctor must talk to you about what mental health treatment you would like.

If you agree to treatment this is called '**informed consent**'.

To give informed consent to treatment you must be able to:

- **understand** the information you are given about treatment
- **remember** the information you are given about treatment
- **use or weigh** the information about treatment
- **communicate** your decision about treatment.

A psychiatrist, doctor or another member of the treating team will help you to make decisions about your mental health treatment.

To help you to make a decision about your treatment a psychiatrist or doctor must:

- give you enough information to help you to make a decision about your treatment
- give you time to think about the decision before you make a decision
- tell you what the treatment will do to help you get better
- tell you what other treatments may help to make you better
- tell you about any side-effects, discomforts or risks of the treatment or other treatments.

You can ask any questions that you want about your treatment. The psychiatrist or doctor must answer your questions in a way that you will best understand.

You can also have other people help you to make decisions about your mental health treatment, such as:

- a family member
- your nominated person
- a guardian
- a carer
- a mental health advocate.

What if I don't want treatment or I can't make a decision?

'**Compulsory treatment**' means that a psychiatrist can give you treatment for mental illness even if you don't want it.

A psychiatrist will make a decision about your treatment if:

- you do not agree to the treatment that the psychiatrist thinks will help you get better
- you are unable to make a decision about your treatment when the decision needs to be made.

If you are given compulsory treatment you may be admitted to hospital as an inpatient or allowed to live in the community. Compulsory treatment does not change your Non-Custodial Supervision Order.

If you do not agree to the treatment or are unable to make a decision about your treatment the psychiatrist will still listen to what treatment you would like.

A psychiatrist will also look at your advance statement if you have one.

An advance statement is written by you. An **advance statement** says what treatment you would like when you are unwell.

The psychiatrist will also listen to what some other people who know you have to say about your treatment:

- your nominated person
- a guardian
- a carer if the treatment decision will directly affect the carer or the caring role.

The psychiatrist will also look at any second opinion about your mental health treatment that has been given to the psychiatrist.

The psychiatrist will also think about how it will affect your mental health if the treatment is not given to you.

Even if you are unable to make a decision about your mental health treatment now, you may be able to make a decision at another time.

Changing a condition of your Non-Custodial Supervision Order

If you want to have a condition changed, you must make an application to the court that made the Order.

You will need a lawyer to help you make the application because the procedures are complex and you will need a legal representative at the court.

Organisations that may be able to help with your application are described at the end of this booklet.

Your psychiatrist will send a clinical report to the court for the hearing. Copies will be given to you or your representative. It is your right to attend the court hearing and to have a lawyer represent you.

Your psychiatrist and other members of the treating team will give evidence at the court hearing. You and your representative will also be able to give evidence.

The court will make the final decision.

The supervisor of the Order, the Director of Public Prosecutions or the Victorian Attorney-General can also apply to have your Order varied.

What happens if I don't comply with a condition of the Order?

If you do not comply with the conditions of your Order, the supervisor or the Secretary to the Department of Health may apply to the court to vary the Order to a Custodial Supervision Order.

You will be sent a notice advising the date, time and place of the court hearing. You must attend the hearing, unless the court decides it would be bad for your health.

It is your right to have a lawyer represent you. If you do not attend the court on the day of the hearing, the court may issue a warrant for your arrest.

Your psychiatrist and other members of the treating team will give evidence at the court hearing, for example, how you failed to comply with your Non-Custodial Supervision Order.

You and your representative will also be able to give evidence and explain your side of the case.

The court will make its decision and will:

- confirm your Non-Custodial Supervision Order, it may also change the conditions of the Order
- change your order to a Custodial Supervision Order. If the court places you on a Custodial Supervision Order you will be taken to hospital and detained as a forensic patient.

What happens if I don't comply with a condition of my Order and I am a danger to myself or others?

If you do not comply with your order and you are a serious danger to yourself or other people, you will be apprehended and taken to and detained in hospital.

Once you are detained, an application will be made to the court within 48 hours to vary your order to a Custodial Supervision Order. The court must hear the application as soon as possible.

It is your right to attend the court hearing and to have a lawyer represent you.

Your psychiatrist and other members of the treating team will give evidence at the court hearing, for example, how you failed to comply with your Non-Custodial Supervision Order.

You and your representative will also be able to give evidence and explain your side of the case.

The court will make its decision and will:

- release you from hospital back onto your Non-Custodial Supervision Order, it may also change the conditions of the Order
- change your Order to a Custodial Supervision Order.

If the court makes a Custodial Supervision Order, you must stay in the hospital as a forensic patient.

Travel interstate or overseas

If you want to travel interstate or overseas, for example, to go on a holiday, to attend a special event like a wedding or to keep contact with family and friends, you must apply to the supervisor for permission.

You should be given permission if the travel is only for a short time and arrangements can be made for you to receive treatment and support at your destination.

You should apply early because it may take time to decide your application and make the necessary arrangements at your destination.

If you go interstate or overseas without permission, you will be in breach of the Non-Custodial Supervision Order and liable to arrest by police.

When you are arrested, you will be returned to Victoria and detained in hospital.

The supervisor or the Secretary to the Department of Health will then apply to the court to vary the Order to a Custodial Supervision Order.

Ending your Non-Custodial Supervision Order

A Non-Custodial Supervision Order is not like a court sentence; it does not have a fixed time.

The court will release you from the Order when it is satisfied that you are no longer a danger to yourself or other people.

The court may set a date to review your progress or you can apply to the court to end the Order.

Application to end the Order

If you want to be released from the Order, you must make an application to the court that made the Order.

