HCF

SUBMISSION TO THE SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE

INQUIRY INTO THE HEALTH LEGISLATION AMENDMENT (IMPROVING CHOICE AND TRANSPARENCY FOR PRIVATE HEALTH CONSUMERS) BILL 2026

24 MARCH 2026

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Committee Secretary
Senate Standing Committees on Community Affairs
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

To the Committee Secretary,

Thank you for the opportunity to make a submission to the Senate Community Affairs Legislation Committee inquiry into the *Health Legislation Amendment (Improving Choice and Transparency for Private Health Consumers) Bill 2026* (the Bill).

HCF supports measures that improve transparency for consumers and strengthen confidence in private health insurance. However, HCF has serious concerns that the product regulation measures in Schedule 2 go materially beyond what is necessary to address "product phoenixing" and will create significant unintended consequences for consumers, competition and the sustainability of essential products—particularly Gold hospital cover.

In HCF's view, "phoenixing" is a symptom of structural issues in the market (including adverse selection pressures for high cost treatment), not the root cause. Restricting portfolio management will not resolve those structural pressures. More importantly, it risks producing inequitable outcomes across the membership, particularly for long-tenured members who have maintained continuous cover and depend on access to sustainable, appropriately priced products that reflect their health needs.

This is not a theoretical concern. Gold hospital cover is already under acute sustainability pressure, driven by the concentration of high-cost claims in mental health, obstetrics and complex chronic conditions. Without the flexibility to actively manage these portfolios, insurers will be left to either apply broad premium increases applied across the entire membership which in today's economic environment is likely to lead to significant lapses by members who can no longer afford our products, or close Gold products and remove private access to those services on the Gold tier, placing additional pressure on an already overloaded public health system

HCF urges the Committee to recommend targeted amendments and clear operational safeguards so the Bill can achieve its transparency objectives without reducing consumer choice, increasing premiums through compliance and delivery friction, or limiting insurers' ability to respond to emerging risks and cost shocks in the interests of members.

HCF thanks the Committee for considering our submission and would welcome the opportunity to appear before the Committee to discuss these issues further.

Sincerely,

Lorraine Thomas
Managing Director and Chief Executive Officer

1. EXECUTIVE SUMMARY

As Australia's largest not-for-profit and fastest growing large health insurer, HCF is focused on delivering for our more than 2.1 million members. HCF returns 89 cents in benefits for every dollar paid in premium, above last 10-year's industry average of 84 cents[1]. Under our 2030 Strategy, HCF is committed to increasing that figure to 90 cents in the dollar. This reflects HCF's not-for-profit model and our commitment to prioritise member value over shareholder profits.

Our sole purpose is the health and wellbeing of our members. Every decision HCF makes on product design, pricing and portfolio management must balance the needs and financial interests of our entire membership: long-tenured members, high-need members, and those seeking affordable preventive care. This submission reflects that responsibility.

HCF supports the Bill's objective to improve transparency and comparability of medical fees and likely out-of-pocket costs for consumers, including through strengthening the Medical Costs Finder. HCF recognises the cost-of-living pressures facing households and commends the Government's efforts to improve price transparency so consumers can better anticipate out-of-pocket costs and make informed choices. HCF is broadly supportive of the transparency-by-default measures in Schedule 1, subject to appropriate data quality and governance safeguards.

However, HCF has key concerns with Schedule 2's product and premium approval framework being overly broad. While HCF understands the Minister's concerns with the potential consumer impact of closing and opening identical products with higher prices which the Minister believes private health insurers do it this way to avoid the annual premium approval round, the breadth of this legislation could create unintended consequences. In our view, what has been labelled "phoenixing" is a symptom of structural settings in the Gold/Silver/Bronze/Basic tiering framework and adverse selection pressures, not a cause or a loophole in itself.

By limiting timely, targeted sustainability actions, the Bill is likely to increase reliance on larger premium increases on existing products, rather than more nuanced portfolio measures, undermining the stated objective of improving value for consumers.

As a potential solution, HCF recommends three targeted changes:

- A clean carve-out of Extras (general treatment) products from Schedule 2.
- Risk equalisation reforms that better support mental health and pregnancy as a structural complement to transparency measures.
- A narrow, clear definition of "designated change" so routine and consumer-beneficial product stewardship is not inadvertently captured.

Our submission below therefore provides further information on our key concerns with Schedule 2 including our recommended targeted changes.

