

EXPLANATORY STATEMENT

Private Health Insurance Act 2007

Private Health Insurance (Complying Product) (Age of Dependants) Amendment Rules 2021

Authority

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) authorises the Minister to, by legislative instrument, make specified Private Health Insurance Rules providing for matters required or permitted by the corresponding Chapter, Part, section or Schedule to be provided; or necessary or convenient to be provided, in order to carry out or give effect to that Chapter, Part or section.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose

The *Private Health Insurance (Complying Product) (Age of Dependants) Amendment Rules 2021* (the Amendment Rules) amend the *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules) to include a definition of a person with a disability. The definition is ‘a participant under the National Disability Insurance Scheme or the National Disability Insurance Scheme launch’, within the same meaning as in section 9 of the *National Disability Insurance Scheme Act 2013*. Under the Complying Product Rules, private health insurers will be permitted to be more expansive in their definition under their insurer rules but will not be able to apply a narrower definition than that in the Rules.

The Amendment Rules also add two new insured groups in the Complying Product Rules and make other consequential amendments to the Rules to reflect the recent changes to the Act in relation to increasing the age of dependants covered under a private health insurance policy, including amending references from ‘child dependants’ to ‘dependent persons’.

The Act, as amended by the *Private Health Insurance Legislation (Age of Dependants) Amendment Act 2021* (the Amending Act), has:

- changed the maximum allowable age for people to be covered under a private health insurance policy as a dependant from up to 24 years old to up to 31 years old;
- allowed people with a disability, regardless of their age, to be covered under a private health insurance policy as a dependant.

The amendments do not make it mandatory for private health insurers to offer this increased coverage.

The Amending Act commenced on 1 April 2021.

Consultation

Consultation in relation to the Amendment Rules was undertaken with various stakeholders such as insurers and disability peak representatives between December 2020 and July 2021. Discussions were focussed on the definition of ‘disability’, the ‘types’ of insured groups and the proposed changes to the Complying Product Rules to implement amendments to the Rules, to reflect the recent changes to the Act with regards to increasing the age of dependants.

In December 2020, the Department of Health (the Department) released a consultation paper: ‘Private health insurance reforms – second wave’, seeking comments from all stakeholders on any issues considered relevant to the proposed private health insurance reforms announced in the October 2020 Budget. These reforms included ‘Increasing the age of dependants to encourage younger people, and people with a disability, to maintain private health insurance’.

In July 2021, taking into consideration feedback provided by insurers, peak representative bodies and other related stakeholders, the Department released an exposure draft of the Amendment Rules to support insurer understanding, and assist in providing a relevant basis for decision-making purposes. At the same time, the Department circulated a Q&A paper to test its full understanding of stakeholder queries on the implementation of the Amending Act, and a paper on proposed new insured groups, with examples, for stakeholder information and consideration.

The Amendment Rules commence on the day after they are registered on the Federal Register of Legislation.

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of this instrument are set out in the Attachment.

Details of the *Private Health Insurance (Complying Product) (Age of Dependants) Amendment Rules 2021*

Section 1 Name

Section 1 provides that the name of the instrument is the *Private Health Insurance (Complying Product) (Age of Dependants) Amendment Rules 2021* (the Amendment Rules).

Section 2 Commencement

Section 2 provides that the instrument commences the day after it is registered on the Federal Register of Legislation.

Section 3 Authority

Section 3 provides that the instrument is made under section 333-20 of the *Private Health Insurance Act 2007*.

Section 4 Schedules

Section 4 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1- Amendments

Item 1 inserts the following new definitions in rule 4: ‘National Disability Insurance Scheme’, ‘National Disability Insurance Scheme’, and ‘participant’, which all have the same meaning as in section 9 of the *National Disability Insurance Scheme Act 2013*. These definitions are required to define a person with a disability.

Item 1 also inserts a new definition for ‘person with a disability’, which is defined as a participant in the National Disability Insurance Scheme or the National Disability Insurance Scheme launch.

Item 1 After the definition of ‘*upgrade*’, (Note) uses new terminology from the Act by replacing ‘dependent child non-student’ with ‘dependent non-student’. Also insert new definitions of ‘dependent person’, ‘dependent person with a disability’, ‘dependent student’ and ‘product’.

Item 2 amends the list of terms in the final note for rule 4 to include additional terms. The list of terms are those used in the Complying Product Rules, that have the same meaning as in the Act.

Item 3 replaces the provisions for insured groups in rule 5. The current provisions contain 10 insured groups. The new provisions contain 11 insured groups.

The table below shows the current insured groups omitted and retained, and new insured groups added in subrule 5(2).

The one insured group that was omitted (being ‘3 or more people, at least 3 of whom are adults’) is not in use. Although the Australian Prudential Regulation Authority (APRA) reporting suggests it is in use, discussions with insurers indicate that APRA has been misreporting on extended family product (subparagraph (5)(1)(a)(vi) - ‘3 or more people, at least 3 of whom are adults’). Discussions with the Private Health Insurance Ombudsman also indicate no Private Health Insurance Statement for this insured group.

The two new insured groups under paragraphs 5(2)(g) and 5(2)(k) of the Amendment Rules are those that include at least one dependent person with a disability.

