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| Statement of Rights  Neurosurgery for Mental Illness |
| You were given this document because you considering neurosurgery for mental illness (NMI).  It explains your legal rights under the *Mental Health and Wellbeing Act 2022 (*the Act). |
| Help with this document  * Your treating team must help you understand this information. * A blue sign with white figures    Description automatically generated with low confidenceYou can get help from a family member, friend, or advocate. * See the ‘Get Help’ section of this sheet for contact details of organisations that can help. * For help in your language contact the Translating and Interpreting Service on 131 450.  What is neurosurgery for mental illness (NMI)? Neurosurgery for Mental Illness (NMI) is an operation on the brain used to treat people living with severe mental illness who have not responded to other treatments.  It is rarely used and needs approval from the Mental Health Tribunal. You can only have NMI if you want to have it and give informed consent, and the Mental Health Tribunal gives you permission to have it. Your psychiatrist will give you information about NMI if you are considering it. Capacity to give informed consent You must have capacity to give informed consent to have NMI.  Giving informed consent means that you have understood and considered the information you need to make a decision about receiving treatment.  You can only give informed consent if you have capacity to do so. Your psychiatrist should start by assuming that you do have capacity.  You will have capacity to give informed consent to a particular treatment if you can:   * understand the information you’re given about that treatment; * remember that information; * use or weigh that information; and * communicate your decision   Your capacity to give informed consent must be checked at a time and in a place when it is most likely to be an accurate assessment. Your psychiatrist must give you support to build your capacity. Your psychiatrist should assess your capacity regularly as it can change.  No one else can consent for you. You can withdraw your consent to NMI at any time, even after giving informed consent. If you want to withdraw consent, tell your psychiatrist, or have someone else talk to them on your behalf, such as a support person or advocate. Mental Health Tribunal You can only have NMI if the Mental Health Tribunal gives you permission.  They will only approve NMI if:   * You have given informed consent in writing, and * They think NMI will benefit you.   To decide if they think it will benefit you, the Mental Health Tribunal must consider:   * Whether NMI is likely to be an effective treatment for your mental illness; * What the likely consequences are for you if NMI is not performed; * If there are any other alternative treatments you could have; and * Any risks or side effects of NMI and your opinion about them.   Your treating team can apply to the Mental Health Tribunal if you have said you want NMI. The Mental Health Tribunal must hold a hearing within 30 business days of the application.  You can ask staff, a lawyer, or advocate for help to prepare for the hearing. You have the right to:   * a copy of the report and to view the documents your treating team have given to the Mental Health Tribunal at least two business days before the hearing. Your psychiatrist can ask the Mental Health Tribunal to stop you reading the report or documents if it could cause serious harm to yourself or someone else; * provide your own statement or evidence; and * request a statement of reasons for the Mental Health Tribunal’s decision within 20 business days of your hearing.   If the Mental Health Tribunal decides to approve NMI, they will let the Chief Psychiatrist know and then you can have NMI. If they don’t approve it, you can’t have NMI. You will be given a copy of their decision. Your rights People who are considering NMI have rights. You have the right to information Your treatment team must give you information about your:   * assessment; * proposed treatment; * alternatives; and * rights.   Information can be in writing or spoken, and in your preferred language. They must give clear answers to your questions. Information should be given at a time that’s right for you to consider it. You have the right to support You can choose someone to help you, including someone who speaks your language. Your team must help you contact a support person.  The psychiatrist must notify, and can consider, input from people at certain points in your assessment and treatment. This can include your:   * nominated support person; * mental health advocate; * guardian; * carer; or * parent (if under 16).   You can tell your treating team if there’s somebody you don’t want them to contact. Sometimes your information might be legally shared when you don't want it to be. You have the right to help with making decisions You can choose someone to help you with decisions.  Even if you’re receiving compulsory treatment, your treating team must give you information about your options. They must give you enough information and time to make decisions and answer your questions in a way you understand. They should allow you to make decisions, even if they think there’s some risk. You have the right to feel safe and respected Compulsory assessment and treatment should be provided in a way that respects and protects your individual needs and identity. This can include your culture, communication needs, age, disability, gender identity, religion, and sexual orientation. Your other health needs should be recognised and supported. Your dignity, autonomy, and rights should be upheld. You have rights if you are a First Nations person First Nations people should have their unique culture and identity respected.  You have the right to assessment and treatment that promotes your self-determination.  Your connection to family, kin, community, country, and water should be respected.  You can get help from the:   * Aboriginal Liaison Officer at your mental health service. * Victorian Aboriginal Legal Service.  You have the right to help with communication Your treating team must respect and support how you communicate. This includes:   * using an interpreter if you want one; * communicating in the best possible environment for you; and * providing spaces for you to speak with family, carers, support people, or advocates.   You have the right to communicate with anyone while in hospital. You will have to follow hospital rules about what time you are allowed to use public phones. You might have to wait for a phone to be available.  When in hospital, your right to communicate with anyone may be restricted if necessary for safety. But you can’t be restricted from contacting:   * a lawyer; * the Mental Health and Wellbeing Commission; * the Mental Health Tribunal; * the Chief Psychiatrist; * your mental health advocate; or * the Office of the Public Advocate community visitor.  You have the right to advocacy support You can contact Independent Mental Health Advocacy (IMHA) for independent and free advocacy support at any time. They can help you know your rights and have your say.  IMHA is notified automatically when you’re placed on an order and will contact you unless you’ve told them not to. You have the right to legal advice You have the right to communicate with a lawyer to seek legal assistance about mental health or other legal issues. There are free legal services you can contact. You have the right to make an advance statement of preferences This is a document you can make that explains what you want to happen if you receive compulsory assessment or treatment. This is when you are assessed or treated even if you don’t want to be. It can include what kinds of treatment, support or care you want. You can make one at any time.  The mental health service must try to do what’s in your statement, but they are not legally bound to do so. If they don’t follow a preferred treatment, they must tell you why in writing within 10 business days. You have the right to choose a nominated support person This is a person you formally choose to support and advocate for you if you receive compulsory assessment or treatment. This is when you are assessed or treated even if you don’t want to be. They must advocate for what you say you want, not what they want. The mental health service must help them support you and inform them about your treatment. You have the right to make a complaint You can complain directly to your service or to the Mental Health and Wellbeing Commission (MHWC). You have the right to access your information and request changes You can submit a Freedom of Information request directly to the public mental health service.  You can ask for corrections to your health information. If the mental health service denies your request, you can create a health information statement that explains the changes you want. This must be included in your file. Get help Services you can contact for help using your rights   | Service | Details | Contact details | | --- | --- | --- | | Independent Mental Health Advocacy | Independent advocacy service | 1300 947 820  [www.imha.vic.gov.au](http://www.imha.vic.gov.au) | | Victoria Legal Aid | Free legal assistance | 1300 792 387  [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) | | Mental Health Legal Centre | Free legal assistance | 9629 4422  [www.mhlc.org.au](http://www.mhlc.org.au) | | Victorian Aboriginal Legal Service | Free legal assistance for Aboriginal and Torres Strait Islander peoples | 9418 5920  [www.vals.org.au](http://www.vals.org.au) | | Community Visitors | Visit mental health services | 1300 309 337  [www.publicadvocate.vic.gov.au/opa-volunteers/community-visitors](http://www.publicadvocate.vic.gov.au/opa-volunteers/community-visitors) | | Mental Health and Wellbeing Commission | Independent complaints service | 1800 246 054  [www.mhwc.vic.gov.au](http://www.mhwc.vic.gov.au) | | Mental Health Tribunal | Makes and reviews treatment orders | 1800 242 703  [www.mht.vic.gov.au](http://www.mht.vic.gov.au) | |