You will need a lawyer to help you make the application because the procedures are complex and you will need a legal representative at the court.

Organisations that may be able to help with your application are described at the end of this booklet.

If the court revokes the Non-Custodial Supervision Order, you will be free of any further obligations or restrictions under the Order.

If the court refuses your application, it is your right to appeal against the court's decision to the Court of Appeal.

Major review

When the court made your Order, it set a time called the nominal term.

If you are still on the Order at the end of the nominal term, the court must conduct a major review of your progress.

The purpose of the major review is to decide whether you can be released from the Non-Custodial Supervision Order.

It is your right to attend the court hearing and to have a lawyer represent you.

Your psychiatrist and other members of the treating team will give evidence at the court hearing. You and your representative will also be able to give evidence.

If the court does not release you from the Non-Custodial Supervision Order, you have the right to appeal to the Court of Appeal.

If you are not released at the major review, the court will automatically review you at least every five years while you remain on the Order.

Access to information

It is your right to apply for access to documents about your personal information that the treating service holds. If a public mental health service holds the information, then the application is made under the *Freedom of Information Act 1982*.

If a private doctor holds the information, then the application is made under the *Health Records Act 2001*.

If you wish to access the information, you can ask a member of the treating team or the mental health service's freedom of information officer to help you make an application.

Organisations that may be able to help you with an application are described at the end of this booklet.

Your rights

You have the right to get support

You can ask to get help from a family member, a carer or any other person you choose.

You can also get help from a person who can speak your language.

A doctor, nurse, psychiatrist or other member of the treating team must help you to contact someone who you would like to help you.

You can speak up if you think something was not ok with the mental health services you have been given

You can make a complaint about the mental health services you have been given.

You can talk to your doctor, the treating team or staff at the hospital about your complaint.

You can also talk to the Health Services Commissioner if you are receiving mental health services from a private doctor or the Mental Health Complaints Commissioner if you are receiving mental health services from a public mental health service.

Commissioners are independent organisations that make sure that mental health services are doing the right thing.

The Commissioners make sure all assessment and treatment follows the law.

You can talk to the relevant Commissioner or someone at the Commissioner's office if you are unhappy about your assessment and treatment.

A psychiatrist, doctor, nurse or other member of the treating team must help you to talk to the Commissioner.

You can also ask a family member, a carer or any other person you choose to help you to talk to the Commissioner.

The contact details for the offices of both the Mental Health Complaints Commissioner and the Health Services Commissioner are included at the end of this booklet.

Making an advance statement

An **advance statement** says what treatment you would like when you are unwell.

You can make an advance statement at any time, if you:

- understand what an advance statement is
- understand what it means to make an advance statement.

You make an advance statement by:

- writing it down
- signing the document.

The document must also be signed by a witness.

A **'witness'** can be a psychiatrist, a doctor, a nurse or another member of the treating team, a lawyer or some other people.

The witness must say:

- that you understand what an advance statement is
- that you understand what it means to make an advance statement.

A psychiatrist, doctor, nurse or another member of the treating team can help you to make an advance statement if you ask them for help.

You can ask to get help from any other person you choose.

Choosing a nominated person

You can ask someone to be your nominated person at any time.

A **'nominated person'** is someone you can choose to look out for you if you have to have compulsory treatment.

Your nominated person can be:

- a family member
- a carer
- a partner
- anyone else you choose.

Your nominated person gets lots of information about your mental health treatment.

Because of this you should choose someone who knows you well and who you can trust.

The person needs to agree to be your nominated person.

You can choose a nominated person if you:

- understand what a nominated person is
- understand what it means to choose a nominated person.

You choose the nominated person by:

- writing it down
- signing the document.

The document must also be signed by a witness.

A **'witness'** can be a psychiatrist, a doctor, a nurse or another member of the treating team, a lawyer or some other people.

The witness must say:

- that you understand what a nominated person is
- that you understand what it means to choose a nominated person.

The witness cannot be the person you choose to be the nominated person.

A psychiatrist, doctor, nurse or another member of the treating team can help you to choose your nominated person if you ask them for help.

You can ask to get help from any other person you choose.

For more information or to ask other people to help you

You can call:

Mental Health Complaints Commissioner is an independent complaints body that can help you with any concerns or complaints you may have about the public mental health services you are being given.

Toll Free: 1800 246 054.

Email: help@mhcc.vic.gov.au

Website: www.mhcc.vic.gov.au

Address: Mental Health Complaints Commissioner
Level 26, 570 Bourke Street
MELBOURNE VIC 3000

Health Services Commissioner is an independent complaints body that can help you with any concerns or complaints you may have about the services provided by a private doctor.

Tel: 1300 582 113

Fax: 9032 3111

Email: hsc@health.vic.gov.au

Website: www.health.vic.gov.au/hsc

Address: Health Services Commissioner
Level 26, 570 Bourke Street
MELBOURNE VIC 3000

Victoria Legal Aid provides free legal information, education and advice about lots of areas of law. It provides a visiting advice service to most of Melbourne's mental health inpatient facilities and many regional mental health inpatient facilities.

For information about the law and how we can help you, call Legal Aid on **1300 792 387**

More information is on the Victoria Legal Aid website at www.legalaid.vic.gov.au

Mental Health Legal Centre provides a free legal advice service on Tuesday and Thursday evenings between 6.30 pm and 8.30 pm.

Tel: 9629 4422

More information is on the Mental Health Legal Centre website at www.communitylaw.org.au/mhlc

Community Visitors are people who visit mental health services and can assist you with any questions and help you to seek support or resolve issues about the mental health services you are being given.

Tel: 1300 309 337