Report to the Australian Senate

On anti-competitive and other practices by health insurers and providers in relation to private health insurance

For the period 1 July 2018 to 30 June 2019

Australian Competition and Consumer Commission
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Shortened terms

ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
AIA	AIA Australia Limited
AMA	Australian Medical Association
APRA	Australian Prudential Regulation Authority
Bupa	Bupa HI Pty Ltd
CCA	*Competition and Consumer Act 2010* (Cth)
CPI	Consumer price index
GMHBA	GMHBA Limited
HBF	HBF Health Limited
HCF	The Hospitals Contribution Fund of Australia Limited
HealthEngine	HealthEngine Pty Ltd
LHC	Lifetime Health Cover loading
MACOPC	Ministerial Advisory Committee on Out-of-Pocket Costs
Medibank	Medibank Private Limited
MO Health	MO Health Pty Ltd
MTAA	Medical Technology Association of Australia
NIB	NIB Health Funds Limited
PHIO	Private Health Insurance Ombudsman
PHMAC	Private Health Ministerial Advisory Committee
Ramsay	Ramsay Health Care Australia Pty Limited
WPI	Wage price index

Executive summary

This is the 21st report to the Australian Senate prepared by the Australian Competition and Consumer Commission (ACCC) on competition and consumer issues in the private health insurance industry. This report is for the period 1 July 2018 to 30 June 2019 (the reporting period).

This report analyses key competition and consumer developments and trends in the private health insurance industry during the reporting period that may have affected consumers' health cover and out-of-pocket expenses. This report also continues the ACCC's focus on adequate private health insurer communications to their consumers, including on detrimental policy changes, as well as potential emerging issues in the use of consumer data.

Premiums and exclusions are increasing and participation rates are decreasing

The costs of private health insurance continued to be of concern to consumers. In 2018–19, private health insurance participation rates continued to decline, while average gap payments for in-hospital and extras treatment increased. Cumulative premium increases have been higher than inflation and wage growth in the past five years, indicating that households with private health insurance are contributing an increasing proportion of their incomes to paying premiums. There has, however, been a downward trend in the rate of average annual premium increases.

There was a reduction in the proportion of Australians holding private health insurance during 2018–19, as occurred during the previous year. The number of people covered by private health insurance has declined in most age groups up to age 60, while the numbers of insured over 60 years old are increasing.[1]

During the reporting period, the proportion of hospital policies held containing exclusions increased to become the majority of policies offered by insurers, with the proportion of exclusionary policies increasing by almost 14 per cent during the reporting period.

In April 2019, reforms introduced by the Australian Government took effect which aimed to make private health insurance simpler and more affordable.

Concerns about the use of consumer data extend to the health sector

In 2019, the ACCC released its *Digital platforms inquiry final report* and *Customer loyalty schemes final report*, which both observed that few consumers are fully informed of, fully understand, or can effectively control, the scope of data collected about them when they engage with such services.

The ACCC notes that consumer data collected by private health insurers and other businesses, for example through wellbeing apps and rewards schemes, can be used for a number of purposes such as targeted marketing, including from third parties.

The ACCC further notes that privacy policies that are vague and seek broad consents and discretions from consumers about how they will collect, use and disclose their data may raise potential issues under the Australian Consumer Law (ACL). This may also include practices where consumers only have a limited ability to opt out of targeted advertising or the sharing of their data with unknown third parties.

The ACCC is undertaking current enforcement action in relation to alleged misleading and deceptive conduct concerning data in the health sector. The ACCC has also recommended that the government consider certain reforms to privacy and consumer laws to give consumers greater control over their personal information and to increase the accountability of businesses for their data practices.

1 Australian Medical Association (AMA), *AMA Private health insurance report card 2019*, Canberra, 31 October 2019, https://ama.com.au/article/ama-private-health-insurance-report-card-2019, p. 2.

Private health insurance complaints have decreased

In 2018–19, the Private Health Insurance Ombudsman (PHIO) received 4042 complaints about private health insurance. The number of complaints decreased by 11.2 per cent from the 2017–18 figure of 4553, and was the lowest since the 2013–14 financial year (3427).

The PHIO reported that 86 per cent of complaints in 2018–19 were about health insurers. Issues regarding benefits continued to be the most frequently raised issue in complaints, making up over 32 per cent of total complaints. The main issue with benefits that consumers raised was about hospital policies with unexpected exclusions and restrictions.

The ACCC notes that the PHIO received 223 complaints in 2018–19 about private health insurance rule changes. This was a 150 per cent increase from 2017–18, and the PHIO has attributed this as largely due to insurers changing their product offerings.

In 2018–19, the ACCC received 170 contacts (enquiries and complaints) in relation to private health insurance issues, which was a 17 per cent decrease from 2017–18.

ACCC enforcement actions

Private health insurers and other health industry participants have been the subject of a number of recent ACCC enforcement matters.

The ACCC instituted two proceedings in the Federal Court in 2019 relating to private health insurance issues and alleged contraventions of the ACL. The first involved Medibank Private Limited regarding cover for joint investigations and reconstruction procedures, and the second involved online booking platform HealthEngine Pty Ltd regarding the sharing of consumer information with private health insurance brokers and the publishing of patient reviews and ratings.

The ACCC enforcement matters involving NIB Health Funds Limited and Ramsay Health Care Australia Pty Limited continued during the reporting period and are ongoing at the time of publication.

Policy developments in private health insurance

On 1 April 2019, a range of reforms to private health insurance took effect. The intent of these changes was to ensure insurance was simpler and more affordable, and included requiring hospital insurance products to be categorised into product tiers, allowing insurers to offer youth-based discounts and to offer lower premium prices for higher excesses, and new mandatory information on what each policy covers.

On 2 March 2019, the Australian Government announced it would be taking action on all the recommendations in the Ministerial Advisory Committee on Out-of-Pocket Costs report into improving the transparency of specialists' out-of-pocket costs, including the development of a national searchable website, which was subsequently launched on 30 December 2019.

1. Introduction

For its 21st report to the Australian Senate, the Australian Competition and Consumer Commission (ACCC) has prepared a report which provides an update on key competition and consumer developments and trends in the private health insurance industry between 1 July 2018 and 30 June 2019 (the reporting period), and also acknowledges developments since the end of the reporting period.

As part of this approach, the ACCC has had regard to policy reforms that have recently been implemented and are ongoing in this sector.

While these reforms continue, the ACCC expects private health insurers to accurately inform consumers about any detrimental changes to their policies in a clear, prominent and timely manner. The ACCC also expects health insurers and other businesses in the health sector to be alive to the highly sensitive nature of the personal information and data they may be collecting and using, and to ensure they comply with their obligations arising under the Australian Consumer Law (ACL).

1.1 Senate order

This report has been prepared in compliance with a current Australian Senate order, under which the ACCC has an obligation to report annually on competition and consumer issues in the private health insurance industry.[2] The complete Senate order is extracted below.

Senate order

There be laid on the table as soon as practicable after the end of each 12 months ending on or after 30 June 2003, a report by the Australian Competition and Consumer Commission containing an assessment of any anti-competitive or other practices by health insurers or providers which reduce the extent of health cover for consumers and increase their out-of-pocket medical and other expenses.

1.2 Role of the ACCC

The ACCC is an independent Commonwealth statutory authority whose role is to enforce the *Competition and Consumer Act 2010* (Cth) (CCA), including the ACL, which is a single national law providing uniform consumer protection and fair trading laws across Australia. The ACL is enforced by the ACCC and state and territory fair trading agencies. The object of the CCA is to enhance the welfare of Australians by promoting fair trading and competition, and through the provision of consumer protection.

In addition to preparing this report in accordance with the Senate order, the ACCC has a broader role in the private health insurance industry of enforcing and encouraging compliance with the CCA and ACL.[3] The statutory consumer protections in the CCA include relationships between consumers and health insurers, hospitals, medical facilities, health providers and practitioners. Competition laws also govern relationships between industry players and, among other things, restrict anti-competitive arrangements and exclusionary conduct.

2 Senate procedural order no. 17 Health—Assessment reports by the Australian Competition and Consumer Commission agreed to 25 March 1999, by means of an amendment to the motion that the report of the committee on Health Legislation Amendment Bill (No. 2) 1999 be adopted. J.626, amended 18 September 2002 J.761.

3 The Australian Prudential Regulation Authority (APRA) supervises private health insurers operating in Australia under a regulatory framework as set out on APRA's website.

The ACCC's Compliance and Enforcement Policy and Priorities outlines our enforcement powers, functions, priorities and strategies.[4] The ACCC updates this document yearly to reflect current and enduring priorities.

1.3 Methodology in preparing this report

In preparing the 2018–19 private health insurance report, the ACCC has drawn on information and data from a range of sources, including desktop research and contacts data.

Key industry data used and relied upon by the ACCC includes:

- industry statistics and data collected by the Australian Prudential Regulation Authority (APRA)
- private health insurance complaints data from the Private Health Insurance Ombudsman (PHIO).[5]

4 See Australian Competition and Consumer Commission (ACCC), *ACCC Compliance & enforcement policy and priorities*, Canberra, 2019, https://www.accc.gov.au/about-us/australian-competition-consumer-commission/compliance-enforcement-policy-priorities.

5 The PHIO is a specialist role of the Commonwealth Ombudsman.

2. Key industry developments and trends

This chapter sets out key competition and consumer developments and trends in the private health insurance industry that occurred in 2018–19, as summarised below.

