



Dental Benefits Legislation Amendment Act 2014

No. 115, 2014

**An Act to amend legislation in relation to dental
benefits, and for other purposes**

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

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
Schedule 1—Amendments		3
Part 1—Professional Services Review Scheme		3
	<i>Dental Benefits Act 2008</i>	3
	<i>Health Insurance Act 1973</i>	7
Part 2—Waiver of debts arising in relation to the Chronic Disease Dental Scheme		12
	<i>Health Insurance Act 1973</i>	12
Part 3—Compliance		15
	<i>Dental Benefits Act 2008</i>	15
Part 4—Delegation of Ministerial powers		30
	<i>Dental Benefits Act 2008</i>	30
Part 5—Dental providers		31
	<i>Dental Benefits Act 2008</i>	31
Part 6—Provision of information		32
	<i>Dental Benefits Act 2008</i>	32
Part 7—Technical amendment		33
	<i>Dental Benefits Act 2008</i>	33



Dental Benefits Legislation Amendment Act 2014

No. 115, 2014

An Act to amend legislation in relation to dental benefits, and for other purposes

[Assented to 3 November 2014]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Dental Benefits Legislation Amendment Act 2014*.

2 Commencement

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Professional Services Review Scheme

Dental Benefits Act 2008

1 Section 4

Insert:

disqualified practitioner: a dental practitioner is a ***disqualified practitioner*** if:

- (a) the dental practitioner is fully disqualified under an agreement in effect under section 92 of the *Health Insurance Act 1973*; or
- (b) the dental practitioner is fully disqualified under section 105 of that Act; or
- (c) a final determination under section 106TA of that Act containing a direction under paragraph 106U(1)(h) of that Act that the dental practitioner be fully disqualified is in effect.

Note: Under section 106ZPM of the *Health Insurance Act 1973* (which deals with failure to produce certain documents or give certain information), a person may be taken to be a disqualified practitioner for the purposes of sections 20B to 20E of this Act.

partly disqualified practitioner: a dental practitioner is a ***partly disqualified practitioner*** in relation to a dental service if:

- (a) the dental practitioner is partly disqualified under an agreement in effect under section 92 of the *Health Insurance Act 1973* in respect of the service; or
- (b) a final determination under section 106TA of that Act containing a direction under paragraph 106U(1)(g) of that Act that the dental practitioner be partly disqualified is in effect in respect of the service.

2 Section 10

Omit:

- | |
|---|
| <ul style="list-style-type: none">• Dental benefit is not payable in certain circumstances. |
|---|

substitute:

- Dental benefit is not payable in certain circumstances, including where a dental service is provided by a practitioner who has been disqualified under the *Health Insurance Act 1973*.
- The Minister may direct a disqualified practitioner to give notice of his or her disqualification.

3 After section 20

Insert:

20A Dental benefit is not payable in respect of a dental service rendered by a disqualified practitioner

Dental benefit is not payable in respect of a dental service if, at the time when the service was rendered, the person who rendered the service, or the dental provider on whose behalf the service was rendered, was:

- (a) a disqualified practitioner; or
- (b) a partly disqualified practitioner in relation to the service.

20B Minister may direct disqualified practitioner to give notice of disqualification

- (1) The Minister may, by written instrument served on a disqualified practitioner or a partly disqualified practitioner (the *practitioner*), direct the practitioner, and persons acting on behalf of the practitioner, not to render a specified dental service in respect of which, under section 20A of this Act or section 106ZPM of the *Health Insurance Act 1973*, dental benefit is not payable unless, before beginning to render the service, the practitioner or a person acting on behalf of the practitioner:
 - (a) gives a copy of the notice under subsection (2) to the person (the *service recipient*) to whom the dental service is to be rendered; and
 - (b) if the practitioner or person acting on behalf of the practitioner has reasonable grounds for believing that the service recipient is, or may be, unable to read and understand

the notice—takes reasonable steps to explain the contents of the notice to the service recipient or to another person who has care of the service recipient.

Note: Failure to comply with a direction given under this section is an offence (see section 20C).

