

# EXPLANATORY STATEMENT

*Dental Benefits Act 2008*

*Dental Benefits Amendment (Allied Dental Practitioners) Rules 2022*

## **Purpose**

The *Dental Benefits Rules 2014* (the Rules) provides the framework for the Child Dental Benefits Schedule (CDBS) and sets out the directions for specifying classes of dental providers, identifying who may render services on behalf of a dental provider, and stipulating the conditions that must be satisfied before a benefit is payable to an eligible patient.

The purpose of the *Dental Benefits Amendment (Allied Dental Practitioners) Rules 2022* (the Amending Rules) is to expand the class of dental providers who may render services on behalf of a dental provider to certain dental practitioners who:

- hold relevant registration as a dental hygienists, dental therapists, or oral health therapists, and
- have been allocated a provider number by the Chief Executive Medicare under other relevant legislation.

These amendments enable dental hygienists, dental therapists and oral health therapists to render certain services listed on the Dental Benefits Schedule in their own capacity and independent of a dentist. This change will reflect the Dental Board of Australia's revised Scope of Practice Registration Standard which took effect on 1 July 2020, and consequently removed the requirement for a structured professional relationship between allied dental practitioners and dentists.

As a result of these amendments, allied dental practitioners and dental prosthetists will continue to be able to render services on behalf of a dentist who holds a Medicare provider number. Likewise, there will be no changes to arrangements for public sector dentists providing services under the CDBS who will continue to utilise Representative Public Dentist (RPD) arrangements.

Depending on the class of dental practitioner who renders a particular dental service, the Amending Rules intend to restrict the payment of benefits of certain items listed on the Dental Benefits Schedule.

## **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 66(1A) of the Act provides for the Minister Health to delegate the power to make Dental Benefits Rules under s 60(1).

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

### **Reliance on subsection 33(3) of the *Acts Interpretation Act 1901***

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.

### **Commencement**

The Amending Rules commences on the later of the day after this instrument is registered or 1 July 2022.

### **Consultation**

The Department of Health (Department) consulted with the Australian Dental Association, Dental Hygienists Association of Australia, the Australian Dental and Oral Health Therapists' Association, and State and Territory public dental providers to determine services that may be delivered by certain types of dental practitioners, and the practical implementation of these changes. These stakeholders were also consulted more broadly about the changes and administrative procedures relating to Medicare.

The Department also consulted with Services Australia regarding consequential amendments to administration and payment systems as a result of the Amending Rules.

This consultation enabled the department to accurately determine the items to be provided by therapists/hygienists, and the items which should only be rendered by, or on behalf, of a dentist. In effect, this influences the systems design build by Services Australia.

Details of the Amending Rules are set out in **Attachment A**.

The Amending Rules are compatible with human rights and freedom recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

## ATTACHMENT A

### **Details of the *Dental Benefits Amendment (Allied Dental Practitioners) Rules 2022***

#### **Section 1 Name**

Section 1 provides that the name of the instrument is the *Dental Benefits Amendment (Allied Dental Practitioners) Rules 2022*.

#### **Section 2 Commencement**

Section 2 provides that the instrument commences on the later of 1 July 2022, or the day after this instrument is registered.

#### **Section 3 Authority**

Section 3 provides that the instrument is made under the *Dental Benefits Act 2008*.

#### **Section 4 – Schedules**

Section 4 provides that the Schedule sets out the specific terms of amendment and repeal of each instrument, and any other item in the Schedule has effect according to its terms.

#### Schedule 1 – Amendments

##### **Item 1 – Before rule 1**

Item 1 inserts a new heading of “Part 1—Preliminary” before Rule 1.

##### **Item 2 – Rule 4**

Item 2 inserts a note that intends to clarify that expressions used in the Rules including “Chief Executive Medicare”, “dental practitioner”, “dental provider”, and “item” are as defined in the *Dental Benefits Act 2008*.

