

EXPLANATORY STATEMENT

Dental Benefits Act 2008

Dental Benefits Amendment Rules (No. 1) 2020

Authority

Section 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 to be provided, or necessary or convenient to be provided in order to carry out or give effect to the Act.

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 *Dental Benefits Amendment Rules (No. 1) 2020* (the Amendment Rules) amends the *Dental Benefits Rules 2014* (the Rules) to reflect indexation of the amount of dental benefit payable for dental service items in Schedule 1, and the benefit limits cap amount in Schedule 3 of the Rules, effective from 1 January 2021.

The Rules provide for the Child Dental Benefits Schedule (CDBS), which sets out items specifying dental services, the amount of dental benefit payable, and method for determining the amount, in respect of a dental service. The CDBS commenced on 1 January 2014 and provides benefits for basic dental services for eligible children aged 2-17 years.

There has been a pause on indexation of the amount of dental benefit payable, and benefit limits cap amount since the commencement of the CDBS. The pause finishes on 31 December 2020, meaning indexation of 1.3 per cent is to be applied from 1 January 2021.

The original intent at the commencement of the CDBS in 2014 was to index the program annually. This did not occur because of policy decisions to pause indexation. The end of the pause on 31 December 2020 allows the scheme to be indexed from 1 January 2021. Indexation will now be applied annually at a rate that is provided to the Department of Health by the Department of Finance at economic updates.

Schedule 3 of the Rules lists the benefit limits cap amount for each two year calendar period. On 1 January 2021, the indexation is to be applied to the benefit cap amount increasing the benefit cap amount from \$1,000 to \$1,013.

Schedule 1 of the Rules lists the dental items covered under the CDBS and the amount of benefit payable for each item. On 1 January 2021 indexation is to be applied to the items.

The indexed cap rate will apply from 1 January 2021 until 31 December 2021. However, the cap amount for the two year calendar period commences in the year in which the child first accesses services. For example if a child has accessed benefits in 2020, the 2019-2020 cap of \$1,000 applies. If a child first accesses benefits in 2021 the 2021-2022 cap of \$1,013 applies.

Consultation

Consultation was undertaken with Services Australia to ensure administration of the changes occur once the changes come into effect. Services Australia administers the program including management of payments. Consultation with Services Australia ensures that the implementation of the indexed items and cap is available from 1 January 2021. No further consultation was undertaken. The level of consultation reflects the administrative nature of the changes and the underlying principle that indexation will be applied annually.

This instrument commences on 1 January 2021.

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

Details of this instrument are set out in the Attachment.

Details of the *Dental Benefits Amendment Rules (No. 1) 2020*

Section 1 Name

This section provides that the name of the instrument is the *Dental Benefits Amendment Rules (No. 1) 2020*.

Section 2 Commencement

This section provides that the instrument commences on 1 January 2021.

Section 3 Authority

This section provides that the instrument is made under subsection 60(1) of the *Dental Benefits Act 2008*.

Section 4 Schedules

This section provides that changes are made to the instrument as specified in the 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 – Schedule 1 Dental Benefits Schedule

Item 1 repeals Schedule 1 and substitutes it with a new Schedule 1, which amends the amount of the benefit payment for each dental service item to reflect the application of an indexation rate of 1.3 per cent.

Item 2 – Schedule 3 Benefit limits

Item 2 repeals Schedule 3 and substitutes it with a new Schedule 3, which amends the benefit limits cap amount to reflect the application of an indexation rate of 1.3 per cent. Children who commence their two year cap period in 2021 will now have access to \$1,013 over the two year calendar period instead of \$1,000.

Statement of Compatibility with Human Rights

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

Dental Benefits Amendment Rules (No.1) 2020

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 *Dental Benefits Rules 2014* (the Rules) provide for the Child Dental Benefits Schedule (CDBS), which sets out items specifying dental services, the amount of dental benefit payable, and method for determining the amount, in respect of a dental service. 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 (No. 1) 2020* (the Amendment Rules) amends the Rules to reflect indexation of the amount of dental benefit payable for dental service items in Schedule 1, and the benefit limits cap amount in Schedule 3 of the Rules, effective from 1 January 2021.

There has been a pause on indexation of the amount of dental benefit payable, and benefit limits cap amount since the commencement of the CDBS. The pause finishes on 31 December 2020, meaning indexation is to be applied from 1 January 2021.

The original intent at the commencement of the CDBS in 2014 was to index it annually. This did not occur because of a policy decision to pause indexation. In 2017 a decision was made to extend the pause until 31 December 2020. The end of the indexation pause allows the scheme to be indexed from 1 January 2021.

Schedule 1 of the Rules lists the dental items covered under the CDBS and the amount of benefit payable for each item. On 1 January 2021 indexation is to be applied to the items.

Schedule 3 of the Rules lists the benefit limits cap amount for each two year calendar period. On 1 January 2021, indexation is to be applied to the benefit cap amount increasing the benefit cap amount from \$1,000 to \$1,013.

Human rights implications

The Amendment 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 application of indexation reverts to the original intent to index the CDBS annually. The CDBS promotes and improves oral health of children by improving access to dental services. Indexing the scheme helps maintain the value of benefits in line with inflation, and maintains access to services and rates of bulk-billing.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights because it maintains the rights to health and social security and is therefore compatible with Australia’s human rights obligations.

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