ACCC Report

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 of 1 July 2012 to 30 June 2013

www.accc.gov.au

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 of 1 July 2012 to 30 June 2013

ISBN 978 1 922145 00 0

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

The ACCC has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

Parties who wish to re-publish or otherwise use the information in this publication must check this information for currency and accuracy prior to publication. This should be done prior to each publication edition, as ACCC guidance and relevant transitional legislation frequently change. Any queries parties have should be addressed to the Director, Corporate Communications, ACCC, GPO Box 3131, Canberra ACT 2601, or publishing.unit@accc.gov.au.

ACCC 11/13_816

www.accc.gov.au

Contents

Executive summary

In this year's report to the Australian Senate, the ACCC has examined the practice by some insurers and firms offering comparison services of using end of financial year (EOFY) advertising as a tool to encourage consumers to purchase health cover in order to 'avoid crunch time'. A series of government policy initiatives have resulted in some consumers becoming more sensitive to EOFY advertising, whether or not the policy changes apply to them specifically.

Examples of EOFY incentives to take up private health insurance (PHI) include:

- **The Medicare Levy Surcharge (MLS)** which is levied on taxpayers who do not have hospital cover and who earn above a certain income in the financial year. To avoid paying the surcharge a taxpayer must hold hospital cover with a registered health fund.[1]
- **The Lifetime Health Cover (LHC) loading** which involves a financial loading on hospital cover and is designed to encourage people to take out cover earlier in life. A person must take out hospital cover before 1 July following their 31st birthday to avoid paying a loading of 2 per cent for each year they are over 30.[2]
- **The Private Health Insurance Rebate (PHI Rebate)** which provides a percentage reduction in the premium cost of health cover, depending on a consumer's age and income. This can be claimed as either a deduction in premiums, as a direct payment or as a tax return at the EOFY.[3]

In an environment of complex product offerings and perceived urgency consumers may find it difficult to ask insurers or comparison services the right questions to enable an informed decision. For this reason, the ACCC sought to examine the features of such advertising and its impacts on consumers. In particular, the ACCC wanted to gain a better understanding of consumers' experiences when signing up to, or transferring between, insurers as a result of such campaigns.

Under a Senate order, the ACCC is required to assess whether conduct by insurers and providers results in higher premiums or lower coverage for consumers. In light of this the ACCC considered whether the practices of insurers and comparison services were in general impacting the ability of consumers to make informed choices. The ACCC also examined whether EOFY advertising impacted on the ability of consumers to access and use their cover after signing up, including the ability of consumers to easily transfer or switch between insurers.

The ACCC found that the PHI market is characterized by *information asymmetry*—that is, consumers hold less information than insurers on levels of cover and complex product offerings and that this asymmetry is exacerbated by EOFY advertising. There is a general lack of awareness among consumers of the various government tax initiatives associated with the EOFY. In this environment there is potential for consumers to be confused or misled by EOFY advertising of PHI products. Time pressures portrayed in advertising may lead consumers to make hasty and ill-informed decisions resulting in consumers purchasing health cover that does not suit their needs. However, advertising during this time may also prompt or remind consumers to make better-informed purchasing decisions provided they have the relevant information at hand.

The ACCC found that consumers are experiencing information problems after a policy has been purchased from an insurer. These information problems only become apparent after a policy has been tested and failed. The ACCC found that the high level of exclusions and restrictions in products offered by insurers resulted in consumers discovering that a service was not covered

1 Private Health Insurance Ombudsman, Medicare Levy Surcharge, (20 November 2013), PrivateHealth.gov.au http://www.privatehealth.gov.au/healthinsurance/incentivessurcharges/mls.htm

2 Private Health Insurance Ombudsman, *Lifetime Health Cover Loading*, (20 November 2013), PrivateHealth.gov.au http://www.privatehealth.gov.au/healthinsurance/incentivessurcharges/lifetimehealthcover.htm

3 Private Health Insurance Ombudsman, *Australian Government Private Health Insurance Rebate*, (20 November 2013), PrivateHealth.gov.au http://www.privatehealth.gov.au/healthinsurance/incentivessurcharges/insurancerebate.htm

during a personal health crisis or after a service had been received and paid for. Although, this problem is not specific to the tax period, the ACCC considers that these information problems are exacerbated by EOFY advertising.

The ACCC also found that consumers are experiencing difficulties when transferring between insurers under existing portability arrangements and that these problems are exacerbated by the EOFY. Consumers are facing difficulties using and accessing their coverage after signing up to a new insurer due to long delays in the processing of transfer certificates by insurers contrary to portability obligations. As a result, consumers are facing the prospect of paying double premiums and having to deal with multiple insurers for many months after switching. This may be a contributing factor to the relatively low levels of consumer mobility in the PHI sector as consumers may be put off by the knowledge that portability can in fact be a long and tedious process, particularly around the EOFY period.

Having identified potential problems with EOFY campaigns, the ACCC has developed some suggestions for consumers, the PHI industry and government. Solutions to the problems raised in this report include:

- Encouraging better practices by insurers in relation to information provided to consumers before, during and after the purchase of a new policy, particularly during the EOFY.
- Educating consumers on EOFY campaigns by helping consumers to identify and assess their health and financial needs when purchasing new policies. To this end the ACCC has developed a set of key questions that consumers should ask themselves when taking up policies at the EOFY.
- Ensuring that insurers meet their legal obligations in relation to portability, particularly in relation to time limits on transfer certificates.

1. Introduction

This year's report to the Australian Senate has assessed the advertising of private health insurance (PHI) at the end of financial year (EOFY). Insurers and comparison services use various advertising techniques to entice consumers to sign up to their funds and educate consumers on their product offerings. One type of advertising technique that continues to be popular among insurers and comparison services is the EOFY campaign.

Such advertising uses the deadline associated with tax-related government initiatives as a mechanism to encourage consumers to sign up to a fund or transfer between policies. This advertising, although informative, can be problematic for consumers. The complexity of products and the time pressures associated with the EOFY can make it difficult for consumers to make informed decisions when purchasing PHI. Due to the high demand on insurers during this time, consumers can also encounter problems using and accessing their health cover and may face difficulties transferring between funds.

