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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DENTAL BENEFITS BILL 2008

DENTAL BENEFITS (CONSEQUENTIAL AMENDMENTS) BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health and Ageing,
the Hon Nicola Roxon MP)

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DENTAL BENEFITS (CONSEQUENTIAL AMENDMENTS) BILL 2008

OUTLINE

The Dental Benefits Bill 2008 and the Dental Benefits (Consequential Amendments) Bill 2008 establish a legislative framework for the payment of dental benefits in order to introduce the Government's Teen Dental Plan election commitment. This measure is included in the 2008-09 Budget.

From 1 July 2008, the Government will provide up to \$150 per eligible teenager towards an annual preventative check for teenagers aged 12-17 years in families receiving Family Tax Benefit Part A (FTB(A)), and teenagers in the same age group receiving Youth Allowance or Abstudy. Approximately 1.1 million teenagers will be eligible for the Teen Dental Plan each year.

The Teen Dental Plan will be administered by Medicare Australia using client eligibility data provided by Centrelink. The dental profession is being consulted on the implementation arrangements for the Teen Dental Plan.

The Bills also provide a legislative framework for payment of other dental benefits through a new Dental Benefits Schedule (DBS). The DBS could be expanded to include other dental benefits items in the future. The legislative framework for the DBS is broadly modelled on relevant provisions of the *Health Insurance Act 1973* relating to the payment of Medicare benefits.

The Dental Benefits Bill:

- establishes an entitlement to dental benefits;
- provides for the payment of dental benefits;
- provides a framework for the issuing of vouchers (for example, in respect of teenagers who are eligible for the Teen Dental Plan);
- establishes provisions for the protection (and, where authorised, the disclosure) of protected information;
- creates general offence provisions relating to assignment of benefit agreements and the giving of false or misleading information;
- allows the Minister for Health and Ageing to make Dental Benefits Rules under the Bill (through a legislative instrument); and
- provides for funds relating to the payment of dental benefits to be appropriated through a new special appropriation.

The Dental Benefits (Consequential Amendments) Bill makes amendments to the following Acts:

- *Age Discrimination Act 2004*
- *A New Tax System (Family Assistance) (Administration) Act 1999*
- *Health Insurance Act 1973*
- *Jurisdiction of Courts (Cross-vesting) Act 1987*
- *Medicare Australia Act 1973*
- *Sea Installations Act 1987*
- *Social Security (Administration) Act 1999*
- *Student Assistance Act 1973*

These amendments are necessary for the implementation and administration of the Teen Dental Plan. Some of the consequential amendments allow the payment of dental benefits under the proposed *Dental Benefits Act 2008* to be treated in the same manner as the payment of Medicare benefits under the *Health Insurance Act 1973*.

FINANCIAL IMPACT STATEMENT

The measure enabled by these Bills has a total cost of \$490.7 million over five years. The budgeted annual costs, which include dental benefits to patients, and administrative costs for Medicare Australia and Centrelink to introduce the necessary systems changes and manage the program, are set out in the table below:

2007-08 (\$ million)	2008-09 (\$ million)	2009-10 (\$ million)	2010-11 (\$ million)	2011-12 (\$ million)
5.6	101.5	111.1	133.2	139.3

DENTAL BENEFITS BILL 2008

NOTES ON CLAUSES

PART 1 – PRELIMINARY

Section 1 – Short title

This clause provides for the Bill, once enacted, to be cited as the *Dental Benefits Act 2008*.

Section 2 – Commencement

This clause provides for the Bill to commence on the day after it receives Royal Assent.

Section 3 – Simplified outline

This clause provides a simplified outline of the Bill.

Section 4 – Definitions

This clause sets out definitions of terms used in the Bill.

Section 5 – Meaning of *eligible dental patient*

This clause defines ‘eligible dental patient’ for the purposes of the Bill.

Proposed subsection 5(1) provides that an ‘eligible dental patient’, in relation to a dental service, is:

- a person who has been issued with a voucher under Part 4 of this Bill;
- an ‘eligible person’ included in a class of eligible persons, as specified in the Dental Benefits Rules; or
- all eligible persons if so specified in relation to a dental service in the Dental Benefits Rules.

An ‘eligible person’ is defined in proposed section 4 to mean an eligible person within the meaning of section 3 of the *Health Insurance Act 1973*, or a person who is treated as such a person because of section 6, 6A or 7 of that Act. The definition of ‘eligible person’ is aligned with the persons who are eligible to receive, or treated as eligible to receive, Medicare benefit.

Proposed subsection 5(2) provides that a class of eligible persons specified in the Dental Benefits Rules may be described by reference to the person’s age, or, by reference to whether the person is receiving a specified pension, benefit or allowance at a specified time or during a specified time period, or, by reference to both of these matters. A class of eligible persons may also be described by reference to other matters, as specified in the Dental Benefits Rules.

The Dental Benefits Rules are a legislative instrument to be made by the Minister under proposed section 60.

Section 6 – Meaning of *dental provider*

This clause defines ‘dental provider’ for the purposes of this Bill.

Proposed subsection 6(1) provides that a ‘dental provider’, in relation to a dental service, means:

- a ‘dental practitioner’; or
- a person included in a class of persons specified to be dental providers in relation to a dental service in the Dental Benefits Rules.

The term ‘dental practitioner’ is defined in proposed section 4 to have the same meaning as in section 3 of the *Health Insurance Act 1973*. A ‘dental practitioner’ is defined in that Act to mean a person registered or licensed as a dental practitioner or dentist under a law of a State or Territory that provides for the registration or licensing of dental practitioners or dentists.

Proposed subsection 6(2) provides that the Dental Benefits Rules may provide that a dental practitioner is not a dental provider in relation to a dental service. This may be necessary if the dental service is of a specialised nature.

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

This clause provides that, for the purposes of the Bill, a dental service may be ‘rendered on behalf of a dental provider’, but only where:

- the dental service is rendered by another person, who is in a class of persons specified in the Dental Benefits Rules for the purpose of this clause; and
- the other person provides the dental service, in accordance with accepted dental practice, under the supervision of the dental provider.

For the purposes of the Teen Dental Plan, it is intended that dental therapists and dental hygienists will be able to render services on behalf of a dental provider.

PART 2 – ENTITLEMENT TO DENTAL BENEFITS

Section 8 – Simplified outline

This clause provides a simplified outline of Part 2 relating to entitlement to dental benefits.

Section 9 – Entitlement to dental benefits

Basic Entitlement

Proposed subsection 9(1) sets out the basic entitlement to a dental benefit. It provides that if ‘dental expenses’ are incurred in respect of a ‘dental service’ rendered in Australia to an ‘eligible dental patient’, a ‘dental benefit’ is payable under proposed section 11 in respect of the dental service.

The term ‘eligible dental patient’ is defined in proposed section 5. The terms ‘dental service’, ‘dental benefit’ and ‘dental expenses’ are defined in proposed section 4. A ‘dental service’ means a clinically relevant service specified in an item, being a service rendered by or on behalf of a dental provider. A ‘dental benefit’ means a dental benefit payable under Part 3 of the proposed Act. The term ‘dental expenses’ means an amount payable in respect of a dental service.

Amount payable

Proposed subsection 9(2) provides that the amount of the dental benefit payable in respect of a dental service is the amount specified in, or determined in accordance with, the Dental Benefits Rules.

Proposed subsection 9(3) provides that the amount of the 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 – Simplified outline

This clause provides a simplified outline of Part 3 relating to payment of dental benefits.

