Australian
Private Hospitals
Association

Regulating Product Openings for Private Health Insurance

CONSULTATION SUBMISSION

October 2025

Contents

Purpose

This document is intended to provide a response to the consultation on regulating product openings for private health insurance. It highlights the current state of insurance product phoenixing, legislation and regulation, and the need to outlaw insurance product phoenixing to safeguard the public interest.

The information provided in this document must be handled in accordance with Australian Government best practice for sensitive and commercial sensitive information.

Introduction

In 2024, the Office of the Commonwealth Ombudsman investigated allegations in response to a report by CHOICE Magazine that some private health insurers were engaging in practices that had the effect of circumventing the premium approval process and restricting consumer choice.[1] This conduct specifically related to insurance product phoenixing activity in relation to Gold policies.

The Ombudsman noted that even if no law had been breached, there were concerns relating to the fairness and appropriateness of such conduct for the long-term interests of consumers.

The Australian Private Hospitals Association (APHA) is the peak body for private hospitals in Australia, encompassing small, medium and large hospital groups; small, medium and large independent hospitals; specialist psychiatric hospitals and rehabilitation hospitals; and day surgeries. We have been strong advocates to government for the need to outlaw insurance product phoenixing by the private health insurance industry. This conduct makes health insurance unaffordable for consumers, limits patient access, and in turn also further undermines private hospital viability.

Gold products provide cover for essential services including maternity and mental health. Both of which have been singled out as rapidly becoming unviable hospital sectors due to funding shortfalls, workforce issues, and ever-increasing costs. According to the Ombudsman's analysis, in 2023, the average premium of a new gold cover policy for a particular insurer was 21% higher than the average premium of the closed policy, in 2024, the average premium of the new policy was 14% higher.

Shockingly, in March 2025, just a few months after the Minister for Health, the Hon Mark Butler, publicly called on the health insurance industry to stop phoenixing or he would legislate to stop them, HCF, a major not-for-profit private health insurer, flouted this warning and was found to have increased the price of its Gold policy by 35% after closing its existing policy and forcing new gold members to take out extras.[2]

As these practices have clearly continued, we strongly support the Minister in stopping this practice. APHA remains committed to working with the Minister's Office and the Commonwealth Department of Health, Disability, and Ageing to remake the legislative framework for the private health system in a manner that supports the interests of all relevant stakeholders and that places our patients at the centre of policy.

This is why we believe that there is a need for government to not simply ban or outlaw insurance product phoenixing, but go further to criminalise it to prevent Australians from being subject to a volatile insurance market and having their access to care degraded.

[1] https://www.ombudsman.gov.au/__data/assets/pdf_file/0026/314828/Public-statement-health-insurers-using-loopholes-to-increase-premiums-December-2024.pdf
[2] https://www.abc.net.au/news/2025-03-31/investigation-into-private-health-insurance-pricing-tactics/105102776

Analysis and Recommendations

APHA is supportive of the government's efforts to outlaw insurance product phoenixing. This illustrates the success of our campaign to ensure that private hospitals are factored into the conversation that relates to their viability and that government policy is fair, reasonable, and informed. To that end, we make the following submissions:

1.0 The Public Interest Test

1.1 Section 66-10(3) of the *Private Health Insurance Act 2007* (Cth) (**PHI Act**) provides that the Minister may approve the proposed changes to premiums unless satisfied that the change 'would be contrary to the public interest'.

1.2 We understand that the government intends to amend the PHI Act to require 'insurers to apply to seek the Minister's approval of the premium for a new product against a public interest test,'[3] similar to the test in s 66-10(3) of the Act.

1.3 We note that 'public interest' is currently not defined with respect to the operation of the PHI Act[4] and risks inconsistent and unrepeatable application by the Minister (noting that s 333-1 of the PHI Act does not permit a delegation of authority for s 66-10 provisions).

1.3.1 There is a need for the government to amend legislation to provide for a clear definition of the 'public interest' to ensure accurate and appropriate interpretation and application of the law and to ensure fairness, reliability and consistency.

1.3.2 While privacy legislation also does not define 'the public interest', given that privacy is fact and context specific, it is appropriate to keep it flexible.[5] Whereas, the pursuit of public health, low cost burden on consumers and value for money, in addition to the need to ensure private hospital viability, are likely to remain constant, the PHI Act should define the 'public interest'.

1.3.3 Alternatively, we suggest that the legislation be amended to provide a non-exhaustive list of what constitutes the public interest in the context of premium settings to help provide a guide on interpreting the bounds of the test.

2.0 Discretionary Power to Approve New Policies

2.1 As the APHA sees it, the proposed legislative amendments confer discretionary power on the Minister to approve new policies. We believe that this does not appropriately outlaw or prevent private health insurers from engaging in phoenixing.