The ACCC sought submissions from the public in order to better understand consumers' experiences with EOFY campaigns. The ACCC sought to determine how consumers are impacted by EOFY advertising and whether consumers are being given adequate information during these campaigns. The ACCC also sought information on consumers' experiences using their coverage after signing up and whether they experienced any difficulties transferring between funds.

1.1 Senate order

Under an Australian Senate order, the ACCC is tasked with providing an annual report on competition and consumer issues in the PHI industry. The ACCC is required to report on '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'.[4]

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.

This report has been prepared in compliance with that order and covers the period 1 July 2012 to 30 June 2013. It is the 15th report prepared by the ACCC in compliance with an order agreed to by the Australian Senate on 25 March 1999 and amended on 18 September 2002.

4 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.

1.2 Role of the ACCC

A number of government agencies are involved in the administration and regulation of the PHI industry in Australia. The Department of Health (Health)[5] administers the *Private Health Insurance Act 2007* (PHI Act) and PHI provider rules. The Private Health Insurance Administration Council (PHIAC) is charged with the registration and prudential regulation of health insurers and advises the government on competition policy within the PHI industry. In addition, the Private Health Insurance Ombudsman (PHIO) has been established to manage consumer complaints relating to PHI.

The role of the ACCC in relation to the PHI industry is confined to complying with the Senate order and enforcing and encouraging compliance with the *Competition and Consumer Act 2010* (CCA). This includes ensuring compliance with the Australian Consumer Law (ACL). The ACL is a single national law that provides uniform consumer protection and fair trading laws across Australia. It is enforced by the ACCC and all state and territory ACL regulators, and where conduct applies to financial services, the Australian Securities and Investment Commission (ASIC).

The ACCC is an independent statutory authority established to enforce and encourage compliance with the CCA. The purpose of the CCA is to enhance the welfare of Australians by promoting competition and fair trading. The CCA provides for the protection of consumers in their dealings with business, including prohibitions against misleading and deceptive conduct and anti-competitive conduct. Issues within the realm of health policy sit outside the remit of the ACCC.

The ACCC undertakes enforcement action where appropriate and necessary to underpin its compliance objectives. The principles adopted by the ACCC to encourage compliance with the law are set out in our *Compliance and Enforcement Policy* which outlines the ACCC's enforcement powers, functions and priorities. In carrying out its duties under the CCA, the ACCC has a dual role as:

- a national enforcement agency, and
- a provider of education and information for business (including the professions) and consumers in relation to compliance with the CCA.

1.3 ACCC approach to the Senate Order

Past ACCC reports to the Senate have undertaken a broad survey of issues affecting the PHI industry, such as contracting, preferred provider schemes, informed financial consent and second-tier default benefits. Although those issues remain relevant, the ACCC has this year chosen to focus its efforts on a single, discrete issue affecting the industry.

In preparation for the report, the ACCC undertook a comprehensive assessment of the issues impacting the PHI industry and drew the conclusion that EOFY advertising could be problematic for consumers.

In the reporting period a number of government incentives to take up PHI were altered. These changes were accompanied by extensive EOFY advertising by insurers and comparison services.

The ACCC examined the impacts of EOFY advertising on consumers and the PHI market. In particular the ACCC examined:

- whether consumers are being given adequate information during EOFY campaigns; and
- whether consumers are experiencing any difficulties using or accessing their coverage after signing up to a fund or transferring between policies.

5 For the reporting period 1 July 2012 to 30 June 2013 the Department of Health (Health) was known as the Department of Health and Ageing referred to as (DoHA) throughout this publication.

During the reporting period the ACCC received only one specific complaint in relation to EOFY advertising. The ACCC received 53 complaints relating to PHI generally out of a total 165 796 contacts. This accounts for less than 0.001 per cent of total contacts to the ACCC.

In order to better understand the broader issues the ACCC consulted with key stakeholders, including the PHIO, PHIAC and DoHA.

The ACCC also sought evidence of complaints from state and territory ACL regulators and received details of a small number of complaints and enquiries made to these agencies. In total the ACCC received details of 62 complaints and enquiries related to PHI from NSW, WA and Qld, of these only two complaints related directly to the issue of EOFY advertising. Other jurisdictions did not record any PHI contacts. All relevant contacts that were recorded by ACL regulators were referred to the PHIO.

The PHIO advised that it had fielded a number of inquiries in relation to EOFY advertising in the lead up to 30 June 2013 and received one complaint directly related to EOFY advertising (out of a total of 2955 complaints). In its annual report, the PHIO found that there was a significant level of PHI awareness amongst consumers during the reporting period due to advertising about the LHC loading deadline and changes to the PHI Rebate.

The low level of complaints related to EOFY advertising does not mean that there is not a problem. It may be that consumers are not making the connection between issues they have experienced and EOFY campaigns.

For this reason, the ACCC wrote to a wide range of stakeholders with an interest in PHI to determine the impacts of EOFY advertising. An invitation to make a submission to the report was also made available on the ACCC website. The invitation letter is provided at appendix A.

The ACCC received a total of 18 submissions to the report. A list of submissions is provided at appendix B. Submissions made to this year's report are available on the ACCC website at www.accc.gov.au/phireport.

The ACCC would like to thank stakeholders for their time in making a submission to the report.

1.4 Structure of the Report

The report is structured as follows:

- **Chapter two** deals with the types of advertisements used by insurers during EOFY campaigns and the specific information problems experienced by consumers during this time.
- **Chapter three** considers the ability of consumers to access and use their health cover during the EOFY and in particular whether any problems exist with consumers switching between insurers during this time.
- **Chapter four** identifies strategies to improve outcomes for consumers.

2. End of financial year advertising

This chapter will assess the impacts of EOFY advertising on consumers. In particular, it will assess whether consumers are receiving adequate information about government initiatives during this time. This chapter will look at consumers' experiences with EOFY advertising and assess whether time pressures are leading consumers to 'panic buy' insurance or make ill-informed purchasing decisions.