Division 2 – Payment of dental benefits

Section 11 – Payment of dental benefits to persons who incur dental expenses

This clause provides that, subject to Part 3, dental benefit in respect of a dental service is payable by the Medicare Australia CEO on behalf of the Commonwealth to the person who incurs the dental expense in relation to the dental service.

The dental benefit is to be paid in the manner determined by the Medicare Australia CEO. This determination may provide for, but is not limited to, payment into a bank account. The Dental Benefits Rules may specify circumstances or conditions relating to such a payment.

Section 12 – Assignment of dental benefits

This clause provides for the assignment of dental benefits, commonly known as “bulk billing”.

Scope

Proposed section 12 applies where a dental benefit is payable under proposed section 11.

Assignment of dental benefit

Proposed subsections 12(2) to (3) provide that the person and the dental provider who rendered the dental service, may enter into an agreement under which:

- the person assigns his/her right to the payment of the dental benefit to the dental provider; and
- the dental provider accepts the assignment of benefit as full payment of the dental expenses incurred by the person in respect of the dental service.

In this case, the dental provider is not allowed to charge the person an additional fee for the dental service.

Such an agreement must be made in accordance with the ‘approved form’. ‘Approved form’ is defined in proposed section 4 to mean a form approved in writing by the Medicare Australia CEO.

Agents

Proposed subsection 12(4) provides that a person who rendered the dental service on behalf of the dental provider may enter into the agreement under proposed subsection 12(2) on behalf of the dental provider, only if authorised to do so by the dental provider.

Section 13 – Payment of assigned dental benefits

This clause provides that, subject to proposed section 15, the dental benefit is payable in accordance with the assignment under proposed section 12.

The dental benefit is to be paid in the manner determined by the Medicare Australia CEO. This determination may provide for, but is not limited to, payment into a bank account. The Dental Benefits Rules may specify circumstances or conditions relating to such a payment.

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

This clause allows a cheque to be issued in the name of the dental provider, rather than paying the benefit to the person, in certain circumstances. This claiming method is similar to the ‘pay doctor cheque’ method used in relation to Medicare benefit under the *Health Insurance Act 1973*.

This clause provides that where a dental benefit is payable to a person under proposed section 11 and the person has not paid the dental expenses in relation to the dental service, the person may request the Medicare Australia CEO to issue a cheque in the name of the dental provider for the amount of the dental benefit payable.

In this case, the dental benefit will not be paid to the person. The cheque issued in the name of the dental provider will be given to the person, or posted to the address specified by the person. After the cheque is issued, it is the responsibility of the person to provide the cheque to the dental provider.

Division 3 – Claims for dental benefits

Section 15 – Claims for dental benefits

Claims for unassigned dental benefits

Proposed subsection 15(1) provides that a dental benefit (other than an assigned benefit under proposed section 12) must be made in accordance with an approved form, and be lodged with the Medicare Australia CEO, or sent to the Medicare Australia CEO in such manner as he or she determines. The Dental Benefits Rules may specify circumstances or conditions relating to sending such a claim for a dental benefit.

Claims for assigned dental benefits

Proposed subsection 15(2) provides that a dental benefit assigned under proposed section 12 must be made in accordance with an approved form, and be lodged with

the Medicare Australia CEO, or sent to the Medicare Australia CEO in such manner as he or she determines. The Dental Benefits Rules may specify circumstances or conditions relating to sending such a claim for a dental benefit. The claim for dental benefit must be made within two years of the dental service, or a longer period as allowed under proposed subsection 16(2).

Proposed subsection 15(3) provides that the claim for an assigned dental benefit must not be paid unless the claimant satisfies the Medicare Australia CEO that, after signing the assignment agreement under proposed subsection 12(2), the person who incurred the dental expense retained a copy of the assignment agreement in his or her possession.

Proposed subsections 15(4) and (5) provide that, without limiting other methods which might be chosen, the Medicare Australia CEO may provide for a claim for dental benefit to be sent by electronic transmission.

Section 16 – Application for a longer period to lodge claims for assigned benefits

This clause allows a person to apply to the Medicare Australia CEO for a longer period (that is, more than two years after the dental service) to lodge a claim for an assigned dental benefit. The Medicare Australia CEO may, by notice in writing, extend the period for lodgement of the claim. In exercising this power, the Medicare Australia CEO must have regard to all relevant matters including, but not limited to, any hardship that may be caused to the person if a longer period is not allowed.

This clause is similar to section 20B of the *Health Insurance Act 1973*, which gives the Medicare Australia CEO an equivalent power to extend the period of lodgement for a claim for a Medicare benefit.

Division 4 – When dental benefit is not payable

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

This clause provides that a dental benefit is not payable unless the dental provider, or an employee of the dental provider, has recorded certain information (known as particulars) on the relevant document/s (the account, receipt, voucher, or assignment form). The particulars will be specified in the Dental Benefits Rules.

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

This clause provides that a dental benefit is not payable unless the conditions specified in the Dental Benefits Rules are satisfied.

Proposed subsection 18(2) provides that the conditions which the Dental Benefits Rules may specify may include conditions relating to:

- the dental service;
- the circumstances in which the dental service is rendered;
- the dental provider by whom, or on whose behalf, the dental service is rendered;
- the eligible dental patient to whom the dental service is rendered; or
- dental services rendered by, or on behalf of, or under an arrangement with, the Commonwealth, a State, an internal Territory, a local governing body, or an

authority established by a law of the Commonwealth, a law of a State or a law of an internal Territory.

The Note to proposed section 18 refers to subsection 13(3) of the *Legislative Instruments Act 2003*. Subsection 13(3) makes clear that conditions specified in Dental Benefits Rules made for the purpose of proposed section 18 may identify a class or classes of dental service, dental provider, eligible dental patient, etc.

An example of a condition that could be specified in the Dental Benefits Rules under proposed section 18 is a condition that dental benefit is not payable in relation to certain classes of patients, or particular types of dental services, unless the dental benefit is ‘bulk billed’.

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

This clause provides that a dental benefit is not payable to a person in respect of a dental service where the person has private health insurance covering the dental service and the person has received, or chooses to receive, a benefit from their private health insurer in respect of the dental service.

The intention is to prevent a person from using their private health insurance to “top-up” a dental benefit paid under the Dental Benefits Schedule. It is only if an insured person receives, or chooses to receive, a benefit from their private health insurer in respect of the dental service that dental benefit under the proposed Act would not be payable. The same interaction between private health insurance and Medicare benefit applies in relation to allied health services under section 3C determinations made under the *Health Insurance Act 1973*.

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

This clause provides that a dental benefit is not payable in respect of a dental service rendered as part of ‘hospital treatment’.

The clause also provides that dental benefit is not payable in respect of a dental service rendered as part of ‘hospital-substitute treatment’ where the eligible dental patient chooses to receive a benefit from a private health insurer.

The effect of proposed section 20 is to focus the proposed Act on situations where the dental service is not rendered as part of hospital treatment. The wording used, including the associated reference to hospital-substitute treatment, matches that used in paragraph 10(2)(a) of the *Health Insurance Act 1973*.

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

The effect of proposed subsection 21(1) is that the Dental Benefits Rules may provide that a dental benefit is not payable in respect of a dental service.

