

getting OUR

Rights right  
Right?

by the SA Lived Experience Leadership &  
Advocacy Network | LELAN



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## About this resource

*'The right to the highest attainable standard of physical and mental health is a fundamental human right.'* [UN Human Rights Council 34th Session]

**This resource was developed to inform South Australians of the rights people have when accessing mental health services, whether voluntarily or involuntarily.** It is designed to be of use to people seeking support as well as to the people that provide support.

The mental health 'system' is a complex web of services, laws, policies, and practices that can be confusing, disempowering and threatening for people trying to get help. Accessing clear information to help navigate the journey through care and treatment can be challenging, especially at a time when people may be experiencing significant distress and crisis.

This resource summarises the rights that apply at key points in the care and treatment journey from first contact with services, admission through to discharge and when in the community. **We know, sadly, that at this point in time these rights are not always upheld.**

Empowering people to know and claim their rights is key to a human rights based approach and something that we actively nurture. It fosters a stronger role in participating and making decisions related to a persons own care and treatment and promotes a culture and services where human rights are upheld.

This resource was developed by the SA Lived Experience Leadership & Advocacy Network (LELAN). It was inspired by the *Rights in mind: A pathway to patients' rights in mental health services* resource produced by the Mental Welfare Commission for Scotland.

**'Mental health is not merely a health or medical concern, it is very much a matter of human rights, dignity and social justice.** The overview of the challenges facing persons with mental health conditions and those with psychosocial disabilities indicates that fundamental changes are necessary in current approaches to the protection of their rights and how that protection is implemented in policy. **Key to this is recognizing that the individuals concerned, including children, have agency, self-determination and rights, which should be protected and respected.'** [UN Human Rights Council 34th Session]

# Charter of Health and Community Services Rights in South Australia

**ACCESS**

**SAFETY**

**QUALITY**

**RESPECT**

*'I have a right to be safe from abuse, or the risk of abuse, and to have my legal and human rights respected and upheld. I have a right to receive services free from discrimination and harassment'*

**PARTICIPATION**

**INFORMATION**

**PRIVACY**

**COMMENT**

*'I have a right to be fully involved in decisions and choices about services planned and received. I have a right to support and advocacy so I can participate. I have a right to seek advice or information from other sources. I have a right to give, withhold or withdraw my consent at any time'*

***'Mental health services must be respectful of medical ethics and human rights, as well as culturally appropriate, sensitive to gender and life-cycle requirements and designed to respect confidentiality and empower individuals to control their health and well-being.***

*They must respect the principles of medical ethics and human rights (including “first, do no harm”), choice, control, autonomy, will, preference and dignity. Overreliance on pharmacological interventions, coercive approaches and in-patient treatment is inconsistent with the principle of doing no harm, as well as with human rights. **Human rights capacity-building should be routinely provided to mental health professionals.*** [UN Human Rights Council 35th Session]

# Rights for all people accessing mental health services in South Australia

## When accessing mental health services you have the right to:

Be treated in accordance with the Mental Health Act 2009

Mental Health Act 2009

Be treated in accordance with the Health and Community Services Complaints Commissioner's (HCSCC) Charter of Rights

Health and Community Services Complaints Commission Act 2004

Be treated in accordance with the Australian Charter of Healthcare Rights

Australian Charter of Healthcare Rights 2020

Be treated in accordance with all international conventions to which Australia is a signatory

Mental Health Act 2009

Be treated with courtesy, dignity and respect

Mental Health Act 2009

Have **restrictive practices** used **only as a last resort**

Mental Health Act

Not be diagnosed with any mental health condition on the basis of political, religious or philosophical beliefs, sexual orientation or gender identity, anti-social behaviour, developmental disability, economic or cultural status, or use of alcohol or other drugs

Mental Health Act 2009

Be **presumed to have decision making ability** unless there is evidence to the contrary

Mental Health Act 2009

Mental health services that consider your stage in life, gender identity, sexuality, disability, culture, language, and history of trauma

Mental Health Act 2009

Not be subjected to **inhuman or degrading treatment or punishment**

United Nations Convention on the Rights of Disabled People



## When receiving treatment, whether voluntarily or involuntarily, you have the right to:

### Mental health care designed to support your recovery

Mental Health Act 2009

Have your treatments and services outlined in a treatment and care plan

Mental Health Act 2009

Have treatment and care plans developed with input from professionals from different fields, eg psychologist, social worker or peer worker, in consultation with you and your support people