2.1 Tax-related government initiatives

EOFY advertising coincides with the cut-off date of many tax-related government initiatives designed to encourage consumers to take up private hospital cover, and where possible, to use the private system to reduce the demand on Medicare. A series of changes to government policy have resulted in some consumers becoming more sensitive to EOFY advertising, whether or not the policy changes apply to them specifically. The relative complexity of PHI and the use of the 'June 30' deadline in advertising of PHI products have caused consumers to conflate the various government initiatives leading to possible confusion and poor decision making.

Medicare Levy Surcharge (MLS) is levied on taxpayers who do not have hospital cover and who earn above a certain income in the financial year. To avoid paying the surcharge a taxpayer must hold hospital cover with a registered health fund.[6]

Lifetime Health Cover (LHC) loading involves a financial loading on hospital cover and is designed to encourage people to take out cover earlier in life. A person must take out hospital cover before 1 July following their 31st birthday to avoid paying a LHC loading of 2 per cent for each year they are over 30.[7]

Private Health Insurance Rebate (the PHI Rebate) provides a percentage reduction in the premium cost of health cover, depending on age and income of consumers. This can be claimed as either a deduction in premiums, as a direct payment or as a tax return at the EOFY.[8]

Recently some changes have been made to the PHI Rebate. Since 2005, the PHI Rebate has increased for people aged 65 to 70 years. From 1 July 2012, the government has introduced three new 'Private Health Insurance Incentives Tiers' to income test the PHI Rebate. If a person earns below a certain threshold in the financial year they will remain eligible for the PHI Rebate. In July 2013, the PHI Rebate ceased to be payable on the LHC loading component imposed on PHI premiums. From April 2014, there will be a cap on increases in the PHI Rebate to either the rate of inflation or the actual increase in premiums, whichever is lower.[9]

The PHI industry is estimated to have spent $150 million on media in 2012, about double the amount spent in 2008, in response to these policy changes. The ACCC understands that June 2012 was one the industry's busiest periods. An estimated 200 000 people invested an extra $1.2 billion in prepaid payments in order to retain the PHI Rebate before it was means tested. This was a once off opportunity to retain the PHI Rebate and is no longer on offer.

6 Private Health Insurance Ombudsman, *Medicare Levy Surcharge,* (20 November 2013), PrivateHealth.gov.au http://www.privatehealth.gov.au/healthinsurance/incentivessurcharges/mls.htm

7 Private Health Insurance Ombudsman, *Lifetime Health Cover Loading*, (20 November 2013), PrivateHealth.gov.au http://www.privatehealth.gov.au/healthinsurance/incentivessurcharges/lifetimehealthcover.htm

8 Private Health Insurance Ombudsman, *Australian Government Private Health Insurance Rebate*, (20 November 2013), PrivateHealth.gov.au http://www.privatehealth.gov.au/healthinsurance/incentivessurcharges/insurancerebate.htm

9 Ibid.

It is noted that the Australian Government undertook public awareness measures to provide consumers with information about the changes to the PHI Rebate. In its submission DoHA highlighted that it undertakes, with the assistance of the Department of Human Services, an annual LHC loading mail out to all people who may be affected. DoHA also advised that the Australian Government endeavours to ensure that consumers are well informed prior to purchasing health cover via a number of initiatives, including the PrivateHealth.gov.au website.

Government advertising related to these initiatives has been around for over 15 years. The government first introduced the EOFY campaign in 1996 to back its LHC loading policy initiative. That commercial pictured a group of people huddling under an umbrella which was shielding them from a storm. The people were seen to urge others to join them under the umbrella. The advertisement implied that those who did not take out health cover by 'June 30' would be left out in the cold. In that instance, the object of the advertising was to directly inform consumers of their rights and obligations in relation to PHI. Threats of higher premiums, coupled with the 'Run for Cover' campaign, were the main drivers of the increase in membership from 30 per cent to 45 per cent in 2000. Since then a number of useful government information campaigns have been run to inform consumers of changes to PHI requirements.

2.2 Insurers' and comparison services' use of EOFY advertising

EOFY advertising used by insurers and comparison services, although informative, can be problematic. It was submitted that insurers are taking advantage of the opportunity presented by government deadlines for their own marketing and commercial purposes, without much regard for the needs of consumers. For example, many advertisements shown during this time try to tap into a consumer's drive to save money and avoid perceived tax penalties. The Australian Dental Association (ADA) highlighted the concern that many EOFY advertisements only refer to the potential adverse taxation consequences and never suggest to consumers the need to evaluate their own situation before purchasing insurance.

It was submitted that a significant factor influencing the decision of insurers to undertake an EOFY campaign is to inform consumers of the need to take out health cover by the end of the year. For example, one insurer submitted that tax time advertising is a means to inform consumers of the possible benefits which may be available to them. Another insurer submitted that their advertisements are used to remind consumers that the EOFY is approaching and to show consumers that they can offer options to assist with tax time. One such iSelect advertisement shown during the reporting period declared that iSelect makes 'tax time less taxing' for consumers.

EOFY campaigns exist in other sectors such as the business supplies, telecommunications and media industries, without any major problems. However, the PHI campaigns aired during the reporting period present some problems for consumers due to the complexity of PHI products and government initiatives, and the content of advertisements.

A number of PHI advertisements use emotive phrases and images to paint the deadline in a menacing light. For example, Bupa refers to the deadline as 'crunch time' in its television advertisements. These advertisements show the words 'June 30' falling from the sky, with dark, ominous clouds in the background and menacing music playing overtop to give an overall impression of impending doom. It seems that this advertisement and others like it are trying to send a message to consumers that something bad may happen if they do not sign up by the deadline.

Some commercials take a more jovial approach to the deadline. For example, iSelect refers to the deadline as 'June Hurty'. The object of this claim is to imply that not purchasing insurance by the deadline may hurt you.

Other commercials attempt to create the feeling of time pressure in viewers. For example, in one advertisement an iSelect executive is shown feverishly working a touchscreen computer for tax time which he explains is extremely complex and exclaims 'tax time is coming, Brad!' in a panic stricken voice.

2.3 Consumers' experiences with EOFY advertising

A problem with EOFY advertisements used by insurers and comparison services is that they are targeted at informing consumers that they need to take up or change policies before 'June 30' in order to avoid suffering detrimental tax impositions. While this may be the case for certain consumers, the ACCC is concerned that, in some circumstances, consumers may be reacting to a perceived need to purchase cover that does not apply to them.