Proposed subsection 21(2) provides instances where the Dental Benefits Rules may specify that a dental benefit is not payable. These include, but are not limited to:

- a specified dental service;
- a dental service provided in specified circumstances;

- a dental service rendered by, or on behalf of, a specified dental provider;
- a dental service rendered to a specified eligible dental patient; or
- a dental service rendered by, or on behalf of, or under an arrangement with, the Commonwealth, a State, an internal Territory, a local governing body, or an authority established by a law of the Commonwealth, a law of the State or a law of an internal Territory.

The Note to proposed section 21 refers to subsection 13(3) of the *Legislative Instruments Act 2003*. Subsection 13(3) makes clear that Dental Benefits Rules made for the purpose of proposed section 21 may specify a class or classes of dental service, dental provider, eligible dental patient, etc.

The purpose of proposed section 21 is very similar to proposed section 18 (which provides that dental benefit is not payable unless conditions specified in the Dental Benefits Rules are satisfied). The Dental Benefits Rules may specify similar types of instances to those addressed in sections 17, 19 and 19A of the *Health Insurance Act 1973*, and in section 18 of that Act (prior to commencement of the *Health and Other Services (Compensation) Act 1995*) but would not be limited to those instances.

PART 4 – DENTAL BENEFITS VOUCHERS

Division 1 – Introduction

Section 22 – Simplified outline

This clause provides a simplified outline of Part 4 relating to the issuing of vouchers in relation to a dental service.

This Part deals specifically with the issuing of vouchers under the Teen Dental Plan, but the provisions would also allow vouchers to be issued in respect of other eligible dental patients and other dental services in the future.

Division 2 – Qualification for vouchers

Section 23 – Qualification for a voucher - teenagers

Proposed section 23 provides that a person will qualify for a voucher under the Teen Dental Plan, if the person:

- is of a certain age (as set out in proposed subsection 23(1));
- is an eligible person for Medicare purposes (as defined in proposed section 4); and
- satisfies the means test (as set out in proposed section 24).

A person will meet the age criteria for the Teen Dental Plan if they satisfy either proposed paragraph 23(1)(a) or paragraph 23(1)(b).

Proposed paragraph 23(1)(a) provides that a person must be aged 12 to 17 years, for at least one day in the calendar year.

Proposed paragraph 23(1)(b) covers the situation where a person is expected to turn 12 years of age in the calendar year, but has not yet had their 12th birthday at the time they qualify for a voucher.

Section 24 – When a person satisfies the means test

This clause specifies the circumstances where a person will satisfy the means test for the Teen Dental Plan.

Basic rule

Proposed subsection 24(1) sets out the basic rule for satisfying the means test. A person will satisfy the means test, at the first time in the calendar year, where the person is:

- receiving a payment under the ABSTUDY scheme, or another person is receiving such a payment in respect of the person;
- receiving youth allowance; or
- an FTB(A) teenager (as set out in proposed subsection 24(2)).

The meaning of ‘receive’ a payment under the ABSTUDY scheme, or in relation to youth allowance, is defined in proposed subsections 24(3) and (4).

Proposed paragraph 24(1)(d) provides that the Dental Benefits Rules may also specify other classes of persons as satisfying the means test.

When a person is an FTB(A) teenager

Proposed subsection 24(2) sets out when a person is considered to be an ‘FTB(A) teenager’ for the purposes of satisfying the means test.

Proposed subsection 24(2) provides that, for the purposes of this section, a person (the ‘teenager’) is an FTB(A) teenager at a particular time if, at that time:

- the teenager, or his or her partner, is entitled to be paid FTB(A) at a rate greater than nil (with a ‘section 16 determination’ in force);
- an ‘FTB recipient’ in relation to the teenager is entitled to be paid FTB(A), in respect of the teenager, at a rate greater than nil (with a ‘section 16 determination’ in force);
- the teenager, or his or her partner, has received an ‘FTB lump sum payment’ (under Part A) in respect of the last ‘income year’ ending before the start of the calendar year in which the teenager will qualify for a voucher;
- an ‘FTB recipient’ in relation to the teenager has received an ‘FTB lump sum payment’ (under Part A) that is in respect of the teenager, and in respect of the last income year ending before the start of the calendar year in which the teenager will qualify for a voucher; or
- the teenager is in a class of persons specified in the Dental Benefits Rules to be an FTB(A) teenager for the purposes of proposed paragraph 24(2)(e).

Proposed subsection 24(3) provides definitions for terms used in this section.

A ‘section 16 determination’ means a determination under section 16 of the *A New Tax System (Family Assistance) Act 1999*. This refers to the situation where a person has been assessed as eligible to receive an FTB(A) payment by instalment, including a person who has elected to defer the payment of the instalment in order to avoid a potential FTB(A) debt at the end of the financial year.

An ‘FTB recipient’, in relation to a teenager, means a person of whom the teenager is an ‘FTB child’ in relation to family tax benefit, or an ‘approved care organisation’ of

which the teenager is a client. 'FTB child' and 'approved care organisation' are also defined in proposed subsection 24(3).

'An FTB lump sum payment' means a payment of family tax benefit under section 24 of the *A New Tax System (Family Assistance) Act 1999* that has a Part A rate that is greater than nil. 'Part A rate' is also defined in proposed subsection 24(3).

'Income year' has the same meaning as in subsection 3(1) of the *A New Tax System (Family Assistance) Act 1999*. It is a financial year.

Section 25 – Dental Benefits Rules must specify certain matters

Proposed subsection 25(1) provides that where a class of persons is specified in the Dental Benefits Rules as satisfying the means test (for the purpose of paragraph 24(1)(d)), the Dental Benefits Rules must also specify the time, or how to work out the time, at which the person satisfies the means test.

Proposed subsection 25(2) provides that where a teenager is in a class of persons specified in the Dental Benefits Rules as being an 'FTB(A) teenager' (for the purpose of paragraph 24(2)(e)), the Dental Benefits Rules must also specify the time, or how to work out the time, at which the person is an FTB(A) teenager.

Section 26 – Qualification for a voucher – other persons

This clause provides that the Dental Benefits Rules may specify other classes of eligible persons who qualify for a voucher in relation to a specified dental service. This class (or classes) of persons could be different from the teenagers under proposed section 23.

Division 3 – Issue of vouchers and other matters

Section 27 – Medicare Australia CEO must issue vouchers

This clause provides for the issue of vouchers by the Medicare Australia CEO in relation to a person who qualifies for a voucher.

The effect of this clause is to limit the distribution of vouchers late in the calendar year when there would be limited opportunity for the person to make a dental appointment and use the voucher before it expires. However, a person, or someone on their behalf, can still request a voucher. If the person qualifies for a voucher, the Medicare Australia CEO must issue a voucher up to 15 days before the end of the calendar year.

In 2008 it is proposed that most vouchers will be distributed during July and August, and then on a monthly basis to newly eligible teenagers up to the end of October, for use in that calendar year. In 2009 and later calendar years, most vouchers will be distributed at the beginning of the calendar year, and then on a monthly basis to newly eligible teenagers up to the end of October, for use in that calendar year.

Persons who qualify on or before 31 October

Proposed subsection 27(1) provides that the Medicare Australia CEO must issue a voucher for a calendar year, if:

- the person qualifies for the voucher on or before 31 October in the calendar year; or
- by another date, if an earlier or later date in the calendar year is specified in the Dental Benefits Rules.

Subject to proposed subsection 27(5), the Medicare Australia CEO is not required to issue a voucher if a voucher has already been issued in relation to the person and the dental service for the calendar year.