Mental Health Act 2009

To have access to services and programs that enable you to maintain maximum independence

United Nations Convention on the Rights of Disabled People

To have your physical and mental health reviewed regularly

Mental Health Act 2009

To **participate in political and public life**

United Nations Convention on the Rights of Disabled People

**To maintain family relationships**

United Nations Convention on the Rights of Disabled People

**Be given information about your mental health, legal rights, treatment options and any associated risk**

Mental Health Act 2009

**Have a support person to help exercise your rights and to help with communication with a mental health professional**

Mental Health Act 2009

**Only with your informed consent can you be subjected to medical experimentation**

United Nations Convention on the Rights of Disabled People

**'A recovery-based approach to mental health is centred on the strengths of the individual and on facilitating access to the supports he or she needs, it integrates an understanding of trauma and involves persons with lived experiences in mental health in the provision of services.** This approach requires “listening and responding to individuals’ understanding of their condition and what helps them to recover [and] working with people as equal partners in their care”.

*Given the close relationship between mental health conditions and trauma, all mental health services should be “trauma-informed” and designed to avoid re-traumatization, and staff should be trained to recognize and refrain from engaging in practices that might trigger painful memories and re-traumatize persons with trauma histories.*

**Finally, persons with mental health conditions are the foremost experts in their own recovery and in assisting others in their recovery.** Peer workers provide each other with support and a sense of belonging, in addition to their expertise, thus reducing unnecessary admissions, and their use is central to mental health care.' [UN Human Rights Council 34th Session]

## In regard to your health information and records you have the right to:

### Access to your own health information records

Health and Community Services  
Complaints Commission Act 2004

Have your personal information kept confidential except under special circumstances detailed in the Mental Health Act 2009

Mental Health Act 2009

## In regard to complaints about mental health services you have the right to:

Make a complaint about a mental health service Health and Community Services Commissioner **without retribution**

Health and Community Services  
Complaints Commission Act 2004

Be supported in making a complaint from a person of your choice

Health and Community Services  
Complaints Commission Act 2004

Receive a prompt response to your complaint

Health and Community Services  
Complaints Commission Act 2004

## In regards to Advance Care Directives you have the right to:

**Make decisions about your future care and treatment in the form of an Advanced Care Directive**

Advance Care Directive Act 2013

To have your choices outlined in an Advance Care Directive to be applied if there comes a time when you are unable to make decisions

Advance Care Directive Act 2013

# Rights for all people accessing mental health services on a voluntary basis

## When accessing mental health services voluntarily you have the right to:

### Refuse treatment

Consent to Medical Treatment and Palliative Care Act 1995

### Leave the treatment centre at any time

Mental Health Act 2009

## When being admitted into a treatment centre you have the right to:

### Have information about facilities within the hospital provided in a way that is accessible to you

United Nations Convention on the Rights of Disabled People

### Receive a written statement of your rights and, if needed, an explanation of its meaning

Mental Health Act 2009

**Information**, provided in a way you can understand, as far as practicable, **about why you are being admitted to hospital and your treatment and care plan including options, rights, benefits and possible side effects of treatments**

Mental Health Act 2009

*'Reductive biomedical approaches to treatment that do not adequately address contexts and relationships can no longer be considered compliant with the right to health. **While a biomedical component remains important, its dominance has become counter-productive, disempowering rights holders and reinforcing stigma and exclusion.** In many parts of the world, community care is not available, accessible, acceptable and/or of sufficient quality (often limited to psychotropic medications).'* [UN Human Rights Council 35th Session]

## When staying in a treatment centre you have the right to:

Have an **adequate standard of residential living** including adequate food, clothing and housing

United Nations Convention on the Rights of Disabled People

Have your religious/spiritual needs respected (eg. special diet or worship practice) within consideration of the rights of others

International Covenant on Civil and Political Rights

**Communicate with people outside of the hospital with reasonable privacy**

Mental Health Act 2009

Have no restrictions or conditions placed on communications with the Minister for the Office of the Chief Psychiatrist, SACAT, the Public Advocate, the Minister for Health and Wellbeing, the Chief Psychiatrist or the Health and Community Services Complaints Commissioner

Mental Health Act 2009

**Only have Electro-Convulsive Treatment (ECT) be administered if you give written consent except under very limited situations**

Mental Health Act 2009

Only have psychosurgery performed with your consent or, when you are indisposed, with the consent of the South Australian Civil and Administrative Tribunal (SACAT) on your behalf, with no exceptions