The advertising in question applies to all consumers irrespective of their income, age or tax status. The advertising does not always identify the target audience and does not explain the details of the tax initiatives clearly. For example, Bupa's television advertisements show a very young woman with her parents, who is unlikely to meet many of the tax related thresholds that make 'June 30' such an important deadline. The fact that she is making purchasing decisions with her parents likely suggests that she is not close to attaining the age of 31 in the relevant period or is not likely to be earning above the income threshold.

A similar Choosi advertisement shows a young and fit personal trainer outlining that his clients need to purchase health cover before 'June 30'. This advertisement does not explain their age or income threshold levels. Although people with personal trainers are arguably likely to meet either one of these criteria, it is not clear what the tax implications are for each individual consumer.

The key problem with EOFY advertising is that, in some cases, consumers may purchase health cover that does not suit their financial needs nor help meet their tax obligations. Another concern is that consumers may not attain the taxation benefit they are seeking because they may have been overstated. Further, consumers may, in haste, take up policies which do not suit their needs and leave them facing shock out-of-pocket costs or premium payments.

Submissions to the report further highlight that consumers are often confused by EOFY advertising by insurers and comparison services. It was reported that consumers did not understand how the LHC loading worked. Many submissions emphasised that due to the wording of some advertisements, a consumer aged under 30 could be led to believe that they will be affected by the LHC loading when in fact it does not apply to them. The same is true for consumers that do not meet the earning thresholds for the MLS or the PHI Rebate.

One submission outlined that in order to be exempt from the MLS a consumer must purchase cover for the whole year. If a consumer who earns over the threshold purchases cover on 29 June 2013 they will be liable to pay tax for the whole 2012–13 financial year less one day pro rata. Many consumers are unaware that in order to avoid the tax implications of the surcharge they must purchase and pay for a full year's worth of health cover.

One ACL regulator provided the ACCC with details of a complaint in which the complainant believed that an insurer's advertisement about taking out health cover by EOFY was misleading. The consumer stated the insurer failed to inform them that people earning over $80 000 need cover to avoid the MLS and failed to inform them that they had to be in the health fund for a full year before receiving the exemption.

Another complaint to the regulator involved a consumer that joined a fund during the EOFY and who was being charged more than originally quoted and found that the benefits were not useful to her.

The ACCC also received a complaint in which the complainant said that advertising relating to the PHI Rebate was false advertising as the PHI Rebate is actually means tested which means that some people are not entitled to the PHI Rebate, or have a rebate lower than 30 per cent.

2.4 Advertising and the ACL

Given the extensive advertising and marketing campaigns conducted by the PHI industry, particular attention needs to be given to conduct and representations that may mislead consumers. The ACL prohibits businesses from making statements that are misleading or deceptive, or likely to mislead or deceive. It is also unlawful to make false or misleading statements about goods and services including a specific prohibition on making false or misleading representations that a consumer has a need for a particular product.

False or misleading advertising

The ACL sets out rules around how businesses, including insurers, communicate with consumers. Although it does not specifically regulate what businesses say in their advertising, it does prevent businesses from making false or misleading claims.

Businesses are at risk of breaching the ACL where they make statements that are incorrect or likely to create a false impression. For example, businesses must not make false or misleading claims about the quality, value, price, age or benefits of goods or services, or any associated guarantee or warranty.

When assessing whether conduct is likely to mislead or deceive, the ACCC will consider whether the *overall impression* created by the conduct is false or inaccurate.

A representation that misleads one group of consumers may not necessarily mislead another group. For example, individual contractors whose income fluctuates may be more vulnerable to products claiming to provide certainty at tax time. Where a particular need is expressed by a consumer to a fund and insurance is sold on that basis, the product sold must meet that need.

To make sure they comply with the ACL, advertisers should be certain they can substantiate their claims, particularly those on expected outcomes. They should also consider whether what is left unsaid may be misleading or deceptive.

One insurer submitted that they used disclaimers to ensure that consumers are made aware of the thresholds associated with tax incentives. A problem with the use of disclaimers or small print is that such statements do not absolve the maker of a representation from being found to have made a misleading statement. Also, shorter versions of more informative EOFY advertisements usually leave out disclaimers or direct references to the important threshold information due to timing restrictions.

In determining whether an advertisement that uses disclaimers or small print is misleading the ACCC will have regard to the full context of the advertisement including:

- whether the small print is sufficiently prominent
- the length of time the disclaimer is shown for, and
- the overall impression created by the advertisement.

It is important to note that in some cases advertising that makes use of disclaimers has been found to be misleading by the Courts.

2.5 Information asymmetry

Easily accessible and quality information is important to ensure consumers can make well informed and rational purchasing decisions. In the PHI sector, the information made available to consumers is often highly complex and not readily understood. What often results is that consumers are unable to determine whether the price being charged is fair or if they could find a better deal with another fund. This affects a consumer's ability to make informed choices about purchasing PHI.

The ACCC has found that there is a general lack of awareness among consumers of the various government initiatives in existence during the EOFY period. One insurer submitted that research suggested that consumers had low levels of knowledge of government PHI taxation policies with only 51 per cent of consumers believing they already had a good understanding of the two key policies, the MLS and LHC loading.

The PHIO outlined that its yearly figures show that they regularly receive a spike in enquiries each May and June, in some part due to EOFY advertising, as well as other factors such as DoHA's LHC loading mail out. The PHIO received 198 enquiries in May and 215 in June 2013, through the Australian Government's PrivateHealth.gov.au website. The average per month in 2012–13 was 123 enquiries. Some of these enquiries directly referenced EOFY advertising by funds. This further suggests that consumers need more information about PHI during this period.

The ACCC found that while consumers are receiving some useful information about policies and their tax implications from EOFY advertisements they are not getting enough of the right information, and are often not in a position to properly formulate their enquiries.

Informed choices and information asymmetry

Information asymmetry occurs when one party to a transaction has more information than another party. In the PHI industry, there is an inherent level of information asymmetry between health funds and consumers. This is because health funds have access to information regarding out-of-pocket costs and tax rebates that is not easily available to consumers.

