

29 May 2014



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## **Submissions to the Treasury's National Injury Insurance Scheme: Motor Vehicle Accidents Consultation Regulation Impact Statement**

Avant welcomes the opportunity to provide input into the NIIS Motor Vehicle Accidents Consultation Regulation Impact Statement.

Avant is a medical indemnity organisation representing over 60,000 medical and allied health practitioners and students in Australia. Avant has been involved in the design of the proposed national disability insurance schemes, providing input and formal submissions to the Productivity Commission on medical indemnity and other issues prior to the publication of its Report into Disability Care and Support in July 2011. Avant is represented on the NIIS Medical Misadventure Advisory Group, which has worked on the design of the medical accident provisions of the proposed NIIS.

Although the current consultation deals with the model for providing lifetime care and support for people catastrophically injured in motor accidents, we have assumed that the model that is ultimately adopted in this regard will be adopted more broadly for all accidents to be covered by the NIIS, including medical accidents. We provide the attached submissions on the basis of that assumption.

We would welcome the opportunity to comment on further Consultations on the design of the NIIS as it applies to medical accidents.



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

Yours sincerely

A handwritten signature in blue ink, appearing to read "Georgie", with a long horizontal flourish extending to the right.

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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.

## **Avant Submissions on the Treasury's National Injury Insurance Scheme: Motor Vehicle Accidents Consultation Regulation Impact Statement**

### **1. Introduction**

Avant is a medical indemnity organisation representing over 60,000 medical and allied health practitioners and students in Australia. Avant has been involved in the design of the proposed national disability insurance schemes, providing input and formal submissions to the Productivity Commission on medical indemnity and other issues prior to the publication of its Report into Disability Care and Support in July 2011. Avant is represented on the NIIS Medical Misadventure Advisory Group, which has worked on the design of the medical accident provisions of the proposed NIIS.

We note the reference made in the Consultation RIS (at page 4) to the Productivity Commission's finding that there is little rationale for the differences between the current schemes for recovery of compensation for motor accidents, workplace accidents, medical accidents and general accidents.

With this in mind, although the Consultation RIS deals only with the model for providing lifetime care and support for people catastrophically injured in motor accidents, we have assumed that the model that is ultimately adopted in this regard will be adopted more broadly for all accidents to be covered by the scheme, including medical accidents. We have therefore not commented on the particular Consultation questions; rather we provide general comments regarding the design of the NIIS, as it would apply to medical accidents.

### **2. Scheme Design**

We believe that the overall objectives of disability reform are not best served by the proposed introduction of dual schemes, but that the objectives would be best served by having only the NDIS.

Section 3 of the Consultation RIS refers to the objective of government action in this area, namely to provide adequate, consistent and tailored lifetime care and support for all individuals who newly acquire catastrophic injuries due to motor vehicle accidents:

- regardless of the jurisdiction in which that person lives or was injured

- in a financially sustainable manner
- in a way that discourages risky behaviour
- in a way that encourages rehabilitation and early intervention to facilitate independence and participation
- is equitable in its impact on each State and Territory and their residents
- is consistent with the implementation of the NDIS.

We agree that that these are the main objectives of government action in this area.

While there have been a series of arguments put forward by the Productivity Commission and others to justify dual schemes and including medical accident injuries in the NIIS, in our view there are more compelling contrary arguments.

To get a sense of the practicalities of dual schemes, we need to consider the number of people who are likely to suffer catastrophic injuries from medical accidents into context.

It is stated in the Consultation RIS (at page 3) that 11% of catastrophic injuries are caused by medical accidents. Based on the figure in the Consultation RIS of up 1,000 newly catastrophically injured people each year, it can be estimated that the likely numbers of people who will suffer catastrophic injuries as a result of medical accidents and would be eligible for the NIIS each year is around 100 people annually.

We suggest that there is little justification for amending up to eight sets of State laws to cover those people when they would likely be eligible for support under the NDIS in any event.

We have assumed that medical accidents would be included in the NIIS by bringing these accidents under existing State-based motor accident schemes. The costs of doing so would not be insignificant, given they are not all “no-fault” schemes and none of them is currently resourced to deal with long-tail medical indemnity claims, which are very different in nature (and often in complexity) from motor vehicle accident (or for that matter workers’ compensation) claims.