# Find out more

* Mental Health and Wellbeing Act 2022

[www.legislation.vic.gov.au/as-made/acts/mental-health-and-wellbeing-act-2022](http://www.legislation.vic.gov.au/as-made/acts/mental-health-and-wellbeing-act-2022)

* Office of the Chief Psychiatrist guidelines   
  [www.health.vic.gov.au/chief-psychiatrist/chief-psychiatrist-guidelines](http://www.health.vic.gov.au/chief-psychiatrist/chief-psychiatrist-guidelines)
* Victoria Legal Aid website  
  [www.legalaid.vic.gov.au/mental-health-and-your-rights](http://www.legalaid.vic.gov.au/mental-health-and-your-rights)
* Mental Health and Wellbeing Act handbook

[www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook](http://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook)

* Victorian Charter of Human Rights and Responsibilities   
  [www.legislation.vic.gov.au/in-force/acts/charter-human-rights-and-responsibilities-act-2006/015](http://www.legislation.vic.gov.au/in-force/acts/charter-human-rights-and-responsibilities-act-2006/015)
* Independent Mental health Advocacy know your rights information

[www.imha.vic.gov.au/know-your-rights](http://www.imha.vic.gov.au/know-your-rights)

* Victorian Department of Health Statement of Rights

<https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/statement-of-rights>



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