The ACL does not explicitly regulate how health funds must disclose this information. However, health funds have an obligation to disclose relevant information to consumers prior to a consumer purchasing a health cover product.

For consumers, the PHI market is characterised by information asymmetry. That is, consumers hold less information than providers.

The Consumers Health Forum (CHF) submitted that the environment of perceived urgency generated by EOFY advertising may negatively impact on informed financial consent. The CHF argued that consumers do not have enough time to read, understand and consider financial information before having to make a decision. During consultations with consumers, the CHF found that the complexity of PHI and government initiatives is creating a barrier to effective decision making for consumers. The CHF submitted that consumers are having difficulties understanding the interaction between fees charged by doctors, rebates received from insurers, Medicare rebates and various safety nets and tax rebates.

There is also a potential for time pressures portrayed through EOFY advertising to be leading consumers to 'panic buy' health cover that is not suited to their needs.

'Panic buying' or time pressure purchases

Time pressure purchases occur when consumers feel the need to purchase a particular product to avoid missing out, or to avoid being penalised. In the PHI industry, time pressure purchases can occur as a result of EOFY advertising by insurers and comparison services and how consumers interpret this advertising.

The CHF argues that an important determinant that leads a consumer to making a wrong and potentially costly decision is the time pressure experienced when purchasing insurances during the EOFY. They say this can be exacerbated by the complexity of PHI products.

However, HBF submitted that figures from the 2011 IPSOS Report show that only 13 per cent of consumers took out private hospital cover to avoid the MLS. This suggests that the decision to take out health cover is not significantly influenced by the EOFY. It may be that the advertising is acting as a reminder to purchase health cover for another reason.

One insurer submitted that research undertaken after their June 2013 campaign revealed that over 80 per cent of consumers contacting the insurer during this time were not seeking additional information on government policy. They said these customers were interested in generic information pertaining to health cover. The insurer argued that these results indicate that consumers taking out health cover during this time were acting in a 'sensible and considered way' when purchasing health cover products to ensure their purchase would provide value and appropriate coverage to themselves or their families and not simply as a mechanism to avoid the MLS or LHC loading.

It may be that consumers otherwise not intending to take up PHI, or who are attuned to the vague desirability of acquiring PHI take the tax time trigger as an opportunity to sign up and 'tick that box' without engaging in an analysis of their PHI needs. This makes it difficult for consumers to assess whether their policy is meeting their needs down the track and lowers the likelihood of movement between policies.

The aim of government is to ensure consumers have sufficient knowledge to help them understand their needs and options and to have confidence their PHI will meet their needs. Consumers are entitled to make well-informed decisions, particularly when it comes to health care.

Not only does the supply of adequate information help to prevent consumers from misunderstanding the nature and extent of their insurance coverage, but it also has the potential to minimise disputes between consumers and health funds. Further, addressing information asymmetries in the industry may aid consumers in making informed choices about purchasing PHI products.

2.6 Insurers information practices

The ACCC received a number of submissions that EOFY advertising was not problematic for consumers and highlighted the lengths that insurers and comparison services go to in order to ensure that consumers have adequate information.

One insurer did not consider that any anti-competitive or other irregular behaviour occurred as part of EOFY advertising. Its advertising acknowledged EOFY can be daunting, but tried to make it simple for consumers. It extended call centre and retail store hours of operation during the EOFY to improve accessibility for consumers.

Hirmaa, a peak representative body for a number of insurers, submitted that it is confident that consumers are able to navigate their way through EOFY advertising. It highlighted that its members provide consumers with detailed information before, during and after joining a fund.

Hirmaa pointed out that its members provide consumers with a standard information statement (SIS)[10] on joining the fund and annually thereafter. Hirmaa submitted that if there was ever some ambiguity the consumer could always seek clarification from an insurer.

HBF noted that it advertises in the lead-up to the EOFY because the public is more aware of tax matters during this time. It receives referrals from accountants during this time because tax conversations prompt consumers to seek additional information from insurers.

While conceding a key driver of the purchase of health cover is a means to avoid the MLS and LHC loading, HBF stated that the conversations that they have with prospective members are the same regardless of the time of year in which they choose to make their purchase.

HBF submitted that all staff that interact with members are rigorously trained to undertake a thorough analysis of consumer's needs. They call this process the 'needs discovery process' which involves an explanation of the various government initiatives relating to PHI.

One insurer submitted that it used its best endeavours to ensure that consumers always have access to clear, accurate and transparent information about PHI products. The insurer pointed out that its standard sales process focussed on needs based selling which includes detailed questioning of a customer to ensure they get a product that suits their health and financial needs. The insurer argued that as a signatory to the Private Health Insurance Code of Conduct, its customers were adequately protected.

Private Health Insurance Code of Conduct

The Private Health Insurance Code of Conduct (the Code) is a voluntary code developed by the PHI industry. It is self-regulated by the industry and does not fall under the PHI Act, the CCA or the ACL.

The Code sets out agreed standards and responsibilities for the industry. It regulates the training of health fund employees, the principles of practice adopted by agents and brokers, policy documentation guidelines, contract cooling-off periods, and privacy policies. Health funds that are signatories to the Code must ensure that they comply with the rules and cooperate with the Code Compliance Committee (the Committee).

The Committee is independent from signatories and is responsible for ensuring that all signatories comply with the rules of the Code. Aside from monitoring and enforcing compliance, the Committee is responsible for conducting audits, investigating alleged breaches of the Code, imposing sanctions for breaches of the Code, and publishing annual compliance reports. The Committee is also responsible for administering its own dispute resolution process. All signatories to the Code are required to provide consumers with information about alternate means of dispute resolution through the PHIO.

Although the Code provides some guidance to insurers and some safeguards for consumers, it falls short of creating enforceable obligations on insurers to ensure that they adequately inform consumers before, during and after an advertising campaign.

In submissions, many insurers supported any effort to make information about health cover requirements clearer and more accessible for consumers.

