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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**PRIVATE HEALTH INSURANCE LEGISLATION AMENDMENT BILL 2009**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health and Ageing, the Honourable Nicola Roxon MP)



## **PRIVATE HEALTH INSURANCE LEGISLATION AMENDMENT BILL 2009**

### **OUTLINE**

The Bill provides for amendments to the *Private Health Insurance Act 2007* and the *Age Discrimination Act 2004* to allow insurers to permanently offer extended family policies that cover ‘dependent child non-students’. ‘Dependent child non-students’ are people aged from 18 to 24 with no partner where defined in a private health insurer’s fund rules. Family policies, or policies with more than one person including a ‘dependent child non-student’, may be offered at an additional premium cost.

The Bill also includes consequential amendments to the *Private Health Insurance Act 2007*, consistent with the introduction of the Private Health Insurance (National Joint Replacement Register Levy) Bill 2009, which imposes a levy to fund the National Joint Replacement Register (NJRR).

The provisions dealing with extended family policies will commence on the later of 1 July 2009 and the day on which the Act receives Royal Assent. The commencement day for the provision which adds the definition ‘dependent child non-student’ to Schedule 1 of the *Private Health Insurance Act 2007* is the same time as the provision dealing with extended family policies.

The amendments to the *Private Health Insurance Act 2007* that are a consequence of the introduction of the Private Health Insurance (National Joint Replacement Register Levy) Bill 2009 will commence at the same time as the provisions of the proposed *Private Health Insurance (National Joint Replacement Register Levy) Act 2009*.

Schedule 1 of the Bill makes amendments to the *Private Health Insurance Act 2007* and the *Age Discrimination Act 2004*.

#### Extended Family Policies

The amendments will add a category of ‘dependent child’ under the *Private Health Insurance Act 2007* by inserting the definition of ‘dependent child non-student’. This will allow insurers to charge a different premium for ‘dependent child non-students’ under a family policy. A ‘dependent child non-student’ is a person aged from 18 to 24 (inclusive), who does not have a partner, is not receiving a full time education at a school, college or university and is defined in a private health insurer’s fund rules. The provision will allow insurers to include ‘dependent child non-students’ on a family policy (a policy with more than one person that includes a dependent child or children) at an additional premium rate.

In 2007, a number of private health insurers requested changes to the private health insurance law to allow private health insurers to offer family policies covering ‘dependent child non-students’ at rates higher than the premium for the same products covering children aged under 18 and older students. Transitional arrangements allowing this practice were put into effect in late 2007. The Bill will allow this practice on a permanent basis.

The Bill also amends the *Age Discrimination Act 2004* in order to ensure that private health insurers who offer extended family policies under the *Private Health Insurance Act 2007* do not unlawfully do so under the *Age Discrimination Act 2004*.

#### National Joint Replacement Register (NJRR) Levy

The Bill also includes consequential amendments to the *Private Health Insurance Act 2007*, consistent with the introduction of the Private Health Insurance (National Joint Replacement Register Levy) Bill 2009 which imposes a levy upon sponsors of joint replacement prostheses listed in the Private Health Insurance (Prostheses) Rules in order to recover the costs of maintaining the NJRR. The consequential amendments to the *Private Health Insurance Act 2007* allow for the administration of the NJRR levy.

#### **Financial Impact Statement**

This Bill includes consequential amendments to the *Private Health Insurance Act 2007* associated with the introduction of the Private Health Insurance (National Joint Replacement Register Levy) Bill 2009. The Private Health Insurance (National Joint Replacement Register Levy) Bill 2009 would impose a levy upon sponsors of joint replacement prostheses listed in the Private Health Insurance (Prostheses) Rules in order to recover the costs of operating the NJRR and represents a cost saving measure of approximately \$5 million over four years.

## PRIVATE HEALTH INSURANCE LEGISLATION AMENDMENT BILL 2009

### NOTES ON CLAUSES

#### **Clause 1 – Short Title**

This clause provides that the Bill, once enacted, may be cited as the *Private Health Insurance Legislation Amendment Act 2009*.

#### **Clause 2 – Commencement**

This clause provides that the Bill, once enacted, will commence on the day on which the Act receives Royal Assent for sections 1 to 3 which cover the Short Title, Commencement and Schedule(s) to the Act.

For Schedule 1, items 1 to 4 which deal with extended family policies, and item 14 which adds the definition of ‘dependent child non-student’ to Schedule 1 of the *Private Health Insurance Act 2007*, the commencement day is the later of 1 July 2009 and the day on which the Act receives Royal Assent.

The commencement day for Schedule 1, items 5 to 13 which deal with amendments which are a consequence of the Private Health Insurance (National Joint Replacement Register Levy) Bill 2009, and item 15 which adds the definition of ‘national joint replacement register levy’ to Schedule 1 of the *Private Health Insurance Act 2007*, is the same time as the commencement of sections 3 to 9 of the proposed *Private Health Insurance (National Joint Replacement Register Levy) Act 2009* (i.e. 1 July 2009).

#### **Clause 3 – Schedule(s)**

This clause provides that each Act that is specified in a Schedule to this Bill is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Bill has effect according to its terms.

#### **Schedule 1 – Amendments**

##### *Age Discrimination Act 2004*

#### **Item 1 – Schedule 2 (cell at table item 9A, column headed “Provision(s)”)**

Item 1 inserts the words “and subsection 63-5(4)” providing that acts performed by private health insurers in direct compliance with the new subsection 63-5(4) are not unlawful under the *Age Discrimination Act 2004*.

