

Mental Health Act 1986

Section 9
Mental Health Regulations 1998
Regulation 5(2)

Mental Health Statewide Patient Number

Local Hospital Patient Number

Family Name

Given Names

Date of Birth Sex

Alias

Mental Health Act 1986

Section 9
Mental Health Regulations 1998
Regulation 5(2)

Mental Health Statewide Patient Number

Local Hospital Patient Number

Family Name

Given Names

Date of Birth Sex

Alias

RECOMMENDATION
FOR PERSON TO RECEIVE INVOLUNTARY TREATMENT FROM
AN APPROVED MENTAL HEALTH SERVICE

PART A
TO THE \*REGISTERED MEDICAL PRACTITIONER EMPLOYED BY AN APPROVED
MENTAL HEALTH SERVICE / MENTAL HEALTH PRACTITIONER

Notes to completing
this form

This Recommendation
must be completed by a
registered medical
practitioner.

It is valid for 72 hours
following the
examination of the
person by the
recommending
registered medical
practitioner.

In considering whether
a person has refused or
is unable to consent to
the necessary
treatment, only the
person's personal
refusal or consent is
relevant and not the
refusal or consent of a
guardian, a medical
treatment agent or a
person responsible (if
there are any) or the
Victorian Civil and
Administrative Tribunal.

You must personally
observe some fact/s at
the examination that
indicate the application
of all the criteria in
section 8(1) of the
Mental Health Act
1986 to the person.

You may rely on facts
communicated by other
people, for example
family members, in
addition to the facts
personally observed, so
long as you have
reasonable grounds for
relying on those facts.

If you are unable to
observe any facts to
support the
Recommendation, you
may rely solely upon
facts communicated
directly to you by
another registered
medical practitioner
who has personally
examined the person
within the previous 28
days. Please complete
Part B

Please make an Involuntary Treatment Order for:

GIVEN NAME/S FAMILY NAME (BLOCK LETTERS) of
person who should be made subject to an Involuntary Treatment Order

of: address of person who should be made subject to an Involuntary Treatment Order

- (1) I am a registered medical practitioner.
(2) I personally examined the abovenamed person:
on the day of 20 at 24 hour

- (3) It is my opinion that all the following criteria in section 8(1) of the Mental Health Act 1986 apply to the person:
(a) the person appears to be mentally ill (a person is mentally ill if he or she has a mental illness, being a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory); and
(b) the person's mental illness requires immediate treatment and that treatment can be obtained by the person being subject to an involuntary treatment order; and
(c) because of the person's mental illness, involuntary treatment of the person is necessary for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and
(d) the person has refused or is unable to consent to the necessary treatment for the mental illness; and
(e) the person cannot receive adequate treatment for the mental illness in a manner less restrictive of his or her freedom of decision and action.

- (4) I do not consider the person to be mentally ill by reason only of any one or more of the exclusion criteria listed in section 8(2) of the Mental Health Act 1986.

- (5) I base my opinion on the following facts.
Facts personally observed by me on examination to support this Recommendation:

Blank lines for facts personally observed by me on examination to support this Recommendation.

Facts communicated to me by another person to support this Recommendation:

Blank lines for facts communicated to me by another person to support this Recommendation.

\* delete as necessary

PART B
TO BE COMPLETED WHERE NO FACTS ARE PERSONALLY OBSERVED

If you are unable to
observe any facts to
support the
Recommendation, you
may rely solely upon
facts communicated
directly to you by
another registered
medical practitioner
who has personally
examined the person
within the previous 28
days.

The other registered
medical practitioner
must have personally
observed some fact/s
that indicate the
application of all the
criteria in section 8(1) of
the Mental Health Act
1986 to the person.

The other registered
medical practitioner
must not be a relative or
guardian of the person.

- (6) As no facts were personally observed by me to support this Recommendation, the following facts were communicated directly to me \*in person/in writing/by telephone/by electronic communication by:

Dr GIVEN NAME/S FAMILY NAME (BLOCK LETTERS) of other registered medical practitioner

of: address of other registered medical practitioner

doctor's telephone number:

who examined the person on the day of 20
(being a period not more than 28 days prior to today's date)

Facts communicated to me by other examining registered medical practitioner:

Blank lines for facts communicated to me by other examining registered medical practitioner.

PART C
SIGNATURE

You must not:
• also complete the
Request (Schedule 1);
or
• be a relative or
guardian of the
person being
recommended.