10 Standard Information Statements (SIS) are available on all PHI products. Health funds are required to provide a SIS to a consumer under the PHI Act. The SIS gives a summary of key product features and allows a consumer to compare a products coverage and price in order to assess whether the product meets their needs. The SIS does not contain all information about a policy. To obtained detailed information a consumer will need to contact their insurer directly.

2.7 Conclusion

While the ACCC considers EOFY advertising can be helpful to consumers and spur competition between funds, it notes the issue of lack of informed choice is an on-going feature of the market. This appears to be exacerbated by EOFY advertising due to the impetus for consumers to address their health cover needs against the requirements of taxation and other government initiatives.

The ACCC considers that information asymmetry in the PHI market may usefully be addressed by more information regarding EOFY tax implications being made available to consumers. Further, the ACCC considers there would be merit in consumers being further educated of the need to be properly informed prior to purchasing a health cover product during EOFY including whether or not they are even in a position where health cover would be in their interest.

To this end the ACCC has developed a set of key questions that consumers should ask themselves when taking up or transferring PHI policies at the EOFY:

1. Why do I want private health insurance?
2. Are there any tax implications for me in getting private health insurance?
3. Am I turning 31 before 1 July this year?
4. Do I earn over the income thresholds for the Medicare Levy Surcharge or the Private Health Insurance Rebate?
5. What are my health cover needs?
6. Does this health cover meet my needs?
7. What if I want to change my health cover?

3. Using and accessing private health insurance

This chapter will assess whether EOFY campaigns are impacting on consumer's ability to access and use health cover. In particular this chapter will focus on consumer's ability to switch between insurers under PHI portability arrangements.

3.1 Information problems after purchasing private health insurance

As outlined in chapter 2, information problems are a key aspect of the PHI industry because consumers hold less information than insurers. A number of concerns have been raised about the impact of these information problems after consumers have purchased health cover. The ACCC found that information problems only become clear once a policy has been tested and failed.

Submissions to the report suggest that insurers do not fully disclose preferred provider arrangements to consumers before purchase and that consumers only find out that their choice of provider is not preferred after they try to make a claim for a service.

The Australian Society of Orthodontists (ASO) submitted that it was concerned that patients were not being informed about the relevant orthodontic benefits and any 'wait times' that applied when joining a fund. Instead, consumers may be surprised with additional out of pocket expenses after they have signed up for health cover.

The Australian Society of Plastic Surgeons (ASPS) submitted that there is a lack of disclosure and lack of transparency in relation to product exclusions and restrictions. It said that its patients were only made fully aware of exclusions during a personal health crisis when they attempted to use their health cover after costs have already been incurred.

The ADA submitted that due to circumstances associated with EOFY, consumers are often not aware of what is covered by their insurance until after they make a claim. In particular, the ADA is concerned with the way insurers categorise general, complex and major dental services. The ADA argues that the lack of uniformity in the way these categories are used means that there is a lack of transparency on how annual limits are calculated by insurers.

This creates a great deal of confusion for consumers trying to make a claim and makes it extremely difficult for consumer to compare the level of cover offered across policies.

3.2 Quality of product offerings during the end of financial year

It was put to the ACCC that there might be an issue with EOFY products designed to help consumers to escape perceived tax penalties. Concerns were raised that a higher incidence of lower quality and cheaper cover available during the EOFY may over time lead to a reduction in the quality of products available in the market.

Many insurers submitted that they did not offer special EOFY products, but that they had basic products available that could potentially be used by consumers to avoid negative tax implications. Other insurers highlighted that they offered special products and discounts during the EOFY to entice consumers to sign up or transfer. One insurer outlined that during the reporting period it offered products with gap free dental health care for the whole family as a part of its EOFY campaign. This would suggest that some consumers may in fact benefit from some special EOFY products.

Concerns were raised in submissions that some basic products offered by insurers contained high levels of exclusions and restrictions. For example, the ASPS submitted that many basic health cover products excluded cosmetic surgery. This exclusion applies equally to reconstructive cosmetic surgery following a serious injury or illness such as following treatment for extensive burns or following breast cancer surgery. The ASPS argued that ideally such surgery should not be excluded from basic hospital cover, but that in those circumstances where insurers do exclude reconstructive surgery they should ensure that they inform consumers of such exclusions.

On balance, the ACCC did not receive conclusive evidence of poor quality products being offered by insurers during the EOFY.

3.3 Consumers experiences with PHI portability

As a part of the assessment of consumers' ability to use and access health cover, the ACCC assessed consumers' experiences with switching or transferring between insurers under PHI portability arrangements. The ACCC was concerned that the volume of sign-ups during the EOFY could impact negatively on consumers seeking to switch during this time.

The PHIAC's recent paper on *Portability, Switching and Competition in the Australian Private Health Insurance Market* noted that the portability rules, which allow consumers to move their business to a better value product in a convenient way and at minimal cost, are a vital aspect of any competitive market. In other words, the ability of consumers to freely exercise choice is a driver of market-based outcomes. Consumer choice is best supported by consumer knowledge of product offerings, and lack of regulatory, financial or administrative barriers in shifting their business from one health insurer to another. When this is the case, consumers can obtain the most appropriate product for their health needs.

The PHIAC notes that transfer rates between insurers are very low and considers the low level of switching in the Australian PHI market may reflect a number of factors including:

- a general level of consumer satisfaction with current insurers
- some consumers adopting a 'set and forget' approach and not expending the effort needed to review their options, and
- a lack of consumer awareness of the portability rules.

Consumer experiences with portability were a key focus of many submissions to the report, including the issue of whether consumers are aware of their ability to use portability arrangements. The ADA believes consumers are 'very much unaware' they can change insurers or health cover policies without loss of qualifying periods and bonuses. The ADA encourages government agencies including the ACCC and the PHIO to make increased efforts to inform consumers about the existence and ease of changing PHI policies and providers. The ADA asserts that insurers are not outlining information relating to the processes and real costs of changing providers to consumers and that 'to facilitate true competition, consumers must be made aware of relevant information that is available to them'.

However, the majority of submissions identified that the main issue with the portability process is slowness on the part of some insurers in issuing transfer certificates. It was submitted that these long delays in the processing of certificates was contrary to insurers' portability obligations.