- (2) The instrument must:
- (a) be accompanied by a notice:
 - (i) setting out particulars of the disqualification; and
 - (ii) explaining such of the effects of the disqualification as the Minister considers appropriate; and
 - (b) specify the day on which the direction comes into effect, which must not be before the instrument is served on the practitioner.

Period during which direction remains in force

- (3) Unless sooner revoked, a direction under subsection (1) in relation to a disqualified practitioner, or a partly disqualified practitioner, remains in force until the practitioner ceases to be a disqualified practitioner or a partly disqualified practitioner.

Legislative instrument

- (4) An instrument made under subsection (1), or a notice accompanying the instrument under subsection (2), is not a legislative instrument.

20C Strict liability offence—failure to comply with direction to give notice of disqualification

- (1) A person (the *first person*) commits an offence if:
- (a) the first person is a disqualified practitioner or a partly disqualified practitioner; and
 - (b) an instrument is served on the first person under section 20B; and
 - (c) the instrument contains a direction; and
 - (d) the first person:
 - (i) fails to comply with the direction; or
 - (ii) causes or permits a person acting on his or her behalf to fail to comply with the direction.

Penalty: 1 penalty unit.

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

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

- (3) Subsection (1) does not apply if the first person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

20D Minister may direct disqualified practitioner to display notice of disqualification

- (1) The Minister may, by written instrument served on a disqualified practitioner or a partly disqualified practitioner (the *practitioner*), direct the practitioner to display one or more notices under subsection (2):

- (a) in a specified place or places; and
- (b) in a specified manner.

Note: Failure to comply with a direction given under this subsection is an offence (see section 20E).

- (2) The instrument must:

- (a) be accompanied by one or more notices:
 - (i) setting out particulars of the disqualification; and
 - (ii) explaining such of the effects of the disqualification as the Minister considers appropriate; and
- (b) specify the day on which the direction comes into effect, which must not be before the instrument is served on the practitioner.

- (3) No more than one direction under subsection (1) may be in force in relation to the practitioner at any time.

Period during which direction remains in force

- (4) Unless sooner revoked, a direction under subsection (1) in relation to a disqualified practitioner, or a partly disqualified practitioner, remains in force until the practitioner ceases to be a disqualified practitioner or a partly disqualified practitioner.

Legislative instrument

- (5) An instrument made under subsection (1), or a notice accompanying the instrument under subsection (2), is not a legislative instrument.

20E Strict liability offence—failure to comply with direction to display notice of disqualification

- (1) A person commits an offence if:
- (a) the person is a disqualified practitioner or a partly disqualified practitioner; and
 - (b) an instrument is served on the practitioner under section 20D; and
 - (c) the instrument contains a direction; and
 - (d) the person fails to comply with the direction.

Penalty: 1 penalty unit.

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

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

- (3) A person who commits an offence against subsection (1) commits a separate offence in respect of each day (including the day of a conviction under this section or any later day) during which the offence continues.

- (4) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

4 Paragraphs 35(a) and (b)

After “this Act”, insert “or the *Health Insurance Act 1973*”.

Health Insurance Act 1973

5 Subsection 3(1)

Insert:

dental benefit has the same meaning as in the *Dental Benefits Act 2008*.

relevant dental benefits offence means:

- (a) an offence against section 50, 51, 52, 53 or 54 of the *Dental Benefits Act 2008*; or
- (b) an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*; that relates to an offence referred to in paragraph (a) of this definition; or
- (c) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1, 144.1, 145.1, 145.4 or 145.5 of the *Criminal Code* that relates to a claim for payment in respect of the rendering of a dental service (within the meaning of the *Dental Benefits Act 2008*).

6 Section 79A

After “medicare benefits”, insert “, dental benefits”.

7 Subsections 80A(1) and (2)

After “medicare benefit”, insert “or dental benefit”.

8 Subsection 81(1) (paragraph (a) of the definition of service)

After “medicare benefit”, insert “or dental benefit”.

9 Subsection 81(1) (note at the end of the definition of service)

After “Note”, insert “1”.

10 Subsection 81(1) (at the end of the definition of service)

Add:

Note 2: See the *Dental Benefits Act 2008* for when a dental benefit is payable.

11 Section 89A (heading)

Repeal the heading, substitute:

89A Director may refer material to Chief Executive Medicare if certain offences or civil contraventions are suspected

12 Subsection 89A(1)

After “section 124B,” insert “or a relevant dental benefits offence,”.