Definitions
See the Mental Health
Regulations 1998 or
back of the Request
(Schedule 1) for
definitions of:
• prescribed person
• prescribed registered
medical practitioner
• authorised person
• mental health
practitioner

The person may, in the
future, have access to
this Recommendation
under the Freedom of
Information Act 1982
or through Mental
Health Review Board
proceedings.

- (7) I consider that an involuntary treatment order should be made for the abovenamed person.

GIVEN NAME/S FAMILY NAME (BLOCK LETTERS) of recommending registered medical practitioner

Signed: signature of recommending registered medical practitioner Date:

Qualifications:

Address:

Telephone no:

NEXT STEPS

- 1. This Recommendation only becomes effective if it is accompanied by a Request (Schedule 1).
2. If a Request and a Recommendation are completed, together they give sufficient authority to a 'prescribed person', the person making the Request or a person authorised by the person making the Request to:
• take the person to an appropriate approved mental health service; or
• arrange for a registered medical practitioner employed by an approved mental health service or a 'mental health practitioner' to assess the person.

Transport

- 3. For the purpose of taking the person to an approved mental health service, a 'prescribed person' may with such assistance as is required and such force as may be reasonably necessary, enter any premises in which the 'prescribed person' has reasonable grounds for believing that the person may be found and if necessary to enable the person to be taken safely, use such restraint as may be reasonably necessary. A 'prescribed person' who uses restraint must complete the form Restraint attached.

- 4. If a 'prescribed registered medical practitioner' considers that it is necessary to sedate the person so that the person can be taken safely to the approved mental health service, the 'prescribed registered medical practitioner' may administer or direct an 'authorised person' to administer sedation to the person. A person who prescribes or administers sedation must complete the form Sedation attached.

Making an Involuntary Treatment Order (Schedule 6)

- 5. If a Request and a Recommendation are completed and the person has been taken to, or is in, an approved mental health service (including gazetted Emergency Departments), a registered medical practitioner employed by the approved mental health service or a 'mental health practitioner' must make an Involuntary Treatment Order for the person.

OR

If a Request and a Recommendation are completed and a registered medical practitioner employed by an approved mental health service or a 'mental health practitioner' has been requested to assess the person, the practitioner must either:

- Take, or arrange for the person to be taken, to an appropriate approved mental health service. (An Involuntary Treatment Order will be made at the approved mental health service); OR
• Make an Involuntary Treatment Order if the person is not to be taken to the approved mental health service, for example, if a community treatment order is to be made in the community.

\* delete as necessary

## RELEVANT SECTIONS OF THE MENTAL HEALTH ACT 1986

### Section 8. *Criteria for involuntary treatment*

- (1) The criteria for involuntary treatment of a person under this Act are that –
- the person appears to be mentally ill; and
  - the person's mental illness requires immediate treatment and that treatment can be obtained by the person being subject to an involuntary treatment order; and
  - because of the person's mental illness, involuntary treatment of the person is necessary for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and
  - the person has refused or is unable to consent to the necessary treatment for the mental illness; and
  - the person cannot receive adequate treatment for the mental illness in a manner less restrictive of his or her freedom of decision and action.
- Note: In considering whether a person has refused or is unable to consent to treatment, see section 3A (below).
- (1A) Subject to sub-section (2), a person is mentally ill if he or she has a mental illness, being a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory.

### Exclusion criteria

- (2) A person is not to be considered to be mentally ill by reason only of any one or more of the following –
- that the person expresses or refuses or fails to express a particular political opinion or belief;
  - that the person expresses or refuses or fails to express a particular religious opinion or belief;
  - that the person expresses or refuses or fails to express a particular philosophy;
  - that the person expresses or refuses or fails to express a particular sexual preference or sexual orientation;
  - that the person engages in or refuses or fails to engage in a particular political activity;
  - that the person engages in or refuses or fails to engage in a particular religious activity;
  - that the person engages in sexual promiscuity;
  - that the person engages in immoral conduct;
  - that the person engages in illegal conduct;
  - that the person is intellectually disabled;
  - that the person takes drugs or alcohol;
  - that the person has an antisocial personality;
  - that the person has a particular economic or social status or is a member of a particular cultural or racial group.
- (3) Sub-section (2)(k) does not prevent the serious temporary or permanent physiological, biochemical or psychological effects of drug or alcohol taking from being regarded as an indication that a person is mentally ill.