Insurers' portability obligations

The *Private Health Insurance Act 2007* (PHI Act) regulates portability, switching and competition in the PHI market. These arrangements ensure that consumers are able to switch between insurers without penalty. For example, insurers are prevented from re-imposing any waiting periods on consumers which have already been served at the time of switching.

The PHI Act also places obligations on insurers in relation to issuing of transfer certificate to enable consumers to switch. The outgoing insurer must give a transfer certificate to a person ceasing to be insured within 14 days of ceasing insurance.

Under the PHI Act the new insurer also has an obligation to request a transfer certificate from the outgoing insurer within 14 days, where one has not been supplied by the consumer. The outgoing insurer must comply with the request and give the new insurer a transfer certificate within 14 days.

An insurer commits an offence if it does not meet these requirements, the penalty is 60 penalty units ($10 200 as of November 2013) and strict liability applies to the offence—that is, the insurer is deemed legally responsible, irrespective of culpability.

The Private Health Insurance Code of Conduct mirrors these requirements and also requires insurers to provide a transfer certificate within 14 days.

It appears that although there is a 14 day requirement for providing transfer certificates to the new insurer, it can take up to 30 days during the EOFY period. It was submitted that some consumers were waiting up to three months for a transfer to be processed during this time.

One insurer submitted that their biggest complaint from customers joining their fund was in relation to the transfer process from other insurers. The insurer reported:

> Consumers are frustrated at the present system and their inability to activate their decision to transfer in a timely manner. The resulting sense of helplessness directly undermines their early impressions of their new insurer and the private health insurance system overall. This is a regular but preventable situation.

Other impacts on consumers identified in submissions included double premiums and uncertainty as to coverage. All of which, as discussed below, may be factors explaining low rates of transfer of consumers between insurers in Australia.

The Australian Day Hospital Association (ADHA) submitted that its patients had experienced high levels of uncertainty when attempting to access their health cover following a recent transfer between insurers. The ADHA explained patients are regularly advised to check their level of cover with their insurer prior to admission. However, as a result of delays of up to three months in the processing of some transfers, the ADHA submitted that their patients were required to check with both the outgoing and incoming insurer in order to determine whether they were covered. This results in extra work for the admitting day hospital and extra work and stress for the patient.

According to submissions, consumers can also find themselves paying double premiums during the transfer process. It was submitted that the outgoing insurer may not refund the additional premiums paid and may not offer retrospective cancellations.

One insurer explained that the outgoing fund continues to direct debit transferring customers' accounts until they action the transfer certificate and thereby cancel the insurance. Given the time it takes the new insurer to complete this process, the insurer estimates most customers will be charged by both funds (including the one that they have in their mind already cancelled) causing significant consumer dissatisfaction with regard to the new insurer. They contend it puts the customer significantly out of pocket until the old fund refunds the consumer, if at all.

This insurer submitted that many incumbent funds use this as leverage to retain members, as a long delay in the transfer process may result in the consumer deciding to stay due to the hassle of the transfer process.

Further, the ADA submitted that transfer delays create doubt in the minds of consumers as to whether they should commit to changing insurers and argued that if this tardiness did not exist consumers would in fact change policies.

From an insurer's perspective, one confidential submission advanced a number of reasons why the transfer certificate process stifles competition, noting that the process depends on timely and accurate self-reporting to the requesting fund *by the customer* as to whether they have had prior insurance, and the details of this insurance. The insurer says it has found that regardless of how and how-often this information is requested or consumers reminded, a significant percentage of customers fail to notify the new insurer for some time (often only when they realise that their old fund is still charging them). This insurer also suggested the transfer certificate process appears to be largely ignored by many funds, for a range of reasons including retention of customers, inefficient systems and process bottlenecks, particularly at the EOFY.

3.4 Conclusions

Delays in transferring consumers between funds can increase a consumer's expenses. It appears that there are transaction costs incurred by consumers when involved in switching insurers including transfer delays, double premiums and uncertainty about coverage levels. This is caused by consumers not providing timely information to their new insurer, and it would seem, delays in processing by the funds, which are exacerbated by EOFY.

As posited by some of the submissions, it is possible that these impediments are distorting the market and hindering the full flow of benefits to consumers.

4. Conclusions and recommendations

4.1 Summary of conclusions

Consumers may make irrational purchasing decisions when acquiring a complex product under perceived time pressures and without the right information. These issues all appear to combine in EOFY advertising of PHI products.

The ACCC considers that information asymmetry in the PHI market may usefully be addressed by more information regarding EOFY tax implications being made available to consumers. Further, the ACCC considers there would be merit in consumers being further educated of the need to be properly informed prior to purchasing a health cover product during EOFY including whether or not they are even in a position where health cover would be in their interest.

The ACCC also found that consumers are experiencing problems accessing their policies after signing up to a new fund. Delays in transferring existing customers and unexpected restrictions on a consumer's ability to make a claim diminish a consumer's ability to use and access their insurance.

4.2 Advice for consumers and businesses

The ACCC considers that the advertising that is used to entice consumers to purchase health cover must be careful not to create false impressions in consumers. To this end the ACCC has developed a set of key questions that consumers should ask themselves when taking up or transferring PHI policies at the EOFY. The objective of such guidance is to encourage compliance with the ACL and to provide clarity around EOFY advertising generally.

Seven questions to ask when purchasing health cover

1. Why do I want private health insurance?
2. Are there any tax implications for me in getting private health insurance?
3. Am I turning 31 before 1 July this year?
4. Do I earn over the income thresholds for the Medicare Levy Surcharge or the Private Health Insurance Rebate?
5. What are my health cover needs?
6. Does this health cover meet my needs?
7. What if I want to change my health cover?

4.3 Comment for policy makers

The ACCC considers there is more to be done in the realm of consumer education and empowerement around PHI generally, and specifically in relation to tax obligations imposed as part of government policies in this area. Insurers also need to be made to comply with their transfer obligations to ensure consumers coverage during the transfer process is not adversly affected.

