



Dental Benefits Act 2008

No. 41, 2008

An Act to provide a framework for the provision of dental benefits, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Dental Benefits Act 2008

No. 41, 2008

An Act to provide a framework for the provision of dental benefits, and for related purposes

[Assented to 25 June 2008]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Dental Benefits Act 2008*.

Section 2

2 Commencement

This Act commences on the day after it receives the Royal Assent.

3 Simplified outline

The following is a simplified outline of this Act:

- This Act sets up a framework for the provision of dental benefits.
- Dental benefit is payable if dental expenses are incurred in respect of a dental service rendered to an eligible dental patient.
- The amount of dental benefit payable is the amount specified in, or determined in accordance with, the Dental Benefits Rules.
- If dental benefit is payable, it is payable by the Medicare Australia CEO to the person who incurs the dental expenses in respect of the dental service. In some circumstances, dental benefit is payable to the dental provider.
- Claims for dental benefit must be lodged with the Medicare Australia CEO.
- The Medicare Australia CEO is to issue vouchers in relation to a dental service to persons who qualify for a voucher.
- A person qualifies for a voucher if the person meets the requirements of this Act or if the Dental Benefits Rules provide that the person qualifies for a voucher.
- A person in respect of whom a voucher is in effect is an eligible dental patient. The Dental Benefit Rules may also provide that certain eligible persons are eligible dental patients.

- The Minister may make Dental Benefit Rules which may provide for a Dental Benefits Schedule.
- This Act also makes provision in relation to the disclosure of information, offences against this Act and other matters.

4 Definitions

In this Act:

ABSTUDY scheme means the scheme known as ABSTUDY.

approved form means a form approved, in writing, by the Medicare Australia CEO.

associate, in relation to a corporation, means:

- (a) a director (within the meaning of the *Corporations Act 2001*), secretary or manager of the corporation; or
- (b) a receiver, or a receiver and manager, of any part of the undertaking of the corporation appointed under a power contained in any instrument; or
- (c) a liquidator of the corporation appointed in a voluntary winding up.

authorised disclosure has the meaning given by subsection 34(4).

bank includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

clinically relevant service means a service that is generally accepted in the dental profession as being necessary for the appropriate care or treatment of the patient to whom it is rendered.

dental benefit means dental benefit payable under Part 3.

Dental Benefits Rules means the Dental Benefits Rules referred to in section 60.

Dental Benefits Schedule means the Dental Benefits Schedule referred to in section 61.

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dental expenses means an amount payable in respect of a dental service.

dental practitioner has the same meaning as in the *Health Insurance Act 1973*.

dental provider has the meaning given by section 6.

dental service means a clinically relevant service specified in an item, being a service rendered by or on behalf of a dental provider.

disclose means divulge or communicate.

eligible dental patient has the meaning given by section 5.

eligible person means:

- (a) a person who is an eligible person within the meaning of section 3 of the *Health Insurance Act 1973*; or
- (b) a person who is treated as such a person because of section 6, 6A or 7 of that Act.

employee of Medicare means an employee within the meaning of the *Medicare Australia Act 1973*.

entrusted public official has the meaning given by subsection 34(2).

item means an item in the Dental Benefits Schedule.

making a statement, when used in Division 3 of Part 6, includes a reference to issuing or presenting a document.

Medicare Australia CEO has the same meaning as in the *Health Insurance Act 1973*.

private health insurer has the same meaning as in the *Private Health Insurance Act 2007*.

protected information has the meaning given by subsection 34(3).

qualifies for a voucher has the meaning given by sections 23 and 26.

rendered on behalf of a dental provider has the meaning given by section 7.

satisfies the means test has the meaning given by section 24.

Secretary means the Secretary of the Department.

this Act includes:

- (a) the regulations; and
- (b) the Dental Services Rules.

voucher means a voucher issued under Part 4.

youth allowance means a payment under Part 2.11 of the *Social Security Act 1991*.

5 Meaning of *eligible dental patient*

- (1) An ***eligible dental patient***, in relation to a dental service, is:
 - (a) a person in respect of whom a voucher in relation to the dental service is in effect; or
 - (b) an eligible person included in a class of eligible persons specified in the Dental Benefits Rules to be eligible dental patients in relation to the dental service; or
 - (c) if the Dental Benefits Rules provide that all eligible persons are eligible dental patients in relation to the dental service— an eligible person.
- (2) Without limiting the way in which a class of eligible persons may be described for the purposes of paragraph (1)(b), the class may be described by reference to one or both of the following:
 - (a) age;
 - (b) receipt of a specified pension, benefit or allowance at a specified time or throughout a specified period.

6 Meaning of *dental provider*

- (1) A ***dental provider***, in relation to a dental service, means the following:
 - (a) a dental practitioner;
-

Section 7

- (b) if the Dental Benefits Rules specify a class of persons to be dental providers in relation to the dental service—a person included in that class.
- (2) Despite subsection (1), a dental practitioner is not a dental provider in relation to a dental service, if:
 - (a) the dental practitioner is included in a class of dental practitioners specified in the Dental Benefits Rules not to be dental providers in relation to the dental service; or
 - (b) the Dental Benefits Rules specify that dental practitioners are not dental providers in relation to the dental service.

7 Meaning of *rendered on behalf of a dental provider*

For the purposes of this Act, a dental service is taken to be rendered on behalf of a dental provider if, and only if:

- (a) the dental service is rendered by another person included in a class of persons specified in the Dental Benefits Rules for the purposes of this paragraph; and
- (b) the other person provides the dental service, in accordance with accepted dental practice, under the supervision of the dental provider.