##### *Private Health Insurance Act 2007*

#### **Item 2 – Paragraph 55-5(2)(c)**

Item 2 inserts the words “or subsection 63-5(4)” to exclude premiums charged in compliance with the new subsection 63-5(4) from being *improper discrimination* under the *Private Health Insurance Act 2007*.

#### **Item 3 – At the end of section 63-5**

Item 3 adds new subsections 63-5(4) and 63-5(5) into section 63-5 ‘Meaning of complying health insurance product’.

New subsection 63-5(4) provides that a premium payable for a policy that covers an insured group of two or more people that includes a dependent child non-student may be higher than a premium payable for a policy in the same product that covers an insured group of two or more people that includes one or more dependent children but no dependent child non-student.

New subsection 63-5(5) defines the meaning of *dependent child non-student*.

**Item 4 – At the end of section 304-10**

Item 4 adds the national joint replacement register levy, which is imposed under the proposed *Private Health Insurance (National Joint Replacement Register Levy) Act 2009*, to the list of private health insurance levies in section 304-10. This amendment is a consequence of the proposed *Private Health Insurance (National Joint Replacement Register Levy) Act 2009*.

**Item 5 – Subparagraph 307-1(1)(a)(iv)**

Item 5 omits the word “and” at the end of subparagraph 307-1(1)(a)(iv) and substitutes the word “or”. This amendment is a technical consequential amendment, required as a result of the addition of new subparagraph 307-1(1)(a)(v) (item 6 refers).

**Item 6 – At the end of paragraph 307-1(1)(a)**

Item 6 amends paragraph 307-1(1)(a) by adding new subparagraph 307-1(1)(a)(v) which refers to national joint replacement register levy imposed on a supplementary national joint replacement register levy day (within the meaning of the proposed *Private Health Insurance (National Joint Replacement Register Levy) Act 2009*).

The purpose of this amendment is to clarify that national joint replacement register levy that is imposed on a supplementary national joint replacement register levy day becomes due and payable on the day specified as the payment day for that imposition day in a determination made by the Minister by legislative instrument.

This amendment is a consequence of the proposed *Private Health Insurance (National Joint Replacement Register Levy) Act 2009*.

**Item 7 – Subsection 307-5(1)**

Subsection 307-5(1) currently provides that if a private health insurance levy remains wholly or partly unpaid by a private health insurer after it becomes due and payable, the insurer is liable to pay a late payment penalty. The term *private health insurance levy* has the meaning set out in section 304-10. Currently, all private health insurance levies are payable by private health insurers.

Subsection 307-5(1) requires amendment as a consequence of the national joint replacement register levy (imposed under the proposed *Private Health Insurance (National Joint Replacement Register Levy) Act 2009*) being added to the list of private health insurance levies in section 304-10 (item 4 refers). The national joint replacement register levy will be payable by sponsors for joint replacement prostheses (within the meaning of the proposed *Private Health Insurance (National Joint Replacement Register Levy) Act 2009*), not by private health insurers.

Item 7 omits the words “private health insurer” from subsection 307-5(1) and substitutes the word “person”. The term “person” will cover both private health insurers and sponsors for joint replacement prostheses.

**Item 8 – Subsection 307-5(1)**

Subsection 307-5(1) currently provides that if a private health insurance levy remains wholly or partly unpaid by a private health insurer after it becomes due and payable, the insurer is liable to pay a late payment penalty. The term *private health insurance Levy* has the meaning set out in section 304-10. Currently, all private health insurance levies are payable by private health insurers.

Subsection 307-5(1) requires amendment as a consequence of the national joint replacement register levy (imposed under the proposed *Private Health Insurance (National Joint Replacement Register Levy) Act 2009*) being added to the list of private health insurance levies in section 304-10 (item 4 refers). The national joint replacement register levy will be payable by sponsors for joint replacement prostheses (within the meaning of the proposed *Private Health Insurance (National Joint Replacement Register Levy) Act 2009*), not by private health insurers.

Item 8 omits the words “the insurer” from subsection 307-5(1) and substitutes the words “the person”. The term “person” will cover both private health insurers and sponsors for joint replacement prostheses.

**Item 9 – At the end of subsection 307-10(1)**

Item 9 provides that a national joint replacement register levy and a late payment penalty in respect of a national joint replacement register levy must be paid to the Commonwealth. This amendment is a consequence of the proposed *Private Health Insurance (National Joint Replacement Register Levy) Act 2009*.

**Item 10 – Subsection 307-20(1)**

Item 10 amends subsection 307-20(1) to allow the Minister to waive the whole or part of an amount of late payment penalty in respect of an unpaid amount of national joint replacement register levy if the Minister considers that there are good reasons for doing so. Subsection 307-20(1) already allows the Minister to waive the whole or part of an amount of late payment penalty in respect of an unpaid amount of complaints levy if the Minister considers that there are good reasons for doing so.

**Item 11 – Division 310 (heading)**

Item 11 replaces the heading for “Division 310 – Returns, requesting information and keeping records” with “Division 310 – Returns, requesting information and keeping records: private health insurers” to clarify that Division 310 will only relate to private health insurers.

**Item 12 – Division 313 (heading)**

Item 12 replaces the heading for “Division 313 – Power to enter premises and search for documents” with “Division 313 – Power to enter premises and search for documents: private health insurers” to clarify that Division 313 will only relate to private health insurers.

**Items 13 and 14 – Clause 1 of Schedule 1**

Schedule 1 forms the Dictionary of definitions used in the *Private Health Insurance Act 2007*. These items insert the following new definitions into the Dictionary:

- ***dependent child non-student*** is as defined in subsection 63-5(5) (item 3 refers);  
and
- ***national joint replacement register levy*** is as defined in paragraph 304-10(e) (item 4 refers);