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[3] Consultation Paper – Outlawing private health insurance (PHI) product phoenixing, Department of Health, Disability, and Ageing, 2025, p 1.

[4] https://www.health.gov.au/sites/default/files/documents/2021/12/foi-request-2712-release-documents-agendas-and-attached-documents-meetings-of-phmac-subcommittees-and-working-groups-between-september-2016-december-2018-foi-2712-issues-paper-private-health-insurance-premium-setting.pdf

[5] https://www.alrc.gov.au/publication/serious-invasions-of-privacy-in-the-digital-era-alrc-report-123/9-balancing-privacy-with-other-interests/public-interest-matters/

2.2 As the public interest test is quite open ended, it may be difficult to set guardrails and delineate the boundaries of the exercise of this power.

2.3 Insurers are likely to cite growing 'management costs' to justify the need to put in place new policies and close older ones. However, there is limited transparency around what constitutes legitimate management costs, and whether these are being used as a pretext for price increases.

2.3.1 There should be stronger requirements for insurers to justify the closure of products and the introduction of new ones, including independent scrutiny of claimed management costs and their impact on patient care.

2.4 Without strict, transparent guidelines, there is a risk that industry lobbying could influence ministerial decisions, undermining the intent to genuinely prevent phoenixing.

3.0 Interaction with the Australian Consumer Law (ACL)

3.1 The ACL under sch 2 of the *Competition and Consumer Act 2010* (Cth) provides safeguards for consumers receiving products and services, with the Act itself protecting competition in Australia.

3.2 APHA encourages the government to consider synergies between the ACL and anti-phoenixing PHI provisions and/or opportunities to leverage the provisions of the ACL within the PHI Act. We note the following provisions of the ACL that may be relevant to the current situation:

3.2.1 Part 2-1 – Misleading or deceptive conduct

3.2.2 Part 3-1 – Unfair practices

3.2.3 Part 3-3 – Information standards

3.2.4 Chapter 5 – Enforcement and remedies

3.3 We suggest integrating ACL-style consumer protections directly into the PHI Act to ensure consistency and clarity in enforcement.

3.4 We further encourage collaboration between the Department of Health, Disability, and Ageing and the Australian Competition and Consumer Commission (ACCC) to monitor and enforce compliance, especially in cases where phoenixing may involve deceptive conduct.

4.0 Criminalising Phoenixing

4.1 While strengthening the approvals process for new insurance products is a positive step, it may not be sufficient to deter or eliminate phoenixing practices in private health insurance. There are several compelling reasons to consider criminalising phoenixing, rather than relying solely on administrative controls including

4.1.1 stronger deterrence and accountability

4.1.2 adequately closing loopholes and preventing evasion

4.1.3 protecting consumers

4.1.4 enabling effective monitoring and enforcement

4.2 The *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020* (Cth) provide a precedent for imposing criminal offences and civil penalties on corporate officers and directors who engage in illegal phoenixing to evade their responsibilities.

4.2.1 The legislation effectively targets directors and officers who deliberately transfer assets from one company to another to avoid paying debts, leaving creditors and employees disadvantaged. The rationale for criminalising this conduct applies equally to phoenixing in the private health insurance sector.

4.2.1.1 Insurance phoenixing also involves deliberately avoiding regulatory scrutiny and premium controls by closing existing policies and launching near-identical ones at higher prices.

4.2.1.2 Insurance phoenixing also harms consumers (through higher premiums), private hospitals (through reduced access and funding), and the integrity of the health insurance system.

4.2.1.3 Insurance phoenixing also exploits gaps in the PHI Act to advantage one group of stakeholders over the beneficiaries.

4.3 APHA would support stronger regulatory action to ensure that insurers are unable to abrogate Parliamentary authority and intent as representatives of the people of this country.

Conclusion

The APHA reiterates its unwavering commitment to safeguarding the viability of private hospitals and ensuring equitable access to care for all Australians. Insurance product phoenixing undermines consumer trust, inflates premiums, and destabilizes essential health services, including maternity and mental health. While we welcome the government's initiative to outlaw this practice, APHA firmly believes that the government has the opportunity to put in place stronger legislative action and that this is required. Criminalising phoenixing will provide the necessary deterrence, close existing loopholes, and reinforce the integrity of Australia's private health system.

We urge the government to define the public interest within the Private Health Insurance Act, establish transparent guidelines for policy approvals, and integrate robust consumer protections aligned with the Australian Consumer Law. APHA stands ready to collaborate with the Minister for Health, the Department of Health, Disability, and Ageing, and relevant regulatory bodies to ensure that reforms are effective, enforceable, and centred on patient care. Together, we can build a fairer, more sustainable private health insurance framework that truly serves the public good.

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