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Standing Committee on Law and Justice  
Parliament of New South Wales

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Avant Mutual Group Limited  
ABN 58 123 154 898

**Registered office**  
Level 6, Darling Park 3  
201 Sussex Street, Sydney NSW 2000

**Postal address**  
PO Box 746 Queen Victoria Building  
Sydney NSW 1230

**DX** 11583 Sydney Downtown  
avant.org.au

**Telephone** 02 9260 9000 **Fax** 02 9261 2921  
**Freecall** 1800 128 268 **Freefax** 1800 228 268

**Standing Committee on Law and Justice inquiry into the provisions of the Voluntary Assisted Dying Bill 2021**

Thank you for the opportunity to provide feedback on the Voluntary Assisted Dying Bill 2021.

Our submission is attached.

Please contact me on the details below if you require any further information or clarification of the matters raised in this submission.

Yours sincerely



Georgie Haysom  
Head of Research, Education and Advocacy

Direct: (02) 9260 9185  
Email: [georgie.haysom@avant.org.au](mailto:georgie.haysom@avant.org.au)

## Avant submission to the Inquiry into the provisions of the Voluntary Assisted Dying Bill 2021

Avant is the largest medical defence organisation in New South Wales and Australia overall. We provide professional indemnity insurance and legal advice and assistance to more than 78,000 medical practitioners and students around Australia.

In addition to assisting members in civil litigation, professional conduct matters and coronial matters, Avant has a medico-legal advisory service (MLAS) that provides support and advice to members when they encounter medico-legal issues. Our members have contacted us for advice about issues relating to end-of-life care and voluntary assisted dying (VAD). We provide our submission from this perspective.

In this submission we have commented on sections of the Bill where we believe our experience could assist in creating a legislative framework which incorporates sufficient protections for those medical practitioners who choose to participate, and those who choose not to participate in voluntary assisted dying.

### Key points

1. Any legislative framework must incorporate sufficient protections for those medical practitioners who choose to participate, and those who choose not to participate.

Avant supports the protections from liability found in Part 9 of the Bill. We agree that medical practitioners should be immune from criminal and civil liability, and disciplinary action for providing treatment that causes death if they have acted in accordance with the requirements of the legislation in good faith and with reasonable care and skill.

We also support the conscientious objection provisions in Part 1, Division 4 of the Bill. We agree that medical practitioners should not be required to comply with a patient's request, or to be involved in voluntary assisted dying at all. We also agree that medical practitioners should not face any criminal, civil, administrative or disciplinary action for refusing to participate, or for choosing to participate.

The Medical Board of Australia's 'Good Medical Practice: A code of conduct for medical practitioners in Australia' (Code of Conduct) outlines a medical practitioner's rights and obligations regarding conscientious objection. We are pleased to see that the Bill is consistent with the existing rights and obligations under the Code of Conduct.

2. We agree that the Voluntary Assisted Dying Board should not have a role in determining whether or not there has been a breach of the legislative regime and should not have any investigative powers. This is outlined in Part 10 of the Bill. These functions should remain with the authorities currently in existence, including the Health Care Complaints Commission and the Australian Health Practitioner Regulation Agency.

There are a number of instances throughout the Bill where medical practitioners could be fined 100 penalty units for not completing and returning forms to the VAD Board within 5 days (ss 30, 34, 41, 47, 52, 58, 61, 83, 87, 181). This penalty is severe and onerous. It is also more severe and onerous than other jurisdictions across Australia. Training

materials should be very explicit regarding this obligations and procedures to help ensure medical practitioners are not penalised unnecessarily. Avant would also support an initial educative approach for at least the first 12 months of the laws coming into force before the penalties are applied.

3. Division 4 of the Bill requires that following the final review of the patient's decision regarding administration, the coordinating practitioner is to request an authorisation to prescribe a substance from the VAD Board (the 'Board'). This is similar to the Victorian process and [has been criticised](#) as delaying the process. Given the time-sensitive nature of these requests, delays caused by the process should be avoided.

The [Ministerial Expert Panel on Voluntary Assisted Dying](#) in Western Australian also considered this step and decided that authorisation for prescription of VAD medication would be managed through existing mechanisms under the *Medicines and Poisons Act 2014* (WA).

This was to ensure that the VAD process is not burdened by bureaucratic oversight that may not materially add to the safety of the process. It was also to provide clarity that appropriate authorisation of the prescription of VAD medication can be controlled under existing WA legislation.

Avant strongly recommends that the NSW legislation follow the WA legislation in this regard. Medical practitioners are already familiar with applying for authorisations for prescriptions of certain medications through existing mechanisms and as required under the *Poisons and Therapeutic Goods Act 1966* (NSW). This should be the same for VAD medication. This extra step, including applying for authorisation to a new entity, risks delays and mistakes being made. Time is of the essence in this sensitive situation and the process should be made as smooth as possible.

4. Division 4 of the Bill allows for medical practitioners to initiate a discussion about VAD with a patient if the medical practitioner also informs the patient of their other treatment options, including palliative care options. We support this section.

If the legislation is passed, voluntary assisted dying will be a legal, medical option, and it should form part of a medical practitioner's general discussion with their patients about end-of-life care. Without the medical practitioner raising it as an option, they cannot fulfil their obligation to their patient to provide them with all the relevant information, including treatment options, to make an informed decision and to provide valid consent. This will allow medical practitioners to provide patients with information about all relevant, appropriate and legal treatment options.

5. NSW legislation should address the tension between providing information about VAD through telehealth and the provisions in the Commonwealth *Criminal Code Act 1995*.<sup>1</sup> Telehealth has grown exponentially in 2020-2021, particularly compared with utilisation levels when the Victorian and Western Australian legislation was being considered.

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<sup>1</sup> ss 474.29A and 474.29B.

We request that the Committee use this opportunity to provide certainty to medical practitioners that they will not be held liable if they provide information about VAD to their patients using telehealth and electronic communications. This will also support the Bill's objectives to promote access, which is particularly important in a state like NSW with its vast geography and rural and remote populations.

6. Section 130 of the Bill currently outlines the circumstances where a person can record, use or disclose information obtained by the person because of a function under this piece of legislation.

We advise that an amendment should be made to this section to include the circumstance where a medical practitioner is seeking legal advice and representation in a claim or complaint about their involvement in this process.

7. As a national organisation, we see the pitfalls of having multiple and inconsistent laws governing the same subject matter across Australia's many jurisdictions. It affects medical practitioners and patients. Medical practitioners need to understand the nuances of each law of each Australian jurisdiction if they are to practise in that area. This could be particularly burdensome for practitioners who have cross-border practices. Patients should not have varying levels of access or eligibility to healthcare depending on the state or territory in which they reside.

Avant urges legislators to develop legislation that is consistent with other jurisdictions where appropriate.

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