Persons who requests a voucher

Proposed subsection 27(2) provides that the Medicare Australia CEO must issue a voucher for a calendar year, if:

- the person qualifies for the voucher; and
- the Medicare Australia CEO is requested by, or on behalf of, the person to issue the voucher.

Subject to proposed subsection 27(5), the Medicare Australia CEO is not required to issue a voucher if a voucher has already been issued in relation to the person and the dental service for the calendar year.

Timing and form of request

Proposed subsection 27(3) provides that the Medicare Australia CEO is not required to issue a voucher under proposed subsection 27(2) if the request is not made in the approved form or if the request is made within 15 days of the end of the calendar year.

Voucher to be issued as soon as reasonably practicable

Proposed subsection 27(4) provides that the Medicare Australia CEO must issue a voucher as soon as reasonable practicable after the person qualifies for the voucher or after a request is made.

Exception to the one voucher per year rule

Proposed subsection 27(5) provides that 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.

For example, where there are equal shared care arrangements for an FTB(A) teenager, the Dental Benefits Rules may provide for a voucher to be sent to each of the teenager's parents or carers. Regardless of the number of vouchers issued in relation to the teenager, only one dental benefit is payable for the teenager for a preventative dental check each calendar year.

When voucher is not required to be issued

Proposed subsection 27(6) provides that proposed section 27 has effect subject to proposed sections 28 and 29.

Section 28 – When voucher is not required to be issued – person dies

This clause provides that the Medicare Australia CEO is not required to issue a voucher in respect of a person who has died, even though the person has qualified for a voucher in the calendar year.

Section 29 – When voucher is not required to be issued – circumstances specified in the Dental Benefits Rules

This clause provides that the Dental Benefits Rules may specify circumstances in which the Medicare Australia CEO is not required to issue a voucher in respect of a person, even though the person has qualified for a voucher in the calendar year.

For example, the Dental Benefits Rules may specify circumstances where the teenager has been removed from a parent or carer in a family for safety or protection reasons.

Section 30 – Voucher must specify dental service

This clause provides that a voucher must specify the dental service to which it relates. For the Teen Dental Plan, this will be the annual preventative dental check.

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

This clause provides that a voucher takes effect on the day that the voucher is issued and remains in effect until the end of the calendar year. The Dental Benefits Rules may provide for a different period of effect.

Section 32 – Dental Benefits rules may provide for other matters

This clause provides that the Dental Benefits Rules may provide for the following:

- matters relating to requests for vouchers;
- altering the period of effect of the vouchers;
- the persons to whom the vouchers are to be issued;
- lost vouchers.

PART 5 – DISCLOSURE OF PROTECTED INFORMATION

Division 1 – Introduction

Section 33 – Simplified outline

This clause provides a simplified outline of Part 5 which relates to disclosure of protected information.

Division 2 – Disclosure of protected information

Section 34 – Prohibition on disclosure of protected information

This clause creates an offence of unauthorised disclosure of protected information by an entrusted public official.

Proposed section 34 provides that a person will commit an offence if:

- the person is, or was at any time, an entrusted public official;
- the person has, or has at any time had, a duty, function or power under the proposed *Dental Benefits Act 2008*; and
- the person discloses protected information to another person; and
- the disclosure is not an authorised disclosure.

The penalty is imprisonment for two years or 120 penalty units (currently \$13,200), or both.

Proposed subsection 34(2) provides that the following persons are an ‘entrusted public official’: the Medicare Australia CEO, an employee of Medicare Australia, a consultant engaged under section 21 of the *Medicare Australia Act 1973*, the Secretary of the Department administered by the Minister who administers the proposed *Dental Benefits Act 2008*, an APS employee in that Department, or any other person employed or engaged by that Department.

Proposed subsection 34(3) provides that information is ‘protected information’ if the information relates to a person other than the person who obtained it, and:

- the information is obtained by a person in the course of performing duties or functions, or exercising powers, under the proposed *Dental Benefits Act 2008*; or
- the information was information to which the above applied and is obtained by a person by way of an authorised disclosure under proposed section 36.

Proposed subsection 34(4) provides that a disclosure of information is an ‘authorised disclosure’ if the disclosure is one that a person may make under proposed section 35, 36, 37, 38, 39, 40 or 41.

A person obtains protected information by way of an authorised disclosure under proposed section 36 if the disclosure was certified by the Secretary or the Medicare Australia CEO to be in the public interest and was made in accordance with any requirements specified in the Dental Benefit Rules.

Section 35 – Authorised disclosure – official duties

This clause refers to circumstances, relating to the performance of a person’s official duties, where a disclosure of information is an ‘authorised disclosure’ for the purposes of proposed subsection 34(4).

Proposed section 35 provides that a person may disclose protected information if the disclosure is made:

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

Section 36 – Authorised disclosure – public interest

This clause refers to circumstances, relating to public interest certification, where a disclosure of information is an ‘authorised disclosure’ for the purposes of proposed subsection 34(4).

Proposed subsection 36(1) provides that a person may disclose protected information if 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. A disclosure under this subsection must be made in accordance with any requirements specified in the Dental Benefit Rules.

A public interest certificate issued by the Secretary or the Medicare Australia CEO is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. Proposed subsection 36(2) is not intended to create an exemption to that Act.

Section 37 – Authorised disclosure – authorisation by affected person

This clause provides that, for the purposes of proposed 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 that information.

Section 38 – Authorised disclosure – enforcement of the criminal law etc

This clause refers to circumstances, relating to the enforcement of the criminal law, where a disclosure of information is an ‘authorised disclosure’ for the purposes of proposed subsection 34(4).

Proposed subsection 38(1) provides that the Secretary or the Medicare Australia CEO may disclose protected information to an ‘agency’ if he or she believes on reasonable grounds that the disclosure is reasonably necessary for:

- the enforcement of the criminal law;
- the enforcement of a law imposing a pecuniary penalty; or
- the protection of public revenue.

The functions of the agency must also include that enforcement or protection and the disclosure must be for the purposes of that enforcement or protection.

The term ‘agency’ is defined in proposed subsection 38(2) as including a police force of a State or Territory, or any other authority or person responsible for the enforcement of the laws of the State or Territory.

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

This clause provides that, for the purposes of proposed subsection 34(4), the Secretary or the Medicare Australia CEO may disclose protected information if:

- the Secretary or the Medicare Australia CEO believe 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
- the disclosure is for the purposes of preventing or lessening that threat.

Section 40 – Authorised disclosure – professional body

Proposed subsection 40(1) provides that, for the purposes of proposed subsection 34(4), the Secretary or the Medicare Australia CEO may disclose protected information to a ‘professional body’ where that information relates to a dental provider, or the dental services rendered by, or on behalf of, a dental provider. The Secretary or the Medicare Australia CEO must also believe on reasonable grounds that the dental provider should be reported to the professional body.

Proposed subsection 40(3) defines a ‘professional body’ to mean a body responsible for the licensing, registration, accreditation or standards of professional conduct of dental providers generally or a class of dental providers.

Proposed subsection 40(2) provides that this section does not authorise the Secretary or Medicare CEO to disclose protected information relating to a person who is a patient of the dental provider, and from which the identity of the person is apparent or can be reasonably ascertained, unless the Secretary or Medicare CEO believes on reasonable grounds that it is necessary to disclose that protected information in connection with the reporting of the dental provider to the professional body.

Section 41 – Authorised disclosure – administration of this Act

This clause allows protected information to be disclosed to specified Ministers, officers and employees if it is for the purposes of administering the proposed *Dental Benefits Act 2008*.