Summary of key industry developments and trends in 2018–19

- In June 2019, the number of Australians holding hospital only or combined health insurance cover continued to decline, with 44.2 per cent of the Australian population holding such cover. This was a decrease of 0.9 per cent from June 2018. Meanwhile, the proportion of the population holding extras treatment only policies increased from 9.2 per cent in June 2018 to 9.4 per cent in June 2019.
- While cumulative premium increases have been higher than inflation and wage growth over the past five years, there has been a downward trend in the average annual premium increases, falling from 6.2 per cent in the 12 months to June 2015 to 3.25 per cent in the 12 months to June 2019.
- In 2018–19, consumers paid over $24.5 billion in private health insurance premiums, an increase of over $661 million, or 2.8 per cent, from 2017–18.
- The amount of hospital benefits paid to consumers by health insurers was over $15.4 billion and the amount of extras treatment benefits paid was around $5.3 billion.
- The proportion of hospital policies held with exclusions increased by almost 14 per cent from June 2018 (43.8 per cent) to June 2019 (57.6 per cent).
- The number of hospital policies with an excess or co-payment continued to increase slightly from 83.7 per cent to 84.8 per cent.
- 86.8 per cent of in-hospital treatments are delivered without requiring any gap payments from patients, a slight reduction from the 2017–18 figure of 87.8 per cent. When gap payments have been incurred by consumers for hospital treatment, these increased on average by 1.9 per cent, with an increase of almost 4 per cent for extras treatment.
- Complaints to the PHIO have decreased by over 11 per cent since June 2018. Over the same period, contacts to the ACCC relating to private health insurance decreased by 17 per cent, the same percentage decrease as from 2016–17 to 2017–18.

2.1 Private health insurance membership

As at 30 June 2019, 13.6 million Australians, or 53.6 per cent of the population, had some form of private health insurance.[6] This represents a membership reduction of 0.6 per cent from June 2018 (54.2 per cent).[7] The Australian population grew by 396 722, or almost 1.6 per cent, during this period.[8]

This decrease in private health insurance membership continues the trend between June 2017 and June 2018, when the total number of insured persons decreased by 0.6 per cent and the Australian population grew by about 1.5 per cent.[9]

6 APRA, *Statistics: Private health insurance membership trends June 2019*, Sydney, 20 August 2019.

7 Ibid.

8 Ibid.

9 ACCC, *ACCC 2017–18 Private health insurance report to the Australian Senate*, Canberra, 26 November 2018, https://www.accc.gov.au/publications/private-health-insurance-reports/private-health-insurance-report-2017-18, p. 6.

Types of private health insurance

There are broadly two types of private health insurance.

Hospital treatment policies help cover the cost of in-hospital treatment by doctors and hospital costs such as accommodation and theatre fees. This report generally refers to these policies as hospital cover or **hospital policies**.

General treatment policies, also known as **extras** or **ancillary** cover, provide benefits for non-medical health services such as physiotherapy, dental and optical treatment. This report generally refers to these policies as **extras cover** or **extras policies**.

Many consumers hold combined policies that provide cover for both hospital and extras services.[10]

Table 1 shows a reduction in the proportion of the population holding hospital only or combined cover, from 45.1 per cent in June 2018 to 44.2 per cent in June 2019.[11] During the same period, the proportion of the population holding extras only policies has continued to increase, from 9.2 per cent in 2018 to 9.4 per cent in 2019.[12]

Table 1: Insured Australian consumers by policy type, June 2017 to June 2019

	Hospital only or combined cover	Extras cover only	Total insured persons
June 2017	11 318 742	2 194 435	13 513 177
% of population	*46.0%*	*8.9%*	*54.9%*
June 2018	11 259 263	2 287 859	13 547 122
% of population	*45.1%*	*9.2%*	*54.2%*
June 2019	11 227 569	2 373 768	13 601 337
% of population	*44.2%*	*9.4%*	*53.6%*

Source: APRA, *Statistics: Private health insurance membership trends June 2019*.

Membership by health insurer

In 2018–19, there were a total of 37 health funds operating in Australia, including both not-for-profit insurers and for-profit insurers.[13] Bupa HI Pty Ltd (Bupa) remained Australia's largest health insurer ahead of Medibank Private Limited (Medibank), with Bupa ending the 2018–19 financial year with just under 3.6 million members (as measured by individuals covered), compared to Medibank with around 3.54 million members.[14]

As at June 2019, the five largest health insurers in Australia provided cover to almost 79.5 per cent of the Australian consumers with private health insurance. As shown in figure 1, Bupa and Medibank represented over half of the Australian private health insurance market, with market shares of over 26 per cent each. The next three largest insurers—The Hospitals Contribution Fund of Australia Limited (HCF), NIB Health Funds Limited (NIB) and HBF Health Limited (HBF)—had a combined market share of around 27 per cent.

10 Ambulance cover may be available separately, combined with other policies, or in some cases is covered by state or territory governments.

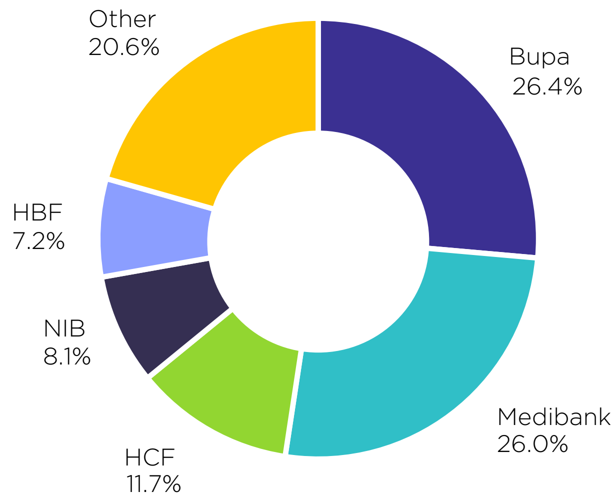
11 APRA, *Statistics: Private health insurance membership trends June 2019*, Sydney, 20 August 2019.

12 Ibid.

13 APRA, Register of private health insurers, Sydney, 1 November 2018, https://www.apra.gov.au/register-of-private-health-insurers.

14 APRA, *Operations of private health insurers annual report 2018–19*, Sydney, 5 November 2019, https://www.apra.gov.au/operations-of-private-health-insurers-annual-report, table 3.

Figure 1: Insurer market share by Australians covered, 2018–19



Source data: APRA, *Statistics: Operations of private health insurers annual report 2018–19*, table 3.

The five largest health insurers have a combined market share of almost 79.5 per cent and contributed to almost 77.5 per cent of total health fund benefits paid in 2018–19[15], with Bupa and Medibank contributing 26.7 per cent and 25 per cent respectively.[16] Benefits paid by health insurers are discussed further in section 2.3.

While the majority of health insurers, including the five largest insurers, had growth rates in member numbers ranging between -5 per cent and 5 per cent during the reporting period[17], two smaller insurers more than doubled their member numbers during this period: MO Health Pty Ltd (MO Health) and Emergency Services Health Pty Ltd.[18]

2.2 Premiums paid by consumers to health insurers

In 2018–19, Australian consumers paid over $24.5 billion in private health insurance premiums, an increase of over $662 million, or 2.8 per cent, from 2017–18.[19] As table 2 shows, this increase is less than in 2017–18.

Table 2: Expenditure on private health insurance, per year, by dollar and percentage change, June 2017 to June 2019

	$ paid (in '000)	$ change from previous year (in '000)	% change from previous year
June 2017	23 066 402	1 005 873	4.6%
June 2018	23 899 157	832 755	3.6%
June 2019	24 561 694	662 537	2.8%

Source: APRA, *Statistics: Quarterly private health insurance statistics*, June 2017, 2018 and 2019.

Figure 2 shows average premium increases (on an industry weighted average basis), the inflation rate and the rate of growth in wages from 2014–15 to 2018–19.

15 The amount paid by an insurer to a policyholder to cover health care costs. Inclusive of state levies.

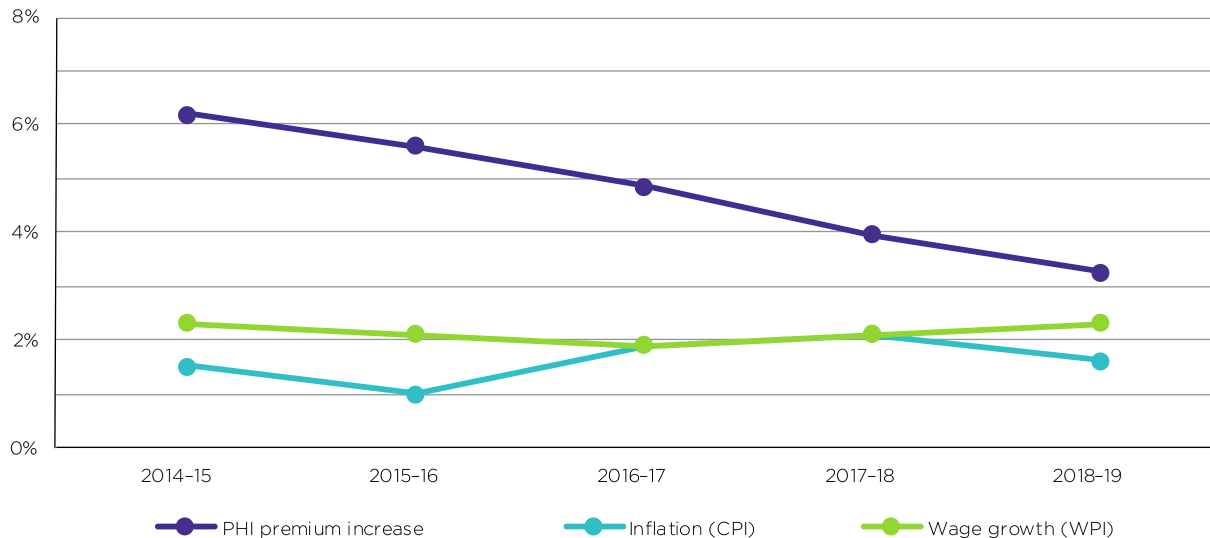
16 APRA, *Operations of private health insurers annual report 2018–19*, Sydney, 5 November 2019, https://www.apra.gov.au/operations-of-private-health-insurers-annual-report, table 3.

17 APRA, *Operations of private health insurers annual report 2018–19*, Sydney, 5 November 2019, https://www.apra.gov.au/operations-of-private-health-insurers-annual-report, table 3; APRA, *Operations of private health insurers annual report 2017–18*, Sydney, 6 November 2018, table 3.

18 Ibid. MO Health had 12,273 members in 2017–18 and 28,385 members in 2018–19 (an increase of 131 per cent). Emergency Services Health Pty Ltd had 1,371 members in 2017–18 and 2,752 members in 2018–19 (an increase of 101 per cent).

