

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Dental Benefits Act 2008

Dental Benefits Amendment Rules 2016

Subsection 60(1) of the *Dental Benefits Act 2008* (the Act) provides that the Minister may, by legislative instrument, make Dental Benefits Rules providing for matters required or permitted by the Act or necessary or convenient to carry out or give effect to the Act. Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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.

The *Dental Benefits Rules 2014* provide for the operational framework and service items for the Child Dental Benefits Schedule (CDBS). The CDBS commenced on 1 January 2014 and provides benefits for basic dental services for eligible children aged 2-17 years.

The *Dental Benefits Amendment Rules 2016* (the Rules) amend the *Dental Benefits Rules 2014* to change the date to which a dental service provided by a State or internal Territory is eligible for dental benefits to 31 December 2016 to continue to allow patients to access treatment provided by public sector dentists under the CDBS. The Rules also provide that this time limitation does not apply to services provided in Australia's external Territories, which will have access to the CDBS from 1 July 2016.

The Rules also include a technical amendment to update a reference to the *Legislative Instruments Act 2003* (now called the *Legislation Act 2003*).

These Rules commence on 1 July 2016.

Consultation

Consultation was not necessary in respect to these Rules as the changes are machinery in nature and do not substantially alter existing arrangements.

Authority: Subsection 60(1) of the
Dental Benefits Act 2008

DETAILS OF THE *DENTAL BENEFITS AMENDMENT RULES 2016*

1. Name of Rules

Rule 1 provides for the Rules to be referred to as the *Dental Benefits Amendment Rules 2016*.

2. Commencement

Rule 2 provides for the Rules to commence on 1 July 2016.

3. Authority

Rule 3 provides that the *Dental Benefits Act 2008* provides authority to make the Rules.

4. Amendments

Rule 4 provides that Schedule 1 amends the *Dental Benefits Rules 2014*.

Schedule 1 – Amendments

Items 1 and 2 amend rule 8A to ensure that time limitations on access to dental benefits for services rendered by or on behalf of a State or internal Territory apply only to dental services rendered in States and internal Territories. While this amendment does not alter existing arrangements for States or internal Territories, it is necessary to ensure this limitation does not apply to Australia's external Territories, which will have access to dental benefits under the Act from 1 July 2016.

Item 3 amends subrule 15(7) (note 2) to replace a reference to "*Legislative Instruments Act 2003*" with "*Legislation Act 2003*". The former *Legislative Instruments Act 2003* was renamed the *Legislation Act 2003* from 5 March 2016.

Item 4 repeals Schedule 2 of the *Dental Benefits Rules 2014* and replaces it with a new Schedule 2. The new Schedule 2 changes the date to which a dental service provided by State or internal Territory is eligible for dental benefits from 30 June 2016 to 31 December 2016. This will allow patients to continue to access treatment provided by public sector dentists under the Child Dental Benefits Schedule.

Statement of Compatibility with Human Rights

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

Dental Benefits Amendment Rules 2016

The *Dental Benefits Amendment Rules 2016* (the Rules) are 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 Legislative Instrument

The *Dental Benefits Rules 2014* provide for the operational framework and service items for the Child Dental Benefits Schedule (CDBS). The CDBS commenced on 1 January 2014 and provides benefits for basic dental services for eligible children aged 2-17 years.

The Rules amend the *Dental Benefit Rules 2014* to:

- change the date to which a dental service provided by State or Territory is eligible for dental benefits to 31 December 2016;
- provide that that time limitations on access to dental benefits for services rendered by or on behalf of a State or internal Territory do not apply to dental services rendered in external Territories; and
- make a technical amendment to update a reference to the *Legislative Instruments Act 2003* (now called the *Legislation Act 2003*).

Human rights implications

The Rules engage the right to health and the right to social security. Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) defines the right to health as “the right to the enjoyment of the highest attainable standard of physical and mental health”. Article 9 of the ICESCR contains the right to social security, including social insurance.

The change to the date of eligibility of State and Territory dental services for dental benefits maintains the right to health and social security as it maintains access to benefits for patients who access CDBS services through the public sector.

From 1 July 2016, the *Dental Benefits Act 2008* will extend to Australia’s external Territories. The amendment to ensure that time limitations on access to dental benefits for services rendered by or on behalf of a State or internal Territory do not apply to dental services rendered in external Territories has no impact on arrangements for States and internal Territories. The amendment promotes the rights to health and social security by providing ongoing certainty of financial assistance for dental services to CDBS eligible children in Australia’s external Territories.

The amended reference to the *Legislation Act 2003* has no human rights implications.

Conclusion

The Rules maintain the rights to health and social security and are therefore compatible with Australia’s human rights obligations.

The Hon Sussan Ley MP Minister for Health