Mental Health Act



## If you are a child in a treatment centre you have the right to:

**Be treated and cared for separately from adults**

Mental Health Act 2009

**Have access to education if you are school age**

Mental Health Act 2009 | Education and Children's Services Act 2019

## When being discharged from a treatment centre you have the right to:

**Have treatment plans that include services and programs that enable meaningful full participation in the community and access to employment, education and training**

United Nations Convention on the Rights of Disabled People

**Information about options for further care and treatment for after discharge**

Mental Health Act 2009

**Decide whether or not you want a referral to a particular health service**

Consent to Medical Treatment and Palliative Care Act 1995

# Your rights under a Community Treatment Order (CTO)

## Your rights before a Community Treatment Order begins:

If you or your possessions are searched it should be done in a way that avoids humiliation, and any confiscated possessions must be returned when it is safe to do so unless they are deemed to be illegal/offensive

Mental Health Act 2009

The medical professional who authorises an involuntary treatment order must not be your partner or anyone in your family or your partner's family

Mental Health Act 2009

To have language Interpreters if you need them

Mental Health Act 2009

## Your rights in relation to a Level 1 Community Treatment Order:

A Level 1 CTO can only be authorised by a medical practitioner or authorised mental health professional

Mental Health Act 2009

**A Level 1 CTO can be made for up to 42 days**

Mental Health Act 2009

During the time that you are subject to a Level 1 CTO you can request the South Australian Civil and Administrative Tribunal (SACAT) to review the authorisation of the order

Mental Health Act 2009

## Your rights in relation to a Level 2 Community Treatment Order:

**A Level 2 CTO can only be authorised by the South Australian Civil and Administrative Tribunal (SACAT)**

Mental Health Act 2009

**A Level 2 CTO can be made for up to 6 months for a child and up to 12 months for an adult**

Mental Health Act 2009

**Within a month after the order came into effect you can request SACAT to conduct an internal review of their decision to authorise the order**

South Australian Civil and Administrative Tribunal Act 2013 | Mental Health Act 2009

**Within 14 days of SACAT completing an internal review you can request an appeal of that decision in the Supreme Court**

South Australian Civil and Administrative Tribunal Act 2013 | Mental Health Act 2009

*'Informed consent is not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making and assigning associated duties and obligations to health-care providers. **In order for consent to be valid, it should be given voluntarily and on the basis of complete information on the nature, consequences, benefits and risks of the treatment, on any harm associated with it and on the availability of alternatives.** Involuntary treatment refers to the administration of medical or therapeutic procedures without the consent of the individual. **Treatment administered, for example, on the basis of misrepresentation would constitute involuntary treatment, as would treatment given under threat, without full information or on dubious medical grounds.** Guaranteeing informed consent is a fundamental feature of respecting an individual's autonomy, self-determination and human dignity.'* [UN Human Rights Council 34th Session]

## While subject to a current Community Treatment Order you have the right to:

**A copy of any document that authorises involuntary treatment and, if needed, an explanation of these documents**

Mental Health Act 2009

A copy of any document authorising changes to the involuntary order including leave of absence from a treatment centre or revocation of the order and, if needed, an explanation of these documents

Mental Health Act 2009

Receive a written statement of your rights and, if needed, an explanation of its meaning

Mental Health Act 2009

Have information about facilities within the Community Treatment Centre provided in a way that is accessible to you

United Nations Convention on the Rights of Disabled People

**Information about your treatment and care plan including options, rights, benefits and possible side effects of treatments**

Mental Health Act 2009

Have your religious/spiritual needs respected (eg. special diet or worship practice) within consideration of the rights of others

International Covenant on Civil and Political Rights

Have no restrictions or conditions placed on communications with the Minister for the Office of the Chief Psychiatrist, SACAT, the Public Advocate, the Minister for Health and Wellbeing, the Chief Psychiatrist or the Health and Community Services Complaints Commissioner

Mental Health Act 2009

Only have Electro-Convulsive Treatment (ECT) be administered if you give written consent or, when you are indisposed, by a person who represents your interests except in very limited cases

Mental Health Act 2009

## In regard to having a Community Treatment Order reviewed you have the right to:

**Have legal representation with every review or appeal of an involuntary treatment order**

Mental Health Act 2009

**Be given a written statement from SACAT after a review is complete that explains the reasons for their decision, if requested**

Mental Health Act 2009

**Apply to SACAT for a review of a direction for transfer to an interstate treatment centre**

Mental Health Act 2009

## After a Community Treatment Order ends you have the right to:

**Have any plans for your treatment or care include services and programs that enable meaningful full participation in the community including access to employment, education and training**

