Actuaries Institute.

17 October 2025

Department of Health, Disability and Ageing

Email: PHIconsultation@health.gov.au

Dear Sir/Madam,

Consultation: Outlawing Private Health Insurance (PHI) product phoenixing

The Actuaries Institute of Australia welcomes the opportunity to provide feedback on the proposed legislative changes to outlaw PHI product cycling (referred to in the consultation paper as "phoenixing").

The Institute, as the peak professional body for actuaries in Australia, has members who work across various areas of the health sector, including in PHI, disability support, mental health, health system financing, government and public health. Our members' actuarial expertise in managing risk, uncertainty and long-term sustainability positions actuaries and the Institute to make valuable contributions to policy development.

Responses to this consultation have been prepared by a volunteer working group guided by the Institute's Public Policy Principles that any policy measures or changes should promote public wellbeing, consider potential impacts on equity, be evidence-based and support effectively regulated systems. The responses draw on recent research and analysis undertaken by the Institute's *Gold Hospital Working Group*.

Overall Comments

We acknowledge and strongly support the policy objectives underpinning the proposed changes, specifically ensuring access and affordability of comprehensive cover for consumers and improving affordability of Gold tier coverage. However, we are concerned that the proposed legislative changes may be disproportionate to the problem they seek to address and could create significant unintended consequences that undermine both market efficiency and consumer outcomes. We set out suggestions for alternative approaches that we believe could achieve the same policy objectives with minimal unintended consequences.

Root Causes

Product cycling has emerged as an insurer response to two interrelated problems:

1. **Consumer Equity:** Gold tier products have become financially unsustainable due to anti-selection. Product cycling can protect existing Gold product members from bearing the full cost of new members who join specifically to claim on high-value services such as pregnancy and psychiatric care, and then downgrade or cancel. Product cycling allows insurers to price new Gold products for expected claims experience while avoiding large premium increases on existing members.

2. **Regulatory Oversight:** The current framework allows material mid-year premium increases through product cycling to occur without the scrutiny applied during the annual premium round process, creating concerns about regulatory circumvention.

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These challenges are fundamentally driven by the design features of Gold products and broader systemic issues, particularly inadequate risk equalisation. Durable solutions to Gold product sustainability require enhanced risk equalisation arrangements that better account for risk selection on Gold tier services such as pregnancy and hospital psychiatric services, review of tier coverage requirements that contribute to concentrations of adverse selection, and/or changes to waiting periods and the PHI Incentives.

Product cycling has emerged as an unintended consequence of the 2018 tiering reforms, which aimed to simplify and bring clarity to the PHI market through Gold, Silver, Bronze, and Basic categories. Seven years post-implementation, it is evident these reforms inadvertently introduced a previously non-existent degree of financially significant anti-selection. Insurers have responded over time with cycling behaviours as a risk management strategy. Viewing the current proposals as a refinement of the 2018 reforms—rather than as correction of anti-regulatory conduct—may allow more productive focus on addressing the underlying structural issues while maintaining appropriate regulatory oversight.

It is worth noting that the proposed pre-approval requirements would be materially more restrictive than product approval processes for other insurance types in Australia. Most general insurance and life insurance products do not require ministerial approval for new product launches, relying instead on prudential supervision and conduct regulation. We encourage consideration of how the different regulatory approaches for PHI may impact market efficiency and innovation, and whether there are insights from other insurance regulatory frameworks that could inform the design of these measures.

Key Concerns

The most direct impact of the proposed legislation would be to reduce consumer choice without addressing the outcomes of the insurer behaviour it seeks to address. Under the proposed framework, insurers are still free to close Gold products at any time but would be unable to launch replacement products until the next 1 April premium round, potentially up to 12 months later. This means consumers could face reduced product availability for extended periods while the underlying pricing pressures that motivate product cycling would remain unaddressed.

The proposed changes would affect all new product launches, not just those exhibiting the pricing behaviour of concern. Analysis of recent (FY 2025) market activity shows approximately 196 new products were launched across the industry, with only 35 being Gold hospital products where cycling behaviours have been observed. That is, over 80% of new products launched were non-Gold cover. If the proposed legislation would have been in place, it would, however, have subjected all 196 new products to an approval process designed to address concerns about approximately 35 Gold product launches.

