# Response to Medical Treatment Planning and Decisions Bill 2016

I attach a briefing note addressing key issues with the Medical Treatment Planning and Decisions Bill 2016 (the Bill). The Bill was passed by the Legislative Assembly on 27 October 2016 and is yet to pass the Legislative Council.

If passed, the Bill will establish new processes and requirements about the making of medical treatment decisions where the person being treated does not have decision-making capacity. Victoria Legal Aid (VLA) welcomes many aspects of the Bill which would improve current laws and procedures. However, we are concerned by the lack of meaningful public consultation to ensure that the good intentions of the Bill can be realised effectively and appropriately in practice. We recommend that further consultation be undertaken, particularly with people likely to be affected by the Bill, to ensure that it provides adequate safeguards and clear and effective procedures.

VLA is particularly concerned by the following aspects of the Bill:

* The Bill expands the definition of ‘medical treatment’ to include ‘mental health treatment’. This would permit guardians and certain family members to make mental health treatment decisions on behalf of a person who does not have decision-making capacity. This is concerning given the sensitive nature of mental health issues and the tensions which conflicting perspectives on treatment can create within families.
* The Bill does not adequately explain how it will interact with the Mental Health Act 2014 (MHA). This lack of clarity is likely to cause confusion in practice, and risks people being subjected to mental health treatment to which they have not given informed consent outside of the safeguards established by the MHA.
* It appears that the people most affected by the Bill would be denied standing to seek independent oversight of its operation and application in practice. The person asserted to lack decision-making capacity and/or who is subject to medical treatment cannot apply to VCAT themselves for an order about whether they have capacity, about their appointed medical treatment decision-maker or about medical treatment decisions being made in relation to them because they are not included within the definition of an ‘eligible applicant’.

VLA urges further consultation be undertaken with consumers to ensure the Bill provides adequate safeguards and clear and effective procedures.

If you have any queries about these issues or the attached briefing note, please do not hesitate to contact myself (Bevan Warner, Managing Director) or Dan Nicholson (Executive Director, Civil Justice Access and Equity) on (03) 9269 0691 or Dan.Nicholson@vla.vic.gov.au.