United Nations Convention on the Rights of Disabled People

**Decide whether or not you want a referral to a particular health service**

Consent to Medical Treatment and Palliative Care Act 1995

**Information about options for further care and treatment for after your CTO ends**

Mental Health Act 2009

# Your rights under an Inpatient Treatment Order (ITO)

## Your rights before being admitted to hospital under an Inpatient Treatment Order:

If you or your possessions are searched it should be done in a way that avoids humiliation, and any confiscated possessions must be returned when it is safe to do so, unless they are deemed to be **illegal/offensive**

Mental Health Act 2009

The medical professional who authorises an involuntary treatment order must not be your partner or anyone in your family or your partner's family

Mental Health Act 2009

To have language Interpreters if you need them

Mental Health Act 2009

## Your rights in relation to a Level 1 Inpatient Treatment Order:

A level 1 ITO can only be authorised by a medical practitioner or authorised mental health professional

Mental Health Act 2009

**A level 1 ITO can be made for up to 7 days**

Mental Health Act 2009

Within the 7 days of the order you can request the South Australian Civil and Administrative Tribunal (SACAT) to review a Level 1 ITO

Mental Health Act 2009



***'Coercion in psychiatry perpetuates power imbalances in care relationships, causes mistrust, exacerbates stigma and discrimination and has made many turn away, fearful of seeking help within mainstream mental health services.'*** [UN Human Rights Council 35th Session]

## Your rights in relation to a Level 2 Inpatient Treatment Order:

A level 2 ITO can only be authorised by a psychiatrist or authorised medical practitioner

Mental Health Act 2009

**A level 2 ITO can be made for up to 42 days**

Mental Health Act 2009

Within the 42 days of the order you can request SACAT to review a Level 2 ITO

Mental Health Act 2009

## Your rights in relation to a Level 3 Inpatient Treatment Order:

A level 3 ITO can only be authorised by the South Australian Civil and Administrative Tribunal (SACAT)

Mental Health Act 2009

**A level 3 ITO can be made for up to 6 months for a child and up to 12 months for an adult**

Mental Health Act 2009

Within a month after the order came into effect you can request SACAT to conduct an internal review of their decision to authorise the order

South Australian Civil and Administrative Tribunal Act 2013 | Mental Health Act 2009

Within 14 days of SACAT completing an internal review you can request an appeal of that decision in the Supreme Court

South Australian Civil and Administrative Tribunal Act 2013 | Mental Health Act 2009

When being admitted to hospital under an Inpatient Treatment Order you have the right to:

**A copy of any document that authorises involuntary treatment and, if needed, an explanation of these documents**

Mental Health Act 2009

A copy of any document authorising changes to the involuntary order including leave of absence from a treatment centre or revocation of the order and, if needed, an explanation of these documents

United Nations Convention on the Rights of Disabled People

Receive a written statement of your rights and, if needed, an explanation of its meaning

Mental Health Act 2009

Have information about facilities within the hospital provided in a way that is accessible to you

Mental Health Act 2009

Information about why you are being admitted to hospital and your treatment and care plan including options, rights, benefits and possible side effects of treatments

Mental Health Act 2009

## While in hospital under an Inpatient Treatment Order you have the right to:

Have an adequate standard of residential living including adequate food, clothing and housing

United Nations Convention on the Rights of Disabled People

Have your religious/spiritual needs respected (eg. special diet or worship practice) within consideration of the rights of others

International Covenant on Civil and Political Rights

Communicate with people outside of the hospital with reasonable privacy

Mental Health Act 2009

Have no restrictions or conditions placed on communications with the Minister for the Office of the Chief Psychiatrist, SACAT, the Public Advocate, the Minister for Health and Wellbeing, the Chief Psychiatrist or the Health and Community Services Complaints Commissioner

Mental Health Act 2009

Only have Electro-Convulsive Treatment (ECT) be administered if you give written consent or, when you are indisposed by a person who represents your interests, except in very limited cases

Mental Health Act 2009

Only have psychosurgery performed with your consent or, when you are indisposed with the consent of the South Australian Civil and Administrative Tribunal (SACAT) on your behalf, with no exceptions

