

4 March 2022

Australian Law Reform Commission
PO Box 12953
George Street Post Shop QLD 4003
financial.services@alrc.gov.au

Dear Sir/Madam,

Re: Australian Law Reform Commission Consultation on Financial Services Legislation: Interim Report A (ALRC Report 137)

Avant Mutual Group Limited (Avant) is a member owned organisation, primarily operating a medical indemnity business. Avant holds approximately 52% of the medical indemnity insurance market share. Avant has diversified its operations into other lines of business covering private health insurance, financial services, and other technology-based solutions.

The Avant Group welcomes the opportunity to comment on the issues and proposals raised by the Australian Law Reform Commission (ALRC) in the Financial Services Legislation Interim Report A (Consultation Paper).

Avant is submitting its comments on the proposals raised by the ALRC in its Consultation Paper and thanks the ALRC for its consideration of the matters raised in this submission.

About the Avant Group

Avant offers medical indemnity insurance through its wholly owned subsidiary Avant Insurance Limited (AIL) under its general insurance authorisations. AIL operates nationally to support medical practitioners, medical practices and medical students to protect its members in their practice and study of medicine. Avant also provides support to its members through the provision of financial services throughout the different life stages of their career, primarily through its wholly owned subsidiary Doctors' Financial Services Pty Limited.

This submission does not comment on proposals relating to broader aspects of general insurance or professional indemnity insurance, but instead seeks to explain specific concerns relating to medical indemnity insurance and Avant's unique membership.

The Need for Reform

Avant acknowledges there is a need to reform the financial services law and supports improvements to the financial services regime that improves navigability and reduces complexity. Avant considers clarity is required on how the proposed changes will interact with the array of specific financial services reforms introduced in recent years to ensure there are no unintended impacts arising from the proposed simplification. In addition, unlike

other areas of professional indemnity insurance, medical indemnity is subject to its own legislation and further clarity is required on how the proposed legislation will interact with those requirements, including consideration being otherwise given to how complexity may be reduced between the law governing medical indemnity insurance and financial services. Medical Indemnity insurance is the only category of professional indemnity insurance that is deemed by legislation to be a retail product and Avant submits that the legislative classification of Medical Indemnity insurance should be aligned with other categories of professional indemnity insurance.

Specifically, to avoid potentially affecting the broader services offered by Avant to its members, in considering the interaction of legislative medical indemnity regimes, we request the ALRC consider the unique nature of the medical indemnity insurance offering, the high degree of regulation that medical defence organisations are subject to and the broader services offered by medical defence organisations that go beyond professional indemnity insurances, including industry education, regulatory engagement and medio-legal and advisory services, amongst others.

Proposals Relating to Definitions – Retail and Wholesale Client

Avant considers there is merit in aligning the definition and principles of retail client in the *Corporations Act*, *ASIC Act* and consumer credit regime. However, Avant believes that medical indemnity insurance is unique in its nature as compared to retail general insurance products, such as motor, home and contents insurance.

Avant does not support the inclusion of medical indemnity within the definition of financial product and believes an exemption should operate in respect of it as:

- there is a high degree of regulation of medical indemnity insurance in Australia with the Medical Indemnity Act 2002 and Medical Indemnity (Prudential Supervision and Product Standards) Act 2003 being in place. There is also access to government schemes through arrangements in place with Government. Greater certainty is required on how the proposed revisions will interact with existing legislation; and
- Avant provides medical indemnity insurance to both individual medical practitioners and medical practices, as well as providing business insurance to medical practices. The former currently falls within the scope of the legislation and the latter two are excluded. Under the proposed amendments all of these product lines would be sold to a retail client unless the practice did not meet the definition of a small business. This introduces ambiguity in the sales process and creates significant issues for staff to determine whether or not the medical practice is a retail client.

Product Design and Distribution Obligations

Avant supports the reframing of product disclosure to becoming an outcomes-based standard of disclosure but maintains that it continues to be appropriate for medical indemnity insurance to be excluded from Design and Distribution Obligations (DDO).

It is uncertain whether the proposed simplification will require medical indemnity insurers to comply with DDO obligations. If this were the case, there would be a disproportionate compliance burden given:

- the nature of the products are targeted to medical practitioners and the business of running a medical practice;
- medical indemnity insurance product design obligations are already subject to strict requirements in the Medical Indemnity Act and Medical Indemnity (Prudential Supervision and Product Standards) Act;
- medical indemnity insurance policies are limited in their nature, typically covering for civil liability for third party claims, defence/response costs of investigations and inquiries relating to clinical practice; and
- the products are issued by a small number of medical indemnity providers, are well understood with product terms having remained relatively stable over the last two decades when compared to other general insurance products.

Conduct Obligations

Avant is supportive of simplifying the corporations and financial services law, in particular Avant supports the separation of the law relating to financial products and the provision of financial advice in recognition of the role financial advisers play in the provision of financial advice and the differing obligations between licensees and product issuers. However, further clarity is required on how any revised requirements might interact with Design and Distribution and Target Market Determinations obligations.

Avant also suggests further clarity is required on the removal of the general licence obligations relating to the management of conflicts of interest, maintaining competence, training of representatives and risk management systems. We are seeking to understand how these requirements are defined in the recommended changes as they provide useful minimum standards for licensees to observe and are consistent with the ALRC's outcomes-based approach to regulation.

A medical indemnity insurance exemption

If medical indemnity insurance is subject to the revised regime Avant believes further sector specific consultation with medical and other professional indemnity insurers should be undertaken to consider the issues arising specifically from broader regulation.

Avant welcomes further discussion with the ALRC.

If you have any queries in relation to our submission or would like further information please contact Paul Perry at [REDACTED]

Yours sincerely,

[REDACTED]
Natasha Fenech
Group CEO & Managing Director