13 Paragraphs 92(2)(b) and (c)

After “medicare benefit” (wherever occurring), insert “or dental benefit”.

14 Subsection 92(2) (note)

Repeal the note, substitute:

Note: Medicare benefits and dental benefits are not payable in respect of services rendered or initiated by, or on behalf of, disqualified practitioners (see section 19B of this Act in relation to medicare benefits, and section 20A of the *Dental Benefits Act 2008* in relation to dental benefits).

15 Paragraph 92(4)(e)

After “medicare benefit”, insert “or dental benefit”.

16 Section 106N (heading)

Repeal the heading, substitute:

106N Committee may refer material to Chief Executive Medicare if certain offences or civil contraventions are suspected

17 Subsection 106N(1)

After “section 124B,” insert “or a relevant dental benefits offence,”.

18 Paragraphs 106U(1)(c) and (ca)

After “medicare benefit” (wherever occurring), insert “or dental benefit”.

19 Paragraph 106U(1)(cb)

After “medicare benefits” (wherever occurring), insert “or dental benefits”.

20 Subsection 106U(1) (note)

Repeal the note, substitute:

Note: Medicare benefits and dental benefits are not payable in respect of services rendered or initiated by, or on behalf of, disqualified practitioners (see section 19B of this Act in relation to medicare benefits, and section 20A of the *Dental Benefits Act 2008* in relation to dental benefits).

21 Subsection 106ZPM(1)

After “medicare benefit”, insert “or dental benefit”.

22 Subsection 106ZPM(2)

After “medicare benefits”, insert “and dental benefits”.

23 Paragraph 106ZPM(4)(a)

After “medicare benefits”, insert “and dental benefits”.

24 Subsection 106ZPM(4)

Omit all the words after “the person is”, substitute:

taken to be:

- (c) fully disqualified at that time for the purposes of section 19D;
and
- (d) a disqualified practitioner for the purposes of sections 20B to 20E of the *Dental Benefits Act 2008*.

25 Subsection 106ZR(1)

After “this Act” (wherever occurring), insert “or the *Dental Benefits Act 2008*”.

26 Subsection 129AAC(1)

Omit “or relevant civil contravention”, substitute “, relevant civil contravention or relevant dental benefits offence”.

27 Application of amendments

- (1) The amendments made by this Part (other than items 12, 17 and 26) apply in relation to services provided on or after the day this Part commences.

- (2) The amendments made by items 12 and 17 apply in relation to relevant dental benefits offences committed on or after the day this Part commences.
- (3) The amendment made by item 26 applies in relation to relevant dental benefits offences whether committed before, on or after the day this Part commences.

Part 2—Waiver of debts arising in relation to the Chronic Disease Dental Scheme

Health Insurance Act 1973

28 After section 129AEC

Insert:

129AED Waiver and repayment of certain debts arising under the Chronic Disease Dental Scheme

When this section applies

- (1) This section applies in relation to a purported payment of medicare benefit in respect of a service referred to in Schedule 1 to the *Health Insurance (Dental Services) Determination 2007* if:
 - (a) the service was provided by a dental practitioner; and
 - (b) the payment exceeded the amount (if any) that should have been paid; and
 - (c) there was a failure to comply with subsection 10(2) (quotation for dental services and reporting) of the Determination in relation to the service; and
 - (d) the Chief Executive Medicare is satisfied that the excess is solely attributable to the failure to comply with subsection 10(2) of the Determination.

Note: The Determination was made under subsection 3C(1) of this Act. It ceased at midnight 30 November 2012 (see section 2A of the Determination).

- (2) However, this section does not apply in relation to a purported payment of medicare benefit in respect of a service that was rendered on or after 1 April 2010 unless, before the end of 30 November 2014, the dental practitioner provides or has provided the Chief Executive Medicare with evidence that the documents that, under subsection 10(2) of the Determination, should have been given to the patient and general practitioner before the relevant course of treatment began have since been given to those persons.