This emphasises the importance of addressing underlying Gold product market dynamics alongside any cycling restrictions. Without addressing root causes, the proposed measures may shift problems rather than solving them.

Response to Specific Questions

1. Business Practices, Approvals and Timeframes for New PHI Products

Operational Challenges
The existing premium round application process requires insurers to lock in pricing decisions approximately six months before implementation. Extending this process to all new products would effectively lock in pricing for new products up to 16 months before launch, increasing forecasting

uncertainty and pricing risk. It would also likely increase resourcing bottlenecks, particularly for smaller insurers, and reduce the productivity of insurers product and pricing teams.

If the same information is required for out-of-cycle submissions as for premium round submissions, the work involved in launching a single new product mid-year would be comparable to preparing a premium round submission. This would make out-of-cycle product launches significantly more expensive, and potentially prohibitively expensive, substantially reducing this option for most insurers, particularly smaller funds.

A differentiated impact by fund structure and size

The proposed changes could disproportionately impact smaller and not-for-profit insurers.

- **Capital management limitations of not-for-profit funds**
  Not-for-profit funds (regardless of size) have fewer sources of capital than for-profit insurers. If the ability to adjust products mid-year is restricted, these funds face greater risk of capital depletion when products are mispriced. This is particularly acute for smaller funds with fewer products, where mispricing a single product line might represent a more material portion of their overall portfolio.
- **Recovery plan implications**
  The proposed changes may significantly impair insurers' ability to execute recovery plan strategies in a timely manner when capital adequacy is threatened. While capital-raising challenges are particularly acute for not-for-profit and smaller funds, the timing constraints affect all insurers. The consultation asks what would constitute exceptional circumstances, and this detail will be helpful, however, we suggest insurers also need clarity on the speed of the Department and/or Ministerial response in these exceptional circumstances so that they can incorporate this into APRA mandated contingency planning.
- **Strategic disadvantage**
  It has been suggested that some insurers may respond to the new legislative environment by launching multiple products each year, then closing those they do not wish to continue. Such approaches could add to product complexity for consumers, are not productive and may require a level of resourcing not available to smaller funds.

Increased Capital Requirements and Premium Implications

By restricting insurers' ability to adjust products in response to emerging risks, the proposed framework increases overall business risk. Under prudential standards, higher risk requires higher capital holdings, which translates directly to higher premiums for members. This dynamic is particularly concerning for not-for-profit funds that cannot raise capital through equity markets and can only build capital through retained surplus.

Additionally, where a product is loss-making and consuming capital, other members effectively subsidise that product. The proposed framework makes it difficult to adjust such products promptly, potentially requiring overall premium increases across most or all members to recover lost capital.

Potential Impact on Premium Round Increases

We expect these changes will put greater upward pressure than otherwise on premium increases sought during the premium round because:

- Increased forecasting uncertainty and pricing risk will need to be reflected in higher capital and higher premiums
- With the protection of product relaunches removed, insurers are likely to apply for larger increases than otherwise on Gold products to reduce the risk of adverse selection

- If funds have had poor performance due to underpriced products, the likely delay in repricing may result in them needing to overcompensate with price rises to recoup losses (subject to regulatory approvals).

2. Exceptional Circumstances for Premium Approvals Outside Annual Rounds

The effectiveness of the proposed framework depends critically on how "exceptional circumstances" is defined. Without a clear definition, insurers face significant uncertainty about when mid-year product launches would be permitted.

Clarity on Application Requirements
We encourage the Department to consider proportionate information requirements based on the materiality and nature of the product change. A full premium round submission for a minor product adjustment would be unnecessarily burdensome.

Alternative Approach 1: Enhanced Notification Rather Than Approval
Rather than requiring approval for all new products, the Department could consider an enhanced notification framework that:

- Requires insurers to notify the Department of all new product launches with pricing details and target market
- Requires comparison to the closest existing products and identification of any products closed within the previous 6-12 months to identify potential concerning cycling behaviour
- Triggers additional scrutiny only where new products closely replicate recently closed products or show pricing patterns inconsistent with legitimate competitive behaviour
- Allows the Minister to request additional information or challenge products that appear contrary to public interest.