2. CONTEXT SETTING: THE CHALLENGES OF GOLD & PRODUCT TIERING

To give you some context to our concerns, tiering has increased structural pressures on sustainability and fairness. The current private health insurance product framework has been built

[1] 88.7% for HCF and 84.4% industry average. Calculated based on the average of the past 10 years, sourced from APRA Statistics: Operations of Private Health Insurers Annual Report data 2015–24 and Quarterly private health insurance statistics July 2024–June 2025

incrementally through a series of regulatory reforms rather than designed as a coherent whole. The introduction of the Gold, Silver, Bronze and Basic product tiers in 2019 was intended to improve consumer clarity and portability. Since then, further changes, often driven by well intentioned policy objectives (for example, mental health waiver and upgrade settings), have compounded these settings and contributed to increasing sustainability pressures across the industry. For a not-for-profit insurer owned by its members, this has heightened the need to balance affordability and access in the interests of the whole membership.

Gold hospital cover, in particular, has become a concentration point for high-cost, high-need claims, including mental health, obstetrics and complex chronic conditions. Adverse selection dynamics mean that members most likely to claim at high cost disproportionately hold Gold products. This places sustained upward pressure on premiums for Gold cover and threatens its long-term viability. This pressure is further compounded by the fact that some insurers no longer offer a Gold product at all, increasing the concentration of high-cost risk among the smaller number of funds that continue to offer comprehensive Gold cover. This creates a genuine dilemma for funds: preserve access to comprehensive cover for members who need it, while maintaining affordability and fairness for the broader membership who ultimately share the cost through premiums.

In this context, what has been labelled "product phoenixing" is a symptom of these structural settings, not a cause or a loophole. Like other insurers, HCF maintains on-sale and off-sale products as part of prudent portfolio management. For a member-owned, not-for-profit insurer, these tools are one way to help balance the interests of different cohorts across the membership, including long-tenured members, high-need members and those seeking affordable cover. Overly broad restrictions risk unintended consumer harm by reducing competition and choice, increasing compliance and delivery costs (which ultimately flow through to premiums), and leaving insurers with fewer options than broad premium increases to manage emerging risks and cost shocks.

Any policy response in this area must balance constraints on product management with insurers' prudential obligations and the principle of member equity. For HCF, that means balancing the needs of all members, including long-tenured members who have maintained continuous cover, members with high and complex health needs, and members who are price sensitive. This is particularly important where some members may join (or upgrade) to access high-cost treatment and then leave once that treatment is complete, commonly described as "hit & run" behaviour.

These dynamics are further compounded by the absence of an industry-wide mechanism to confirm whether a member has previously utilised the one-time mental health waiver when joining a new fund, increasing uncertainty and potentially contributing to short-term participation behaviours.

If funds are prevented from managing this risk through timely product stewardship, costs will be shifted onto the broader membership through higher, more blunt premium increases, reducing affordability for all members and limiting capacity to keep essential products, especially Gold, sustainably available.

3. SCHEDULE 2 (REGULATING PREMIUMS): *KEY CONCERNS*

The Bill introduces a concentrated annual approval cycle that limits flexibility to respond to changing market conditions

The Bill effectively centres pricing and product decisions on a single annual submission window (the "approved application period"), and applies a higher threshold to approvals outside that period.

HCF is concerned this will:

- create severe operational complexity by concentrating rate changes, product changes, IT releases and member communications into one period;
- reduce flexibility to respond to genuine market needs, emerging risks, or changes in member demand;
- increase the likelihood of delayed or blunt responses, to the detriment of consumers; and
- unnecessarily impact customer facing and front line teams by concentrating rate changes and product changes on the same implementation day.

"Designated change" is too broad and risks capturing legitimate sustainability measures

The Bill's "designated change" concept is framed broadly and is supplemented by future rule-making. In practice, it risks capturing a wide set of legitimate and necessary product sustainability measures, including those used to:

- manage adverse selection and "hit & run" behaviour;
- protect long-tenured members from subsidising newer, higher-claiming cohorts; and
- ensure products remain financially sustainable in response to cost drivers outside insurers' control.

This is not a theoretical risk. For high-cost products like Gold, sustainability often requires timely portfolio management, not just annual repricing. Removing these options risks the sustainability of product

The public interest test requires explicit statutory guidance

The Bill applies a "not contrary to the public interest" test within the annual window and a stricter "in the public interest" test outside it. Without clear guidance, there is a material risk that "public interest" is interpreted narrowly as short-term price minimisation.

HCF's view is that the public interest must explicitly include:

- long-term affordability and sustainability;
- maintaining competition and consumer choice; and
- protecting existing members from avoidable cross-subsidies driven by adverse selection.

Without these considerations, the Bill risks unintentionally pushing insurers toward fewer sustainable options—ultimately harming consumers.