Waiver and repayment of debts

- (3) If the excess, or part of the excess, is recoverable under section 129AC as a debt due to the Commonwealth, the Chief Executive Medicare must, on behalf of the Commonwealth, waive the debt.
- (4) If the excess, or part of the excess:
 - (a) has been repaid to the Commonwealth by a person (or a person's estate); or
 - (b) has otherwise been recovered by the Commonwealth from a person (or a person's estate), including by way of set-off;the Chief Executive Medicare must, on behalf of the Commonwealth, pay to the person (or to the person's estate) the amount paid or recovered.
- (5) An amount payable under subsection (4) is reduced by any amount already paid by the Commonwealth in respect of the repaid or recovered amount.
- (6) A reference in subsection (3), (4) or (5) to an excess includes:
 - (a) any amount of administrative penalty for which the dental practitioner is liable to the Commonwealth under section 129AEA in relation to the excess; and
 - (b) any interest paid or payable in relation to the excess under subsection 129AC(2) or (3).

129AEE Notice of decision to waive, or not to waive, a debt

- (1) The Chief Executive Medicare must give written notice of the following decisions:
 - (a) a decision to waive a debt under subsection 129AED(3);
 - (b) a decision to pay an amount under subsection 129AED(4);
 - (c) a decision not to waive a debt under subsection 129AED(3), or not to pay an amount under subsection 129AED(4), because the Chief Executive Medicare is not satisfied of the matter referred to in paragraph 129AED(1)(d).
- (2) The notice must be given to the dental practitioner who provided the service referred to in subsection 129AED(1), or to his or her estate.

Schedule 1 Amendments

Part 2 Waiver of debts arising in relation to the Chronic Disease Dental Scheme

- (3) A failure to give notice under this section of a decision does not affect the validity of the decision.

Part 3—Compliance

Dental Benefits Act 2008

29 Section 3

Omit:

- This Act also makes provision in relation to the disclosure of information, offences against this Act and other matters.

substitute:

- This Act also makes provision in relation to the obtaining of documents relevant to ascertaining whether amounts should have been paid, the disclosure of information, offences against this Act and other matters.

30 Section 4

Insert:

Human Services employee means a Departmental employee, within the meaning of the *Human Services (Medicare) Act 1973*.

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

medicare number has the same meaning as in subsection 84(1) of the *National Health Act 1953*.

31 After Part 4

Insert:

Part 4A—Power to obtain documents etc. relevant to ascertaining whether amounts should have been paid

32A Simplified outline

The following is a simplified outline of this Part:

- The Chief Executive Medicare may require the production of documents etc. relevant to ascertaining whether amounts should have been paid.
- A failure to comply may lead to debt recovery action or to a civil penalty.
- The Chief Executive Medicare and Human Services employees may deal with documents etc. produced.

32B When this Part applies

- (1) This Part applies if the Chief Executive Medicare:
 - (a) has a reasonable concern that an amount paid, purportedly by way of dental benefit, in respect of one or more dental services, may exceed the amount (if any) that should have been paid; and
 - (b) has taken into account advice given to him or her by a dental practitioner, or a medical practitioner, who is a Human Services employee about the types of documents that contain information relevant to ascertaining whether amounts paid in respect of dental services of the same kind or kinds as the service or services referred to in paragraph (a) should have been paid; and
 - (c) has taken reasonable steps to consult with a relevant professional body about the types of documents that contain information relevant to ascertaining whether amounts paid in respect of dental services of the same kind or kinds as the service or services referred to in paragraph (a) should have been paid.

Note: For the purposes of paragraph (a), the Chief Executive Medicare may, for example, have a reasonable concern about payments made in respect of:

- (a) dental services rendered by or on behalf of individual dental providers; or
 - (b) dental services rendered by or on behalf of particular kinds of dental providers; or
 - (c) the rendering of dental services to which specific items, or groups of items, relate.
- (2) In forming a reasonable concern for the purposes of subsection (1), the Chief Executive Medicare is not to take account of whether the service is clinically relevant.

Definition

- (3) In this section:

relevant professional body means a body declared by the Minister under subsection (4) to be a relevant professional body.

- (4) The Minister may, by legislative instrument, declare a body to be a relevant professional body for the purposes of this section.

32C Chief Executive Medicare may require person to produce documents etc.

Power to give notice requiring production of documents etc.