19 APRA, *Statistics: Quarterly private health insurance statistics June 2019*, Sydney, 20 August 2019, p. 10.

Figure 2: Private health insurance premium increases, inflation and wage growth, 2014–15 to 2018–19



Source data: Department of Health, Average annual premium price change by insurer; Australian Bureau of Statistics (ABS), *6401.0—Consumer price index, Australia*, Jun 2015, 2016, 2017, 2018 and 2019; ABS, *6345.0—Wage price index, Australia*, Jun 2015, 2016, 2017, 2018 and 2019.

While the average premium increase of 4.8 per cent per year over this period has been higher than the average annual growth in the wage price index (2.1 per cent) and the consumer price index (1.6 per cent) over the same period, the rate of the average yearly premium increases has been decreasing each year over the past five years, and was 3.25 per cent in 2018–19.

This downward trend looks likely to continue with the Health Minister announcing in December 2019 that the average industry premium change for 2020, to take effect on 1 April 2020, will be 2.92 per cent.[20]

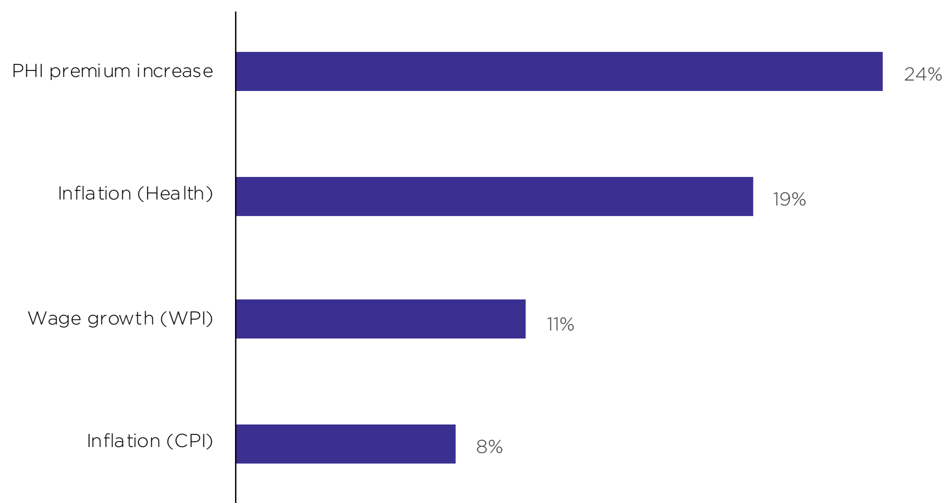
Figure 3 shows the cumulative average increases in private health insurance premiums, the consumer price index, inflation in health prices and wage growth over the five year period from 2014–15 to 2018–19. The health price inflation figure is a component of the consumer price index, and refers to the increase in the price of healthcare, including private health insurance premiums, other hospital, dental and medical services, pharmaceutical products and therapeutic equipment.[21]

Figure 3 shows that private health insurance premium increases have outpaced wage growth and inflation in both the consumer price index and health prices. Over the past five years, cumulative average increases in inflation and wages were approximately 8 and 11 per cent respectively, while health price inflation was 19 per cent and premium increases were 24 per cent. The cumulative higher than wage growth increases in premiums indicates that households with private health insurance have been contributing an increasing proportion of their incomes to paying premiums. However, as indicated in figure 2 earlier, the rate of the average yearly premium increases has been decreasing.

20 G Hunt (Health Minister), *The lowest private health insurance premium change in 19 years,* Media release, Department of Health, Canberra, 7 December 2019, https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/the-lowest-private-health-insurance-premium-change-in-19-years.

21 ABS, *Information paper: Consumer price index: Concepts, sources and methods Australia 2017*, Belconnen, 2018, https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/FEC0ACFDA1490403CA258240000DB621/$File/64610_2017.pdf.

Figure 3: Cumulative average increase in private health insurance premiums, inflation (CPI and health) and wage growth, 2014–15 to 2018–19



Source data: Department of Health, Average premium increases by insurer by year; ABS, *6401.0—Consumer price index*, *Australia*, Jun 2015, 2016, 2017, 2018 and 2019; ABS, *6345.0—Wage price index*, *Australia*, Jun 2015, 2016, 2017, 2018 and 2019.

2.3 Benefits paid by health insurers to consumers

During 2018–19, the amount of hospital benefits paid by private health insurers per consumer increased by 2.8 per cent, along with a 3.1 per cent increase in extras benefits per consumer.[22] The total amount of benefits paid for hospital treatment was over $15.4 billion, and around $5.3 billion for extras treatment.[23]

Table 3: Key metrics relating to the benefits paid by health insurers to consumers, June 2018 to June 2019[24]

	June 2018	June 2019	Change
Benefits: Hospital treatment ($ millions)	$15 064	$15 439	+ 2.5%
Benefits: Extras treatment ($ millions)[25]	$5 151	$5 301	+ 2.9%
Hospital benefit per consumer ($)	$1 338	$1 375	+ 2.8%
Extras benefit per consumer ($)	$419	$432	+ 3.1%

Source: APRA, *Statistics: Quarterly private health insurance statistics*, June 2019.

22 APRA, *Statistics: Quarterly private health insurance statistics June 2019*, Sydney, 20 August 2019, pp 2, 5–6.

23 Ibid, p. 2.

24 This table presents a selection of key metrics relating to the benefits paid by private health insurers. A full outline of all benefits paid to consumers by insurers can be found in APRA's *Quarterly Private Health Insurance Statistics*.

25 Note: Extras treatment, (General treatment—Ancillary) does not include Chronic Disease Management Plans.

While the amount of hospital benefits paid by private health insurers has increased, the rate of these increases has decreased over the past three years. Table 4 shows that the percentage increase in the amount of hospital treatment benefits paid by health insurers to consumers decreased from 5.2 per cent in 2016–17 to 2.5 per cent in 2018–19. Table 5 shows that the percentage increase in extras treatment benefits paid to consumers fell from 4.1 per cent to 2.9 per cent over the same period.

Table 4: Hospital treatment benefits paid by health insurers to consumers, per year, by dollar and percentage change, June 2017 to June 2019

	$ paid (in '000)	$ change from previous year (in '000)	% change from previous year
June 2017	14 592	718	+ 5.2%
June 2018	15 064	472	+ 3.2%
June 2019	15 439	375	+ 2.5%

Source: APRA, *Statistics: Quarterly private health insurance statistics*, June 2017, 2018 and 2019.

Table 5: Extras treatment benefits paid by health insurers to consumers, per year, by dollar and percentage change, June 2017 to June 2019

	$ paid (in '000)	$ change from previous year (in '000)	% change from previous year
June 2017	4923	193	+ 4.1%
June 2018	5151	228	+ 4.6%
June 2019	5301	150	+ 2.9%

Source: APRA, *Statistics: Quarterly private health insurance statistics*, June 2017, 2018 and 2019.

2.4 Consumer responses to private health insurance costs

Consumer research during and after the reporting period indicated that private health insurance is a key financial concern for households and that the cost of insurance is a significant reason why consumers leave insurance.

A survey conducted by CHOICE in August 2019 indicated that private health insurance is the number one financial concern for Australian households.[26] A December 2019 YouGov Galaxy poll also found that consumers indicated that the expense of private health insurance was the predominant reason why consumers leave private health insurance, followed by consumers questioning the value for money of private health insurance.[27]

In addition, consumer research during the reporting period indicated that consumers, particularly younger consumers, are questioning the necessity of holding private health insurance.

A Roy Morgan survey in the twelve months to December 2018 has shown a decline of over nine percentage points in four years among Australians with private health insurance agreeing with the statement that 'it is essential to have private health insurance'.[28] The survey noted generational differences in attitudes towards the necessity of having private health insurance, with only 38.5 per cent

26 S Jeong, *People less worried about debt, but still anxious about money*, CHOICE, Marrickville, 26 August 2019, https://www.choice.com.au/money/budget/consumer-pulse/articles/debt-worry-declining-but-many-australians-still-anxious-about-money.

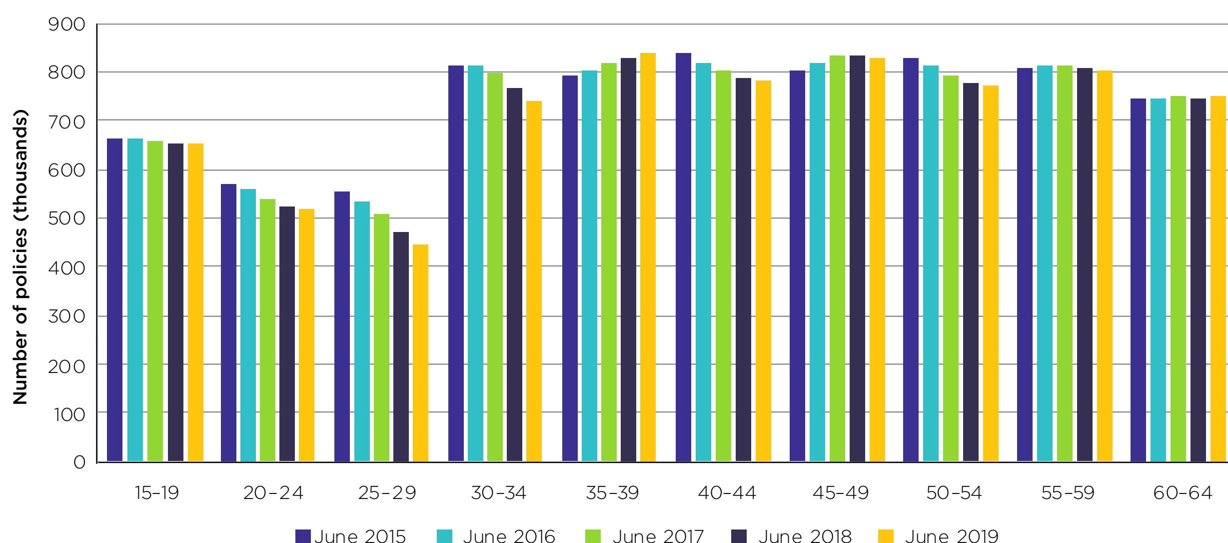
27 YouGov Galaxy poll conducted between 28 November 2019 and 1 December 2019 for the Medical Technology Association of Australia (MTAA): *2 million Aussies dump private health cover as prices soar*, Media release, MTAA, North Sydney, 30 December 2019, http://journalists.medianet.com.au/DisplayAttachment.aspx?j=926201&s=2&k=1913739.

