



ACCC keeps an eye on health funds

The ACCC keeps a watchful eye on the actions of health funds to ensure that the rights of consumers using the funds are protected.

This year the ACCC released its fourth *Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance*.

The report outlines ACCC enforcement action and a number of the ACCC's concerns about the private health sector including:

- the lack of accuracy and completeness of information provided by funds to consumers about health insurance products
- the lack of signatories in the private hospital/day hospital facility sector to the industry code of practice which addresses contract negotiation processes with health funds
- doctors failing to make consumers aware of expected out-of-pocket costs for medical services
- the need for agents who are intermediaries between consumers and health funds to more accurately convey information to consumers about health insurance policies.

Following the report's release ACCC Chairman, Professor Allan Fels, said the ACCC was disappointed with the accuracy and completeness of health insurance information provided to consumers by some health funds.

'It appears that many health funds do not pay sufficient attention to their obligations under the *Trade Practices Act 1974* when making representations about health insurance products to their members or future members', Prof. Fels said.

In fact, the last financial year has seen a number of cases instituted by the ACCC against health insurance companies in which allegations of

misleading or deceptive conduct were made.

Four were instituted under the *Australian Securities and Investment Commission Act 1989* (ASIC Act). Until March 2002 health insurance was regulated through the ASIC Act with delegated power to the ACCC. After March 2002 the ACCC assumed direct responsibility for health insurance.

All cases involve misleading advertising.

NRMA Health Pty Ltd trading as SGIC Health and SGIO Health, NRMA Insurance Ltd and Saatchi & Saatchi Australia Pty Ltd

In July this year the Federal Court in Sydney made orders by consent against NRMA Health Pty Ltd (also trading as SGIC Health and SGIO Health) and NRMA Insurance Ltd concerning advertisements that appeared in various newspapers in September 2001 and on its website.

The print advertisements depicted a woman nursing a new born baby and stated: 'free delivery ... no matter how advanced your pregnancy is', and contained fine print disclaimers that full coverage for obstetric services was subject to any excess or co-payment and service of a 12 month waiting period with NRMA or another health fund.

The orders included declarations that NRMA breached the relevant provisions of the ASIC Act, a requirement that NRMA inform consumers of the misleading conduct, waiting periods to be waived for those who were misled and the availability of refunds for excesses and co-payments.

The ACCC also alleged that Saatchi & Saatchi, NRMA's advertising agency, was involved in the contraventions. On 3 October 2002 Justice Jacobsen

dismissed the ACCC's application in relation to Saatchi & Saatchi's involvement. The ACCC filed an appeal with the Full Federal Court on 24 October 2002.

Medical Benefit Funds of Australia Limited (MBF) and John Bevins Pty Ltd

This case, which was filed in the Federal Court on 8 February 2002, concerned print and television advertisements containing pregnancy-related images. The ACCC alleged that fine print in the advertisements—that the 12-month waiting period for pregnancy-related services would not be waived—was inadequate and unlikely to come to the attention of consumers.

The matter was heard on 3–4 June 2002. Justice Hill handed down his decision on 9 September 2002 ordering the respondents to pay the ACCC's costs. He also proposed to make orders that MBF place corrective advertising on television and in newspapers because the original television and billboard advertisements were misleading.

On 20 September 2002 the court made orders for corrective advertising; MBF appealed on 16 October 2002.

The court also found that John Bevins Pty Ltd, MBF's advertising agent, was knowingly concerned in the alleged contraventions. He appealed on 23 October 2002.

Medibank Private

This case, which began in the Federal Court (Melbourne) in October 2000, involved two advertising campaigns.

The ACCC alleges that from early March 2000 Medibank advertised no rate increase in 2000 on PackagePlus products; and that through its call centre, newspaper advertising,

website, brochures and mail to customers, Medibank failed to properly disclose that rates would increase on 1 July 2000.

The ACCC also alleges that a second campaign in major newspapers in August 2000 offered 'any waiting periods waived' and 'get 30 days free if you change to Medibank Private' to consumers switching from other funds. The ACCC alleges that the advertisements failed to properly disclose that only the two-month general waiting period and the six-month optical waiting period were waived, and that this was only indicated in fine print at the bottom of the advertisements.

- The ACCC is seeking orders including waiver of waiting periods, provision of 30 days free health insurance, and refunds or credits for PackagePlus purchasers.
- On 21 March 2002 the court refused Medibank's application for certain remedial orders sought by the ACCC to be struck out. Medibank Private appealed this decision and on 16 September 2002 the Full Federal Court upheld Medibank's appeal.
- On 10 October 2002 the ACCC filed an application for special leave to appeal the Full Federal Court's decision to the High Court.

Western District Health Fund Limited

The ACCC began court action on 23 January 2002 against Western District Health Fund Limited (trading as Westfund) in the Federal Court, Sydney, alleging misleading or deceptive advertising of its health insurance products.

The proceedings were instituted under the *Australian Securities and Investments Commission Act 1989*.

At the time of the alleged conduct, health insurance fell within the definition of a financial product and was regulated through the ASIC Act. Since December 1998 and at the time of the alleged conduct, ASIC had formally delegated the regulation of all consumer protection aspects of health insurance to the ACCC through the use of nominated ACCC officers as delegates.

On 16 October 2002 the Federal Court declared that Westfund had engaged in misleading and deceptive conduct in relation to advertising its health insurance products to consumers.

In both a television advertisement that aired between February and September 2001 and on its website, Westfund represented that the fund would pay all hospital and medical expenses associated with all operations, and that members would not be required to pay any excess or co-payment.

In fact, Westfund, by operation of the *National Health Act 1953* could not pay all medical expenses in relation to all operations and there were circumstances in which a member may be required to pay an excess or a co-payment.

These representations also included two fine print disclaimers which failed to detract from the overall impression conveyed by the advertisement that a Westfund member would not be required to make any payment in respect of hospital or medical expenses associated with any operations.

Other court orders, all made with the consent of Westfund, include:

- an order that Westfund write to consumers who purchased health insurance from the fund between 15 February 2001 and 22 September 2001, informing them they may have been misled by the advertisements and/or the website and that Westfund offers to refund, to the extent possible:
 - hospital expenses not paid by Westfund
 - certain medical expenses
 - any excess or co-payment paid by the member
- the cost of membership for those members who, as a result of having been misled, choose to leave Westfund
- an order that Westfund publish a corrective statement on its website
- an injunction preventing Westfund from making representations in the future about health insurance benefits without clearly and

prominently displaying the extent to which an insured person is required to make any payment in respect of hospital and/or medical expenses associated with operations

- an order requiring Westfund to establish, maintain and have audited, a trade practices compliance program.

HCF

In August 2001 HCF undertook to waive waiting periods applicable to members who joined HCF between 3 and 30 June 2001.

An HCF television advertisement had stated: 'Join HCF before June 30th and receive instant cover' and that the two and six-month waiting periods were waived. A visual fine print statement read: 'the waiver does not apply to waiting periods of more than six months, including those for pregnancy and related conditions. Pre-existing ailments and conditions are also excluded'.

The ACCC considered the advertisement represented that by joining HCF before 30 June 2001 the public would be entitled to benefits from the time of joining for all hospital, medical and ancillary services included in the cover.