- (1) If the Chief Executive Medicare believes on reasonable grounds that:
- (a) a person:
 - (i) who rendered a dental service in respect of which an amount has been paid that is the subject of the Chief Executive Medicare's concern referred to in paragraph 32B(1)(a); or
 - (ii) on whose behalf such a dental service was rendered; or
 - (b) another person, not being:
 - (i) the person in respect of whom the dental service was rendered; or
 - (ii) the person who incurred the dental expenses in respect of the service;

has possession, custody or control of one or more documents relevant to ascertaining whether the amount paid in respect of the dental service should have been paid, the Chief Executive Medicare may, by written notice given to the person, require the person to do any or all of the things mentioned in subsection (2) within a period specified in the notice.

Note: For a person referred to in paragraph (a), failure to comply with a notice may lead to debt recovery action (see section 56A). For a person referred to in paragraph (b), failure to comply with a notice may lead to a civil penalty (see section 32D).

- (2) The Chief Executive Medicare may require the person, in relation to each dental service specified in the notice:
- (a) subject to subsection (3), to produce to the Chief Executive Medicare, or a Human Services employee, any document, or extract of any document, that is relevant for the purpose set out in subsection (1); or
 - (b) to make a copy of any such document or extract and to produce that copy to the Chief Executive Medicare or a Human Services employee.
- (3) If a document, extract or copy contains clinical details relating to an individual, the person to whom the notice is given is not required to produce the document, extract or copy to a person other than a Human Services employee who is a dental practitioner or a medical practitioner.

Limitations on power to give notice: person must first have been given opportunity to respond to a request

- (4) The Chief Executive Medicare must not give a notice to a person under subsection (1) in respect of a dental service unless the Chief Executive Medicare has given the person a reasonable opportunity to respond to a written request (other than under this section) to produce to the Chief Executive Medicare, or a Human Services employee, documents relevant to ascertaining whether the amount paid, purportedly by way of dental benefit, in respect of the service, should have been paid.

Limitations on power to give notice: notice can only be given in respect of dental service rendered in the last 2 years

- (5) A notice under subsection (1) can only be given in respect of a dental service that was rendered in the period of 2 years immediately before the notice is given.

Content of notice

- (6) A notice under subsection (1) must:
- (a) specify details of each dental service (including the item, date on which the service was rendered and medicare number of the person in respect of whom the service was rendered) in relation to which the document, extract or copy is to be produced; and
 - (b) specify the reason or reasons for the Chief Executive Medicare's concern that an amount paid, purportedly by way of dental benefit, in respect of each such service may exceed the amount (if any) that should have been paid; and
 - (c) specify the information relevant to ascertaining whether amounts paid in respect of each such service should have been paid; and
 - (d) specify how the document, extract or copy is to be produced; and
 - (e) contain a statement to the effect that the person to whom the notice is given is not expected to produce a document, extract or copy containing clinical details relating to an individual unless the document, extract or copy is necessary to ascertaining whether the amount paid in respect of the service should have been paid; and
 - (f) specify the period within which, and place at which, the document, extract or copy is to be produced.

The period specified under paragraph (f) must be a period ending at least 21 days after the day on which the notice is given.

Note: For the purpose of paragraphs (b) and (c) the notice will include the reason for the Chief Executive Medicare's concern about the payment and explain the factual issue that the person is required to substantiate.

Health information within the meaning of the Privacy Act 1988

- (7) The power under this section to require a document, extract or copy to be produced includes the power to require the production of a document, extract or copy containing health information (within the meaning of the *Privacy Act 1988*) about an individual.

Section is not limited by other provisions

- (8) This section is not limited by:
- (a) any other provision of this Act; or
 - (b) any provision of the *Human Services (Medicare) Act 1973* or any other Act;
- that relates to the powers of the Chief Executive Medicare to require the production of documents.

32D Civil penalty—failure to comply with requirement in notice

- (1) A person referred to in paragraph 32C(1)(b) contravenes this section if:
- (a) the person is given a notice under section 32C requiring the person to do something in respect of a dental service; and
 - (b) the person fails to comply with the requirement within the period specified in the notice.