28 Roy Morgan Single Source (Australia), Declining importance of private health insurance to fund members, Media release, Melbourne, 25 March 2019, http://www.roymorgan.com/findings/7908-private-health-insurance-201903220158.

of members aged 14 to 24 and 43 per cent of members aged 25 to 39 agreeing with the statement, compared to 75.1 per cent agreement from members aged 70 and over.[29]

This is consistent with the APRA data in figure 4 which shows the change in the number of people with hospital policies by age group (working age population, aged 15 to 64) over the past five years. In particular, it shows a decline in the number of policies held by the 20–24 and 25–29 age groups. Over the past five years, the number of policies held by 20 to 24 year olds has declined by 51 482 and for 25 to 29 year olds by 106 351. The number of policies held by 30 to 34 year olds is significantly larger than for 25 to 29 year olds, which may reflect such consumers taking up private health insurance to avoid incurring the Lifetime Health Cover (LHC) loading. However, the number of policies held by 30 to 34 year olds has nonetheless declined by 70 949 in the past five years. The number of policies held by 35 to 39 year olds has increased over the same period.

Figure 4: Hospital cover, by age group (working age population, 15 to 64 year olds), June 2015 to June 2019



Source data: APRA, *Statistics: Private health insurance membership trends June 2019*.

The Australian Medical Association (AMA) has noted that the result of these shifts, including premium increases and the opting out of younger consumers from private health insurance, means that a higher proportion of older consumers remain in the private health insurance system who are more likely to be more expensive to insure.[30] APRA data confirms that while the numbers of policies held by young people are declining, the number of policies held by persons 60 years and older increased by over 275 000 in the past five years.[31] A report released by the Grattan Institute in December 2019, in response to these shifts, called for a reconsideration of the community rating system of premium charges.[32] A speech by an APRA board member in February 2020 also called for an examination of the ongoing viability of the community rating system, as part of a broader call for regulatory review of the private health insurance system.[33]

Other consumers are choosing to downgrade their health insurance coverage, rather than opting out altogether. This may include choosing policies with many exclusions, as explored further in section 2.5.

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29 Ibid.

30 AMA, *AMA Private health insurance report card 2019*, Canberra, 31 October 2019, https://ama.com.au/article/ama-private-health-insurance-report-card-2019, p. 1.

31 APRA, *Statistics: Private health insurance membership trends June 2019*, Sydney, 20 August 2019.

32 S Duckett and M Cowgill, *Saving private health 2: Making private health insurance viable*, Grattan Institute, Carlton, 3 December 2019, https://grattan.edu.au/report/saving-private-health-2/. 'Community rating' refers to the regulatory system that requires health insurers to charge all Australian consumers the same premium for the same product, provide cover to anybody who seeks it, and not charge different premiums to individual consumers based on their past or likely future health, claims history, age, pre-existing conditions, gender, race or lifestyle.

33 G Summerhayes, 'Stable but serious' (Speech delivered at the Members Health Directors Professional Development Program, Sydney, 4 February 2020), https://www.apra.gov.au/news-and-publications/apra-member-geoff-summerhayes-speech-to-members-health-directors-professional.

In April 2019, reforms introduced by the Australian Government took effect which are aimed at encouraging younger Australians to take up private health insurance. These changes included introducing the ability for insurers to offer youth-based discounts of up to 10 per cent for 18 to 29 year olds which would be able to be retained by these policyholders until they turn 41.[34] This is in addition to the pre-existing LHC loading, which is charged on top of premiums for each year a consumer puts off obtaining private hospital insurance after they turn 31 years old, and which was put in place to encourage consumers to purchase and maintain private hospital cover earlier in life.[35]

2.5 Policy exclusions and excesses

Exclusionary policies

Exclusions and restrictions[36]

Some health insurance policies provide full cover for the costs of most hospital admissions, apart from any applicable **excess** or **co-payment** that the policyholder is required to pay.

Other policies restrict or exclude benefits for some treatments, in return for offering lower premiums.

If a policy has **exclusions** for particular conditions, the policyholder is not covered at all for treatment as a private patient in a public or private hospital for those conditions. The insurer will not pay any benefits towards a policyholder's hospital and medical costs for such treatment.

If a policy has **restrictions** for particular conditions, the policyholder will be covered for treatment for those conditions, but only to a very limited extent, and the policyholder is still likely to face considerable out-of-pocket costs for such treatment.

Table 6 shows that from June 2018 to June 2019, the proportion of hospital policies held with exclusions increased by almost 14 per cent. For the first time, the majority of policies held now have exclusions, as also shown in figure 5.

Table 6: Hospital policies with exclusions, by percentage, June 2015 to June 2019

	June 2015	June 2016	June 2017	June 2018	June 2019
% of policies with exclusions	35.9%	38.1%	39.9%	43.8%	57.6%

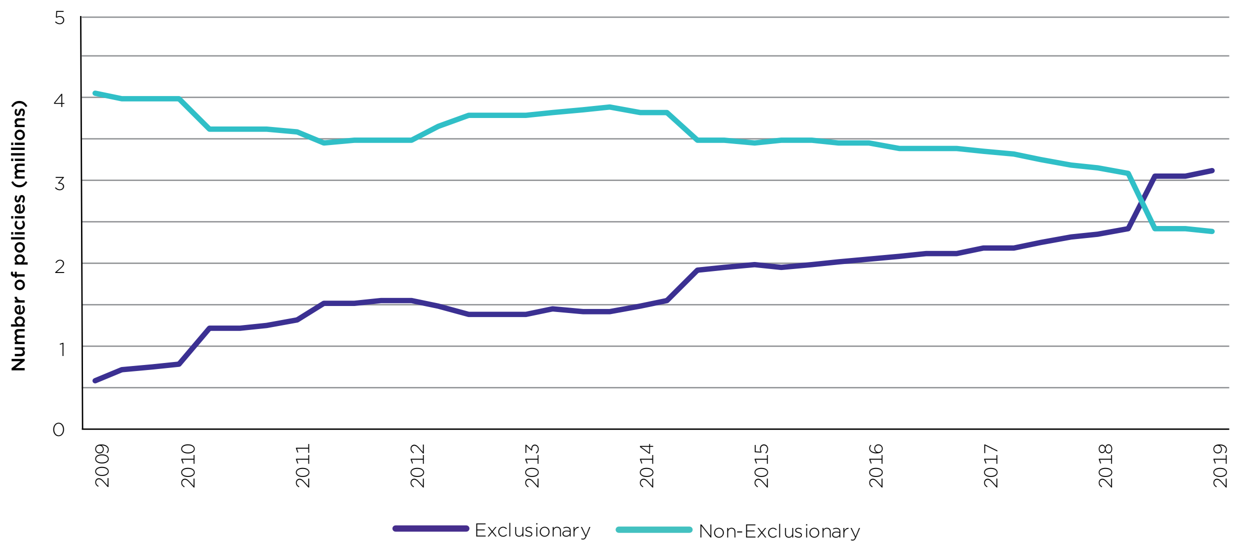
Source: APRA, *Statistics: Private health insurance membership trends June 2019*.

34 Department of Health, *Private health insurance reforms—discount for 18 to 29 year olds*, Canberra, 17 February 2019, https://www.health.gov.au/resources/publications/private-health-insurance-reforms-discount-for-18-to-29-year-olds.

35 Australian Taxation Office, *Lifetime health cover*, Canberra, 27 June 2019, https://www.ato.gov.au/Individuals/Medicare-levy/Private-health-insurance-rebate/Lifetime-health-cover/. For every year a consumer puts off getting private hospital insurance after they turn 31, they will be charged a 2 per cent loading on top of their premium when they take out a policy. This loading is applied to health cover when the consumer joins, and they will need to pay this loading for 10 consecutive years before it ceases to apply.

36 Commonwealth Ombudsman, *Policy exclusions and restrictions*, Canberra, viewed 13 January 2020, https://www.ombudsman.gov.au/publications/brochures-and-fact-sheets/factsheets/all-fact-sheets/phio/policy-exclusions-and-restrictions.

Figure 5: Change in hospital exclusionary and non-exclusionary policies, June 2009 to June 2019



Source data: APRA, *Statistics: Private health insurance membership trends June 2019*.

The number of exclusionary policies held increased by over 650 000 from June 2018 to September 2018, with an equivalent reduction in non-exclusionary policies during the same period.[37]

APRA's statistics did not indicate the reasons for this rise in the number of exclusionary policies during the reporting period. However, analysis by Silvester and others has suggested that less expensive exclusionary policies may appeal both to existing policyholders whose policies have become unaffordable, as well as to young people buying health insurance to avoid LHC loading and the Medicare levy surcharge.[38]

Excesses

Excesses and co-payments[39]

Most insurers will offer policyholders the option of nominating an 'excess' or 'co-payment' on a hospital policy in return for reduced membership premiums.

An **excess** is a lump sum the policyholder pays towards their hospital admission before the health fund will pay its benefits.

A **co-payment** is an amount the policyholder must pay each time the health insurer pays hospital benefits for them. Normally a co-payment is payable for each day of hospitalisation up to a maximum annual amount or per admission amount.

Table 7 shows that almost 85 per cent of hospital policies have excesses and co-payments, a percentage that has increased by around 1 per cent each year since June 2015.

37 APRA, *Statistics: Private health insurance membership trends June 2019*, Sydney, 20 August 2019.

38 B Silvester, E Jeyaratnam and F Jackson-Webb, 'Private health insurance premium increases explained in 14 charts', *The Conversation*, Parkville, 28 March 2018, https://theconversation.com/private-health-insurance-premium-increases-explained-in-14-charts-92825.