### Section 3A. *Meaning of consent of a person*

- (1) In considering, for the purposes of a provision listed in sub-section (2), whether a person in respect of whom –
- a guardian within the meaning of the **Guardianship and Administration Act 1986**; or
  - a person responsible within the meaning given by section 37 of that Act may make decisions relating to treatment; or
  - an agent has been appointed under the **Medical Treatment Act 1988** –
- has refused or is unable to give consent (including informed consent) to treatment, or has given such consent, only that person's personal refusal or consent is relevant and not the refusal or consent of that person's guardian, the person responsible, the agent or the Tribunal.
- (2) Sub-section (1) applies for the purposes of each of these provisions-
- section 8 (criteria for involuntary treatment);
- \* \* \* \*
- (3) This section has effect despite anything in the **Guardianship and Administration Act 1986**, the **Medical Treatment Act 1988** or any other law.

### Section 9. *Request and recommendation for involuntary treatment*

- (1) The documents required to initiate the involuntary treatment of a person are –

- a request in the prescribed form and containing the prescribed particulars; and
  - a recommendation in the prescribed form by a registered medical practitioner following a personal examination of the person.
- (2) A request may be signed before or after a recommendation is made.
- (3) A registered medical practitioner must not make a recommendation under sub-section (1) unless he or she considers that –
- the criteria in section 8(1) apply to the person; and
  - an involuntary treatment order should be made for the person.
- (4) A request and recommendation have effect for 72 hours following the examination of the person by the registered medical practitioner who made the recommendation.
- (5) While they have effect, a request and recommendation made in accordance with this section are sufficient authority for a person referred to in sub-section (6) to –
- arrange for the assessment of the person to whom the recommendation relates by a registered medical practitioner employed by an approved mental health service or a mental health practitioner; or
  - take the person to whom the recommendation relates to an appropriate approved mental health service.
- (6) The persons who may take action under sub-section (5) are –
- the person making the request; or
  - a person authorised by the person making the request; or
  - a prescribed person.

### Section 9A. *Authority to transport*

- (1) Despite anything to the contrary in section 9, a person in respect of whom a request is made in accordance with section 9(1)(a) may be taken to an appropriate approved mental health service without a recommendation being made under section 9(1)(b) if –
- a registered medical practitioner is not available within a reasonable period to consider making a recommendation despite all reasonable steps having been taken to secure the attendance of one; and
  - a mental health practitioner considers that –
    - the criteria in section 8(1) apply to the person; and
    - the person should be taken to an approved mental health service for examination by a registered medical practitioner for the purpose of making a recommendation; and
  - the mental health practitioner completes an authority to transport in the prescribed form containing the prescribed particulars.
- (2) A person who has made a request under section 9(1)(a) in respect of a person must not complete an authority to transport that person under sub-section (1)(c).

### Section 9B. *Taking a person to an approved mental health service*

- (1) This section applies if a person is to be taken to an approved mental health service under –
- a request and recommendation; or
  - an authority to transport; or
  - section 12(2)(a) or 12(6); or
  - section 12AA(7); or
  - section 12AC(4)(b).
- (2) For the purpose of taking the person to the approved mental health service, a prescribed person may with such assistance as is required and such force as may be reasonably necessary –
- enter any premises in which the prescribed person has reasonable grounds for believing that the person may be found; and
  - if necessary to enable the person to be so taken safely, use such restraint as may be reasonably necessary.
- (3) If a prescribed registered medical practitioner considers that it is necessary to sedate the person so that the person can be taken safely to the approved mental health service, the prescribed registered medical practitioner may administer or direct an authorised person to administer sedation to the person.
- (4) A person who uses restraint under sub-section (2) or administers sedation or directs an authorised person to administer sedation under sub-section (3) must specify the particulars required by the prescribed form and deal with the prescribed form in accordance with the regulations.

### Section 12. *Involuntary treatment orders – persons in the community*

- (1) This section applies if –
- a request and recommendation have been made for a person; and
  - a registered medical practitioner employed by an approved mental health service or a mental health practitioner has assessed the person in accordance with the request and recommendation.
- (2) The practitioner must –
- take the person, or arrange for the person to be taken, to an appropriate approved mental health service; or
  - make an involuntary treatment order for the person.
- (3) The practitioner must have regard to the criteria in section 8(1) in deciding what action to take under sub-section (2).
- (4) An involuntary treatment order under this section must be in the prescribed form and contain the prescribed particulars.
- (5) If the practitioner makes an involuntary treatment order for a person but does not consider that –
- the criteria in section 8(1) apply to the person; or
  - an involuntary treatment order should be made for the person –
- the practitioner must notify the authorised psychiatrist of the appropriate approved mental health service as soon as practicable.
- (6) At any time after an involuntary treatment order is made for a person under this section, but before the authorised psychiatrist examines the person under section 12AC, a registered medical practitioner employed by an approved mental health service or a mental health practitioner may take the person, or arrange for the person to be taken, to an appropriate approved mental health service if the practitioner considers it necessary to do so.
- (7) If a person is taken to an approved mental health service under sub-section (6), the involuntary treatment order is sufficient authority for the detention of the person in the approved mental health service until the authorised psychiatrist examines him or her under section 12AC.