Part 2—Entitlement to dental benefits

8 Simplified outline

The following is a simplified outline of this Part:

- This Part creates a basic entitlement to dental benefit in respect of a dental service.
- Dental benefit is payable if dental expenses are incurred in respect of the dental service.
- The amount of dental benefit payable is the amount specified in, or determined in accordance with, the Dental Benefit Rules.

9 Entitlement to dental benefits

Basic entitlement

- (1) If dental expenses are incurred in respect of a dental service rendered in Australia to an eligible dental patient, dental benefit is payable under section 11 in respect of the dental service.

Amount payable

- (2) The amount of dental benefit payable in respect of a dental service is the amount specified in, or determined in accordance with, the Dental Benefits Rules.

Note: See also sections 61 and 62.

- (3) The amount of dental benefit payable in respect of a dental service must not exceed the dental expenses incurred in respect of the dental service.

Part 3 Payment of dental benefits

Division 1 Introduction

Section 10

Part 3—Payment of dental benefits

Division 1—Introduction

10 Simplified outline

The following is a simplified outline of this Part:

- This Part deals with the payment of dental benefit in respect of a dental service.
- Dental benefit is payable by the Medicare Australia CEO to:
 - (a) the person who incurs the dental expenses in respect of the dental service; or
 - (b) the dental provider, if there has been an assignment of dental benefits or if there has been a request that the dental provider be paid.
- Claims for dental benefit must be lodged with the Medicare Australia CEO.
- Dental benefit is not payable in certain circumstances.

Division 2—Payment of dental benefits

11 Payment of dental benefits to persons who incur dental expenses

- (1) Subject to this Part, dental benefit in respect of a dental service:
 - (a) is payable by the Medicare Australia CEO on behalf of the Commonwealth to the person who incurs the dental expenses in respect of the dental service; and
 - (b) is to be paid in such manner as the Medicare Australia CEO determines.
- (2) A determination under paragraph (1)(b) may provide for the amount of dental benefit to be paid to the credit of a bank account in such circumstances (if any), and subject to such conditions (if any), as are specified in the Dental Benefits Rules.
- (3) Subsection (2) does not limit paragraph (1)(b).

12 Assignment of dental benefits

Scope

- (1) This section applies if dental benefit is payable under section 11 to a person in respect of a dental service.

Assignment of dental benefits

- (2) The person and the dental provider by whom, or on whose behalf, the dental service is rendered may enter into an agreement, in accordance with the approved form, under which:
 - (a) the person assigns his or her right to the payment of the dental benefit to the dental provider; and
 - (b) the dental provider accepts the assignment in full payment of the dental expenses incurred by the person in respect of the dental service.
- (3) An assignment of a dental benefit must not be made except in accordance with this section.

Section 13

Agents

- (4) If a person renders a dental service on behalf of a dental provider, the person may enter into an agreement under subsection (2) on behalf of the dental provider only if the person is authorised to do so by the dental provider.

13 Payment of assigned dental benefits

- (1) If an assignment under section 12 takes effect with respect to a dental benefit, the dental benefit is, subject to section 15, payable in accordance with the assignment.
- (2) Dental benefit payable under subsection (1) is to be paid in such manner as the Medicare Australia CEO determines.
- (3) A determination under subsection (2) may provide for the amount of dental benefit to be paid to the credit of a bank account in such circumstances (if any), and subject to such conditions (if any), as are specified in the Dental Benefits Rules.
- (4) Subsection (3) does not limit subsection (2).

14 Payment of dental benefits to dental providers if a request is made

Scope

- (1) This section applies if:
 - (a) dental benefit is payable under section 11 to a person in respect of a dental service; and
 - (b) the person has not paid the dental expenses that the person incurred in respect of the dental service.

Dental benefit not to be paid to the person

- (2) Dental benefit is not to be paid to the person.

Dental benefit to be paid to the dental provider if a request is made

- (3) The person may request the Medicare Australia CEO to:

- (a) give the person personally; or
 - (b) send by post to the address specified by the person;
a cheque for the amount of dental benefit payable in respect of the dental service in lieu of a payment to the person under section 11 in respect of the dental service.
- (4) The Medicare Australia CEO must comply with a request under subsection (3).
- (5) A cheque given or sent as requested under subsection (3) must be drawn in favour of the dental provider by whom, or on whose behalf, the dental service was rendered.

Division 3—Claims for dental benefits

15 Claims for dental benefits

Claims for unassigned dental benefits

- (1) A claim for a dental benefit (other than a dental benefit assigned under section 12) must be made in accordance with the approved form and:
 - (a) lodged with the Medicare Australia CEO; or
 - (b) sent, in such circumstances (if any), and subject to such conditions (if any), as are specified in the Dental Benefits Rules, to the Medicare Australia CEO in such manner as he or she determines.

Claims for assigned dental benefits

- (2) A claim for a dental benefit assigned under section 12 must be made in accordance with the approved form and:
 - (a) lodged with the Medicare Australia CEO; or
 - (b) sent, in such circumstances (if any), and subject to such conditions (if any), as are specified in the Dental Benefits Rules, to the Medicare Australia CEO in such manner as he or she determines;
within the period of 2 years, or such longer period as is allowed under subsection 16(2), after the rendering of the dental service to which the dental benefit relates.
- (3) A claim referred to in subsection (2) must not be paid unless the claimant satisfies the Medicare Australia CEO that, after signing the relevant agreement under subsection 12(2), the assignor retained in his or her possession a copy of the agreement.
- (4) A determination under paragraph (2)(b) may provide for a claim for a dental benefit to be sent by electronic transmission.
- (5) Subsection (4) does not limit paragraph (2)(b).