Proposed subsection 41(1) provides that, for the purposes of proposed subsection 34(4), a person may disclose protected information to:

- the Medicare Australia CEO or an employee of Medicare Australia;
- the Chief Executive Officer of ‘Centrelink’ or an ‘employee of Centrelink’;
- a Minister who administers the proposed *Dental Benefits Act 2008*, the *Medicare Australia Act 1973*, the *Social Security Act 1991* (as it relates to youth allowance), *A New Tax System (Family Assistance) Act 1999* (as it relates to ‘Family Tax Benefit’), or the ABSTUDY scheme; or
- the Secretary of, or an APS employee in, the Department administered by a Minister mentioned above (in proposed paragraph 41(1)(c)).

Proposed subsection 41(3) provides definitions for ‘Centrelink’, ‘employee of Centrelink’ and ‘family tax benefit’.

The effect of this clause is to allow protected information to be exchanged between relevant Departments and agencies for the purposes of administering the Teen Dental Plan. This is necessary given that protected information relating to FTB(A), Youth Allowance and Abstudy clients is held by Centrelink, but Medicare Australia requires this information to identify eligible teenagers and families, distribute vouchers, and to administer the Teen Dental Plan on an ongoing basis.

Section 42 – Disclosure of information to courts or tribunals

This clause provides that a person is not required, except for the purposes of the proposed Act, to disclose protected information to a court or tribunal, or to produce a document that contains protected information in a court of tribunal.

Proposed clause 42(1) provides that this section applies if:

- a person is, or was at any time, an ‘entrusted public official’; and
- the person obtained protected information or a document that contains protected information in the course of performing duties or functions, or exercising powers, under the proposed *Dental Benefits Act 2008*.

The term ‘entrusted public official’ is defined in proposed subsection 34(2).

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

Section 43 – Offence – disclosure of protected information obtained in the public interest

This clause creates an offence of unauthorised disclosure of protected information which was obtained through public interest certification.

A person will commit an offence under proposed section 43 if:

- the person obtains protected information by way of an authorised disclosure under proposed section 36;
- the person discloses the protected information; and
- the disclosure by the person is not an authorised disclosure.

The offence is punishable by a penalty of imprisonment for two years or 120 penalty units (currently \$13,200), or both.

Section 44 – Offence – soliciting disclosure of protected information

This clause creates an offence of soliciting the disclosure of protected information.

A person will commit an offence under proposed section 44 if:

- the person solicits the disclosure of information from another person;
- the information is protected information; and
- the disclosure would constitute a contravention of proposed section 34 (i.e. the disclosure would be an unauthorised disclosure of protected information by an entrusted public official) or proposed section 43 (i.e. the disclosure would be an unauthorised disclosure of protected information which was obtained through public interest certification).

The offence is punishable by a penalty of imprisonment for two years or 120 penalty units (currently \$13,200), or both.

Section 45 – Offence – use etc. of protected information

This clause creates an offence of soliciting, disclosing or using protected information.

A person will commit an offence under proposed section 45 if:

- information is disclosed to the person;
- the information is protected information;
- the disclosure to the person constitutes a contravention of proposed section 34 (i.e. the disclosure is an unauthorised disclosure of protected information by an entrusted public official) or proposed section 43 (i.e. the disclosure is an unauthorised disclosure of protected information which was obtained through public interest certification); and
- any of the following apply:
 - the person solicited the disclosure of the information;
 - the person subsequently discloses the information; or
 - the person uses the information.

The offence is punishable by a penalty of imprisonment for two years or 120 penalty units (currently \$13,200), or both.

Section 46 – Offence – offering to supply protected information

This clause creates an offence of offering to supply protected information.

A person will commit an offence under proposed section 46 if:

- the person offers to supply, or holds himself or herself out as being able to supply (whether or not to a particular person) information about another person;
- the person knows that the information is protected information; and
- the supply would constitute a contravention of proposed section 34 (i.e. the disclosure would be an unauthorised disclosure of protected information by an entrusted public official) or proposed section 43 (i.e. the disclosure would be an unauthorised disclosure of protected information which was obtained through public interest certification).

The offence is punishable by a penalty of imprisonment for two years or 120 penalty units (currently \$13,200), or both.

PART 6 – GENERAL OFFENCES AND RECOVERY PROVISIONS

Division 1 – Introduction

Section 47 – Simplified outline

This clause provides a simplified outline of Part 6 of the Bill relating to general offences and recovery provisions.

In this Part, the following offence provisions are described:

- A strict liability offence of failure to set out certain particulars in an assignment of benefit agreement.
- A strict liability offence of failure to give a copy of an assignment of benefit agreement.
- Two strict liability offences of making or authorising the making of false or misleading statements in connection with claims for dental benefit, including statements made by employees, agents or associates.
- Two offences of knowingly making or authorising the making of false or misleading statements in connection with claims for dental benefit, including statements made by employees, agents or associates. These offences will carry a higher penalty than the similar strict liability offences referred to above.
- An offence of knowingly giving information that is false or misleading.

Given the similarities between the proposed dental benefit arrangements and the existing Medicare benefit arrangements under the *Health Insurance Act 1973*, the offence provisions in the Bill have been modelled on a range of offence provisions currently appearing in the *Health Insurance Act 1973* and contain penalties that are largely consistent with the similar *Health Insurance Act 1973* offence provisions.

The offences in the Bill are aligned with current *Health Insurance Act 1973* offences, to the extent possible, to ensure consistent treatment of practitioners and patients under the proposed dental benefit arrangements and the current Medicare benefit arrangements, particularly in terms of the regulation of their billing and claiming conduct.

Division 2 – Offences relating to assignment agreements

Section 48 – Strict liability offence – particulars not set out in assignment agreement

This clause creates a strict liability offence of failure to set out certain particulars in an assignment of benefit agreement.

A dental provider will commit an offence under proposed subsection 48(1) if:

- the provider (or a person acting on the provider’s behalf) enters into an assignment of benefit agreement under proposed subsection 12(2) with another person; and
- particulars relating to the dental service are required, by the approved form, to be set out in the agreement; and
- the dental provider has not caused the particulars to be set out in the agreement before the other person signs the agreement.

Proposed subsection 48(2) provides that an offence under proposed subsection 48(1) is an offence of strict liability.

The Note after proposed subsection 48(2) directs readers to section 6.1 of the *Criminal Code*, which relevantly states that, if a law that creates an offence provides that the offence is an offence of strict liability, there are no fault elements for any of the physical elements of the offence and the defence of mistake of fact under section 9.2 of the *Criminal Code* is available.

Proposed subsection 48(3) provides that the term ‘approved form’, as it appears in proposed subsection 48(1), means the form approved for the purposes of proposed subsection 12(2). An ‘approved form’ is defined in proposed section 4 to mean a form approved, in writing, by the Medicare Australia CEO.

Apart from three changes that were made to reflect current criminal law policy, the offence in proposed section 48 is consistent with an existing strict liability offence in section 127 of the *Health Insurance Act 1973* which relates to the assignment of benefit agreements that practitioners and patients may enter into under the Medicare arrangements.

The offence in proposed section 48 is punishable by a penalty of 10 penalty units (currently \$1,100). This penalty is largely consistent with the pecuniary penalty attached to the offence in section 127 of the *Health Insurance Act 1973*, which is a fine not exceeding \$1,000.

Section 49 – Strict liability offence – copy of assignment agreement not given

This clause creates a strict liability offence of failure to give a copy of an assignment of benefit agreement.