Civil penalty:

- (a) for an individual—20 penalty units; and
 - (b) for a body corporate—100 penalty units.
- (2) It is a defence in proceedings against a person for a contravention of subsection (1) if the person proves (on the balance of probabilities) that:
- (a) the failure to comply is brought about by another person over whom the person has no control or by a non-human act or event over which the person has no control; and
 - (b) the person could not reasonably be expected to guard against the failure.
- (3) Part VIA of the *Health Insurance Act 1973* applies in relation to this section as if subsection (1) of this section were a civil penalty provision as defined in section 125B of that Act.

Note: Part VIA of the *Health Insurance Act 1973* provides a regime for the obtaining of orders for a civil penalty.

32E Self-incrimination etc.

- (1) A person is not excused from producing a document, extract or copy when required to do so under section 32C on the ground that doing so would tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
 - (a) the document, extract or copy produced; and
 - (b) producing the document, extract or copy; and
 - (c) any information, document or thing obtained as a direct or indirect consequence of producing the document, extract or copy;are not admissible in evidence against the individual in:
 - (d) any criminal proceedings, other than:
 - (i) proceedings for an offence against this Act dealing with false or misleading statements; and
 - (ii) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or
 - (e) any civil proceedings, other than a civil proceeding arising under section 32D, or Division 4 of Part 6, of this Act.

32F Chief Executive Medicare or Human Services employee may deal with documents etc. produced

Power to inspect, copy and retain document etc.

- (1) If a document, extract or copy has been produced under section 32C in respect of a dental service, the Chief Executive Medicare, or a Human Services employee, may do all or any of the things mentioned in subsection (2) for the purpose of ascertaining whether the information contained in the document, extract or copy properly substantiates that an amount paid, purportedly by way of dental benefit, in respect of the service, should have been paid.

Note: If the information does not properly substantiate the amount, debt recovery action may be taken (see section 56A).

- (2) The Chief Executive Medicare or Human Services employee may:
- (a) inspect the document, extract or copy; and
 - (b) make a copy of, or take an extract from, the document, extract or copy; and
 - (c) retain the document, extract or copy in his or her possession for such reasonable period as he or she thinks fit.

Rights of person otherwise entitled to possession of document or extract

- (3) The person otherwise entitled to possession of the document or extract is entitled to be supplied, as soon as practicable, with a copy certified by the Chief Executive Medicare, or a Human Services employee, to be a true copy.
- (4) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (5) Until a certified copy is supplied, the Chief Executive Medicare, or a Human Services employee, must, at such times and places as he or she thinks appropriate, permit the person otherwise entitled to possession of the document or extract, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document or extract.

Section is not limited by other provisions

- (6) This section is not limited by:
- (a) any other provision of this Act; or
 - (b) any provision of the *Human Services (Medicare) Act 1973* or any other Act;
- that relates to the powers of the Chief Executive Medicare, or a Human Services employee, to deal with a document, extract or copy as described in subsection (2) of this section.

Human Services employees

- (7) A Human Services employee referred to in this section may be an employee other than the employee to whom the document, extract or copy was required to be produced.

32 Paragraph 34(2)(b)

Repeal the paragraph, substitute:

- (b) a Human Services employee;

33 Section 47

Omit:

- Division 4 of this Part deals with the recovery of amounts paid because of false or misleading statements.

substitute:

- Division 4 of this Part deals with the recovery of amounts paid under this Act.

34 Division 4 of Part 6 (heading)

Repeal the heading, substitute:

Division 4—Recovery of amounts paid under this Act

35 Section 56 (heading)

Repeal the heading, substitute:

56 Recovery of amounts paid: false or misleading statements

36 At the end of subsection 56(2)

Add:

Note: See section 56D for review of decisions.

37 After section 56

Insert:

56A Recovery of amounts paid: requirements under Part 4A to produce documents

Failure to produce document: notice to person referred to in paragraph 32C(1)(a)

- (1) If:
- (a) a person referred to in paragraph 32C(1)(a) is required, by a notice given under section 32C, to produce a document, extract or copy in respect of a dental service; and
 - (b) the person does not comply with the requirement within the period specified in the notice;
- the amount paid, purportedly by way of dental benefit, in respect of the service, is recoverable as a debt due to the Commonwealth from the person, or the estate of the person.
- (2) Subsection (1) does not apply if the person concerned satisfies the Chief Executive Medicare that the person's non-compliance is due to circumstances beyond the person's control.