16 Application for a longer period to lodge claims for assigned dental benefits

- (1) A person may, in accordance with the approved form, apply to the Medicare Australia CEO for a longer period within which to lodge a claim referred to in subsection 15(2).
- (2) If an application under subsection (1) is made, the Medicare Australia CEO may, by notice in writing given to the person, allow a longer period for the lodgment of the claim.
- (3) The Medicare Australia CEO must, in exercising his or her power under subsection (2), have regard to all matters that the Medicare Australia CEO considers relevant including, but not limited to, any hardship that might be caused to the person if a longer period is not allowed.

Division 4—When dental benefit is not payable

17 Dental benefit is not payable unless particulars are recorded on the account etc.

- (1) Dental benefit is not payable in respect of a dental service unless subsection (2) is satisfied.
- (2) This subsection is satisfied if:
 - (a) the dental provider by whom, or on whose behalf, the dental service was rendered; or
 - (b) an employee of that dental provider;
has recorded on one or more of the following:
 - (c) the account or receipt for fees in respect of the dental service;
 - (d) the voucher that relates to the dental service;
 - (e) if an assignment has been made in accordance with section 12 in relation to the dental benefit in respect of the dental service—on the form of the assignment;such particulars (if any) as are specified in the Dental Benefits Rules in relation to dental services generally or in relation to a class of dental services in which the dental service is included.

18 Dental benefit is not payable unless conditions specified in the Dental Benefits Rules are satisfied

- (1) The Dental Benefits Rules may provide that dental benefit is not payable in respect of a dental service unless the conditions specified in the Dental Benefits Rules are satisfied.
- (2) Conditions specified in the Dental Benefits Rules for the purposes of subsection (1) may include, but are not limited to, conditions relating to:
 - (a) the dental service; or
 - (b) the circumstances in which the dental service is rendered; or
 - (c) the dental provider by whom, or on whose behalf, the dental service is rendered; or

- (d) the eligible dental patient to whom the dental service is rendered; or
- (e) dental services rendered by, on behalf of or under an arrangement with:
 - (i) the Commonwealth; or
 - (ii) a State; or
 - (iii) an internal Territory; or
 - (iv) a local governing body; or
 - (v) an authority established by a law of the Commonwealth, a law of a State or a law of an internal Territory.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

19 Dental benefit is not payable if a benefit has been received etc. under a complying health insurance policy

- (1) Dental benefit is not payable to a person in respect of a dental service if:
 - (a) under a complying health insurance policy with a private health insurer, the person is covered, in whole or in part, for the liability to pay fees and charges in respect of the dental service; and
 - (b) the person has received, or chooses to receive, a benefit from the private health insurer in respect of the dental service.
- (2) In this section:

complying health insurance policy has the same meaning as in the *Private Health Insurance Act 2007*.

cover, in relation to a complying health insurance policy, has the same meaning as in the *Private Health Insurance Act 2007*.

20 Dental benefit is not payable in respect of a dental service rendered as part of an episode of hospital treatment etc.

- (1) Dental benefit is not payable in respect of a dental service rendered to an eligible dental patient if the dental service is rendered:

Part 3 Payment of dental benefits

Division 4 When dental benefit is not payable

Section 21

- (a) as part of an episode of hospital treatment provided to the eligible dental patient; or
 - (b) as part of hospital-substitute treatment provided to the eligible dental patient in respect of which the eligible dental patient chooses to receive a benefit from a private health insurer.
- (2) In this section:

hospital-substitute treatment has the same meaning as in the *Private Health Insurance Act 2007*.

hospital treatment has the same meaning as in the *Private Health Insurance Act 2007*.

21 Dental Benefits Rules may provide that dental benefit is not payable

- (1) The Dental Benefits Rules may provide that dental benefit is not payable in respect of a dental service.
- (2) Without limiting subsection (1), the Dental Benefits Rules may provide that:
 - (a) dental benefit is not payable in respect of a specified dental service; or
 - (b) dental benefit is not payable in respect of a dental service provided in specified circumstances; or
 - (c) dental benefit is not payable in respect of a dental service rendered by, or on behalf of, a specified dental provider; or
 - (d) dental benefit is not payable in respect of a dental service rendered to a specified eligible dental patient; or
 - (e) dental benefit is not payable in respect of a dental service rendered by, on behalf of or under an arrangement with:
 - (i) the Commonwealth; or
 - (ii) a State; or
 - (iii) an internal Territory; or
 - (iv) a local governing body; or
 - (v) an authority established by a law of the Commonwealth, a law of a State or a law of an internal Territory.

Section 21

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Part 4—Dental benefits vouchers

Division 1—Introduction

22 Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a framework for the issuing of vouchers in relation to a dental service to persons who qualify for a voucher.
- A person qualifies for a voucher for a calendar year if he or she is aged between 12 and 18 years at any time during the calendar year, is an eligible person and satisfies the means test.
- The Dental Benefit Rules may also provide that an eligible person qualifies for a voucher for a calendar year.
- The Medicare Australia CEO must issue a voucher to a person if the person qualifies for the voucher on or before 31 October in a calendar year.
- A person who qualifies for a voucher may request the Medicare Australia CEO to issue the voucher.
- Unless the Dental Benefit Rules provide otherwise:
 - (a) only one voucher may be issued in relation to a dental service in respect of a person for a calendar year; and
 - (b) a voucher for a calendar year remains in effect until the end of the calendar year.