A dental provider will commit an offence under proposed subsection 49(1) if the provider (or a person acting on the provider’s behalf) enters into an assignment of benefit agreement under proposed subsection 12(2) with another person, and 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.

Proposed subsection 49(2) provides that an offence under proposed subsection 49(1) is an offence of strict liability.

The Note after proposed subsection 49(2) directs readers to section 6.1 of the *Criminal Code*, which relevantly states that, if a law that creates an offence provides that the offence is an offence of strict liability, there are no fault elements for any of the physical elements of the offence and the defence of mistake of fact under section 9.2 of the *Criminal Code* is available.

Apart from three changes that were made to reflect current criminal law policy, the offence in proposed section 49 is consistent with an existing strict liability offence in section 127 of the *Health Insurance Act 1973*, which relates to the assignment of benefit agreements that practitioners and patients may enter into under the Medicare arrangements.

The offence in proposed section 49 is punishable by a penalty of 10 penalty units (currently \$1,100). This penalty is largely consistent with the pecuniary penalty attached to the offence in section 127 of the *Health Insurance Act 1973*, which is a fine not exceeding \$1,000.

Division 3 – Offences relating to the giving of information

Section 50 – Strict liability offence – false or misleading statements relating to dental benefit; and

Section 51 – Strict liability offence – false or misleading statements, including those by employees etc.

These clauses create two strict liability offences of making false or misleading statements in connection with claims for dental benefit, including statements made by employees, agents or associates.

A person will commit an offence under proposed subsection 50(1) if the person makes, or authorises the making of, an oral or written statement that is false or misleading in a material particular and is capable of being used in connection with a claim for dental benefit.

A person (the ‘first person’) will commit an offence under proposed subsection 51(1) if:

- the first person is an employee, associate or agent of another person (the ‘second person’);
- the second person makes an oral or written statement (the ‘claim statement’);
- the claim statement is false or misleading in a material particular;
- the claim statement is capable of being used in connection with a claim for dental benefit;
- the material particular in respect of which the claim statement is false or misleading is substantially based upon another statement (the ‘employee statement’);
- the employee statement was made by the first person:
 - to the second person; or
 - to an agent of the second person; and
- the employee statement was false or misleading in a material particular.

The offence in proposed subsection 51(1) is intended to cover circumstances where a person makes a false or misleading statement that is capable of being used in connection with a claim for dental benefit, and that statement is substantially based on another false or misleading statement made to the person by an employee, agent or associate of the person. In such circumstances, the employee, agent or associate is guilty of the offence.

Proposed subsection 50(2) provides that an offence under proposed subsection 50(1) is an offence of strict liability. Similarly, proposed subsection 51(2) provides that an offence under proposed subsection 51(1) is an offence of strict liability.

The Notes after proposed subsections 50(2) and 51(2) direct readers to section 6.1 of the *Criminal Code*, which relevantly states that, if a law that creates an offence provides that the offence is an offence of strict liability, there are no fault elements for any of the physical elements of the offence and the defence of mistake of fact under section 9.2 of the *Criminal Code* is available.

Apart from two changes that were made to proposed section 50 and to proposed section 51 to reflect current criminal law policy, proposed sections 50 and 51 are consistent with existing strict liability offences in section 128A of the *Health Insurance Act 1973*, which concern the making or the authorising of the making of false or misleading statements relating to claims for Medicare benefit, including statements made by employees or agents.

Proposed sections 50 and 51 each attract a penalty of 20 penalty units (currently \$2,200). This penalty is largely consistent with the penalty attached to the existing offences in section 128A of the *Health Insurance Act 1973*, which is \$2,000.

Proposed subsection 50(3) provides that despite section 15B of the *Crimes Act 1914* (which would normally impose a time limit of 12 months for the commencement of a prosecution), a prosecution for an offence under proposed subsection 50(1) must be instituted within three years after the time at which the statement is alleged to have been made. Similarly, proposed subsection 51(3) provides that despite section 15B of the *Crimes Act 1914*, a prosecution for an offence under proposed section 51 must be instituted within three years after the time at which the claim statement is alleged to have been made.

Additional notes on strict liability offence provisions

The four strict liability offences contained in the Bill are as follows:

- Proposed section 48 – An offence of failure to set out certain particulars in an assignment of benefit agreement;
- Proposed section 49 – An offence of failure to give a copy of an assignment of benefit agreement;
- Proposed section 50 – An offence of making or authorising the making of an oral or written statement that is false or misleading in a material particular and is capable of being used in connection with a claim for dental benefit; and
- Proposed section 51 – An offence where a person makes a false or misleading statement that is capable of being used in connection with a claim for dental benefit, and that statement is substantially based on another false or misleading statement made by an employee, agent or associate of the person. In such

circumstances, the employee, agent or associate is guilty of an offence.

Proposed sections 48 and 49 have been cast as strict liability offences because proof of intent to fail to comply with the requirements referred to in those sections would be very difficult to obtain. However, failure to comply would have a significant detrimental effect on the administration of the proposed *Dental Benefits Act 2008* and it is important to have offences to create a deterrent to non-compliance. The application of strict liability to proposed sections 48 and 49 will mean that practitioners will be placed on notice to guard against the possibility of contravening these provisions by ensuring the accuracy of their billing arrangements.

The proposed offences in sections 48 and 49 will not be punishable by imprisonment but each will attract a fine of 10 penalty units (currently \$1,100). This proposed penalty is largely consistent with the pecuniary penalty attached to the similar existing strict liability offence relating to Medicare benefit in section 127 of the *Health Insurance Act 1973* (which is a fine not exceeding \$1,000).

Proposed sections 50 and 51 are intended to be used in situations where there is insufficient evidence to prove intent, but there has been significant abuse or misuse of the dental benefit arrangements (for example, where a practice manager repeatedly enters incorrect information on claim forms that a dental provider later signs). These offences have been cast as strict liability offences to deter dental providers and their employees/agents/associates from making incorrect or misleading claims, thereby ensuring the integrity of the claiming arrangements under the dental benefits scheme. The application of strict liability to proposed sections 50 and 51 will mean that dental providers and their employees/agents/associates will be placed on notice to guard against the possibility of contravening these provisions by ensuring the accuracy of their claiming arrangements.

The proposed offences in sections 50 and 51 will not be punishable by imprisonment but each will attract a fine of 20 penalty units (currently \$2,200). This penalty is largely consistent with the penalty attached to the similar existing strict liability offences relating to Medicare benefit in section 128A of the *Health Insurance Act 1973* (which is \$2,000).

**Section 52 – Offence – statement that person knows is false or misleading; and
Section 53 – Offence – statement based on statement that employee etc. knows is false or misleading**

These clauses create two offences of knowingly making false or misleading statements in connection with claims for dental benefit, including statements made by employees, agents or associates.

A person will commit an offence under proposed section 52 if the person makes, or authorises the making of, an oral or written statement and the person knows that the statement is false or misleading in a material particular and is capable of being used in connection with a claim for dental benefit.

A person (the ‘first person’) will commit an offence under proposed section 53 if:

- the first person is an employee, associate or agent of another person (the ‘second person’);

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

Apart from one change that was made to proposed section 52 and to proposed section 53 to reflect current criminal law policy, proposed sections 52 and 53 are consistent with existing offences in section 128B of the *Health Insurance Act 1973*, which concern knowingly making or authorising the making of false or misleading statements in connection with claims for Medicare benefit, including statements made by employees or agents.

