

EXPLANATORY STATEMENT

Dental Benefits Act 2008

Dental Benefits Amendment Rules (No. 1) 2021

Authority

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 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) 2021* (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 2022.

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 Rules also set out a specified monetary limit on the amount of dental benefit payable in respect of specified dental services provided to specified eligible dental patients during specified periods. The CDBS commenced on 1 January 2014 and provides benefits for basic dental services for eligible children.

The original intent at the commencement of the CDBS in 2014 was to index the program annually, however this did not occur because of the policy decision to pause indexation. On 31 December 2020 the indexation pause ceased enabling the scheme to be indexed for the first-time commencing 1 January 2021. Indexation is now 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 2022, indexation is to be applied to the benefit cap amount increasing the benefit cap amount from \$1,013 to \$1,026.

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 2022, indexation is to be applied to each item listed.

The indexed cap rate will apply from 1 January 2022 until 31 December 2022. 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 first accessed benefits in 2021 the 2021-2022 cap of \$1,013 applies. If a child first accesses benefits in 2022 the 2022-2023 cap of \$1,026 applies.

Consultation

Consultation was undertaken with Services Australia to ensure administration of the changes occur once the Amendment Rules 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 2022. 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 2022.

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) 2021*

Section 1 Name

This section provides that the name of the instrument is the *Dental Benefits Amendment Rules (No. 1) 2021*.

Section 2 Commencement

This section provides that the instrument commences on 1 January 2022.

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 benefit payable for each dental service item to reflect the application of indexation which is calculated according to a formula supplied by the Department of Finance.

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 indexation which is calculated according to a formula supplied by the Department of Finance. Children who commence their two year cap period in 2022 will now have access to \$1,026 over the two year calendar period instead of \$1,013.

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) 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 *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 Rules also set out a specified monetary limit on the amount of dental benefit payable in respect of specified dental services provided to specified eligible dental patients during specified periods. The CDBS commenced on 1 January 2014 and provides benefits for basic dental services for eligible children.

The *Dental Benefits Amendment Rules (No. 1) 2021* (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 2022.

The original intent at the commencement of the CDBS in 2014 was to index the program annually. This did not occur because of the policy decision to pause indexation. The indexation pause ended on 31 December 2020 allowing the scheme to be indexed commencing 1 January 2021, and on an annual basis thereafter.

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 2022 the updated indexation rate, as specified by the Department of Finance in the May 2021 economic update, 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 2022 the updated indexation rate, as specified by the Department of Finance in the May 2021 economic update, is to be applied to the benefit cap amount increasing the benefit cap amount from \$1,013 to \$1,026.

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, which is calculated according to a formula supplied by the Department of Finance, reverts to the original intent to index the CDBS annually. 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 promotes the protection of human rights.

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