



**Australian Day Hospital Association (ADHA) Submission  
on  
Options to Strengthen the Misuse of Market Power Law  
Discussion Paper (December 2015)**

## **The Australian Day Hospital Sector**

Growth in the stand-alone Day Hospital sector experienced in recent times, has the potential to significantly reduce healthcare costs adding value to consumer choice for a variety of surgical and medical treatments. Stand-alone Day Hospitals are predominately small businesses and are located throughout all metropolitan areas, and are increasingly developing in rural areas, of Australia.

ADHA represents 70% of the Private (Stand-Alone) Day Hospital sector and is recognised as the peak industry body.

Day Hospitals range greatly in size and can vary from those comprising of one-theatre performing simple local anaesthetic surgical cases, up to larger 4-6 theatre/procedure room Day Hospital complexes, performing advanced surgical procedures. Some stand-alone units have moved to 23 hour licensing where the patient is admitted on one day and is discharged the next, with their admission lasting up to 23 hours to address the needs of the more complex procedures performed in day hospitals in recent years.

The shift towards same Day Hospital care accounted for 69% of private hospitalisations in 2011-12 compared with 60% in the previous decade. There has been a 32% increase in the number of day hospitals between 2001-02 and 2011-12 (ref: AIHW Australia's Health 2014).

As part of the forces of change identified in the Australian Government's *'Reinvigorating Australia's Competition Frame Work'* it was acknowledged that technology has brought new opportunities and challenges to many sectors. This is certainly relevant to the Day Hospital sector. The Private Day Hospital sector has a significant contribution to make, particularly in light of the increasing ageing population, in the delivery of high quality, cost effective healthcare.

The major health insurance funds demonstrate anti-competitive behaviour towards the private Day Hospital sector in relation to private health insurance contracting behaviour when compared with the inpatient private health care sector. To provide an example of this, I have attached a spreadsheet demonstrating a comparison between the inpatient sector and the Day Hospital sector for the funding of cataract surgery (C168) and colonoscopy (G44C) for the financial year 2013/14 (ref: HCP data 2014/15). The potential savings are considerable in both instances.

This situation would not appear to be in the long term interests of consumers.

There should be a reasonable choice available for privately insured consumers when accessing their health care provider. Despite recognition as a quality, low risk option for consumers, the Day Hospital sector experiences significantly lower fees for comparable services than the fees that are received by the inpatient sector, from many of the health insurance funds.

Increasingly in recent times, many Day Hospitals have not been granted contracts with the major health insurance funds, resulting in reliance on the Second Tier Default Benefit. This in turn often results in significant out of pocket expenses for the consumer, in order for the Day Hospital to cover its operational costs. This situation would seem to indicate a misuse of market power by the health insurance industry and a lack of reasonable choice for the privately insured consumer.

The negotiation process between the health insurer and the individual Day Hospital, in many cases, appears to be a take it or leave it approach by the insurer. The Day Hospital appears powerless in this type of negotiation process.

The health insurers' contract documents have more relevance to the larger private inpatient hospitals, rather than the Same Day Hospitals, which operate under different parameters.

We would also comment that alleged misuse by insurers of their market power has not only been seen in in the Private Day Hospital sector. Recent media commentary appears to indicate that such misuse has also been directed against larger hospital groups. Refer attached articles below as an example:

  
20150703 - The  
Advertiser - contract

  
20150731 - The  
Australian Doc - AM

  
20150911 - The  
Australian Doc - Mer

### Comments on the Discussion Paper

With reference to the “take advantage” test, the exclusive dealing that appears to occur on occasions by some health insurance funds and large corporate groups of private inpatient hospitals is competitively harmful to smaller Inpatient Hospitals and Day Hospitals.

In this respect it should be noted that smaller Inpatient Hospitals and Day Hospitals have to comply with the same requirements for licencing and accreditation including the National Safety and Quality Health Service Standards. This would appear to fit the definition of damage to the competitive process and results in lessened affordable options for the consumer.

The removal of the “take advantage” provision with reference to the example above, would place all private hospitals and Day Hospitals on a more level footing with respect to health insurance fund negotiations, increasing competition and providing consumers with cost effective choice.

ADHA would support the Harper Panel “Recommendation 30 – misuse of market power” which would remove the “take advantage” test and focus on the competitive process, rather than “damage to a competitor.”

Option E as stated below, would appear to offer the greatest protection for small business, the competitive process and consumer choice.

**Option E** - Amend the existing provision by removing the words “take advantage” including a “purpose, effect or likely effect of substantially lessening competition” test, making authorisation available, and the ACCC issuing guidelines regarding its approach to the amended provision.

It would appear from the International experience that the inclusion of the “effect or likely effect of reducing competition” would now be relevant to the restructuring of section 46 of the Competition Policy.

As the peak industry body representing Day Hospitals in the Australian Private Health Care Sector, we welcome the opportunity to comment on the Discussion Paper and provide our thoughts related to the experiences of our members and the subsequent impact on Day Hospital consumers.

To discuss these issues further the CEO can be contacted on [jane.griffiths@adha.asn.au](mailto:jane.griffiths@adha.asn.au) or Tel: 08 9332 3606.

Yours sincerely



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