Proposed sections 52 and 53 each attract a penalty of 100 penalty units (currently \$11,000) or imprisonment for five years, or both. Although this penalty departs from the Commonwealth penalty benchmarks, it is largely consistent with the penalty attached to the existing offences in section 128B of the *Health Insurance Act 1973*, which is \$10,000 or imprisonment for five years, or both. It is considered necessary to depart from the standard Commonwealth penalty benchmarks in the interests of ensuring consistency with penalties for these existing offences of a similar kind relating to Medicare benefit. This is important because some dental practitioners will be making claims under both the *Health Insurance Act 1973* (in relation to Medicare benefits) and the proposed *Dental Benefits Act 2008* (in relation to dental benefits).

Further, a maximum penalty of five years imprisonment is considered appropriate for these proposed offences, as this level of penalty will provide practitioners, their employees, and patients with a greater disincentive to engage in prohibited conduct associated with claiming dental benefit, thereby preserving the integrity of the dental benefits scheme.

Section 54 – False statements etc.

This clause creates an offence of knowingly giving information that is false or misleading.

A person commits an offence if he or she gives information under, or for the purposes of the proposed *Dental Benefits Act 2008* and the person knows that the information is false or misleading in a material particular.

Apart from one change that was made to reflect current criminal law policy, proposed section 54 is consistent with an existing offence in section 129 of the *Health*

Insurance Act 1973, which concerns knowingly giving information under, or for the purposes of, the *Health Insurance Act 1973* that is false or misleading.

The proposed penalty is 100 penalty units (currently \$11,000) or imprisonment for five years, or both. Although this penalty departs from the Commonwealth penalty benchmarks, it is largely consistent with the penalty attached to the existing offence in section 129 of the *Health Insurance Act 1973*, which is \$10,000 or imprisonment for five years, or both. It is considered necessary to depart from the standard Commonwealth penalty benchmarks in the interests of ensuring consistency with the penalty for this existing offence of a similar kind relating to the Medicare benefit arrangements. This is important because some dental practitioners will, for example, be entering into assignment of benefit agreements under both the *Health Insurance Act 1973* (in relation to Medicare benefits) and the proposed *Dental Benefits Act 2008* (in relation to dental benefits).

Further, a maximum penalty of five years imprisonment is considered appropriate for this proposed offence, as this level of penalty will provide practitioners, their employees, and patients with a greater disincentive to engage in prohibited conduct associated with, for example, billing and claiming dental benefit, thereby preserving the integrity of the dental benefits scheme.

Section 55 – Prosecution of certain offences

This clause provides that offences against certain sections of the proposed *Dental Benefits Act 2008* shall be indictable offences. The clause also provides for the circumstances in which a court of summary jurisdiction may hear and determine proceedings in respect of those offences and the level of penalty that the court may impose.

Proposed subsection 55(1) provides that an offence against proposed section 52, 53 or 54 is an indictable offence.

Proposed subsection 55(2) provides that, despite proposed subsection 55(1), a court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in proposed subsection 55(1) if:

- the court is satisfied that it is proper to do so; and
- the defendant and prosecutor consent.

Proposed subsection 55(3) provides that if, in accordance with proposed subsection 55(2), a court of summary jurisdiction convicts a person of an offence referred to in proposed subsection 55(1), the court may impose a penalty of:

- imprisonment for a period not exceeding 6 months; or
- a fine not exceeding 10 penalty units (currently \$1,100).

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

Section 56 – Recovery of amounts paid because of false or misleading statements

This clause provides for the Commonwealth to recover excess amounts relating to the payment of a dental benefit where the payment was made as a result of a false or misleading statement.

Proposed subsection 56(1) provides that proposed section 56 will apply if:

- an amount is paid purportedly by way of a payment of dental benefit; and
- 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.

Proposed subsection 56(2) provides that the excess amount is recoverable as a debt due to the Commonwealth from the person who made the statement (or on whose behalf the statement was made), or from the estate of that person.

Proposed subsection 56(3) clarifies that proposed subsection 56(2) applies whether or not the amount was paid to the person who made the statement (or on whose behalf the statement was made), and whether or not any person has been convicted of an offence in relation to the making of the statement.

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

This clause provides for the Commonwealth to be paid interest on an excess amount recoverable under proposed section 56, where the Medicare Australia CEO has given a written notice to the person or estate claiming the excess amount (the ‘principal sum’) as a debt due to the Commonwealth. The amount of interest payable is calculated in accordance with proposed subsections 57(2) to (6).

Proposed subsection 57(2) outlines the circumstances in which interest is payable. Interest is payable on the amount of the principal sum that remains unpaid from time to time if:

- 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
- 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.

The term ‘repayment arrangement’ is defined in proposed subsection 57(6). A repayment arrangement, in relation to a principal sum, means an arrangement entered into between the Medicare Australia CEO and a person, or the person’s estate, for the repayment of the principal sum.

The term ‘relevant period’ is defined in proposed subsection 57(3). The relevant period is either:

- the period of 3 months beginning on the day after the Medicare Australia CEO gives the written notice to the person or estate claiming the principal sum as a debt due to the Commonwealth; or
- such longer period as the Medicare Australia CEO allows.

Proposed subsection 57(4) sets out the day from which interest under proposed subsection 57(2) is payable.

Proposed subsection 57(5) provides that interest under proposed subsection 57(2) is payable at the rate prescribed from time to time for the purposes of

subsection 129AC(2) of the *Health Insurance Act 1973*. The rate under regulation 26 of the *Health Insurance Regulations 1975* is currently 15 per cent per annum.

Proposed subsection 57(5) provides that interest under proposed subsection 57(2) is recoverable as a debt due to the Commonwealth from the person or estate.

Section 58 – Reduction in dental benefit payments because of previous overpayments

This clause enables the Medicare Australia CEO to reduce an amount of dental benefit payable to a person if an amount has previously been paid to the person purportedly by way of dental benefit and the amount paid exceeds the amount (if any) that should have been paid to the person. The amount of the reduction is calculated in accordance with proposed subsections 58(3) to (5).

PART 7 – DENTAL BENEFITS RULES

Section 59 – Simplified outline

This clause provides a simplified outline of Part 7 of the Bill relating to the Dental Benefits Rules.

Section 60 – Minister may make Dental Benefits Rules

This clause provides that the Minister may, by legislative instrument, make Dental Benefits Rules.

Dental Benefits Rules

Proposed subsection 60(1) provides that the Dental Benefits Rules may provide for matters:

- required or permitted by the proposed Act to be provided; or
- necessary or convenient to be provided in order to carry out or give effect to the proposed Act.

Dental Benefits Rules may confer power

Proposed subsection 60(2) provides that 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.

Dental Benefits Rules may incorporate material

Proposed subsection 60(3) provides that 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 as in force or existing at a particular time, or as in force or existing from time to time.

Proposed subsection 60(4) provides that subsection 60(3) has effect despite anything in the *Legislative Instruments Act 2003*. The effect of proposed subsection 60(4) is to display a contrary intention for the purpose of subsection 14(2) of the *Legislative Instruments Act 2003*, which provides that unless the contrary intention appears, a legislative instrument (i.e. the Dental Benefits Rules) may not make provision in relation to any matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

Proposed subsection 60(3) may be of assistance, for example, if the Dental Benefits Rules should refer to instruments made under State or Territory Acts, or other documents, relating to registration, licensing or accreditation, when specifying a class of persons to be dental providers for the purpose of paragraph 6(1)(b) of the proposed *Dental Benefits Act 2008*.