Insured group in current provisions		Insured group in new provisions
5(1)(a)(i)	is retained in	5(2)(a)
5(1)(a)(ii)	is retained in	5(2)(b)
5(1)(a)(iii)	is retained in	5(2)(c)
5(1)(a)(iv)	is retained in	5(2)(d)
5(1)(a)(v)	is retained in	5(2)(h)
5(1)(a)(vi)	omitted	
5(1)(b)(i)	is retained in	5(2)(e)
5(1)(b)(ii)	is retained in	5(2)(i)
5(1)(c)(i)	is retained in	5(2)(c)
5(1)(c)(ii)	is retained in	5(2)(j)
	new insured group	5(2)(g)
	new insured group	5(2)(k)

Paragraph 63-5(4) of the Act allows insurers to charge a different premium price for products that include dependant non-students (insured groups 5(2)(e), 5(2)(f), 5(2)(i) and 5(2)(j)) than policies that do not include a dependant non-student (insured groups 5(2)(d) and 5(2)(h)).

New subrule 5(2) allows insurers to include dependant non-students or conditional dependent non-students in insured groups 5(2)(d) and 5(2)(h) but only if they do not offer coverage for insured groups 5(2)(e), 5(2)(f), 5(2)(i) and 5(2)(j).

Insured groups 5(2)(g) and 5(2)(k) provide insurers with flexibility on whether they wish to limit dependants to people with a disability and exclude all other dependants or include other dependants alongside a dependent person with a disability. An insurer only needs to include a dependent person with a disability. An insurer does not need to include the other types of dependents because 'any number' can also be zero.

An insurer may apply different age ranges to different types of dependants but only one age range is permitted for each dependant type per insurer as the amended legislation mentions each type of dependant separately. That is, if the insurer rules state that a dependent student is defined as aged 22 to 31, then this must be applied to all products. For example, an insurer cannot specify that for a particular product/s the maximum age for a dependent student is defined as 22 to 25, while for other products the dependant age is specified as 22 to 31.

New subrule 5(4) defines the term ‘conditional dependent non-student’. This term is used in the insured groups in subrule 5(2).

Item 4 uses new terminology from the Act by replacing “child dependents” with “dependent persons”.

Subparagraph 11B(c)(ii) makes clearer the advantage a dependent person gains due to the increase in the age of dependent persons is cumulative to an advantage a person gains due to age-based discounts (that is, the two do not operate in combination). For example, insurers may offer premium discounts on hospital cover for each year a person is aged under 30. If a person with an age-based discount transfers to their family’s policy and becomes a dependent person, their previous age-based discount is extinguished.

Item 5 uses new terminology from the Act by replacing “child dependents” with “dependent persons”.

Item 6 uses new terminology from the Act by replacing “of child dependents” with “of dependent persons” and “child dependents” with “dependent persons”.

The premium for a private health insurance product can differ by product subgroups. A product subgroup is all the policies for a product in the same risk equalisation jurisdiction for the same insured group.

Insurers can provide cover for up to 10 different insured groups and it is up to each insurer to determine the insured groups for which it will offer coverage.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Private Health Insurance Legislation Amendment (Age of Dependants) Act 2021

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The purpose of the *Private Health Insurance (Complying Product)(Age of Dependants) Amendment Rules 2021* (the Amendment Rules) is to amend the *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules).

The Amendment Rules make consequential amendments to the Complying Product Rules to include the definition of a person with a disability (rule 4), which is ‘a participant in the National Disability Insurance Scheme or the National Disability Insurance Scheme launch’, within the same meaning as in section 9 of the *National Disability Insurance Scheme Act 2013*. The Amendment Rules also add two new insured groups in the Complying Product Rules (rule 5) and make other consequential amendments to the Rules to reflect the recent changes to the *Private Health Insurance Act 2007* (the Act) in relation to increasing the age of dependants covered under a private health insurance policy, including amending references from ‘child dependents’ to ‘dependent persons’.

Human rights implications

The Amendment Rules engage the right to health by facilitating the payment of private health insurance benefits for health care services; and encouraging access to, and choice in, health care services. Under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), specifically the right to health, the Amendment Rules assist with the progressive realisation by all appropriate means of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Private health insurance regulation assists with the advancement of these human rights by improving the governing framework for private health insurance in the interests of consumers. Private health insurance regulation aims to encourage insurers and providers of private health goods and services to provide better value for money to consumers, and to improve information provided to consumers of private health services to allow consumers to make more informed choices when purchasing services. Private health insurance regulation also requires that insurers do not differentiate between the premiums they charge according to individual health characteristics such as poor health.

The *Private Health Insurance Legislation Amendment (Age of Dependants) Act 2021* (the Amending Act) came into effect on 1 April 2021, and made amendments to the Act to:

- change the maximum allowable age for people to be covered under a private health insurance policy as a dependant from up to 24 years old to up to 31 years old;
- allowed people with a disability, regardless of their age, to be covered under a private health insurance policy as a dependant.

The changes provide continuity of care for younger Australians until the age of 31 years.

The Amendment Rules will allow insurers to limit the dependents in insured groups 5(2)(g) and 5(2)(k) to dependent people with a disability, but the insured group is written to allow for the flexibility of insurers to include multiple types of dependents to cater for the diverse nature of families.

Similarly, the Amendment Rules allow people with recognised disabilities, as defined under the *National Disability Insurance Scheme Act 2013*, regardless of their age, to be covered under their family's private health insurance policy as a dependant. The changes will be advantageous to people with a disability, in the form of meeting their special and particular needs for affordable health care.

In both cases, the Amendment Rules provide positive benefits for both younger Australians and people with a disability, without removing any person's right to the highest possible attainment of health in line with Article 12 of the ICESCR.

The amendments relating to the definition of disability in the Complying Product Rules are as a consequence of the Amending Act to allow people with a disability, regardless of their age, to be covered under a family private health insurance policy as a dependant.

Private health insurers will be permitted to be more expansive in their definition under their insurer rules, but will not be able to apply a narrower definition than in the Rules.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights because it promotes the protection of the human right to enjoyment of the highest attainable standard of physical and mental health.