Division 2—Qualification for vouchers

23 Qualification for a voucher—teenagers

Section applies to certain teenagers

- (1) This section applies to a person, in relation to a calendar year, if:
 - (a) the person is aged at least 12 years but is aged under 18 years on 1 January in the calendar year; or
 - (b) the person will, in the ordinary course of events, reach the age of 12 years at any time during the calendar year.

Point in time at which person qualifies for a voucher

- (2) The person ***qualifies for a voucher*** for the calendar year, in relation to a dental service specified in the Dental Benefits Rules for the purposes of this section, at the first time in the calendar year when:
 - (a) the person is an eligible person; and
 - (b) the person satisfies the means test set out in section 24.

24 When a person satisfies the means test

Basic rule

- (1) For the purposes of section 23, a person ***satisfies the means test*** at a particular time if, at that time:
 - (a) the person is receiving a payment under the ABSTUDY scheme, or another person is receiving such a payment in respect of the person; or
 - (b) the person is receiving youth allowance; or
 - (c) the person is an FTB(A) teenager; or
 - (d) the person is included in a class of persons specified in the Dental Benefits Rules as satisfying the means test for the purposes of this paragraph.

Section 24

When a person is an FTB(A) teenager

- (2) For the purposes of this section, a person (the *teenager*) is an **FTB(A) teenager** at a particular time if, at that time:
- (a) there is in force a section 16 determination that the teenager, or the teenager's partner, is entitled to be paid family tax benefit at a Part A rate that is greater than nil; or
 - (b) there is in force a section 16 determination that an FTB recipient in relation to the teenager is entitled to be paid family tax benefit in respect of the teenager at a Part A rate that is greater than nil; or
 - (c) the teenager, or the teenager's partner, has received an FTB lump sum payment in respect of the last income year ending before the start of the calendar year during which the time occurs; or
 - (d) an FTB recipient in relation to the teenager has received an FTB lump sum payment that is:
 - (i) in respect of the teenager; and
 - (ii) in respect of the last income year ending before the start of the calendar year during which the time occurs; or
 - (e) the teenager is included in a class of person specified in the Dental Benefits Rules to be an FTB(A) teenager for the purposes of this paragraph.

Definitions

- (3) In this section:

approved care organisation has the same meaning as in the *A New Tax System (Family Assistance) Act 1999*.

FTB child, in relation to family tax benefit, has the same meaning as in the *A New Tax System (Family Assistance) Act 1999*.

FTB lump sum payment means a payment of family tax benefit under section 24 of the *A New Tax System (Family Assistance) (Administration) Act 1999* that has a Part A rate that is greater than nil.

FTB recipient, in relation to a teenager, means:

- (a) a person of whom the teenager is an FTB child in relation to family tax benefit; or
- (b) an approved care organisation of which the teenager is a client (within the meaning of the *A New Tax System (Family Assistance) Act 1999*).

income year has the same meaning as in subsection 3(1) of the *A New Tax System (Family Assistance) Act 1999*.

Part A rate means the Part A rate calculated under the *A New Tax System (Family Assistance) Act 1999*.

partner has the same meaning as in the *A New Tax System (Family Assistance) Act 1999*.

receive:

- (a) in relation to a payment under the ABSTUDY scheme—has the meaning given by subsection (4); and
- (b) in relation to youth allowance—has the same meaning as in section 23 of the *Social Security Act 1991*.

section 16 determination means a determination under section 16 of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

When a person is receiving ABSTUDY

- (4) For the purposes of this section, a person is taken to be receiving a payment under the ABSTUDY scheme:
 - (a) from the earliest day on which the payment is payable to the person, even if an instalment of the payment, or the payment, it is not paid until a later day; and
 - (b) until the latest day on which the payment is payable to the person, even if the last instalment of the payment, or the payment, is not paid until a later day.

25 Dental Benefits Rules must specify certain matters

- (1) Dental Benefits Rules made for the purposes of paragraph 24(1)(d) must specify the time, or how to work out the time, at which a person satisfies the means test for the purposes of the paragraph.

Part 4 Dental benefits vouchers

Division 2 Qualification for vouchers

Section 26

- (2) Dental Benefits Rules made for the purposes of paragraph 24(2)(e) must specify the time, or how to work out the time at which, a person is an FTB(A) teenager for the purposes of the paragraph.

26 Qualification for a voucher—other persons

The Dental Benefits Rules may provide that each eligible person included in a specified class of eligible persons *qualifies for a voucher* for a calendar year in relation to a specified dental service.

Division 3—Issue of vouchers and other matters

27 Medicare Australia CEO must issue vouchers

Persons who qualify on or before 31 October

- (1) The Medicare Australia CEO must issue a voucher for a calendar year in respect of a person, in relation to a dental service, if:
 - (a) the person qualifies for the voucher on or before whichever of the following dates is applicable:
 - (i) 31 October in the calendar year;
 - (ii) if an earlier or later date in the calendar year is specified in the Dental Benefits Rules for the purposes of this paragraph—the specified date; and
 - (b) subject to subsection (5), the Medicare Australia CEO has not already issued a voucher for the calendar year in respect of the person in relation to the dental service.

Persons who request a voucher

- (2) The Medicare Australia CEO must issue a voucher for a calendar year in respect of a person, in relation to a dental service, if:
 - (a) the person qualifies for the voucher; and
 - (b) the Medicare Australia CEO is requested by or on behalf of the person to issue the voucher; and
 - (c) subject to subsection (5), the Medicare Australia CEO has not already issued a voucher for the calendar year in respect of the person in relation to the dental service.