Note: See section 56D for review of decisions.

Amount not properly substantiated: notice to person referred to in paragraph 32C(1)(a)

- (3) If:
- (a) a person referred to in paragraph 32C(1)(a) is required, by a notice given under section 32C, to produce a document, extract or copy in respect of a dental service; and
 - (b) the person complies with the requirement within the period specified in the notice; and
 - (c) the information contained in the document, extract or copy does not properly substantiate (wholly or partly) that the amount paid, purportedly by way of dental benefit, in respect of the service, should have been paid;
- then, to the extent that the amount is not properly substantiated, the amount is recoverable as a debt due to the Commonwealth from the person, or the estate of the person.
- (4) Subsection (3) does not apply if the person concerned satisfies the Chief Executive Medicare that the reason that the information contained in the document, extract or copy does not properly

substantiate the amount is due to circumstances beyond the person's control.

Note: See section 56D for review of decisions.

Amount not properly substantiated: notice to person referred to in paragraph 32C(1)(b)

- (5) If:
- (a) a person (the **notice recipient**) referred to in paragraph 32C(1)(b) is required, by a notice given under section 32C, to produce a document, extract or copy in respect of a dental service; and
 - (b) the notice recipient complies with the requirement within the period specified in the notice; and
 - (c) the information contained in the document, extract or copy does not properly substantiate (wholly or partly) that the amount paid, purportedly by way of dental benefit, in respect of the service, should have been paid;
- then, to the extent that the amount is not properly substantiated, the amount is recoverable as a debt due to the Commonwealth from:
- (d) the person who rendered the service, or on whose behalf the service was rendered; or
 - (e) the estate of that person.
- (6) Subsection (5) does not apply if the person from whom the amount concerned is recoverable satisfies the Chief Executive Medicare that the reason that the information contained in the document, extract or copy does not properly substantiate the amount is due to circumstances beyond the control of the person and the notice recipient.

Note: See section 56D for review of decisions.

Amount is recoverable from a person under this section whether or not the amount was paid to that person

- (7) An amount is recoverable from a person as mentioned in subsection (1), (3) or (5) whether or not the amount was paid to that person.

56B Notice of decision that document etc. produced substantiates that amount paid should have been paid

Amount paid substantiated

- (1) If:
- (a) a person produces to the Chief Executive Medicare, or to a Human Services employee, a document, extract or copy relating to a dental service after being requested, or required under section 32C, to do so; and
 - (b) the Chief Executive Medicare decides that the information contained in the document, extract or copy properly substantiates that the amount paid, by way of dental benefit, in respect of the service, should have been paid;
- the Chief Executive Medicare must give the person written notice of the decision.

Circumstances beyond control exist

- (2) If the Chief Executive Medicare is satisfied, for the purposes of subsection 56A(2) or (4), that circumstances beyond a person's control exist, the Chief Executive Medicare must give the person written notice of the decision.
- (3) If the Chief Executive Medicare is satisfied, for the purposes of subsection 56A(6), that circumstances exist beyond the control of:
- (a) the person from whom the amount concerned is recoverable; and
 - (b) the recipient of the notice concerned;
- the Chief Executive Medicare must give written notice of the decision to the person from whom the amount concerned is recoverable.

Notice may include notice of other decisions

- (4) The Chief Executive Medicare's written notice to a person of a decision may include written notice of other decisions referred to in this section, or section 56C, that also are required to be given to the person.

56C Notice of decision to claim amount as debt

- (1) If an amount is recoverable under subsection 56(2), or 56A(1), (3) or (5), as a debt due to the Commonwealth from a person, or from an estate, the Chief Executive Medicare must give written notice to the person or estate of:
 - (a) the decision to claim the amount as a debt; and
 - (b) the reasons for the decision; and
 - (c) the right of the person or estate to seek review of the decision under subsection 56D(1).
- (2) The written notice may also include notice of other decisions referred to in this section, or section 56B, that also are required to be given to the person or estate. The notice may also, as appropriate, state that the Chief Executive Medicare was not satisfied, for the purposes of subsection 56A(2), (4) or (6), that circumstances beyond a person's control existed.
- (3) A failure to comply with the requirements of subsection (1) does not affect the validity of the decision.
- (4) The Chief Executive Medicare must not serve a notice on a person or an estate claiming an amount as a debt before the end of the period of 28 days after written notice of the decision referred to in subsection (1) is given to the person or estate.