39 Commonwealth Ombudsman, *Choosing a health insurance policy*, Canberra, viewed 13 January 2020, https://www.ombudsman.gov.au/publications/brochures-and-fact-sheets/factsheets/all-fact-sheets/phio/choosing-a-health-insurance-policy.

Table 7: Hospital policies with excesses and co-payments, by percentage, June 2015 to June 2019

	June 2015	June 2016	June 2017	June 2018	June 2019
% of policies with excesses & co-payments	80.6%	81.9%	82.9%	83.7%	84.8%

Source: APRA, *Statistics: Private health insurance membership trends June 2019*.

2.6 Out-of-pocket (gap) costs

An out-of-pocket or 'gap' payment is the amount a consumer pays either for medical or hospital charges, over and above what they receive from the Australian Government's Medicare scheme or their private health insurer.

Types of gap arrangements

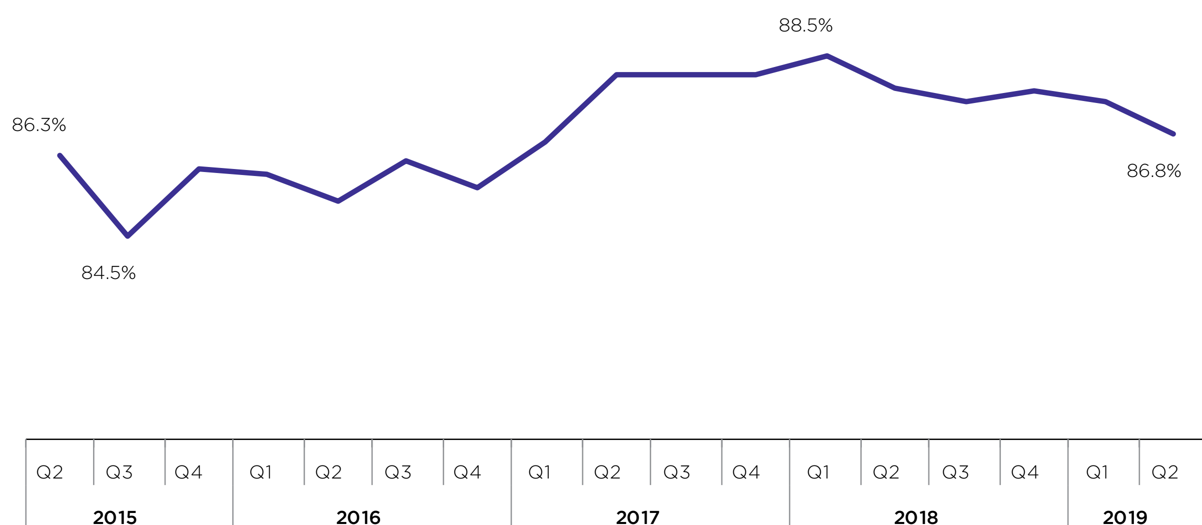
Typically, health insurers enter into contractual arrangements with selected health care service providers, in part, to minimise the out-of-pocket expenses incurred by members. Insurers negotiate set fees and other terms with those providers in exchange for the right to participate in their 'preferred provider' networks or 'no gap' and 'known gap' schemes.

In the case of a **no gap** arrangement, the participating health care service provider agrees to charge a certain amount for services and the health insurer will fully cover the cost of the relevant medical procedure performed by the participating provider.

In the case of a **known gap** arrangement, the participating provider can charge an amount beyond that which the health insurer will cover, but it is restricted to a capped maximum set by the health insurer.

While most in-hospital services are delivered with no gap payments required from patients, figure 6 shows that this rate has varied in recent years, from a low of less than 85 per cent of services not requiring a gap payment in September 2015, to almost 89 per cent in March 2018, before falling again to under 87 per cent in June 2019.

Figure 6: Proportion of in-hospital services with no gap, June 2015 to June 2019



Source data: APRA, *Statistics: Private health insurance medical gap June 2019*.

From June 2018 to June 2019, the average gap expense incurred by a consumer for hospital treatment was $314.51, an increase of 1.9 per cent from the previous year, as shown in table 8. Average gap payments for extras treatment increased by almost 4 per cent to $49.20 over the same period.[40]

40 APRA, *Statistics: Quarterly private health insurance statistics June 2019*, Sydney, 20 August 2019, p. 9.

Table 8 indicates that over the past five years from June 2015 to June 2019, the average gap expense for hospital treatment increased by 11.6 per cent, and by 5.9 per cent for extras treatments. The hospital gap increase is above the cumulative increase in the rate of inflation over the same period (8 per cent), as shown earlier in figure 3.

Table 8: Average gap expense incurred by consumers (hospital and extras treatments), June quarter 2015 to June quarter 2019

	Hospital treatment	Extras treatment
June 2015	$281.80	$46.44
June 2016	$301.39	$46.77
June 2017	$298.92	$46.19
June 2018	$308.73	$47.38
June 2019	$314.51	$49.20

Source: APRA, *Statistics: Quarterly private health insurance statistics*, June 2017, 2018 and 2019; APRA, *Statistics: Private health insurance quarterly statistics*, June 2016.

A YouGov survey from late 2019 found that, after the cost of premiums and a perceived lack of value for money, out-of-pocket costs were a leading reason given by respondents for no longer holding private health insurance.[41]

On 2 March 2019, the Australian Government announced it would be taking action on all of the recommendations in the Ministerial Advisory Committee on Out-of-Pocket Costs (MACOPC) report into improving the transparency of specialists' out-of-pocket costs[42], including the development of a national searchable website which was subsequently launched on 30 December 2019.[43] Further information on the government's response to the MACOPC report is outlined in section 4.2.

2.7 Concerns regarding the use and collection of consumer data

The ACCC considers that Australian consumers are better off when they are both sufficiently informed about the collection and use of their data and have sufficient control over their data. Transparency over the collection and use of data is important so that consumers have the opportunity to understand the data they are providing to others and how it is being used.

The ACCC is undertaking current enforcement action in relation to alleged misleading and deceptive conduct concerning data in the health sector. The action concerns matters involving the alleged sharing of consumer information with private health insurance brokers without adequate disclosure to consumers, as outlined in section 3.1.

The ACCC expects private health insurers and other businesses in the health sector to be alive to the highly sensitive nature of the personal information they may be collecting and using, and to ensure they comply with their obligations arising under the ACL.

During the reporting period, following concerns regarding the security and privacy of the My Health Record system, including whether patient data could be used by private health insurance companies

41 YouGov Galaxy poll conducted between 28 November 2019 and 1 December 2019 for the MTAA: *2 million Aussies dump private health cover as prices soar*, Media release, MTAA, North Sydney, 30 December 2019, http://journalists.medianet.com.au/DisplayAttachment.aspx?j=926201&s=2&k=1913739.

42 G Hunt (Health Minister), *National strategy to tackle specialist out-of-pocket costs*, Media release, Department of Health, Canberra, 2 March 2019, https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/national-strategy-to-tackle-specialist-out-of-pocket-costs.

43 G Hunt (Health Minister), *New website to improve consumer understanding of medical costs*, Media release, Department of Health, Canberra, 30 December 2019, https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/new-website-to-improve-consumer-understanding-of-medical-costs.

to raise premiums or decline insurance to a person,[44] legislation was introduced to prohibit a person or business from accessing, or asking a person to disclose, any information within a person's My Health Record for insurance purposes.[45]

Although health insurers are prevented from accessing My Health Record data, the ACCC's 2019 Digital Platforms Inquiry and Customer Loyalty Schemes final reports[46] raised concerns about the use of other consumer data more generally by businesses.

In particular, the ACCC's *Customer loyalty schemes final report* noted that consumer data is often collected both actively by a number of businesses, for example, information voluntarily provided by a consumer, as well as passively, for example, the background collection of data through a consumer's use of a platform, apps on a device or the use of third party websites.[47] Consumer data is also sometimes linked with external data sources.[48]

Several health insurers offer rewards schemes for their members[49], some of which involve the use of fitness tracking apps and devices to record activities such as steps and sleep.[50] Some of these apps operate in conjunction with companies other than health insurers. For example, the health insurers MO Health and GMHBA Limited (GMHBA) are both partnered with the life insurer AIA Australia Limited (AIA), and use the AIA Vitality program issued by AIA.[51] HCF has also entered into a partnership with Flybuys where new HCF members can collect Flybuys points based on their annual health cover premiums.[52]

Qantas, which offers health insurance issued by NIB, also offers frequent flyer points for members who download the Qantas Wellbeing app and undertake certain activities.[53] Its Qantas Wellbeing Program Terms and Conditions state that members must link a tracking device to record their physical activity, and that as members, they consent to Qantas:

> *'collecting, using and disclosing any personal information including health and Wellbeing information submitted by the Member through joining or use of the Wellbeing Program or collected by Qantas through the Tracking Device or the Qantas Wellbeing App'.*[54]

Although Australians can receive benefits from rewards and discounts offered by health insurers and other organisations that collect consumer data, the ACCC is concerned that few consumers are fully informed of, fully understand, or can effectively control, the scope of data collected when they sign up for, or use, such services.

While the community rating system for private health insurance in Australia prohibits insurers from charging different private health insurance premiums to individual consumers based on health and other factors[55], the ACCC notes that the consumer data collected by wellbeing apps and rewards schemes

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44 For example: N Khadem, ''We desperately need this data': NIB boss wants members' digital health records', *Sydney Morning Herald*, Sydney, 21 July 2018, https://www.smh.com.au/business/consumer-affairs/we-desperately-need-this-data-nib-boss-wants-members-digital-health-records-20180719-p4zsha.html.

45 Australian Digital Health Agency, *My Health Record: Frequently asked questions,* Sydney, viewed 13 January 2020, https://www.myhealthrecord.gov.au/for-you-your-family/howtos/frequently-asked-questions.

46 ACCC, *Digital platforms inquiry final report*, Canberra, 26 July 2019, https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report. ACCC, *Customer loyalty schemes final report*, Canberra, 3 December 2019, https://www.accc.gov.au/publications/customer-loyalty-schemes-final-report.