Appendix A—Invitation letter

Our ref: 51574

Contact officer: Julia Kulakowski-Rupert

Contact phone: 02 6243 1328

Australian Competition & Consumer Commission

GPO BOX 3131
Canberra ACT 2601

23 Marcus Clarke St
Canberra ACT 2601

tel: 02 6243 1111
fax: 02 6243 1199

www.accc.gov.au

6 August 2013

Dear Stakeholder

ACCC Report to the Senate on Private Health Insurance

The Australian Competition and Consumer Commission (ACCC) is commencing preparation of its annual report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance for the period of 1 July 2012 to 30 June 2013.

We are writing to you, as a valued stakeholder, to seek your input on the matters to be considered in this year's report.

This year the ACCC is again focusing on a discrete issue affecting the private health insurance industry. We will be examining the practice by some insurers, comparison services, brokers and intermediaries of using end of financial-year or 'tax time' advertising as a tool to encourage consumers to sign up to a fund, or to transfer between funds, in order to 'beat the yearly premium increase' or to 'avoid crunch time'.

In the past few years, policy changes such as the Lifetime Health Cover Loading, the Medicare Levy Surcharge and the 30 per cent Government Rebate have resulted in some consumers becoming more sensitive to end of financial year advertising, whether or not the policy changes apply to them specifically.

For example, consumers under the age of 30 (and not set to attain the age of 31 in the relevant period) may be led to believe that they must sign up for private health insurance cover or alter their cover before June 30 to avoid penalties—when this may not be the case.

The ACCC considers that in an environment of perceived urgency consumers may be less inclined to ask insurers or brokers the questions they are normally advised to ask to ensure they are in a position to give informed financial consent to a policy that meets their health needs and does not contain unexpected gaps and exclusions.

For this reason, the ACCC is interested to examine the features of such advertising and its impacts on consumers. In particular, we would like to gain a better understanding of consumers' experiences when signing up to, or transferring between insurers, as a result of such campaigns.

Rather than investigate whether particular advertisements or representations contravene the Australian Consumer Law it is intended the report will consider whether the practice in general is impacting the ability of consumers to make informed choices when purchasing private health insurance.

In order to help us to prepare this year's report, we would be most grateful for any comments you may have that touch on the matters outlined above. In particular, the ACCC would like to hear your views on the following issues:

- To the best of your knowledge, what are consumers' experiences in relation to end of financial year advertising? Please reference those advertisements or characteristics of those advertisements that raise concerns for you.
- Are consumers' experiencing any difficulties when signing up to, or switching between, insurers as a result of end of financial year advertising?
- Are consumers being given adequate information in relation to policies offered as a part of end of financial year advertising?
- Are you aware of any difficulties or complaints arising from consumers' experiences with using their coverage after signing up to, or transferring between, insurers? Please provide details.

This year submissions can be made in a number of ways:

- Upload your submission at https://consultation.accc.gov.au/ipil/phireport, or
- Email your submission to phireport@accc.gov.au, or
- Send your submission to Bruce Cooper, GPO Box 3131, Canberra ACT 2601

Submissions are welcome **by Friday 30 August 2013**.

We strongly encourage stakeholders to upload their submission to our website. This will ensure that submitters can manage the submission process in relation to privacy and confidentiality of their submissions, and will ensure that submitters receive an acknowledgement that their submission has been received.

The ACCC will table the final report in the Senate and communicate its findings to stakeholders and the general community as soon as practicable after submissions close.

For more information on the ACCC report to the Senate and to see previous reports and past submissions please go to www.accc.gov.au/phireport.

Any preliminary queries are best directed to phireport@accc.gov.au or to Julia Kulakowski-Rupert on (02) 6243 1328.

Yours Sincerely,

Bruce Cooper
General Manager
Strategy, Intelligence, International and Advocacy Branch

Appendix B—List of submissions

Australian Society of Plastic Surgeons

Medical Technology Association of Australia

HBF Health Limited

Australian Day Hospital Association

hirmaa

Australian Dental Association Inc.

Dental Hygienists' Association of Australia

Australasian College of Podiatric Surgeons

Consumers Health Forum of Australia

ACCC contacts

ACCC Infocentre: business and consumer inquiries: 1300 302 502

Website: www.accc.gov.au

Translating and Interpreting Service: call 13 1450 and ask for 1300 302 502

TTY users phone: 1300 303 609

Speak and Listen users phone 1300 555 727 and ask for 1300 302 502

Internet relay users connect to the NRS (see www.relayservice.com.au and ask for 1300 302 502)

ACCC addresses

National office

23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

Tel: 02 6243 1111
Fax: 02 6243 1199

New South Wales

Level 20
175 Pitt Street
Sydney NSW 2000

GPO Box 3648
Sydney NSW 2001

Tel: 02 9230 9133
Fax: 02 9223 1092

Victoria

Level 35, The Tower
360 Elizabeth Street

Melbourne Central
Melbourne Vic 3000

GPO Box 520
Melbourne Vic 3001

Tel: 03 9290 1800
Fax: 03 9663 3699

Queensland

Brisbane

Level 24
400 George Street
Brisbane Qld 4000

PO Box 12241
George Street Post Shop
Brisbane Qld 4003

Tel: 07 3835 4666
Fax: 07 3835 4653

Townsville

Suite 2, Level 9
Suncorp Plaza
61–73 Sturt Street
Townsville Qld 4810

PO Box 2016
Townsville Qld 4810

Tel: 07 4729 2666
Fax: 07 4721 1538

South Australia

Level 2
19 Grenfell Street
Adelaide SA 5000

GPO Box 922
Adelaide SA 5001

Tel: 08 8213 3444
Fax: 08 8410 4155

Western Australia

3rd floor, East Point Plaza
233 Adelaide Terrace

Perth WA 6000
PO Box 6381
East Perth WA 6892

Tel: 08 9325 0600
Fax: 08 9325 5976

Northern Territory

Level 8, National Mutual Centre
9–11 Cavenagh St
Darwin NT 0800

GPO Box 3056
Darwin NT 0801

Tel: 08 8946 9666
Fax: 08 8946 9600

Tasmania

Level 2
70 Collins Street
Cnr Collins and Argyle Streets
Hobart Tas 7000

GPO Box 1210
Hobart Tas 7001

Tel: 03 6215 9333
Fax: 03 6234 7796