Alternative Approach 2: More Targeted Approach
A more targeted approach could define the trigger for Ministerial approval to be only for new hospital products that are:

- more expensive than an existing or recently discontinued product
- within the same tier (or just the Gold tier)
- within the same distribution channel
- within the same state/territory
- within the same family or policy type.

This approach would:

- Directly address the core concern: bypassing premium approval for material increases on similar products.
- Protect beneficial activities such as introducing lower-cost products, entering new distribution channels or geographies, and making necessary changes to extras cover.
- Still impose additional constraints but present a more balanced compromise of policy objectives for an efficient and competitive system.
- Reduce the regulatory burden on the Department by focusing scrutiny where it is most needed.
- Address cycling concerns while maintaining some market flexibility and reducing regulatory burden relative to universal pre-approval.
- However, it still limits an insurer's ability to address adverse experience, and therefore many of the drawbacks outlined previously, in particular the burden on smaller insurers, impact of capital, innovation and greater upward pressure than otherwise on premium increases, still apply.

Alternative Approach 3: Mid-year Price Increases Count Towards Subsequent Year Premium Increase

We understand a key concern behind the proposed legislation is the lack of oversight and accountability for mid-year price increases. An alternative approach would be to count mid-year price increases towards the subsequent year's premium round increase.

This approach would:

- Provide greater accountability for mid-year increases
- Provide the Department with more transparency on the impact of the increase, as well as a delayed form of approval
- Allow insurers to continue to conduct product cycling activities as needed
- Add only a minimal additional regulatory and administrative burden to the Department and insurers as it would be part of the regular premium submission
- Acknowledge this approach would inflate the annual increase sought in the premium round submission compared with that sought in the current submission process.

Alternative Approach 4: Streamlined Approval Process

If the Minister determines that pre-approval for all new products is necessary, we recommend a streamlined process that:

- Uses a standardised application form focused on key risk indicators
- Provides deemed approval within 15 business days unless the Department requests additional information
- Requires full premium round-equivalent submissions only where products trigger specific red flags (such as materially higher pricing and/or replacement of recently closed products).

3. Application Form Design and Public Interest Test Assessment

Proportionate Information Requirements

We recommend that information requirements for new product approvals should be proportionate to the impact and nature of the product, not automatically equivalent to premium round submissions. We encourage the Department to consider:

Materiality thresholds

Products affecting small numbers of members or representing minor variations should require less detailed submissions.

- **Comparison to existing products**
  Information requirements should focus on how the new product differs from those in the existing portfolio and comparable market products.
- **Differentiation from concerning patterns**
  Enhanced information should be required where products closely resemble recently closed products.
- **Public Interest Test Factors**
  When assessing applications, we recommend the Department consider:
  - **Consumer value proposition**
    - Is the product priced competitively relative to comparable market offerings?
    - Does the product enhance consumer choice by addressing gaps in current coverage options?
    - Does the product improve affordability for particular demographic groups?

- **Market competition and sustainability**
  - Does the product promote competition on value and service quality?
  - Is the product financially sustainable based on actuarial analysis?
- **Community rating and risk equalisation alignment**
  - Is the product consistent with community rating principles?
  - Does the product contribute to or undermine cross-subsidisation within the insurer's risk pool?
- **Relationship to product cycling concerns**
  - Does the product closely resemble a recently closed product?
  - If so, is there a legitimate actuarial or market justification?
  - Does the pricing pattern suggest circumvention of premium round processes?
- **Defining *Contrary to Public Interest***

  We recommend explicit criteria be established, potentially including:
  - Premium increases that cannot be actuarially justified on sustainability or prudential grounds
  - Product structures designed to deliberately segment high and low-risk members contrary to community rating principles, and represent material deviation from products already in the market
  - Closure and reopening of products without material change in design or target market.

4. Drivers of Product Cycling and Likely Industry Responses

Root Causes: Gold Product Adverse Selection

Product cycling in Gold tier products is a symptom rather than the cause of market dysfunction.

The Institute's *Gold Hospital Working Group* has extensively documented the adverse selection dynamics affecting Gold products:

- Gold products attract members with higher expected healthcare utilisation
- Community rating creates cross-subsidisation most pronounced in Gold products
- Risk equalisation provides little support for certain Gold-tier services like pregnancy and hospital psychiatric services
- Healthier members have increasingly migrated to lower-tier products, further concentrating risk in Gold products
- As Gold products have experienced adverse selection, there has been greater upward pressure than otherwise on premium increases, which has driven further healthy member migration in a spiral dynamic.