47 ACCC, *Customer loyalty schemes final report*, Canberra, 3 December 2019, https://www.accc.gov.au/publications/customer-loyalty-schemes-final-report, p. vii.

48 Ibid.

49 Health insurers offering rewards schemes include Bupa, HCF, Medibank and NIB. Further information is available in Appendix B of the ACCC's *Customer loyalty schemes final report*, ACCC, Canberra, December 2019, https://www.accc.gov.au/publications/customer-loyalty-schemes-final-report.

50 MO Health, *AIA Vitality*, viewed 20 January 2020, https://www.myown.com.au/en/vitality.html.

51 MO Health, *myOwn with AIA Vitality*, viewed 20 January 2020, https://www.myown.com.au/en/about-us.html.

52 HCF, *HCF reward new members with Flybuys partnership*, Media release, Sydney, 20 January 2020, https://www.hcf.com.au/pdf/media-releases/2020/HCF_MEDIA_RELEASE_flybuys_200120.pdf.

53 Qantas, *Get the app that puts rewards in your pocket*, viewed 13 January 2020, https://insurance.qantas.com/health-insurance.

54 Qantas, *Qantas Wellbeing Program—Terms and conditions*, effective 18 October 2019, viewed 13 January 2020, https://insurance.qantas.com/termsofuse.

55 See footnote 32 for an explanation of community rating.

could be used for a number of other purposes, including for targeted marketing (including from third parties)[56], and potentially to create insights that could be shared with or sold to third parties.[57]

The ACCC will continue to consider whether the data practices of entities involved in the digital economy, including in the health sector, raise concerns under the CCA and whether it is appropriate for the ACCC to take further enforcement action.

As observed in the ACCC's Digital Platforms Inquiry and Customer Loyalty Schemes final reports, problematic data practices may include instances where consumers only have a limited ability to opt out of targeted advertising or the sharing of their data with unknown third parties.[58]

The ACCC has also recommended that the government consider certain reforms to privacy and other laws to give consumers greater control over their personal information and to increase the accountability of businesses for their data practices. The ACCC has made a range of data and privacy-related recommendations in its Digital Platforms Inquiry and Customer Loyalty Schemes final reports, including:

- strengthening protections in the Privacy Act[59]
- broader reform of the Australian privacy law framework[60]
- the introduction of a statutory tort for serious invasions of privacy[61]
- prohibitions against unfair contract terms[62] and certain unfair trading practices.[63]

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56 For example, see the Direct Marketing section of Medibank's Privacy Policy, viewed 20 January 2020, https://www.medibank.com.au/livebetter/rewards/terms/.

57 The ACCC's *Customer loyalty schemes final report* cites the example of Qantas-owned Red Planet, which uses data insights to offer targeted digital marketing campaigns for third party clients. See section 4.2.4 of the final report for further information.

58 ACCC, *Digital platforms inquiry final report,* Canberra, 26 July 2019, https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report, chapter 7. ACCC, *Customer loyalty schemes final report*, Canberra, 3 December 2019, https://www.accc.gov.au/publications/customer-loyalty-schemes-final-report, chapter 4.

59 ACCC, *Digital platforms inquiry final report*, Canberra, 26 July 2019, https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report, recommendation 16, pp. 34–35. ACCC, *Customer loyalty schemes final report*, Canberra, 3 December 2019, https://www.accc.gov.au/publications/customer-loyalty-schemes-final-report, recommendation 5, p. x.

60 ACCC, *Digital platforms inquiry final report*, Canberra, 26 July 2019, https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report, recommendation 17, pp. 35-36. ACCC, *Customer loyalty schemes final report*, Canberra, 3 December 2019, https://www.accc.gov.au/publications/customer-loyalty-schemes-final-report, recommendation 5, p. x.

61 ACCC, *Digital platforms inquiry final report*, Canberra, 26 July 2019, https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report, recommendation 19, p. 37. ACCC, *Customer loyalty schemes final report*, Canberra, 3 December 2019, https://www.accc.gov.au/publications/customer-loyalty-schemes-final-report, recommendation 5, p. x.

62 ACCC, *Digital platforms inquiry final report*, Canberra, 26 July 2019, https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report, recommendation 20, p. 37. ACCC, *Customer loyalty schemes final report*, Canberra, 3 December 2019, https://www.accc.gov.au/publications/customer-loyalty-schemes-final-report, recommendation 2, p. vii.

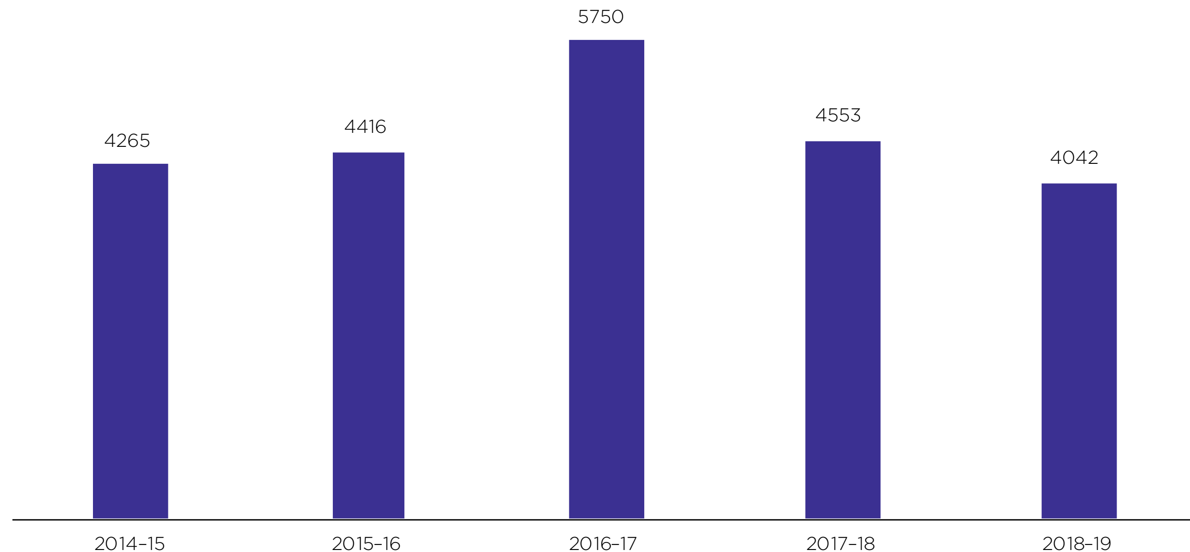
63 ACCC, *Digital platforms inquiry final report*, Canberra, 26 July 2019, https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report, recommendation 21, p. 37. ACCC, *Customer loyalty schemes final report*, Canberra, 3 December 2019, https://www.accc.gov.au/publications/customer-loyalty-schemes-final-report, recommendation 2, p. vii.

2.8 Consumer complaints about private health insurance

Complaints received by the PHIO

The main complaints agency for consumers about their private health insurance is the PHIO. Figure 7 shows that in 2018–19, the PHIO received 4042 complaints about private health insurance.[64] The number of complaints decreased by 11.2 per cent from the 2017-18 figure of 4553[65], and was the lowest number since the 2013–14 financial year (3427).[66]

Figure 7: Total complaints received by the PHIO, 2014–15 to 2018–19



Source data: *Commonwealth Ombudsman annual reports* 2016-17, 2017-18 and 2018-19.

The PHIO reported that 86 per cent of complaints in 2018-19 were about health insurers.[67] Issues regarding benefits continued to be the most frequently raised issue, making up over 32 per cent of total complaints.[68]

The PHIO received 223 complaints in 2018–19 about private health insurance rule changes.[69] This was a 150 per cent increase from the corresponding 2017–18 figure of 89.[70] The PHIO notes that this increase was largely due to business decisions made by insurers changing their product offerings, with only a relatively small number caused by changes necessitated by the Private Health Insurance Reforms.[71]

64 Commonwealth Ombudsman, *Commonwealth Ombudsman Annual Report 2018-19*, Canberra, October 2019, https://www.ombudsman.gov.au/__data/assets/pdf_file/0026/107891/Commonwealth-Ombudsman-Annual-Report-2018-19.pdf, p. 85.

65 Ibid.

66 Commonwealth Ombudsman, *Private Health Insurance Ombudsman Annual Report 2013-14*, Sydney, September 2014, p. 6.

67 Commonwealth Ombudsman, *Commonwealth Ombudsman Annual Report 2018-19*, Canberra, October 2019, https://www.ombudsman.gov.au/__data/assets/pdf_file/0026/107891/Commonwealth-Ombudsman-Annual-Report-2018-19.pdf, p. 89.

68 Ibid.

69 Commonwealth Ombudsman, *Commonwealth Ombudsman Private health insurance quarterly bulletin 91: 1 April-30 June 2019*, Canberra, viewed 14 January 2020, https://www.ombudsman.gov.au/__data/assets/pdf_file/0018/103446/PHI-QB-91.pdf, p. 7.

70 Commonwealth Ombudsman, *Commonwealth Ombudsman Private health insurance quarterly bulletin 87: 1 April–30 June 2018*, Canberra, viewed 14 January 2020, https://www.ombudsman.gov.au/__data/assets/pdf_file/0028/87544/PHIO-QB87.pdf, p. 7.

71 Commonwealth Ombudsman, *Private Health Insurance Ombudsman: Additional Information for 2018-19*, viewed 14 January 2020, https://www.ombudsman.gov.au/__data/assets/pdf_file/0028/108991/PHIO-Annual-Report-2018-19-additional-information.pdf, p. 4.

Complaints by issue

The top four categories for complaints to the PHIO — benefits, membership, service and information—have remained the same for the past five years, as shown in figure 8.

The key issues within these complaint categories are as follows:

- benefits: hospital exclusions and restrictions, general treatment (extras or ancillary benefits), delays in payment
- membership: cancellation, clearance certificates
- service: service delays, premium payment problems, general service issues
- information: verbal advice, lack of notification.