Timing and form of a request

- (3) A request under subsection (2):
 - (a) must be made not later than 15 days, or such other number of days as is specified in the Dental Benefits Rules for the purposes of this paragraph, before the end of the calendar year; and
 - (b) must be in the approved form.

Section 28

Voucher to be issued as soon as reasonably practicable

- (4) The Medicare Australia CEO must issue a voucher under subsection (1) or (2) as soon as reasonably practicable after the person qualifies for the voucher or the request for the voucher is made, as the case requires.

Exception to the one voucher per year rule

- (5) The Dental Benefits Rules may specify circumstances in which more than one voucher in relation to a dental service, may be issued in respect of a person for a calendar year.

When voucher is not required to be issued

- (6) This section has effect subject to sections 28 and 29.

28 When voucher is not required to be issued—person dies

Despite section 27, if:

- (a) a person qualifies for a voucher for a calendar year; and
(b) the person dies before the Medicare Australia CEO issues the voucher for the calendar year in respect of the person;
the Medicare Australia CEO is not required to issue the voucher.

29 When voucher is not required to be issued—circumstances specified in the Dental Benefit Rules

The Dental Benefit Rules may specify circumstances in which the Medicare Australia CEO is not required to issue a voucher for a calendar year in respect of a person who qualifies for the voucher.

30 Voucher must specify dental service

A voucher must specify the dental service to which it relates.

31 Voucher remains in effect until the end of a calendar year

A voucher for a calendar year takes effect on the day on which it is issued and remains in effect until the end of the calendar year,

unless the Dental Benefits Rules provide for a different period of effect.

32 Dental Benefits Rules may provide for other matters

The Dental Benefits Rules may provide for the following:

- (a) matters relating to requests for vouchers;
- (b) altering the period of effect of vouchers;
- (c) the persons to whom vouchers are to be issued;
- (d) lost vouchers.

Part 5—Disclosure of protected information

Division 1—Introduction

33 Simplified outline

The following is a simplified outline of this Part:

- Except as authorised by this Part, an entrusted public official must not disclose protected information.
- An entrusted public official must not, except for the purposes of this Act, be required:
 - (a) to disclose protected information to a court or tribunal; or
 - (b) produce documents that contain protected information in a court or tribunal.
- This Part also sets out a number of offences relating to the disclosure etc. of protected information.

Division 2—Disclosure of protected information

34 Prohibition on disclosure of protected information

Offence

- (1) A person commits an offence if:
- (a) the person is, or was at any time, an entrusted public official;
and
 - (b) the person has, or has at any time had, a duty, function or power under this Act; and
 - (c) the person discloses information to another person; and
 - (d) the information is protected information; and
 - (e) the disclosure is not an authorised disclosure.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Entrusted public official

- (2) Each of the following persons is an **entrusted public official**:
- (a) the Medicare Australia CEO;
 - (b) an employee of Medicare Australia;
 - (c) a consultant engaged under section 21 of the *Medicare Australia Act 1973*;
 - (d) the Secretary of the Department administered by the Minister who administers this Act;
 - (e) an APS employee in that Department;
 - (f) any other person employed or engaged by that Department.

Protected information

- (3) Information is **protected information** if the information relates to a person other than the person who obtained it and:
- (a) the information is obtained by a person in the course of performing duties or functions, or exercising powers, under this Act; or

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- (b) the information was information to which paragraph (a) applied and is obtained by a person by way of an authorised disclosure under section 36.

Authorised disclosure

- (4) A disclosure of information is an **authorised disclosure** if the disclosure is one that a person may make under section 35, 36, 37, 38, 39, 40 or 41.

35 Authorised disclosure—official duties

For the purposes of subsection 34(4), a person may disclose protected information if the disclosure is made:

- (a) in the course of performing a duty or function, or exercising a power, under this Act; or
- (b) for the purposes of enabling another person to perform duties or functions, or exercise powers, under this Act; or
- (c) for the purposes of enabling a person to perform duties or functions, or exercise powers, under the *Medicare Australia Act 1973*.

36 Authorised disclosure—public interest

- (1) For the purposes of subsection 34(4), a person may disclose protected information if:
 - (a) the disclosure is, or is a kind of disclosure, certified, in writing by the Secretary or the Medicare Australia CEO, to be in the public interest; and
 - (b) the disclosure is made in accordance with any requirements specified in the Dental Benefit Rules.
- (2) An instrument made under paragraph (1)(a) is not a legislative instrument.

37 Authorised disclosure—authorisation by affected person

For the purposes of subsection 34(4), the Secretary or the Medicare Australia CEO may disclose protected information to a person who

is expressly or impliedly authorised by the person to whom the protected information relates to obtain it.

38 Authorised disclosure—enforcement of the criminal law etc.

- (1) For the purposes of subsection 34(4), the Secretary or the Medicare Australia CEO may disclose protected information to an agency if:
- (a) the Secretary or the Medicare Australia CEO believes on reasonable grounds that the disclosure is reasonably necessary for:
 - (i) the enforcement of the criminal law; or
 - (ii) the enforcement of a law imposing a pecuniary penalty; or
 - (iii) the protection of the public revenue; and
 - (b) the functions of the agency include that enforcement or protection; and
 - (c) the disclosure is for the purposes of that enforcement or protection.

- (2) In this section:

agency includes:

- (a) a police force of a State or Territory; or
- (b) any other authority or person responsible for the enforcement of the laws of the State or Territory.

39 Authorised disclosure—preventing or lessening a serious and imminent threat to the life or health of a person

For the purposes of subsection 34(4), the Secretary or the Medicare Australia CEO may disclose protected information if:

- (a) the Secretary or the Medicare Australia CEO believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of a person; and
- (b) the disclosure is for the purposes of preventing or lessening that threat.

