

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health and Minister for Sport

Dental Benefits Act 2008

Dental Benefits Amendment Rule 2017 (No. 1)

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 Rule 2017 (No. 1)* (the Rule) amends the *Dental Benefits Rules 2014* to implement the government's revised policy for the CDBS which increases the benefits available for dental services provided to an eligible child, from \$700 to \$1,000, over two calendar years. Children who commenced their two year cap period in 2017 will now have access to \$1,000 over two calendar years instead of \$700.

The two year cap period commences from the calendar year in which the child first accesses dental services under the CDBS and then for each subsequent two year period during which the child accesses dental services. Cap periods do not overlap, i.e. if a child has a two year cap period for the 2016 and 2017 calendar years, the next two year cap period that could apply to the child is for the 2018 and 2019 calendar years.

The Rule retrospectively commences on 1 January 2017, immediately after the commencement of the *Dental Benefits Amendment Rule 2016 (No. 2)*. As required by subsection 12(2) of the *Legislation Act 2003*, the retrospective aspect of the Rules confers a beneficial effect on persons, and does not affect the rights of, disadvantage, or impose liabilities on other persons, other than the Commonwealth.

This Rule is a legislative instrument for the purposes of the *Legislation Act 2003*.

Consultation

The Australian Dental Association has been consulted on this measure.

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

DETAILS OF THE *DENTAL BENEFITS AMENDMENT RULE 2017 (No. 1)*

1. Name of Rule

Rule 1 provides for the Rule to be referred to as the *Dental Benefits Amendment Rule 2017*.

2 Commencement

Rule 2 provides for the Rule to commence immediately after the commencement of the *Dental Benefits Amendment Rule 2016 (No. 2)* (ie on 1 January 2017).

3 Authority

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

4 Schedule(s)

Rule 4 provides that each instrument that is specified in a Schedule to the Rule is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Rule has effect according to its terms. Schedule 1 specifies amendments to the *Dental Benefits Rules 2014*.

Schedule 1 – Amendments

Item 1

Item 1 repeals the current Schedule 3 of the *Dental Benefits Rules 2014* and replaces it with a new Schedule 3. Subrule 14(1) of the *Dental Benefits Rules 2014* provides that the total amount of dental benefit payable in respect of dental services rendered to an eligible dental patient must not exceed the amount (the cap) for the ‘relevant 2 year period’. The table in Schedule 3 of the *Dental Benefits Rules 2014* specifies relevant 2 year periods and the applicable cap for those periods.

The cap for each relevant 2 year period in the new Schedule 3 is \$1,000. The new Schedule 3 effectively amends the cap for the relevant 2 year period covering the 2017 and 2018 calendar years to \$1,000 (previously \$700). By virtue of subrule 14(9) of the *Dental Benefits Rules 2014*, the cap for all subsequent relevant 2 year periods will also be \$1,000, unless further amendments are made.

Rule 14 of the *Dental Benefits Rules 2014* provide that an eligible dental patient’s first relevant 2 year period will be the period made up of the first calendar year after 2014 in which the person receives a dental service and the following calendar year. Once that relevant 2 year period has ended, the next time the eligible dental patient receives another dental service will start the next relevant 2 year that will apply to that patient.

In other words, if an eligible dental patient first receives a dental service in 2016 their relevant 2 year period will cover the 2016 and 2017 calendar years, and their cap will be \$1,000. They will not move to a new \$1,000 cap until 2018-2019.

Statement of Compatibility with Human Rights

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

Dental Benefits Amendment Rule 2016 (No. 2)

The *Dental Benefits Amendment Rule 2016 (No. 2)* (the Rule) 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 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 Rule amends the *Dental Benefit Rules 2014* to increase the two year benefits cap from \$700 to \$1,000 in respect of dental services rendered to an eligible dental patient for the 2017-2018 two year cap period and subsequent two year cap periods.

Human rights implications

The Rule engages 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 Rule implements the government’s revised policy for the CDBS which increases the total dental benefits available for dental services provided to an eligible dental patient, from \$700 to \$1,000, over two calendar years. This cap will apply to eligible children who have a two year cap period commencing with the 2017 calendar year or in later calendar years. Children who commenced a two year cap period in 2016 will continue to have access of up to \$1,000 in dental benefits until 31 December 2017, provided the child is eligible for the CDBS in 2017.

This amendment advances human rights of eligible children by increasing the amount of benefits available for dental treatment from \$700 to \$1,000.

Conclusion

The Rule is compatible with Australia’s human rights obligations because it advances the protection of human rights by enabling limited resources to be spent more effectively and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon Greg Hunt MP Minister for Health and Minister for Sport