Figure 8 shows that complaints declined in the top four complaint categories from 2017–18 to 2018–19. Complaints about benefits, membership and service all decreased by over 20 per cent[72], and complaints about information decreased by almost 12 per cent.[73]

Figure 8 also shows that issues regarding the benefits paid by insurers to consumers continued to account for the highest level of complaints. The main issue of concern within the benefit category was hospital policies with unexpected exclusions and restrictions.[74] As occurred in 2017-18, delays in benefit payments and complaints about insurer rules that limited benefits also represented a significant proportion of complaints received.[75]

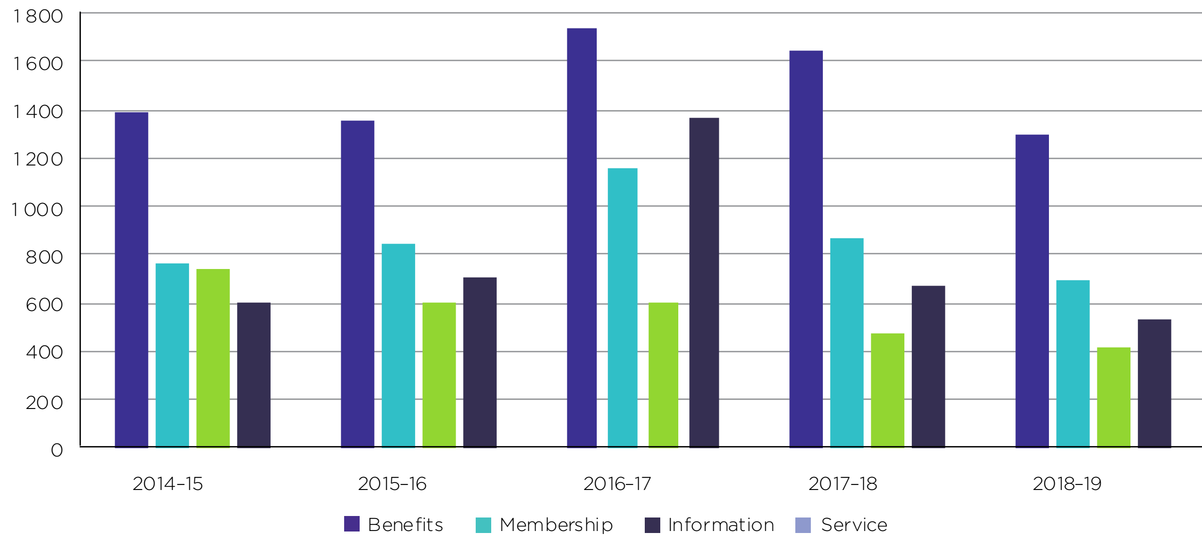
72 Commonwealth Ombudsman, *Commonwealth Ombudsman Annual Report 2018-19*, Canberra, October 2019, https://www.ombudsman.gov.au/__data/assets/pdf_file/0026/107891/Commonwealth-Ombudsman-Annual-Report-2018-19.pdf, pp. 89-90; Commonwealth Ombudsman, *Commonwealth Ombudsman Annual Report 2017-18*, Canberra, October 2018, pp. 91–95. Complaints about benefits decreased by 20.8 per cent, membership complaints decreased by 20.1 per cent and service complaints decreased by 21.0 per cent.

73 Commonwealth Ombudsman, *Commonwealth Ombudsman Annual Report 2018-19*, Canberra, October 2019, https://www.ombudsman.gov.au/__data/assets/pdf_file/0026/107891/Commonwealth-Ombudsman-Annual-Report-2018-19.pdf, p. 90; Commonwealth Ombudsman, *Commonwealth Ombudsman Annual Report 2017-18*, Canberra, October 2018, p. 95.

74 Commonwealth Ombudsman, *Commonwealth Ombudsman Annual Report 2018-19*, Canberra, October 2019, https://www.ombudsman.gov.au/__data/assets/pdf_file/0026/107891/Commonwealth-Ombudsman-Annual-Report-2018-19.pdf, p. 89.

75 Commonwealth Ombudsman, *Commonwealth Ombudsman Annual Report 2018-19*, Canberra, October 2019, https://www.ombudsman.gov.au/__data/assets/pdf_file/0026/107891/Commonwealth-Ombudsman-Annual-Report-2018-19.pdf, p. 89.

Figure 8: PHIO complaints, by issue, 2014–15 to 2018–19



Source data: *Commonwealth Ombudsman annual reports* 2015-16, 2016-17, 2017-18 and 2018-19; *Private Health Insurance Ombudsman annual report* 2014-15.

ACCC contacts received relating to private health insurance

The ACCC and state and territory fair trading agencies also receive consumer complaints relevant to the private health insurance industry. However, the ACCC is not a dispute resolution body and does not generally receive a large number of complaints about private health insurance.

In 2018–19, the ACCC received 170 contacts (enquiries and complaints) in relation to private health insurance issues. This represented a 17 per cent decrease from the previous financial year, when 205 contacts were received. The majority of private health insurance contacts related to consumer protection issues, and almost 50 per cent of contacts concerned potentially misleading or deceptive conduct, or potentially false representations.

Chapter 3 of this report provides a summary of the enforcement actions undertaken by the ACCC in the private health sector during 2018-19.

3. ACCC enforcement actions and industry engagement

Private health insurers and other health industry participants have been the subject of a number of recent ACCC enforcement matters relating to the health sector. This chapter outlines recent ACCC actions, including matters subject to court proceedings.

3.1 ACCC enforcement actions

In 2019, the ACCC instituted two proceedings in the Federal Court relating to private health insurance issues.[76] At the time of publication, two further proceedings instituted in 2017 are ongoing.

Matters commenced

HealthEngine

The ACCC instituted proceedings in the Federal Court on 7 August 2019 against online health booking platform HealthEngine Pty Ltd (HealthEngine) for alleged misleading and deceptive conduct relating to the sharing of consumer information with private health insurance brokers and the publishing of patient reviews and ratings.[77]

HealthEngine provides a booking system for patients and an online health care directory that lists over 70 000 health practices and practitioners in Australia. Up until June 2018, consumers could also access reviews from patients about the quality and services of health practitioners.

The ACCC alleges that between 31 March 2015 and 1 March 2018, HealthEngine manipulated the patient reviews it published, and misrepresented to consumers why HealthEngine did not publish a rating for some health practices.

The ACCC also alleges that from 30 April 2014 to 30 June 2018, HealthEngine gave information such as names, phone numbers, email addresses and birthdates of over 135 000 patients to private health insurance brokers for a fee, without adequately disclosing to consumers that it would do so.

Medibank—Joint investigations and reconstructions

The ACCC instituted proceedings in the Federal Court on 2 September 2019 against Medibank Private Limited trading as 'ahm' (Medibank), alleging that Medibank falsely represented to members holding ahm "lite" or "boost" policies, who were making claims or enquiries, that they were not entitled to cover for joint investigations or reconstruction procedures, when in fact their policies covered these procedures.[78]

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76 The two matters that commenced in 2019 occurred outside the reporting period (i.e. after 30 June 2019).

77 ACCC, *HealthEngine in court for allegedly misusing patient data and manipulating reviews*, Media release, Canberra, 8 August 2019, https://www.accc.gov.au/media-release/healthengine-in-court-for-allegedly-misusing-patient-data-and-manipulating-reviews.

78 ACCC, *Medibank in court for alleged misrepresentations to members about benefits*, Media release, Canberra, 3 September 2019, https://www.accc.gov.au/media-release/medibank-in-court-for-alleged-misrepresentations-to-members-about-benefits.

Matters awaiting outcome

Ramsay Health Care Australia

The ACCC instituted proceedings in the Federal Court in May 2017 against Ramsay Health Care Australia Pty Limited (Ramsay) for alleged anti-competitive conduct involving misuse of market power and exclusive dealing in the Coffs Harbour region.[79]

At the relevant time, Ramsay operated Baringa Private Hospital and the Coffs Harbour Day Surgery, the only private hospital and private day surgery facilities in the Coffs Harbour region. The Coffs Harbour Day Surgery closed in mid-2017, and Baringa Hospital remains the only private hospital in the region. Coffs Harbour surgeons used operating theatres at Ramsay's facilities to perform surgical procedures on private patients.

The ACCC alleges Ramsay became aware that a group of Coffs Harbour surgeons were planning to establish a competing private day surgery facility in Coffs Harbour. In response to this competitive threat, the ACCC alleges senior Ramsay executives told these surgeons that if they were involved with the proposed new day surgery they would have their access to operating theatre time at Baringa Hospital substantially reduced or withdrawn.

The ACCC alleges that Ramsay engaged in this conduct for the purpose of deterring or preventing a new entrant in the day surgery market in Coffs Harbour, or substantially lessening competition in that market.

NIB

The ACCC instituted proceedings in the Federal Court in May 2017 against NIB alleging it contravened the ACL by engaging in misleading or deceptive conduct, unconscionable conduct and making false or misleading representations.[80]

The proceedings arise from NIB's alleged failure to notify members in advance of its decision to remove certain eye procedures from its 'MediGap Scheme' in 2015. Under the MediGap Scheme, members had previously been able to obtain these eye procedures without facing out-of-pocket costs when doctors participated in the scheme.

Matters concluded

Medibank—Limitation of benefits for in-house pathology and radiology—Dismissal of ACCC appeal

On 20 December 2018, the Full Federal Court dismissed the ACCC's appeal against a separate Federal Court judgment in relation to Medibank.[81] The ACCC had alleged Medibank made false, misleading or deceptive representations and engaged in unconscionable conduct in relation to its failure to notify Medibank's members, and members of its subsidiary brand ahm, of its decision to limit benefits for in-hospital pathology and radiology services, despite representing across a number of its communication and marketing materials that it would. The Federal Court dismissed these allegations in August 2017, with the ACCC lodging an appeal. On appeal, the Full Court held that Medibank acted harshly and unfairly, but found this is not enough to establish statutory unconscionability.[82]

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79 ACCC, *ACCC takes action against Ramsay Health Care for alleged anti-competitive conduct*, Media release, Canberra, 1 May 2017, https://www.accc.gov.au/media-release/accc-takes-action-against-ramsay-health-care-for-alleged-anti-competitive-conduct.