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40 Authorised disclosure—professional body

(1) For the purposes of subsection 34(4), the Secretary or the Medicare Australia CEO may disclose to a professional body protected information that relates to:

- (a) a dental provider; or
- (b) the dental services rendered by or on behalf of a dental provider;

if the Secretary or the Medicare Australia CEO believes on reasonable grounds that the dental provider should be reported to the professional body.

(2) Subsection (1) does not apply to protected information:

- (a) that relates to a person who is a patient of the dental provider; and
- (b) from which the identity of the person is apparent or can reasonably be ascertained;

unless the Secretary or the Medicare Australia CEO believes on reasonable grounds that the disclosure of the protected information is necessary in connection with the reporting of the dental provider to the professional body.

(3) In this section:

professional body means a body responsible for the licensing, registration, accreditation or standards of professional conduct of dental providers generally or a class of dental providers.

41 Authorised disclosure—administration of this Act

(1) For the purposes of subsection 34(4), a person may disclose protected information to:

- (a) the Medicare Australia CEO or an employee of Medicare Australia; or
- (b) the Chief Executive Officer of Centrelink or an employee of Centrelink; or
- (c) the Minister who administers:
 - (i) this Act; or
 - (ii) the *Medicare Australia Act 1973*; or

- (iii) the *Social Security Act 1991* in so far as that Act relates to youth allowance; or
 - (iv) the *A New Tax System (Family Assistance) Act 1999* in so far as that Act relates to family tax benefit; or
 - (v) the ABSTUDY scheme; or
 - (d) the Secretary of, or an APS employee in, the Department administered by a Minister mentioned in paragraph (c);
- if the disclosure is for the purposes of administering this Act.

Note: For the definition of *APS employee*, see section 17AA of the *Acts Interpretation Act 1901*.

- (2) In this section:

Centrelink means the Commonwealth Services Delivery Agency.

employee of Centrelink means an employee within the meaning of the *Commonwealth Services Delivery Agency Act 1997*.

family tax benefit has the same meaning as in the *A New Tax System (Family Assistance) Act 1999*.

42 Disclosure of protected information to courts or tribunals

Scope

- (1) This section applies if:
- (a) a person is, or was at any time, an entrusted public official; and
 - (b) the person obtained:
 - (i) protected information; or
 - (ii) a document that contains protected information;in the course of performing duties or functions, or exercising powers, under this Act.

Disclosure of protected information to a court or tribunal

- (2) The person must not, except for the purposes of this Act, be required:
- (a) to disclose the protected information to a court or tribunal; or
 - (b) to produce the document in a court or tribunal.

Division 3—Offences relating to the disclosure etc. of protected information

43 Offence—disclosure of protected information obtained in the public interest

A person commits an offence if:

- (a) the person obtains protected information; and
- (b) the person does so by way of an authorised disclosure under section 36; and
- (c) the person discloses the protected information; and
- (d) the disclosure by the person is not an authorised disclosure.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

44 Offence—soliciting disclosure of protected information

A person commits an offence if:

- (a) the person solicits the disclosure of information from another person; and
- (b) the information is protected information; and
- (c) the disclosure would constitute a contravention of section 34 or 43.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

45 Offence—use etc. of protected information

A person commits an offence if:

- (a) information is disclosed to the person; and
- (b) the information is protected information; and
- (c) the disclosure to the person constitutes a contravention of section 34 or 43; and
- (d) any of the following apply:
 - (i) the person solicited the disclosure of the information;
 - (ii) the person subsequently discloses the information;

(iii) the person uses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

46 Offence—offering to supply protected information

A person commits an offence if:

- (a) the person:
 - (i) offers; or
 - (ii) holds himself or herself out as being able; to supply (whether or not to a particular person) information about another person; and
- (b) the person knows that the information is protected information; and
- (c) the supply would constitute a contravention of section 34 or 43.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Part 6 General offences and recovery provisions

Division 1 Introduction

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Part 6—General offences and recovery provisions

Division 1—Introduction

47 Simplified outline

The following is a simplified outline of this Part:

- Divisions 2 and 3 of this Part set out a number of offences relating to assignment agreements and the giving of information.
- Division 4 of this Part deals with the recovery of amounts paid because of false or misleading statements.

Division 2—Offences relating to assignment agreements

48 Strict liability offence—particulars not set out in assignment agreement

- (1) A dental provider commits an offence if:
- (a) the dental provider, or a person acting on his or her behalf, enters into an agreement under subsection 12(2) with another person; and
 - (b) particulars relating to the dental service are required, by the approved form, to be set out in the agreement; and
 - (c) the dental provider has not caused the particulars to be set out in the agreement before the other person signs the agreement.

Penalty: 10 penalty units.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) In this section:

approved form means the form approved for the purposes of subsection 12(2).

49 Strict liability offence—copy of assignment agreement not given

- (1) A dental provider commits an offence if:
- (a) the dental provider, or a person acting on his or her behalf, enters into an agreement under subsection 12(2) with another person; and
 - (b) the dental provider does not cause a copy of the agreement to be given to the other person as soon as practicable after the other person signed the agreement.

Penalty: 10 penalty units.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Division 3—Offences relating to the giving of information

50 Strict liability offence—false or misleading statements relating to dental benefit

Offence

- (1) A person commits an offence if:
 - (a) the person makes, or authorises the making of, an oral or written statement; and
 - (b) the statement is false or misleading in a material particular; and
 - (c) the statement is capable of being used in connection with a claim for dental benefit.

Penalty: 20 penalty units.

