

## **EXPLANATORY STATEMENT**

### ***Dental Benefits Act 2008***

#### ***Dental Benefits Amendment Rules (No. 1) 2025***

##### **Purpose and operation**

The *Dental Benefits Amendment Rules (No. 1) 2025* (the Amendment Rules) amend the *Dental Benefits Rules 2014* (the Rules) to apply a benefit limits cap in Schedule 3 to the Rules, effective from 1 January 2025 to 31 December 2026. The amount of benefit limits cap for the 1 January 2025 to 31 December 2026 period reflects an indexation to the cap for the 2024-2025 period.

The Amendment Rules rectify a drafting error in the *Dental Benefits Amendment Rules (No. 1) 2024* (the Previous Amendment Rules) that resulted in the new benefits limits cap not being applied.

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 3 of the Rules lists the benefit limits cap amount for each two-year calendar period. On 1 January 2025, indexation is to be applied, by the Amendment Rules, to the benefit cap that applied for dental services provided in the relevant 2024-2025 two-year period, increasing the benefit cap amount from \$1,095 to \$1,132 for the 2025-2026 relevant two-year period.

The indexed cap rate will apply from 1 January 2025 until 31 December 2025. 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 2024 the 2024-2025 cap of \$1,095 applies. If a child first accesses benefits in 2025 the 2025-2026 cap of \$1,132 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.

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

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.

## Commencement

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

The Amendment Rules commence retrospectively on 1 January 2025. This is the date the amendments to the benefits cap to be made by the Previous Amendment Rules would have commenced, but for the drafting error.

Subsection 12(1A) of the *Legislation Act 2003* states that a legislative instrument may commence before the instrument is registered. However, subsection 12(2) has the effect that a retrospectively commencing legislative instrument will not apply in relation to a person to the extent that the retrospective commencement would affect their rights as at the time the instrument is registered so as to disadvantage them, or impose additional liabilities on the person in respect of things done or omitted to be done at the time the instrument is registered.

The new benefits cap will only apply where a child first received eligible dental services in 2025. Given the short time between 1 January 2025 and the making of the Amendment Rules, the Department of Health and Aged Care has not identified any persons who have actually already reached the \$1,132 benefits limit cap. As indicated above, where a child first started receiving eligible dental services in 2024 and so may have already become entitled to significant dental benefits, the existing benefits cap for the 2024-2025 period would continue to apply and they are not affected by the changes made by these Amendment Rules.

## Consultation

Consultation was not required for the Amendment Rules. This is because the amendments made by the Amendment Rules simply rectify a drafting error in the Previous Amendment Rules.

However, consultation was undertaken with Services Australia, which administers the CDBS, before making the Previous Amendment Rules, to ensure its claiming and notification systems have been updated to reflect the indexed benefit limit cap amount that comes into effect on 1 January 2025. 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.

## General

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

Details of this instrument are set out in **Attachment A**.

This instrument is compatible with the human rights and freedoms 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**.

**Details of the *Dental Benefits Amendment Rules (No. 1) 2025*****Section 1 – Name**

This section provides that the name of the instrument is the *Dental Benefits Amendment Rules (No. 1) 2025*.

**Section 2 – Commencement**

This section provides that the Amendment Rules are taken to have commenced on 1 January 2025.

**Section 3 – Authority**

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

**Section 4 – Schedules**

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****Item 1 – Schedule 3 (at the end of the table)**

Item 1 adds a new financial year and benefit limits cap amount to the table in Schedule 3.

The effect of this item is that children who commence their two-year cap period on any date in 2025 will now have access to up to a \$1,132 cap in benefits over the two-year calendar period ending on 31 December 2026. Item 2 of Schedule 1 of the *Dental Benefits Amendment Rules (No. 1) 2024*, was intended to introduce the \$1,132 benefits cap for this period but, due to an inadvertent drafting error, did not do so.

## 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) 2025*

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) 2025* (the Amendment Rules) amend the Rules to reflect indexation to the benefit limits cap amount in Schedule 3 of the Rules, effective from 1 January 2025. This instrument rectifies a drafting error in the *Dental Benefits Amendment Rules (No. 1) 2024* (the Previous Amendment Rules), which was intended to reflect indexation of the benefit limits cap amount in Schedule 3 to the Rules. The Amendment Rules amend Schedule 3 to the Rules to set the benefits limit cap amount to \$1,132 for the 2025-2026 financial year. The amendments made by the Amendment Rules would have been made by the Previous Amendment Rules, but for the drafting error. Schedule 3 of the Rules lists the benefit limits cap amount for each two-year calendar period. On 1 January 2025, the updated indexation rate, as specified by the Department of Finance in the October 2024 economic update, was used to calculate the new benefit cap limit. The effect of this is that children who commence their two-year cap period on any date in 2025 will now have access to up to a \$1,132 cap in benefits over the two-year calendar period ending on 31 December 2026.

#### **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 benefit limits 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.

**Mark Roddam**  
**First Assistant Secretary**  
**Primary Care Division**  
**Department of Health and Aged Care**