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## **Largest MDO backs NDIS but raises concerns about draft legislation**

Avant, Australia's largest medical defence organisation, has expressed concern over some of the key provisions proposed under the National Disability Insurance Scheme Bill, introduced into Parliament today.

The Bill would establish the National Disability Insurance Scheme (NDIS) and the National Disability Insurance Scheme Launch Transition Agency (the Agency) to deliver the scheme and perform a range of other functions.

Avant welcomes and supports the introduction of the NDIS to enhance the quality of life and increase economic and social participation for people with disabilities and their carers. In particular, we support the proposal in the Bill to allow early intervention support with a view to reducing a disabled person's future needs.

However, Avant has serious concerns as the scheme has been designed to sit behind the current litigation-based system for obtaining compensation at common law or under other statutory compensation schemes. This design feature could in practice defeat the very purpose of establishing a "no fault" scheme for those living with disability.

Under the proposed legislation the Agency can require a participant or prospective participant to take action to obtain compensation if they wish to participate in the scheme if the Agency considers such action has "reasonable prospects of success". This action could take several years and the costs could be significant, as well as putting those living with disability through the emotional strain that litigation can bring. While this action is being taken prospective participants cannot access funding or other support from the scheme.

It is not clear how the Agency will determine whether a potential participant's legal action has "reasonable prospects of success" which is the benchmark set by the draft legislation for forcing them to proceed with an action for recovery of compensation but it seems inappropriate that the Agency should determine this as it will have an obvious financial interest in the outcome.

The outcomes of litigation are uncertain, and the scheme, which should be designed to remove uncertainty, appears to at best retain it and at worst reintroduce it. We do not believe this design reflects the intentions of the Productivity Commission in its recommendations to establish the scheme.

The design is also inherently unfair between potential participants, with those who are regarded as having no other right to take action for recovery of compensation facing no further hurdles other than proving their eligibility, while those who may (in the Agency's view) have some prospect of recovering compensation from another source being forced to pursue it.

In Avant's earlier submissions on the NDIS and NIIS, we warned of "forum shopping" or "postcode" risks associated with multiple disability schemes and

their inter relationship with the national scheme and this would appear to be an inevitable consequence of the current design.

For example, a potential participant as a result of a car accident in a State where there is not a "no fault" CTP scheme may pass more easily into the NDIS than a person living in a State with such a scheme, depending on the circumstances of a car accident.

"Avant is concerned that these key provisions run counter to the public policy behind the Productivity Commission's 2011 report into Disability Care and Support," says Avant CEO, David Nathan.

"It is difficult to see how a scheme that forces a participant to exhaust their existing entitlements to compensation before accessing or continuing to access the scheme is fair, or how it would work in practice," says Mr Nathan.

"The health benefits of early and ongoing access to care and support resources may also be reduced by this aspect of the scheme," he says, "thereby denying potential participants of one of the scheme's stated benefits".

"Avant remains keen to work with government to ensure a national scheme that provides appropriate long-term care and support to people living with disability."

From the perspective of the medical community, there are a number of other issues with the draft legislation which we will pursue on their behalf, including the medical examination processes in the draft legislation to determine eligibility and the impact of the Agency dictating to potential participants that they must litigate, which may significantly add to doctors' risk profiles and in turn potentially raise medical indemnity insurance costs.

"We look forward to representing the interests of the community and our members at the Federal Parliamentary Inquiry into the Bill following its introduction," says Mr Nathan.

To arrange a media interview contact Avant Corporate Relations Manager Brad McLean on 02 9260 9198, mobile, 0434 182 951 or email, [Brad.McLean@avant.org.au](mailto:Brad.McLean@avant.org.au)

**About Avant:** Avant is Australia's largest medical defence organisation representing more than 60,000 healthcare practitioners and students nationally.

Avant provides a range of professional indemnity and practice products for health care professionals. The organisation also operates the Avant Risk Advisory Service, the Medico-legal Advisory Service and an advocacy team. Avant also includes the Doctors' Health Fund, which provides individual health insurance cover to healthcare practitioners.