Strict liability

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Prosecution—time limit

- (3) Despite section 15B of the *Crimes Act 1914*, a prosecution for an offence under subsection (1) must be instituted within 3 years after the time at which the statement is alleged to have been made.

51 Strict liability offence—false or misleading statements by employees etc.

Offence

- (1) A person (the **first person**) commits an offence if:
 - (a) the first person is an employee, associate or agent of another person (the **second person**); and
 - (b) the second person makes an oral or written statement (the **claim statement**); and

- (c) the claim statement is false or misleading in a material particular; and
- (d) the claim statement is capable of being used in connection with a claim for dental benefit; and
- (e) the material particular in respect of which the claim statement is false or misleading is substantially based upon another statement (the *employee statement*); and
- (f) the employee statement was made by the first person:
 - (i) to the second person; or
 - (ii) to an agent of the second person; and
- (g) the employee statement was false or misleading in a material particular.

Penalty: 20 penalty units.

Strict liability

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Prosecution—time limit

- (3) Despite section 15B of the *Crimes Act 1914*, a prosecution for an offence under this section must be instituted within 3 years after the time at which the claim statement is alleged to have been made.

52 Offence—statement that person knows is false or misleading

A person commits an offence if:

- (a) the person makes, or authorises the making of, an oral or written statement; and
- (b) the person knows:
 - (i) that the statement is false or misleading in a material particular; and
 - (ii) that the statement is capable of being used in connection with a claim for dental benefit.

Penalty: Imprisonment for 5 years or 100 penalty units, or both.

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53 Offence—statement based on statement that employee etc. knows is false or misleading

A person (the *first person*) commits an offence if:

- (a) the first person is an employee, associate or agent of another person (the *second person*); and
- (b) the second person makes an oral or written statement (the *claim statement*); and
- (c) the claim statement is false or misleading in a material particular; and
- (d) the claim statement is capable of being used in connection with a claim for dental benefit; and
- (e) the material particular in respect of which the claim statement is false or misleading is substantially based upon another statement (the *employee statement*); and
- (f) the employee statement was made by the first person:
 - (i) to the second person; or
 - (ii) to an agent of the second person; and
- (g) the first person knew that the employee statement was false or misleading in a material particular; and
- (h) the first person knew that, or was reckless as to whether, the employee statement would be used in the preparation of the claim statement.

Penalty: Imprisonment for 5 years or 100 penalty units, or both.

54 False statements etc.

A person commits an offence if:

- (a) the person gives information under or for the purposes of this Act; and
- (b) the person knows that the information is false or misleading in a material particular.

Penalty: Imprisonment for 5 years or 100 penalty units.

55 Prosecution of certain offences

- (1) An offence against section 52, 53 or 54 is an indictable offence.
-

- (2) Despite subsection (1), a court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in that subsection if:
 - (a) the court is satisfied that it is proper to do so; and
 - (b) the defendant and the prosecutor consent.
- (3) If, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence referred to in subsection (1), the penalty that the court may impose is:
 - (a) imprisonment for a period not exceeding 6 months; or
 - (b) a fine not exceeding 10 penalty units.

Division 4—Recovery of amounts paid because of false or misleading statements

56 Recovery of amounts paid because of false or misleading statements

Scope

- (1) This section applies if:
 - (a) an amount is paid purportedly by way of a payment of dental benefit; and
 - (b) as a result of the making of a false or misleading statement, the amount paid exceeds the amount (if any) that should have been paid.

Debt due to the Commonwealth

- (2) The amount of the excess is recoverable as a debt due to the Commonwealth from:
 - (a) the person by or on behalf of whom the statement was made; or
 - (b) the estate of that person.
- (3) Subsection (2) applies:
 - (a) whether or not the amount was paid to the person by or on behalf of whom the statement was made; and
 - (b) whether or not any person has been convicted of an offence in relation to the making of the statement.

57 Interest payable on amounts paid because of false or misleading statements

Scope

- (1) This section applies if:
 - (a) an amount (the *principal sum*) is recoverable as a debt due to the Commonwealth from a person or estate under section 56; and
-

- (b) the Medicare Australia CEO has given a written notice to the person or estate claiming the amount as a debt due to the Commonwealth.

Interest payable

- (2) Interest is payable on the amount of the principal sum that remains unpaid from time to time if:
 - (a) a repayment arrangement in relation to the principal sum was entered into during the relevant period and there is a default (whether before or after the end of the relevant period) in repaying all or part of the principal sum as required by the arrangement; or
 - (b) at the end of the relevant period, a repayment arrangement has not been entered into and all or part of the principal sum remains unpaid.
- (3) For the purposes of subsection (2), the **relevant period** is:
 - (a) the period of 3 months beginning on the day after the written notice is given to the person or estate under paragraph (1)(b); or
 - (b) such longer period as the Medicare Australia CEO allows.
- (4) Interest under subsection (2) is payable from:
 - (a) the day after the end of the relevant period; or
 - (b) such later day ordered by a court in any proceedings instituted by the Commonwealth to recover an amount due under this section.
- (5) Interest under subsection (2):
 - (a) is payable at the rate prescribed from time to time for the purposes of subsection 129AC(2) of the *Health Insurance Act 1973*; and
 - (b) is recoverable as a debt due to the Commonwealth from the person or estate.

Definition

- (6) In this section:

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repayment arrangement, in relation to a principal sum, means an arrangement entered into by the Medicare Australia CEO and a person, or the person's estate, for the repayment of the principal sum.

