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Lilian Topic  
Secretary  
Legal & Social Issues Committee  
Parliament House  
Spring Street  
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## Legal and Social Issues Committee Inquiry into End of Life Choices

Avant welcomes the opportunity to provide input into the Legal and Social Issues Committee's inquiry into end of life choices, particularly in relation to the current legal framework.

Avant is Australia's largest medical defence organisation, representing the interests of more than 64,000 doctors and health practitioners around Australia and more than 18,000 practitioners and students in Victoria.

Avant's Medico-legal Advisory Service (MLAS) provides support and advice to members when they encounter medico-legal issues.

Avant receives requests for advice from members around Australia about the medico-legal aspects of end of life care and decision-making. Many inquiries relate to the identification of the correct substitute decision-maker.

### National consistency

Avant supports a nationally consistent approach to end of life decision-making. Each state and territory in Australia has a different legal framework for end of life decision-making. As a result there are different terms for similar concepts. For example, in the context of advance care planning, although advance care directives (ACD) are used in all states and territories, the terminology, format, documentation requirements, how the ACD applies and even the hierarchy of substitute decision-makers differ markedly from state to state.

Lack of consistency between states and territories and legal uncertainty impacts upon the ability of doctors to provide appropriate care at the end of life, and exposes doctors to medico-legal risk. The intricacies and varied legal requirements across states and territories surrounding advance care directives and substitute decision-making cause confusion and have significant implications for doctors and patients.

In 2012, the Senate Community Affairs References Committee's report, Palliative Care in Australia, found that differences in state and territory legislation and

complexities with advance care planning were hampering greater take-up. The Senate Committee recommended that “national model legislation for advanced care planning be developed, and that all governments pursue harmonisation of legislation as a high priority”.

Avant supports the development and use of consistent terminology across Australia as a matter of priority. The legislative framework should be clear in its application and should facilitate appropriate end of life decision-making. Willmott et al highlight that the state of the law surrounding end of life decision making in Victoria is problematic and contributes to medical professionals misunderstanding their legal obligations.<sup>1</sup> Avant believes that the legislation around Australia that impacts on end of life choices should be harmonised.

The National Framework for Advance Care Directives (National Framework) released in 2011 and the Australian Commission on Safety and Quality in Health Care’s recently released National Consensus Statement: Essential elements for safe and high-quality end of life care are a useful start towards a nationally consistent approach to end of life care.

The National Framework refers to “Advance Care Directives” as a collective term to describe a range of instruments and documents that a person can use to record future preferences and appoint a substitute decision-maker.

The *Advance Care Directives Act 2013* (South Australia) was informed by the development of the National Framework and sought to simplify the legal process of advance decision making. The previous forms of advance care directives in South Australia had different legal requirements, required multiple forms to be filled out and were complex and confusing for patients and practitioners alike.

Victoria has a unique legal framework that uses different terminology that used in other states and territories. Under the *Medical Treatment Act 1988* (Vic), an advance care directive in Victoria takes the form of a ‘Refusal of Treatment Certificate’. This form of advance care directive is limited as it can only be used for a current known condition. This means that this form of statutory advance care directive cannot be used for advance decision making for conditions that may or may not occur in the future (i.e. strokes or blood loss).

Avant believes that the Victorian legislation should be amended to harmonise formats and terminology in relation to advance decision making. Avant will consider making further submissions if any changes to the *Medical Treatment Act 1988* (Vic) and the *Guardianship and Administration Act 1986* (Vic) are recommended.

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<sup>1</sup> Willmott L, White B, Parker M, Cartwright C. The legal role of medical professionals in decisions to withhold or withdraw life-sustaining treatment: Part 3 (Victoria). JLM 2011; 18: 773-797.

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

Yours sincerely

A handwritten signature in blue ink, appearing to read "Georgie", followed by a long horizontal flourish.

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Head of Advocacy

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**About Avant**

Avant Mutual Group Limited ("Avant") is Australia's largest medical defence organisation, and offers a range of insurance products and expert legal advice and assistance to over 64,000 medical and allied health practitioners and students in Australia. Our insurance products include medical indemnity insurance for individuals and practices, as well as private health insurance, which is offered through our subsidiary The Doctors' Health Fund Pty Limited.

Our members have access to medico-legal assistance via our Medico Legal Advisory Service. We have offices throughout Australia, and provide extensive risk advisory and education services to our members with the aim of reducing medico-legal risk.