

EXPLANATORY STATEMENT

Dental Benefits Act 2008

Dental Benefits Amendment Rules (No. 1) 2022

Purpose

The *Dental Benefits Amendment Rules (No. 1) 2022* (the Amendment Rules) amend 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 of the benefit limits cap amount in Schedule 3 to the Rules, effective from 1 January 2023.

The Rules provide for the Child Dental Benefits Schedule (CDBS), which sets out items specifying dental services, the amount of dental benefit payable, and the 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.

Schedule 1 to the Rules lists the dental items covered under the CDBS and the amount of benefit payable for each item. On 1 January 2023, indexation is to be applied, by the Amendment Rules, to each item listed in Schedule 1.

Schedule 3 of the Rules lists the benefit limits cap amount for each two-year calendar period. On 1 January 2023, indexation is to be applied, by the Amendment Rules, to the benefit cap amount increasing the benefit cap amount from \$1,026 to \$1,052 for 2023-2024 relevant two-year period.

The indexed cap rate will apply from 1 January 2023 until 31 December 2023. 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 2022 the 2022-2023 cap of \$1,026 applies. If a child first accesses benefits in 2023 the 2023-2024 cap of \$1,052 applies.

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 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.

Consultation

Consultation was undertaken with Services Australia, which administers the dental benefits program, to ensure its claiming and notification systems have been updated to reflect the indexed benefit limit cap amount and indexed schedule fee rates that come into effect on 1 January 2023.

Commencement

The Amendment Rules are a disallowable legislative instrument for the purposes of the *Legislation Act 2003*. The Amendment Rules commence on 1 January 2023.

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

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

ATTACHMENT A

Details of the *Dental Benefits Amendment Rules (No 1) 2022*

Section 1 – Name

This section provides that the name of the instrument is the *Dental Benefits Amendment Rules (No. 1) 2022* (the Amendment Rules).

Section 2 – Commencement

This section provides that the Amendment Rules commence on 1 January 2023.

Section 3 – Authority

This section provides that the Amendment Rules are made under subsection 60(1) of the *Dental Benefits Act 2008*.

Section 4 – Schedule

This section provides that each instrument that is specified in a Schedule to the Amendment Rules 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

Dental Benefits Rules 2014

Item 1 – Schedule 1 – Dental Benefits Schedule

Item 1 repeals Schedule 1 to the rules 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 to the rules 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 2023 will now have access to up to a \$1,052 cap in benefits over the two-year calendar period.

ATTACHMENT B

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) 2022

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 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 the 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) 2022* (the Amendment Rules) amend 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 2023.

Schedule 1 to the Rules lists the dental items covered under the CDBS and the amount of benefit payable for each item. On 1 January 2023 the updated indexation rate, as specified by the Department of Finance in the August 2022 economic update, is to be applied to the items in Schedule 1.

Schedule 3 of the Rules lists the benefit limits cap amount for each two-year calendar period. On 1 January 2023 the updated indexation rate, as specified by the Department of Finance in the August 2022 economic update, is to be applied to the items in Schedule 3.

Human Rights implications

The Amendment Rules engage the following rights:

- the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- the right to the enjoyment of the highest attainable standard of physical and mental health under Article 12 of the ICESCR.

The Right to Health

The right to the enjoyment of the highest attainable standard of physical and mental health is contained in Article 12(1) of the ICESCR. The UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not a right for each individual to be healthy but is a right to a system of health protection

which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Right to Social Security

The right to social security is contained in Article 9 of the ICESCR. It requires that a country must, within its maximum available resources, ensure 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. Countries are obliged to demonstrate that every effort has been made to use all resources that are at their disposal in an effort to satisfy, as a matter of priority, this minimum obligation.

Analysis

The Amendment Rules apply indexation to the amount of benefit payable for each item in Schedule 1 and the cap amount in Schedule 3, which helps maintain the value of benefits in line with inflation and in effect promote bulk billing. Consequently, the Amendment Rules engage the right to health, as contained in Article 12(1) of the ICESCR, and the right to social security, as contained in Article 9 of the ICESCR, by facilitating access to basic dental services for eligible children.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights because it promotes the protection of human rights.