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Consultation on the end-of-life care consensus statement
Australian Commission on Safety and Quality in Health Care
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Consultation on the draft National Consensus Statement on end-of-life care in acute hospitals

Avant is a medical indemnity organisation representing over 60,000 medical and allied health practitioners and students in Australia. Our members have access to medico-legal assistance via our Medico-legal Advisory Service, 24 hours a day in emergencies.

Avant receives requests for advice from members about the medico-legal aspects of advance care planning and end-of-life decision making, particularly in relation to the identification of the correct substitute decision-maker.

General comments

Avant supports a nationally consistent approach to advance care planning and end-of-life decision-making. Avant welcomes the development of the National Consensus Statement to provide guidance for health services to develop systems for delivering appropriate, high-quality care to patients both at the end of life and during the advance care planning process.

However, the complex and varied legal requirements surrounding advance care directives and decision-making at the end of the life, particularly substitute decision-making, mean that the consistent implementation of the Consensus Statement will be difficult. This can only be solved by harmonisation of the law in this area and a consistency of terminology and approach. Until that time, and despite the best efforts of bodies such as the Commission, clinicians will continue to struggle with understanding their obligations.

Key concerns

Based on our experience of assisting members, the key concerns we have identified in this area are:

- Lack of understanding of medical practitioners about their legal obligations regarding advance care directives and substitute decision-making, including identifying who is the appropriate substitute decision-maker
- Lack of consistency of the law across jurisdictions in Australia, leading to uncertainty and confusion
- Difficulty dealing with situations where there is disagreement among or between family members, the patient and the treatment team about treatment options.



Although there are statements to the effect that relevant legislation and regulatory frameworks should be taken into account, because the legal requirements are markedly different across jurisdictions in Australia, we **recommend** that this be made more explicit in the consensus statement. This could be done by including statements that hospitals and health services ensure that their policies and procedures:

- use the terminology relevant in their jurisdiction and
- comply with their jurisdiction's legal requirements.

It is important the team members are educated about their legal requirements in the jurisdictions in which they practise, and this should be addressed as a matter of priority.

Comments on particular sections of statement

Terminology

Avant agrees that there is a lack of clarity and agreement about the meaning of many terms commonly used in relation to end-of-life care. The use of consistent terminology is of paramount importance, but we appreciate the difficulty associated with this given the different terms used in different jurisdictions around Australia.

Description of "Advance care directive"

The National Framework for Advance Care Directives quoted as the reference for the description 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. An advance care directive may appoint a substitute decision-maker but doesn't always, therefore we **recommend** that the description be amended to read:

An advance care directive can record the patient's preference for future care and may also appoint a substitute decision-maker ...

While we note that the term "advance care directive" is the term used in the consensus statement, we **recommend** that there be an acknowledgment that different terminology is used around Australia to describe this type of written directive. This could be done by amending the description as follows:

~~An~~ Advance care directives ~~has~~ have legal status and ~~is~~ are recognised in various forms by the common law and in relevant legislation (where it exists) in each state and territory in Australia.

Description of "Advance care planning"

The description recognises that advance care planning can be formal or informal. Advance care planning relevant for a patient at the end-of-life can also take place *before* a life-limiting condition is diagnosed, especially in the informal context. We **recommend** that this be acknowledged in the description.

The second paragraph noting that a document that appoints a substitute-decision maker is considered to be an advance care directive may be confusing to clinicians, and may not reflect the law in all jurisdictions. We **recommend** the second paragraph of the description be amended as follows:

A document that appoints a substitute decision-maker ...~~is~~ may be considered to be an advance care directive in some jurisdictions.

3. Components of care

Documentation of the processes of decision-making and advance care planning is of paramount importance, particularly where there is concern or disagreement. There is some reference to the need for documentation in the consensus statement: see for example at paragraphs 1.10 and 5.9.

We **recommend** that there also be a reference to documenting the content of discussions in paragraph 2.3 (discussion about range of views and reasons for them) and paragraph 3.8 (second opinions).

8. Supervision and support for interdisciplinary team members

Avant welcomes the recognition in section 8 of the statement of the distress that can be suffered by team members caring for patients at the end of life. Avant promotes the importance of maintaining good physical, mental and workplace health and wellbeing, and strongly agrees with the recommendation in the statement that hospitals facilitate access to peer support, mentoring and appropriate clinical supervision.

10. Systems to support high-quality care

We **recommend** that systems should include the ability to collect, store and review relevant information regarding the appointment of substitute decision-makers and advance care plans and directives.

Please contact me if you have any queries or require any further information. Avant would welcome the opportunity to participate further in developing the Consensus Statement including participating in the Commission's workshops.



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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 60,000 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.