80 ACCC, *ACCC takes action against NIB*, Media release, Canberra, 30 May 2017, https://www.accc.gov.au/media-release/accc-takes-action-against-nib.

81 ACCC, *Full Federal Court dismisses ACCC appeal against Medibank*, Media release, Canberra, 20 December 2018, https://www.accc.gov.au/media-release/full-federal-court-dismisses-accc-appeal-against-medibank.

82 As noted in section 2.7, the ACCC has recommended the introduction of a prohibition on certain unfair trading practices.

3.2 ACCC industry engagement concerning detrimental policy changes

As noted in the ACCC's 2017-18 *Private health insurance report to the Australian Senate*, the PHIO released a report into hospital policy changes announced by Bupa in February 2018, in which benefits would no longer be paid for a range of services previously covered under its basic and mid-level hospital policies.[83]

In August 2018, the ACCC wrote to several private health insurers about communicating detrimental policy changes to consumers. The purpose of this industry engagement was to draw attention to the findings in the PHIO's report into Bupa and to put the industry on notice that the ACCC is continuing to monitor the private health insurance industry in relation to its ACL obligations and will consider enforcement action where insurers do not comply with the ACL.

The ACCC strongly recommended that private health insurers conduct a thorough review of all future communications with consumers to ensure any detrimental policy changes are clear, prominent and timely.[84]

This is particularly relevant in the context of changes to premiums and health insurance policies that came into effect on 1 April 2019, requiring consumers to be given sufficient time ahead of any changes to consider the impact and make informed decisions about their health insurance cover.

The ACCC noted to private health insurers that it recognises there may be circumstances where it may be appropriate for insurers to align the timing of communications to consumers regarding multiple policy changes, and would take these circumstances into account in any consideration of whether particular notifications were timely. However, consumers will still need to be given sufficient time ahead of any changes to consider the impact of such changes and make informed decisions about their health insurance cover.[85]

3.3 Consumer Health Regulators Group

Noting the potential for the ACCC's consumer law work to intersect with other health sector regulators, the ACCC is a member of the Consumer Health Regulators Group.[86] The group meets on a quarterly basis (or as otherwise needed), to exchange information, including about emerging issues of interest or concern, and to ensure responsibilities and functions of each regulator within the consumer health industry are understood and consistently applied.

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83 ACCC, *ACCC 2017-18 Private health insurance report to the Australian Senate*, Canberra, 26 November 2018, https://www.accc.gov.au/publications/private-health-insurance-reports/private-health-insurance-report-2017-18, section 3.1; Commonwealth Ombudsman, Bupa Health Insurance Hospital Policy Changes, Canberra, June 2018, https://www.ombudsman.gov.au/__data/assets/pdf_file/0029/84791/Bupa-Health-Insurance-Hospital-Policy-Changes-June-2018.pdf.

84 ACCC, *ACCC 2017-18 Private health insurance report to the Australian Senate*, Canberra, 26 November 2018, https://www.accc.gov.au/publications/private-health-insurance-reports/private-health-insurance-report-2017-18, section 3.2.

85 Ibid.

86 In addition to the ACCC, other members include the Australian Health Practitioner Regulation Agency (who work in partnership with 15 National Boards in the National Registration and Accreditation Scheme), the PHIO, the Therapeutic Goods Administration, the NSW Health Consumer Complaints Commission, the Victorian Health Complaints Commissioner, the Department of Health (Cth), the Department of Health (Qld), the NSW Fair Trading Commissioner and Consumer Affairs Victoria.

4. Policy developments in private health insurance

The observations in this report are made in the context of recent and ongoing reforms to the sector. This chapter provides an update on policy developments relating to private health insurance during and after the reporting period.

4.1 Implementation of private health insurance reforms

In October 2017, the Australian Government announced a series of reforms aiming to make private health insurance simpler and more affordable. Certain reforms were aimed at addressing issues which have been the subject of previous ACCC reports, such as the complexity of private health insurance products, difficulties in comparing different policies and improving information provision practices and clarifying defined terms.

On 1 April 2019, a number of key reforms commenced including:

- requiring insurers to categorise hospital insurance products into Gold, Silver, Bronze and Basic product tiers
- allowing insurers to offer youth-based discounts of up to 10 per cent for 18 to 29 year olds, which policyholders will be able to keep until they turn 41
- allowing insurers to offer lower premium prices for higher excesses
- allowing policyholders to upgrade their insurance coverage to access psychiatric services without serving a waiting period
- allowing insurers to offer travel and accommodation benefits as part of hospital treatment cover for policyholders in rural and remote areas, and

a new Private Health Information Statement to include mandatory information about what each policy covers, and for all products to be included on the www.privatehealth.gov.au website.[87]

The Department of Health has collated statistics since the introduction of the reforms in April 2019[88], including that 362 256 policyholders received an age-based discount in the quarter ending 30 June 2019[89], and that this number had increased to 382 687 in the quarter ending 30 September 2019.[90]

Senate inquiry into the value and affordability of private health insurance and out-of-pocket medical costs

On 19 December 2017, the Senate Standing Committee on Community Affairs released its inquiry report into the value and affordability of private health insurance and out-of-pocket medical costs.[91] The report made 19 recommendations, including changes to improve the price transparency of health insurers and medical practitioners, as well as for further consideration and legislative change surrounding the use of data by health insurers competing for services against other non-preferred

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87 Department of Health, *Private health insurance reforms*, Canberra, 23 December 2019, https://www.health.gov.au/health-topics/private-health-insurance/private-health-insurance-reforms.

88 Department of Health, *Private health insurance reform data quarterly reports*, Canberra, 6 December 2019, https://www.health.gov.au/resources/collections/private-health-insurance-reform-data-quarterly-reports.

89 Department of Health, *Statistics—Private health insurance reform data April to June 2019*, Canberra, 5 December 2019, https://www.health.gov.au/resources/publications/statistics-private-health-insurance-reform-data-april-to-june-2019.

90 Department of Health, *Statistics—Private health insurance reform data July to September 2019*, Canberra, 5 December 2019, https://www.health.gov.au/resources/publications/statistics-private-health-insurance-reform-data-july-to-september-2019.

91 Senate Community Affairs References Committee, Parliament of Australia, *Value and affordability of private health insurance and out-of-pocket medical costs*, Canberra, 19 December 2017, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Privatehealthinsurance/Report.

providers.[92] The Australian Government's response to the Senate Community Affairs Reference Committee report was tabled on 19 December 2018.[93]

Launch of the AMA's Informed Financial Consent Guide

On 23 July 2019, the Australian Government and the AMA jointly launched the AMA's Informed Financial *Consent Guide: A Collaboration Between Doctors and Patients* to help consumers better understand medical treatment fees and out-of-pocket costs.[94]

This Guide was intended to complement other government activities to provide improved medical specialist costs transparency, including the government's medical specialists' fee transparency website, as discussed in section 4.2.

4.2 Ministerial committees

Ministerial Advisory Committee on Out-of-Pocket Costs

On 2 January 2018, the MACOPC was established to provide advice to the Health Minister on possible reforms covering best practice models for the transparency of in-hospital medical out-of-pocket costs and to help consumers with private health insurance better understand out-of-pocket costs.[95] The MACOPC provided recommendations on improving transparency of medical specialists' out-of-pocket costs to the Health Minister in December 2018.

On 2 March 2019, the Health Minister announced that the Australian Government is taking action on all of the recommendations in the MACOPC report, including:

- the development of a national searchable website to provide the public with greater access to information about the costs of specialist services, intending to reduce the burden of 'bill shock' and to allow consumers to make informed choices
- making existing de-identified data available showing the range of fees and related out-of-pocket costs charged by specialists for the same treatments, aggregated to show the range charged within geographic areas, and
- Government funding an education initiative to increase the understanding of medical out-of-pocket costs among consumers, their families and GPs.[96]

The Australian Government launched its Medical Costs Finder website on 30 December 2019.[97] The website currently shows typical out-of-pocket costs for common treatments and procedures in the private system, and information on fees for particular medical specialists is expected to be introduced later in 2020.[98]

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92 Ibid.

93 Australian Government, *Australian Government response to the Senate Community Affairs Committee report: Value and affordability of private health insurance and out-of-pocket medical costs*, Canberra, 19 December 2018, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Privatehealthinsurance/Government_Response.

94 G Hunt (Health Minister), *Informed Financial Consent Guide launched*, Media release, Department of Health, Canberra, 23 July 2019, https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/informed-financial-consent-guide-launched.

95 Department of Health, *Ministerial Advisory Committee on Out-of-Pocket Costs*, Canberra, 15 March 2019, https://www1.health.gov.au/internet/main/publishing.nsf/Content/min-advisory-comm-out-of-pocket.

96 G Hunt (Health Minister), *National strategy to tackle specialist out-of-pocket costs*, Media release, Department of Health, Canberra, 2 March 2019, https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/national-strategy-to-tackle-specialist-out-of-pocket-costs.

97 G Hunt (Health Minister), *New website to improve consumer understanding of medical costs*, Media release, Department of Health, Canberra, 30 December 2019, https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/new-website-to-improve-consumer-understanding-of-medical-costs.

98 Ibid.

Private Health Ministerial Advisory Committee

The Private Health Ministerial Advisory Committee (PHMAC) was established in September 2016 to bring together key stakeholders in the private health sector to work in partnership on the development and implementation of possible reforms to private health insurance.[99]

The PHMAC held its final meeting on 4 December 2018, in which the Department of Health provided an update on the finalisation of legislation for the private health reforms.[100]

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99 Department of Health, *Private Health Ministerial Advisory Committee—Terms of reference*, Canberra, 7 October 2016, https://www1.health.gov.au/internet/main/publishing.nsf/Content/phmac-terms-of-reference.

100 Department of Health, *Summary of the sixteenth meeting of the Private Health Ministerial Advisory Committee, 4 December 2018, Department of Health offices (Scarborough House), Canberra*, https://www1.health.gov.au/internet/main/publishing.nsf/Content/phmac-meeting-16.

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