The number of Gold tier products in market has declined from 112 in 2020 to 73 in 2024, with average Gold premiums increasing by 37% over the same period, reflecting fundamental sustainability challenges independent of cycling practices.

Likely Industry Responses and Consumer Impact

The likely industry responses and consumer impacts if this legislation proceeds are outlined in detail in Section 1 above, including increased premium pressure, disproportionate impact by fund structure and size, and potential market withdrawal from certain product categories.

Several insurers have already reduced Gold product offerings in certain distribution channels or made these products more difficult to access. If the proposed legislation significantly constrains an insurer's ability to manage the financial sustainability of Gold products, some health funds may need to further limit or withdraw Gold products from their offerings to maintain prudential soundness.

This outcome would be inconsistent with the policy objective of ensuring access and affordability of comprehensive Gold tier coverage and may not achieve the intended improvements in consumer outcomes.

Addressing Root Causes
Durable solutions to Gold product sustainability require addressing underlying adverse selection dynamics through:

- Enhanced risk equalisation arrangements that better account for risk selection on Gold tier services such as pregnancy and hospital psychiatric services
- Review of benefit requirement structures that contribute to adverse selection between product tiers
- Changes to waiting periods and product lengths.

5. Additional Considerations

Implementation and Transition
If the proposed changes proceed, we recommend:

- **Transition arrangements**
  Products currently in development should receive appropriate grandfathering provisions
- **Clear guidance**
  The Department should publish detailed guidance on exceptional circumstances criteria, public interest test application and approval processes
- **Monitoring and Reporting**
  The Department should establish frameworks to assess changes in Gold product availability, premium patterns, capital adequacy trends, product innovation and consumer outcomes.

The proposed changes focus on restricting the launch of new products and do not explicitly address an insurer's current ability to withdraw specific coverages from existing products or otherwise reduce benefits. This ability to modify existing products represents an important prudential protection that allows insurers to manage emerging risks without complete product withdrawal.

We recommend that any final legislation clearly preserve an insurer's rights to modify existing product benefits (subject to existing regulatory requirements and member protections), and that any proposed restrictions on such modifications be subject to separate consultation including advice from APRA on prudential implications.

Recommendations

In summary, the Actuaries Institute offers the following recommendations.

1. **Consider the targeted alternative regulatory approach**
   (i.e., Alternative Approach 2 in section 2 above).
   Define the trigger for Ministerial approval as being for new hospital products that are more expensive than an existing or recently discontinued product within the same tier (or just the Gold tier) and distribution channel.

Rather than requiring equivalent scrutiny for all new products, establish an enhanced notification system (Alternative Approach 1) that triggers detailed review only where concerning pricing patterns are evident (such as products that closely replicate recently closed products or show material price increases).

2. **Ensure proportionate information requirements**
   Information requirements should be proportionate to materiality and risk rather than automatically equivalent to full premium round submissions.

3. **Clearly define key terms**
   "Exceptional circumstances," "contrary to public interest" and approval criteria should be explicitly defined through stakeholder consultation.

4. **Address underlying Gold product dynamics**
   Complement any cycling restrictions with policy measures to address adverse selection and sustainability challenges in Gold products, which are the root cause of the cycling behaviour.

5. **Consider differential approaches by fund structure and size**
   The regulatory framework should consider the unique capital constraints that smaller and not-for-profit funds face and the potential implications for their ability to offer Gold tier products to members. As currently drafted, these funds and their members will be disproportionately impacted. The regulatory framework should consider these structural differences to avoid creating disproportionate competitive disadvantages.

6. **Establish robust monitoring frameworks**
   Track implementation impacts on premium trends, product availability, market competition and consumer outcomes.

The Institute would welcome the opportunity to discuss these considerations further and provide additional technical expertise as the Department develops implementation approaches.

If you would like to discuss any aspect of this submission, please contact the Institute via (02) 9239 6100 or public_policy@actuaries.asn.au

Yours sincerely

(Signed)

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