

EXPLANATORY STATEMENT

Dental Benefits Act 2008

Dental Benefits Amendment Rules (No. 2) 2022

Purpose

The *Dental Benefits Amendment Rules (No. 2) 2022* (the Amendment Rules) amend the *Dental Benefits Rules 2014* (the Rules) to extend the date to which a dental service provided by a State or internal Territory is eligible for dental benefits under the Child Dental Benefits Schedule (CDBS) to 31 December 2026. The CDBS provides benefits for basic dental services for eligible children aged 0-17 years. The Amendment Rules allow patients to continue to access treatment provided by public sector dental providers under the CDBS until 31 December 2026.

Authority

Subsection 60(1) of the *Dental Benefits Act 2008* (the Act) allows the Minister, by legislative instrument, to make Dental Benefits Rules providing for matters required or permitted by the Act 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.

Commencement

The Amendment Rules commence on 1 January 2023.

Consultation

Consultation prior to making the Amendment Rules was not necessary as the amendments do not substantially alter existing arrangements.

General

The Amendment Rules are a disallowable legislative instrument for the purposes of the *Legislation Act 2003*.

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**.

Details of the *Dental Benefits Amendment Rules (No. 2) 2022*

Section 1 – Name

This section provides that the name of the instrument is the *Dental Benefits Amendment Rules (No. 2) 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 2 – Eligibility of dental services rendered in a State or internal Territory by or on behalf of or under an arrangement with a State or internal Territory

Item 1 repeals Schedule 2 of the *Dental Benefits Rules 2014* and substitutes a new Schedule 2. The new Schedule 2 extends the date to which a dental service provided by, or on behalf of, or under an arrangement with a State or internal Territory is eligible for dental benefits to 31 December 2026.

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. 2) 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. 2) 2022* (the Amendment Rules) amend the Rules to extend the date to which a dental service provided by, or on behalf of, or under an arrangement with a State or internal Territory is eligible for dental benefits to 31 December 2026.

The Amendment Rules allow patients to continue to access treatment provided by public sector dentists under the CDBS until 31 December 2026.

Human Rights implications

The Amendment Rules engage the following rights:

- the right to the enjoyment of the highest attainable standard of physical and mental health under Article 12 of the ICESCR, and
- the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (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 the right for every individual to be healthy but 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 will allow eligible patients, aged between 0-17 years, to continue to access treatment provided by, on behalf of, or under an arrangement with a State or internal Territory under the CDBS until 31 December 2026. The Amendment Rules engage:

- the right to health as contained in Article 12(1) of the ICESCR by supporting the delivery of public dental services which enables eligible patients to access to dental facilities, dental practitioners, and essential dental services, and
- the right to social security as contained in Article 9 of the ICESCR by providing for payments for dental benefits to eligible patients through the CDBS, consequently enabling eligible patients to access benefits in the public sector and assisting eligible patients to access essential dental care.

Conclusion

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

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