Private Healthcare Australia
Better Cover. Better Access. Better Care.

# Merger Reform Consultation

**January 2024**


## Contact:

Julia Medew – Public affairs and policy officer

0402 011 438

julia.medew@pha.org.au

## About Private Healthcare Australia (PHA)

Private Healthcare Australia (PHA) is the Australian private health insurance industry's peak representative body. We have 21 registered health funds throughout Australia as members and collectively represent 98% of people covered by private health insurance. PHA member funds provide healthcare benefits for more than 14.2 million Australians.

## Response

PHA welcomes the opportunity to comment on merger reform options given the potential impacts for Australia's health sector. As noted by Treasury in its consultation paper, it is important to get the regulatory balance right so benign and pro-competitive mergers can proceed and anti-competitive mergers are blocked with minimal cost. Striking this balance will help Australia maximise productivity, deliver high-quality goods and services at competitive prices, and foster innovation.

This is especially true for the health sector where there are diverse examples of benign or beneficial mergers among smaller providers such as dental clinics and allied health services. Consolidation of these businesses often improves services while lowering costs for consumers. At the other end of the spectrum, there are concentrated markets, such as pathology, where large companies want more concentration to wield more power.

In December 2023, the ACCC rightly opposed the proposed acquisition of Healius Limited by Australian Clinical Labs Limited – Australia's second and third largest pathology companies. The ACCC concluded there was a significant risk the merger would lead to longer turnaround times for pathology services, shorter collection centre opening hours, reduced support for doctors, and increased prices for patients via more private billing. This was an important decision by the ACCC during a cost-of-living crisis causing many Australians to forego health services due to cost, and an example of the current model of regulation working well.

However, PHA shares the ACCC's concern about other examples of health sector companies not notifying the ACCC of proposed acquisitions or completing transactions / threatening to complete transactions before the ACCC finished a review. In addition, there has been a surge in mergers and acquisitions in the health sector in recent years, including some involving private equity firms that are often accused of putting profits ahead of consumers' best interests.

The trend of private equity interest in healthcare companies is concerning because it has potential to lead to over servicing and price gauging in an environment where consumers tend to lack knowledge of the product or service (information asymmetry) and where there are known weaknesses in the payment systems. The latter was highlighted by the 2023 Independent Review of Medicare Integrity and Compliance showing a small proportion of 500 million Medicare transactions are scrutinised each year, potentially wasting billions of dollars each year.

For these reasons, PHA supports the proposed amendment in question 18 to bolster the "substantial lessening of competition test" to include acquisitions that "entrench, materially increase or materially extend a position of substantial market power”. This amendment will strengthen protections against the risk of further concentration of some markets in healthcare.

Furthermore, PHA supports the proposed retention of a public benefit test if a new merger control regime is introduced. This will add an additional protection to ensure competition concerns are balanced against other potential benefits to the community, such as carbon emission reductions for Australia to work towards a net zero economy.

Australia’s dual public private health system delivers some of the best health outcomes in the world, but it is facing significant challenges, including a shortage of health workers, increasing demand from an ageing population, more chronic disease, and rising costs from new technology. If we are to meet the health needs of Australians over the next 40 years, we must introduce more cost-effective ways of delivering healthcare. This will require healthy, competitive markets that nurture innovation, and strong regulation of mergers and acquisitions to ensure we do not end up with monopolies backed by private equity firms putting profits ahead of all else.