Mental Health Act 2009

**Have access to services and programs that enable you to maintain maximum independence**

United Nations Convention on the Rights of Disabled People

## If you are a child in hospital under an Inpatient Treatment Order you have the right to:

**Be treated and cared for separately from adults in mental health services**

Mental Health Act 2009

**Have access to education if you are school age**

Mental Health Act 2009 | Education and Children's Services Act 2019

## In regard to having an Inpatient Treatment Order reviewed you have the right to:

**Have legal representation with every review or appeal of an involuntary treatment order**

Mental Health Act 2009

**Be given a written statement from SACAT after a review is complete, that explains the reasons for their decision, if requested**

Mental Health Act 2009

**Apply to SACAT to review a direction for transfer to an interstate treatment centre**

Mental Health Act 2009

## After an Inpatient Treatment Order ends and you are discharged from hospital you have the right to:

Have any plans for your treatment or care include services and programs that enable meaningful full participation in the community including access to employment, education and training

United Nations Convention on the Rights of Disabled People

Decide whether or not you want a referral to a particular health service

Consent to Medical Treatment and Palliative Care Act 1995

Information about options for further care and treatment for after discharge

Mental Health Act 2009

***'Evidence shows that the provision of interdisciplinary and demedicalized services in the community enables users to remain connected with their families, to maintain employment and generally to remain close to the support networks which facilitate early treatment and recovery.'*** [UN Human Rights Council 34th Session]



# Rights related to your nominated carer

**You have the right to nominate a relative, carer or friend of your choice to act as your carer**

Mental Health Act 2009

**You have the right to choose to have your carer:**

**Participate with you and your treating professional, in developing your treatment and care plan**

Mental Health Act 2009

**Be provided information about your treatments**

Mental Health Act 2009

**Be provided with copies of any involuntary orders, changes to orders, a statement of your rights and if needed an explanation of the meaning of these documents**

Mental Health Act 2009



Be provided with information about options for your treatment for after discharge

Mental Health Act 2009

**Your carer has the right to:**

Have the same rights, choices and opportunities as other Australians

Carers Recognition Act 2005

Have **your rights explained to them and be given a written statement of your rights** if you stay in hospital as a voluntary inpatient

Mental Health Act 2009

Apply to the South Australian Civil and Administrative Tribunal (SACAT) to review an involuntary treatment order authorised by parties other than SACAT

Mental Health Act 2009

**Apply to SACAT for a review of a direction for transfer to an interstate treatment centre**

Mental Health Act 2009

**Apply for an internal review of a SACAT decisions regarding involuntary treatment**

Mental Health Act 2009

**Apply to the Supreme Court for an appeal of the outcome of such an internal review**

Mental Health Act 2009

**Be provided a written statement from SACAT, on request, that explains the reasons for a SACAT decision after a review is complete**

Mental Health Act 2009

**Ask the Health and Community Services Complaints Commissioner to investigate the case for your complaint**

Health and Community Services Complaints Commission Act 2004

**Advocate, dispute or ensure they have input into the decision and process of how it will happen as part of the review process**

Mental Health Act 2009

***'Social networks, peer support, circles of support and local community support are valuable, in particular to address situations of crisis and emergency; they must be acknowledged and their development supported.'*** [UN Human Rights Council 34th Session]

## Children who are carers have the right to:

**Have caring responsibilities minimised**

Carers Recognition Act 2005

**Have barriers to services such as restrictions on age or access to money and transport, minimised.**

Carers Recognition Act 2005

***'The effective realization of the right to health requires the participation of everyone, particularly those living in poverty and in vulnerable situations, in decision-making at the legal, policy, community and health service level. At the population level, empowering everyone to participate meaningfully in decisions about their health and well-being requires multisectoral and inclusive engagement with stakeholders, such as users and former users of mental health services, policymakers, service providers, health workers, social workers, the legal profession, the police, carers, family members and the wider community.'***

***Health settings must empower users as rights holders to exercise autonomy and participate meaningfully and actively in all matters concerning them, to make their own choices about their health, including sexual and reproductive health, and their treatment, with appropriate support where needed.'*** [UN Human Rights Council 35th Session]

*'Participation in mental health services is a relatively recent phenomenon and is complicated by deeply entrenched power asymmetries within mental health systems. **It is important to facilitate the empowerment of individuals, especially those with particular mental health needs, through the support of self-advocacy initiatives, peer support networks, dialogues and other user-led advocacy initiatives, as well as new working methods, such as co-production, which ensure representative and meaningful participation in health-service development and provision.** In that regard, creating space for civil society and supporting the activities of non-governmental organizations is crucial to restoring trust between care providers and rights holders using services.'* [UN Human Rights Council 35th Session]



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