Material uncertainty remains on scope, timing and practical operation

HCF is concerned the Bill does not provide sufficient clarity on critical operational matters, including:

- what constitutes a "product" for the purposes of "designated change" (including whether broader insurer features and value-adds are captured);
- how approvals interact with third-party changes that materially affect premium/value outcomes (e.g. levies and contracting changes);
- whether changes must take effect from a fixed date (such as 1 April) or can be staged; and

- what occurs where an insurer elects not to implement an approved change because circumstances have materially shifted between approval and deployment.

4. RECOMMENDATIONS: TARGETED AMENDMENTS AND SAFEGUARDS

HCF recommends the Committee support the Bill's intent **subject to amendments** that reduce the risk of unintended harm:

- **Exclude extras products.** HCF recommends the Bill be amended so Schedule 2 does not apply to Extras (general treatment) products. This reflects the practical reality that Extras products do not operate on the same clinical category architecture as hospital products, are not the source of the "product replacement" concerns raised by the Minister; and operate in a highly competitive retail market, with no evidence of the issues identified in hospital replacement policies. HCF advanced this position during the October 2025 consultation on outlawing product "phoenixing", and Members Health Fund Alliance and Private Healthcare Australia have also recommended excluding Extras for practical reasons.
- **Narrow and clarify "designated change"** to capture true phoenixing/value erosion conduct, while avoiding capture of legitimate sustainability actions and routine portfolio management. The ambiguity in the legislation is unhelpful and may drive unintended consequences.
- **Strengthen public interest guidance** to require explicit consideration of long-term affordability, sustainability, competition and protection of long-tenured members. Additional statutory and regulatory guidance is required to ensure it is applied consistently and in a way that promotes long-term member outcomes.
- **Progress complementary structural reforms to address the drivers of "phoenixing"**. HCF submits that the effectiveness of the Bill in improving consumer outcomes will be significantly enhanced if it is complemented by reforms that directly address the structural drivers of product replacement behaviour, particularly in Gold products.

5. ALTERNATIVE POLICY LEVERS TO ADDRESS THE DRIVERS OF PHOENIXING

HCF submits that if the Government's objective is to improve consumer outcomes and reduce the incentives for phoenixing behaviour, then targeted policy reforms addressing the underlying drivers will be more effective and less risky than broad restrictions on product and premium management. HCF recommends consideration of the following alternative or complementary levers:

Risk equalisation settings (targeted support for open Gold products)

HCF recommends the Committee encourage Government to progress risk equalisation reforms that better support mental health and pregnancy, recognising these areas can create concentrated sustainability pressures that undermine the long-term viability of comprehensive products. Transparency measures will be strengthened when paired with structural settings that preserve access to comprehensive cover for high-need cohorts.

Allowing a proportion of claims costs of open Gold tier products to be recognised in risk equalisation would:

- reduce incentives to close and replace products purely to manage high cost claims and adverse selection;
- support continued availability of comprehensive cover for high needs cohorts; and

- encourage insurers to maintain accessible Gold offerings without shifting cost burdens onto long-tenured members.

By smoothing extreme cost concentrations, targeted risk equalisation reform would directly weaken one of the key structural drivers of Gold product replacement behaviour.

Mental health upgrade reforms (address a known adverse selection pathway)

Revisiting mental health upgrade settings is necessary to address a material driver of Gold tier sustainability pressures. While well-intentioned, short upgrade pathways can exacerbate adverse selection and contribute to the conditions that drive insurers to take portfolio actions to restore sustainability.

Incentives for Gold tier uptake (strengthen the risk pool and sustainability)

Adjustments to incentives such as MLS, LHC, and/or rebate settings could support broader Gold risk pooling, reduce concentration of high-claiming cohorts, and improve long-term sustainability, reducing pressure for portfolio actions that are later characterised as phoenixing.

6. CONCLUSION

HCF supports the Bill's transparency and consumer protection intent in Schedule 1. However, Schedule 2 as drafted risks reducing competition and consumer choice, increasing operational burden and costs, and driving blunt premium outcomes by constraining timely product sustainability actions, particularly for high-cost products like Gold.

In assessing the Bill, HCF urges the Committee to consider the broader sustainability context for private health insurance, including adverse selection pressures, the need to maintain access to comprehensive cover for high-need cohorts, and long-term affordability for the wider membership. If health insurers have reduced ability to manage their portfolios, this will lead to more closures of Gold products and remove private access to those services on the Gold tier, placing additional pressure on an already overloaded public health system.

HCF urges the Committee to adopt the targeted amendments and safeguards set out in the Recommendations section, including narrowing and clarifying Schedule 2 so it addresses phoenixing conduct without undermining prudent portfolio management, and ensuring Schedule 1 transparency-by-default measures are implemented with strong data governance, context and correction mechanisms.

These changes will better protect consumers while supporting long-term affordability, continued access to essential products (including Gold), and a more sustainable private health system overall.