

SUBMISSION

Friday, 24 October 2025

AMA submission to the consultation on outlawing private health insurance product phoenixing

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The Australian Medical Association (AMA) thanks the Department of Health, Disability and Ageing for the opportunity to provide feedback on the proposed legislative reforms aimed at outlawing product phoenixing — a practice whereby insurers circumvent the premium round process by closing an existing product and launching a similar one at a higher price after premium increase negotiations have concluded.

As outlined in our June 2024 submission on the annual [premium round](#) process, and in our [2024 Private Health Insurance Report Card](#), the AMA has long advocated for closing the legislative loophole allowing private health insurers to ‘phoenix’ products. The AMA agrees that requiring ministerial approval of premiums for new products, aligning applications with the annual Premium Round, and limiting out-of-round applications to rare and clearly defined ‘exceptional circumstances’ are appropriate measures to protect consumers and uphold public interest.

However, as discussed in this submission, the AMA also believes that both terms — ‘exceptional circumstances’ and ‘public interest’ — must be defined in relevant legislation. Furthermore, penalties for non-compliance on the part of private health insurers must be sufficiently serious to act as an effective deterrent to this practice.

Evidence from the Private Health Insurance Ombudsman (PHIO) and market trends underscore the need for reform. As reported in the [AMA 2024 Private Health Insurance Report Card](#), in late 2024, the PHIO found that some insurers had used phoenixing practices to increase prices of gold-tier products by more than 30 per cent.ⁱ

Subsequently, the Minister for Health and Aged Care Mark Butler condemned phoenixing as ‘price-gouging’ and contrary to the spirit and intention of the law. Noting the practice of phoenixing was quite widespread, the minister added that if it continued, he would consider legislative options to prevent it.ⁱⁱ When insurers failed to cease the practice, the minister made an election commitment in April 2025 to outlaw product phoenixing.

Over recent years, premium increases have outpaced wages and inflation, while insurers' management expenses and profits have grown strongly. These dynamics, along with the practice of phoenixing, have contributed to hundreds of thousands of consumers downgrading their coverⁱⁱⁱ and have eroded public confidence in the private health system.

The AMA notes that questions posed in the [consultation paper](#) are directed at private health insurers. As the AMA does not wish to comment on business processes on behalf of insurers, our comments below are overarching in nature and take a principles approach.

AMA position and principles

As stated in the [consultation paper](#), under section 66–10 of the *Private Health Insurance Act 2007* (PHI Act), private health insurers must apply to the minister for approval to change premiums on existing private health insurance products. The minister must then approve the premium changes requested unless he or she is satisfied requested changes are not in the public interest.

However, product phoenixing (where an existing product is closed to new members and similar or identical products are made available at a much higher cost outside the timeframe of the premium approval process) directly circumvents this requirement.

The AMA believes this practice is severely impacting the affordability of products, especially in the critical 'gold' tier category — the only product tier through which many Australians can obtain no-wait cover for various types of private healthcare, including maternity care, mental healthcare, and joint replacements.

The AMA therefore supports legislative amendments to require private health insurers to use the annual Premium Round to seek approval for the pricing of new products, unless they can demonstrate 'exceptional circumstances' whereby it is 'in the public interest' to submit a new product application to the minister outside the normal Premium Round process. The AMA also agrees private health insurers should retain the ability to close or terminate products to manage prudential risk, while being prevented from using such product closures to facilitate phoenixing.

However, it is important to note that currently, the PHI Act does not define 'public interest', so there is no clear 'public interest test' for either insurers or the minister. This omission means that ministerial discretion to approve product premium changes may be applied inconsistently, from government to government. There is also currently no definition of 'exceptional circumstances' in the legislation. To ensure that out-of-session applications for ministerial approval of new product premiums are justified and rare, such a definition must be included.

AMA recommendations

In summary, to ensure effective implementation of legislative changes to prevent product phoenixing, the AMA recommends:

- a clear definition of 'exceptional circumstances' be included in the legislation

- inclusion of a clear definition of ‘public interest’ in the legislation
- clear definitions to identify when a new product is the same or substantially similar to an existing product, including structured product-comparison requirements
- a streamlined, single application process for changes to the premiums of existing products and applications for new product premiums within the Premium Round, with defined decision timeframes
- transparent publication of approved new product premiums and public interest considerations
- robust consumer communication requirements, including timely updates to Private Health Information Statements (PHIS)
- ongoing consultation with the Australian Prudential Regulation Authority (APRA) and continued monitoring by PHIO
- ongoing monitoring of changes in the rates of exclusionary policies, policies where the consumer has opted to reduce their premium by paying an ‘excess’ when they need to use the policy, and gap arrangements with doctors, to ensure product phoenixing is not replaced by other practices that reduce the value of private health insurance to consumers and raise their out-of-pocket costs.

In defining ‘public interest’ within the legislation, the department could consider:

- profitability of the insurer, including its investment income, and its capacity to absorb any cost increases it is facing without the need to increase premium costs to consumers
- the expected impact of premium increases on consumer affordability and value, noting recent trends of premium growth outpacing wages and inflation
- whether premium increases are likely to impact the ratio of premiums paid versus benefits paid to the consumer, and likely consumer out-of-pocket costs under typical care scenarios
- any effects of the terms of PHI products on access to agreement hospitals and stability of provider networks
- whether the new product is the same or substantially similar to an existing product but at a higher price point
- whether consumer notifications and PHIS provide clear, timely information to avoid confusion and bill shock.

Finally, the AMA notes the consultation paper makes no mention of penalties that would be applied to insurers who continue the practice of product phoenixing once these legislative changes are implemented.

Given the extraordinary financial resources and profitability of the largest insurers that hold more than 80 per cent of the private health insurance market in Australia, along with the failure of some to change their behaviour, even after a warning from the minister last year, the AMA believes these penalties should be sufficiently severe to act as an effective deterrent against flouting the law.

Such penalties should include the insurer being publicly named by the minister to alert consumers, as well as the imposition of financial penalties of a magnitude that would make it financially unprofitable for insurers to flout the law in the first place.

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ⁱ https://www.ombudsman.gov.au/__data/assets/pdf_file/0026/314828/Public-statement-health-insurers-using-loop-holes-to-increase-premiums-December-2024.pdf

ⁱⁱ <https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/minister-for-health-and-aged-care-press-conference-9-december-2024>

ⁱⁱⁱ https://www.health.gov.au/sites/default/files/2024-05/private-health-insurance-reform-data-quarterly-trends-report_0.xlsx