58 Reduction in dental benefit payments because of previous overpayments

- (1) The Medicare Australia CEO may reduce one or more amounts of dental benefit payable to a person if:
 - (a) an amount or amounts have previously been paid under this Act to the person purportedly by way of dental benefit; and
 - (b) the amount or amounts referred to in paragraph (a) exceed the amount (if any) that should have been paid to the person.
- (2) The amount of the excess referred to in paragraph (1)(b) is the **overpayment amount**.

Amount of reduction—no previous recovery or reduction

- (3) If subsection (4) does not apply, the amount of a reduction under subsection (1) must not exceed the overpayment amount.

Amount of reduction—previous recovery or reduction

- (4) If either or both of the following have occurred:
 - (a) the Medicare Australia CEO has previously reduced, under this section, one or more amounts (the **reduced amounts**) of dental benefit payable to the person;
 - (b) one or more amounts (the **recovered amounts**) have been previously recovered from the person under section 56;the amount of a reduction under subsection (1) must not exceed the amount by which the overpayment amount exceeds the sum of the reduced amounts (if any) and the recovered amounts (if any).

Reduction to nil

- (5) A reduction under subsection (1) may result in one or more amounts of dental benefit being reduced to nil.

Part 7—Dental Benefits Rules

59 Simplified outline

The following is a simplified outline of this Part:

- The Minister may make Dental Benefits Rules.
- The Dental Benefits Rules may provide for a Dental Benefits Schedule that sets out:
 - (a) items specifying dental services; and
 - (b) the amount of dental benefit payable, or a method for determining the amount of dental benefit payable, in respect of a dental service.
- The specification of a dental service in an item in the Dental Benefits Schedule may be unconditional or subject to specified conditions, limitations or restrictions.

60 Minister may make Dental Benefits Rules

Dental Benefits Rules

- (1) The Minister may, by legislative instrument, make ***Dental Benefits Rules*** providing for matters:
 - (a) required or permitted by this Act to be provided; or
 - (b) necessary or convenient to be provided in order to carry out or give effect to this Act.

Dental Benefits Rules may confer power

- (2) The Dental Benefits Rules may make provision for or in relation to a matter by conferring a power on the Minister or on the Medicare Australia CEO.

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Dental Benefits Rules may incorporate material

- (3) The Dental Benefits Rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.
- (4) Subsection (3) has effect despite anything in the *Legislative Instruments Act 2003*.

61 Dental Benefits Schedule

- (1) The Dental Benefits Rules may provide for a Dental Benefits Schedule that sets out the following:
 - (a) items specifying dental services;
 - (b) the amount of dental benefit payable, or a method for the determining the amount of dental benefit payable, in respect of a dental service.

Note: The amount of dental benefit payable in respect of a dental service must not exceed the dental expenses incurred in respect of the dental service: see subsection 9(3).

- (2) The Dental Benefits Rules may sets out rules for interpretation of the Dental Benefits Schedule.

62 Specification of items in Dental Benefits Schedule may be conditional

- (1) The specification of a dental service in an item in the Dental Benefits Schedule may be:
 - (a) unconditional; or
 - (b) subject to such conditions, limitations or restrictions as are specified in the Dental Benefits Rules (including the Dental Benefits Schedule).
- (2) Conditions, limitations or restrictions specified in the Dental Benefits Rules may include, but are not limited to, imposing a

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monetary limit on the amount of dental benefit payable in respect of:

- (a) a specified dental service; or
- (b) dental services provided to an eligible dental patient; or
- (c) dental services provided to an eligible dental patient during a specified period.

Part 8—Other matters

63 Simplified outline

The following is a simplified outline of this Part:

- This Part makes provision in relation to:
 - (a) the functions of the Medicare Australia CEO; and
 - (b) the appropriation of the Consolidated Revenue Fund; and
 - (c) the delegation of the Secretary's functions or powers under this Act; and
 - (d) the making of regulations for the purposes of this Act.

64 Additional functions of the Medicare Australia CEO

- (1) In addition to the functions of the Medicare Australia CEO under the *Medicare Australia Act 1973*, the Medicare Australia CEO has such additional functions as are conferred on the Medicare Australia CEO by or under this Act.
- (2) Anything done by or on behalf of the Medicare Australia CEO in the performance of such additional functions is taken, for all purposes, to have been done in the performance of his or her functions under the *Medicare Australia Act 1973*.

65 Appropriation

Amounts of dental benefit payable under this Act are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

66 Delegation

- (1) The Secretary may, by writing, delegate any or all of his or her functions or powers under this Act to an SES employee, or acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

- (2) In exercising powers or performing functions delegated under subsection (1), the delegate must comply with any directions of the Secretary.

67 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

68 Review of operation of Act

- (1) The Minister must cause an independent review of the operation of this Act to be undertaken as soon as possible after the first anniversary of the commencement of this Act.
- (2) Further independent reviews of the operation of this Act must be made as soon as practicable after the third anniversary of the commencement of this Act and at three yearly intervals thereafter.
- (3) The Minister must cause a copy of the report of each review mentioned in subsection (1) and (2) to be tabled in each House of the Parliament within 15 sitting days of the day on which the report is given to the Minister.
- (4) The review must be conducted by a panel which must comprise not less than five persons, including:
 - (a) a person occupying the position of Commonwealth Chief Medical Officer;
 - (b) a person nominated by the Australian Dental Association;
 - (c) a person nominated by the Consumers' Health Forum of Australia;

Part 8 Other matters

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- (d) two other persons nominated by the Minister, at least one of whom must have qualifications in medicine or dentistry.
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*[Minister's second reading speech made in—
House of Representatives on 29 May 2008
Senate on 18 June 2008]*

(100/08)