56D Review of decision to claim amounts as debt

- (1) If the Chief Executive Medicare makes a decision referred to in subsection 56C(1) about a person or an estate, the person or estate may apply in writing to the Chief Executive Medicare, in the form approved in writing by the Chief Executive Medicare, for a review of the decision.
- (2) In making an application under subsection (1), the person or estate may provide the Chief Executive Medicare with additional information to substantiate (wholly or partly) that the amount paid, purportedly by way of dental benefit in respect of the service, should have been paid.
- (3) An application for review of a decision must be made within 28 days after the person or estate is notified of the decision.

- (4) On receiving an application for review of a decision, the Chief Executive Medicare must:
 - (a) review the decision; and
 - (b) confirm, vary or revoke the decision.
- (5) The Chief Executive Medicare must give to the applicant written notice of the decision on the review within 28 days after receiving the application for review.
- (6) To avoid doubt, a decision referred to in subsection 56C(1) (including such a decision varied under this section) may be reviewed under this section once only.

38 Section 57 (heading)

Repeal the heading, substitute:

57 Interest payable on recoverable amounts

39 Subsection 57(1)

After “section 56”, insert “or 56A”.

40 Section 58 (heading)

Repeal the heading, substitute:

58 Recovering amounts by reducing future payments

41 Subsections 58(1) and (2)

Repeal the subsections, substitute:

- (1) The Chief Executive Medicare may reduce one or more amounts of dental benefit payable to a person if:
 - (a) the following conditions are satisfied:
 - (i) an amount or amounts have previously been paid under this Act to the person purportedly by way of dental benefit;
 - (ii) the amount or amounts referred to in subparagraph (i) exceed the amount (if any) that should have been paid to the person (whether or not the excess is recoverable as mentioned in paragraph (b)); or

(b) an amount is recoverable from the person under section 56 or 56A.

- (2) The **reduction limit** is the excess referred to in subparagraph (1)(a)(ii), or the amount referred to in paragraph (1)(b), as the case requires.

42 Subsection 58(3)

Omit “overpayment amount”, substitute “reduction limit”.

43 Paragraph 58(4)(b)

After “section 56”, insert “or 56A”.

44 Subsection 58(4)

Omit “overpayment amount”, substitute “reduction limit”.

45 At the end of Division 4 of Part 6

Add:

58A Amounts recoverable once only

To avoid doubt, an amount paid purportedly by way of dental benefit is recoverable under this Division once only.

46 Application of amendments

The amendments made by this Part apply in relation to amounts paid, purportedly by way of dental benefits, whether before or after the commencement of the amendments.

Part 4—Delegation of Ministerial powers

Dental Benefits Act 2008

47 Section 63

Omit:

- | |
|---|
| (c) the delegation of the Secretary's functions or powers under this Act; and |
|---|

substitute:

- | |
|---|
| (c) the delegation of the functions and powers of the Minister or the Secretary under this Act; and |
|---|

48 Before subsection 66(1)

Insert:

Delegation by Minister

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

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

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

Delegation by Secretary

Part 5—Dental providers

Dental Benefits Act 2008

49 Paragraph 6(1)(a)

Repeal the paragraph, substitute:

- (a) a dental practitioner who has general registration, or specialist registration, in the dentists division of the dental profession under a law of a State or Territory;

Part 6—Provision of information

Dental Benefits Act 2008

50 At the end of paragraph 41(1)(c)

Add:

(vi) the *Veterans' Entitlements Act 1986*; or

Part 7—Technical amendment

Dental Benefits Act 2008

51 Section 4 (paragraph (b) of the definition of *this Act*)

Omit “Services”, substitute “Benefits”.

*[Minister’s second reading speech made in—
House of Representatives on 26 March 2014
Senate on 28 October 2014]*

(78/14)