On the other hand, the NDIS already exists. The NDIS will have processes specifically designed to deal with those suffering from cerebral palsy and these will be appropriate to cover those suffering from other catastrophic injuries arising from medical accidents.

The number of people who will need lifetime care and support under the NDIS (ie those with cerebral palsy and other birth-related neurological injuries) is also

expected to be very low, and it would make sense to derive any “economies of scale” from a single scheme with a single set of processes catering for, say 200 new entrants per year, than establish nine separate schemes, which will duplicate processes, add cost and add complexity, meaning that the cost per person benefitting under the NDIS and NIIS would be very high relative to one national scheme.

There are also likely to be delays caused by COAG obtaining agreement for consistent scheme design across the States and the challenges associated with harmonising State laws and scheme rules. For these reasons, we suggest that medical accident injuries should not go into the NIIS, but should be covered by the NDIS.

This would leave the NIIS to cover motor accidents, workplace accidents and general accidents and avoiding the costs of “converting” each State-based motor accident compensation scheme to deal with medical accidents. The costs and complexities arising from having a national NDIS and eight State-based schemes dealing with medical accident are, in our view, simply not justified.

### **3. Impact analysis**

The following complexities that may arise if the NIIS is established are relevant to the impact analysis of the alternative models for the NIIS:

- While the existing State and territory accident compensation schemes may be well-placed to provide extended cover relatively quickly and efficiently under the NIIS, this may not be the case for medical accidents. Issues such as transitional arrangements, eligibility criteria and the time taken to determine the full financial and other impacts all bring into question whether the existing State-based no-fault schemes, to the extent that they exist, are in fact the right place to cover medical accidents.
- There may also be a high level of “sunk cost” into the NIIS if it subsequently merges with the NDIS following the proposed review of the Schemes in 2020, as recommended by the Productivity Commission and referred to in section 8 of the Consultation RIS.
- Having two schemes sitting side-by-side may confuse and frustrate participants, especially if the outcomes of participants in the individual schemes are different or unfair, whether intentionally or otherwise

- The existence of separate schemes may lead to “forum shopping” between the NDIS and the NIIS and patients might well be expected to gravitate to the scheme offering, or being perceived to offer, better quality services and/or support. This may be the case in particular during the early years of the NIIS if States which do not currently have “no fault” accident compensation schemes take longer than those States which do to adjust to the new regime (whether option 1 or 2 is adopted). Some States may not have, or may not develop as quickly, the same level of expertise or experience in dealing with the catastrophically injured or readily available systems and services to provide the appropriate level of support.
- Geographical issues may arise as a result of having different schemes within the NIIS alongside the NDIS (despite the proposed minimum benchmarks). It is not clear how “boundary disputes” between the State schemes within the NIIS will be resolved, for example whether qualification for a particular scheme might be determined by the patient’s place of residence, the place in which the relevant accident occurred or by reference to other criteria.

As an organisation representing members in jurisdictions around Australia, we favour a nationally consistent approach to government action and regulation. If an NIIS is to be established, then the recommendation of minimum benchmarks for eligibility (as contemplated under options 1 and 2) will assist in achieving uniformity, and will reduce the likelihood of forum shopping and boundary disputes.

Funding is an important aspect of the impact analysis. We note that option 1 is funded through CTP changes, while option 2 is funded by the local jurisdiction. We would need more detail about the proposed funding arrangements for medical accidents to comment further on the financial impacts. However, in the context of medical accidents, we would not support any increase in or levy upon doctors premiums to fund the NIIS.

#### **4. Summary and Key points**

We believe that the overall objectives of disability reform are not best served by the introduction of the NIIS alongside the NDIS, but that the objectives would be best served by having only the NDIS.

If the NIIS is to be implemented for medical accidents:

- the NIIS should not be funded by an increase in or a levy upon doctors’ premiums

- there should be standard and clear eligibility criteria in every state and territory
- to avoid forum shopping and boundary disputes the systems in each state should be nationally consistent and the impact should be equitable in its application to the states and territories and individuals around Australia.

We would welcome the opportunity to comment on further Consultations on the design of the NIIS as it applies to medical accidents.

Avant Mutual Group  
29 May 2014