### Section 12AA. *Involuntary treatment orders – persons in approved mental health services*

- (1) This section applies if –
- a request and recommendation have been made for a person; and
  - the person has been taken to, or is in, an approved mental health service.
- (2) A registered medical practitioner employed by the approved mental health service or a mental health practitioner must make an involuntary treatment order for the person.
- (3) An involuntary treatment order under this section must be in the prescribed form and contain the prescribed particulars.
- (4) An involuntary treatment order made for a person in accordance with this section is sufficient authority for the detention of the person in an approved mental health service.
- (5) A registered medical practitioner employed by the approved mental health service or a mental health practitioner may release a person from detention under sub-section (4) to await the examination by the authorised psychiatrist under section 12AC if the practitioner has –
- had regard to the criteria in section 8(1); and
  - consulted with the authorised psychiatrist.
- (6) If the practitioner makes an involuntary treatment order for a person but does not consider that –
- the criteria in section 8(1) apply to the person; or
  - an involuntary treatment order should be made for the person –
- the practitioner must notify the authorised psychiatrist of the appropriate approved mental health service as soon as practicable.
- (7) At any time after an involuntary treatment order is made for a person under this section for a person who is not detained in an approved mental health service, but before the authorised psychiatrist examines the person under section 12AC, a registered medical practitioner employed by an approved mental health service or a mental health practitioner may take the person, or arrange for the person to be taken, to an appropriate approved mental health service if the practitioner considers it necessary to do so.
- (8) If a person is taken to an approved mental health service under sub-section (7), the involuntary treatment order is sufficient authority for the detention of the person in the approved mental health service until the authorised psychiatrist examines him or her under section 12AC.

### Section 123. *Registered medical practitioner to specify facts*

- (1) A registered medical practitioner who signs any recommendation or certificate in connection with the making of an involuntary treatment order or the admission of any person to an approved mental health service must –
- specify the facts upon which the opinion that the person to whom the recommendation or certificate relates is mentally ill is based; and
  - distinguish the facts personally observed from –
    - facts not personally observed; and
    - facts communicated to the registered medical practitioner by any other person.
- (2) A person may be made subject to an involuntary treatment order or admitted to an approved mental health service on a recommendation or certificate which relies upon facts not personally observed by the registered medical practitioner if the registered medical practitioner –
- has reasonable grounds for relying on those facts; and
  - has –
    - personally observed some fact which supports the recommendation or certificate; or
    - relied upon facts personally observed by another registered medical practitioner within 28 days of the recommendation or certificate and communicated directly by that registered medical practitioner to the registered medical practitioner signing the recommendation or certificate.
- (3) If the registered medical practitioner signing the recommendation or certificate has relied upon the facts of the kind specified in sub-section (2)(b)(ii) the recommendation or certificate must specify the name and address of the other registered medical practitioner.

### Section 124. *Recommendation or certificate not to be signed without examination*

- (1) A registered medical practitioner who signs a recommendation or certificate in connection with the making of an involuntary treatment order or the admission of any person to an approved mental health service without complying with section 123 is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for doing so.
- (2) A registered medical practitioner who wilfully and falsely states in writing that any person is mentally ill is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for doing so.

### Section 125. *Persons prohibited from signing recommendation or certificate*

- A recommendation or certificate in connection with the making of an involuntary treatment order or the admission of any person to an approved mental health service is not valid if it is signed by a registered medical practitioner who is –
- a relative or guardian of that person; or
  - the person by whom the request is made.

### Section 126. *Offences in relation to recommendations or certificates*

- (1) A registered medical practitioner who wilfully and falsely states or certifies anything in a recommendation or certificate in connection with the making of an involuntary treatment order or admission of any person to an approved mental health service is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for doing so.
- (2) Any person not being a registered medical practitioner who signs a recommendation or certificate in connection with the making of an involuntary treatment order or admission of any person to an approved mental health service is guilty of an offence against this Act and liable to a penalty of not more than 25 penalty units.

### Section 127. *Payment for recommendation*

- Where a registered medical practitioner makes a recommendation under section 9 and is not entitled to receive payment for making the recommendation other than under this section, the registered medical practitioner may apply to the Secretary for payment of the prescribed recommendation fee.