##### **Item 3 – Rule 4 (definition of *dental provider*)**

Item 3 repeals the definition of “dental provider” as the term is already defined in the *Dental Benefits Act 2008*.

##### **Item 4 – Rule 4**

Item 4 inserts a new definition of “registered dentist”. The intention of this definition is to define the narrow class of dental providers who are dentists who hold a Medicare provider number. A registered dentist may have dental hygienists, dental therapists, dental prosthetists and oral health therapists render services on their behalf.

##### **Item 5 – Rule 4 (note 1)**

Item 5 removes numbering of a note contained in Rule 4.

### **Item 6 – Rule 4 (note 2)**

Item 6 removes Note 2, which specifies “For the definitions of other expressions used in these Rules, see the Act”. This is a consequential amendment resulting from Item 2.

### **Item 7 – Rule 6**

Item 7 repeals and substitutes Rule 6. Subsection 1 of this item is intended to expand the class of dental providers under section 6(1)(b) of the *Dental Benefits Act 2008* to include dental hygienists, dental therapists, and oral health therapists.

Subsection 2 of this item specifies that dental practitioners who do not have a Medicare provider number are not dental providers and therefore ineligible to bill for the services listed in the Dental Benefits Schedule. This includes dental practitioners referred to under section 6(1)(a) of the *Dental Benefits Act 2008* and as the result of these amendments, the expanded class of dental providers under Rule 6(1).

### **Item 8 – Rule 7**

Item 8 repeals and substitutes Rule 7. Subsection 1 of this item specifies that dental hygienists, dental therapists, dental prosthetists and oral health therapists are eligible to provide services listed in the Dental Benefits Schedule on behalf of a registered dentist.

Subsection 2 of this item specifies a dental service in the Dental Benefits Schedule may also be rendered on behalf of a public sector dental provider who is also a registered dentist by another public sector dental provider. This enables the continuation of existing public sector billing arrangements.

### **Item 9 – Before rule 8**

Item 9 inserts a new heading of “Part 2—Payment of dental benefits” before Rule 8.

### **Item 10 – After rule 8**

Item 10 inserts Rule 8AA which prescribes the requirement for certain items in the Dental Benefits Schedule to be rendered by the appropriate class of dental provider before a benefit may be paid. This allows for dental hygienists, dental therapists, and oral health therapists to provide a limited range of services listed on the Dental Benefits Schedule.

This condition limits the payment of dental benefits to who are generally not able to render all items listed on the Dental Benefits Schedule.

### **Item 11 – Before rule 9**

Item 11 inserts a new heading of “Part 3—Dental benefits vouchers” before Rule 9.

### **Item 12 – Before rule 14**

Item 12 inserts a new heading of “Part 4—Other conditions, limitations or restrictions for items” before Rule 14.

**Item 13 – After rule 29**

Item 13 inserts a new heading of “Part 5—Application, savings and transitional provisions” before Rule 29.

Item 13 also inserts Rule 30, which is an application provision specifying that this instrument only applies in relation to the payment of dental benefits for dental services rendered on or after 1 July 2022.

## **Statement of Compatibility with Human Rights**

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

### ***Dental Benefits Amendment (Allied Dental Practitioners) Rules 2022***

This 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 Amending Rules**

The *Dental Benefits Amendment (Allied Dental Practitioners) Rules 2022* (the Amending Rules) amends the *Dental Benefits Rules 2014* by expanding the class of dental providers who can render services on behalf of a dental provider for certain services listed on the Dental Benefits Schedule to eligible dental patients, including dental hygienists, dental therapists, and oral health therapists who hold both the relevant registration in accordance with State and Territory law and a Medicare provider number.

#### **Human rights implications**

The overarching purpose of the Amending Rules is to allow eligible children to receive benefits for essential dental services more easily from an expanded number of dental practitioners. This supports Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) such that it promotes the right to enjoyment of the highest attainable standard of physical and mental health. The Amending Rules also align with Article 9 of the ICESCR by ensuring access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.