Section 61 – Dental Benefits Schedule

This clause provides that the Dental Benefits Rules may provide for a Dental Benefits Schedule that sets out:

- items specifying dental services; and
- the amount of the dental benefit payable, or a method for determining the amount of dental benefit payable, in respect of a dental service.

The Note after proposed subsection 61(1) directs readers to proposed subsection 9(3) which states that a dental benefit payable in respect of a dental service must not exceed the dental expenses incurred in respect of the dental service.

Proposed subsection 61(2) provides that the Dental Benefits Rules may set out rules for interpretation of the Dental Benefits Schedule.

Section 62 – Specification of items in Dental Benefits Schedule may be conditional

This clause provides that the specification of a dental service in an item in the Dental Benefits Schedule may be:

- unconditional; or
- subject to such conditions, limitation or restrictions as are specified in the Dental Benefits Rules (including the Dental Benefits Schedule).

These conditions, limitation or restrictions may include, but are not limited to, imposing a monetary limit on the amount of dental benefit payable in respect of:

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

PART 8 – OTHER MATTERS

Section 63 – Simplified outline

This clause provides a simplified outline of Part 8 of the Bill.

Section 64 – Additional functions of the Medicare Australia CEO

This clause provides, for the avoidance of any doubt, that in addition to the functions of the Medicare Australia CEO under the *Medicare Australia Act 1973*, the Medicare Australia CEO has the additional functions conferred on the Medicare Australia CEO by or under the proposed *Dental Benefits Act 2008*. Proposed subsection 64(2) further provides that 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*.

Paragraph 5(1)(c) of the *Medicare Australia Act 1973* provides that the Medicare Australia CEO has any functions conferred on the Medicare Australia CEO under any

other Act. Section 4A of the *Medicare Australia Act 1973* provides that the function of Medicare Australia is to assist the Medicare Australia CEO in the performance of the Medicare Australia CEO's functions.

Section 65 – Appropriation

This clause provides that dental benefits payable under the proposed *Dental Benefits Act 2008* are payable out of the Consolidated Revenue Fund, which is appropriated accordingly. This standing appropriation is similar to the standing appropriation contained in section 125 of the *Health Insurance Act 1973* in relation to Medicare benefit.

Section 66 – Delegation

Proposed subsection 66(1) provides that the Secretary may, by writing, delegate any or all of his or her powers or functions under the proposed *Dental Benefits Act 2008* to an SES employee or acting SES employee, in the Department.

Proposed subsection 66(2) provides that in exercising powers or performing functions delegated under proposed subsection 66(1), the delegate must comply with any directions of the Secretary.

The Secretary of the Department of Health and Ageing (as well as the Medicare Australia CEO) has certain powers and functions relating to authorised disclosure of protected information in accordance with Division 2, Part 5 of the proposed Act.

It is not necessary to provide for a power of delegation for the Medicare Australia CEO as subsection 8AC(1) of the *Medicare Australia Act 1973* provides that the Medicare Australia CEO may, by writing, delegate to an employee all or any of the powers or functions of the Medicare Australia CEO under 'any other Act', which would include the proposed *Dental Benefits Act 2008*.

Section 67 – Regulations

This clause provides that the Governor-General may make regulations prescribing matters required or permitted by the proposed Act, or, necessary or convenient to be prescribed for carrying out or giving effect to the proposed Act.

DENTAL BENEFITS (CONSEQUENTIAL AMENDMENTS) BILL 2008

NOTES ON CLAUSES

Clause 1 – Short Title

This clause provides for the Bill, once enacted, to be cited as the *Dental Benefits (Consequential Amendments) Act 2008*.

Clause 2 – Commencement

This clause provides that sections 1 to 3 of the proposed *Dental Benefits (Consequential Amendments) Act 2008* will commence on the day on which that proposed Act receives Royal Assent. The amendments to the various Acts listed in Schedule 1 of the Bill will commence at the same time as the proposed *Dental Benefits Act 2008*.

Clause 3 – Schedule(s)

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

SCHEDULE 1 – AMENDMENTS

Age Discrimination Act 2004

Item 1 – Schedule 2 (after table item 3)

This item would insert a reference to section 5 and Part 4 of the proposed *Dental Benefits Act 2008* into Schedule 2 of the *Age Discrimination Act 2004*.

Schedule 2 relates to provisions of laws which are exempt under subsection 39(1A) of the *Age Discrimination Act 2004*. This insertion will ensure that persons determining eligibility and implementing the Teen Dental Plan, in direct compliance with section 5 and Part 4 of the *Dental Benefits Act 2008*, will not breach the *Age Discrimination Act 2004*.

A New Tax System (Family Assistance) (Administration) Act 1999

Items 2 and 3 – section 162

Items 2 and 3 would insert a reference to the proposed *Dental Benefits Act 2008* into subsections 162(1) and (2) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

To determine eligibility for the Teen Dental Plan, Medicare Australia needs access to information held by Centrelink, in relation to Youth Allowance, ABSTUDY and Family Tax Benefit Part A, to match with Medicare information.

This amendment to the *A New Tax System (Family Assistance) (Administration) Act 1999* will allow the provision of this information in relation to Family Tax Benefit Part A. The amendments will authorise a person to obtain, make a record, disclose and use protected information under the *A New Tax System (Family Assistance) (Administration) Act 1999* for the purposes of the proposed *Dental Benefits Act 2008*.

The operation of this amendment to allow for data-matching is not only necessary to the administration and implementation of the Teen Dental Plan, but may also be used for future dental services that may be introduced under the Dental Benefits Schedule, which rely on Family Tax Benefit Part A eligibility.

Health Insurance Act 1973

Item 4 – Subsection 130(1)

Item 4 would insert a reference to the proposed *Dental Benefits Act 2008* into subsection 130(1) of the *Health Insurance Act 1973*.

The purpose of this amendment is to ensure that it is clear that it would not be an offence under subsection 130(1) of the *Health Insurance Act 1973* for a person performing functions under the proposed *Dental Benefits Act 2008* to make a record of, divulge or communicate information relating to the affairs of another person, which was acquired by him or her in the performance of his or her duties, or in the exercise of his or her powers or functions under the *Health Insurance Act 1973*.

Jurisdiction of Courts (Cross-vesting) Act 1987

Item 5 – Schedule

Item 5 would insert a reference to the proposed *Dental Benefits Act 2008* into the Schedule of the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cross-vesting Act). The Schedule relates to section 7 of the Cross-vesting Act, which relates to the institution and hearing of appeals in Federal and State Supreme courts.

The effect of the amendment would be to allow subsection 7(5) of the Cross-vesting Act to apply, which would require a matter arising under the proposed *Dental Benefits Act 2008* to be heard on appeal by the Full Federal Court, or, with special leave, by the High Court, rather than by the Full Court of a State or Territory Supreme Court.

As the *Health Insurance Act 1973* (relating to the payment of Medicare benefits) also appears in the Schedule of the Cross-vesting Act, the insertion will align the proposed *Dental Benefits Act 2008* with the *Health Insurance Act 1973*.

Medicare Australia Act 1973

Items 6 to 17 would amend the *Medicare Australia Act 1973* (MA Act) to ensure that the investigative powers of Medicare Australia may be exercised in relation to offences contained in the proposed *Dental Benefits Act 2008*.

Item 6 – section 3

Section 3 of the MA Act sets out definitions for terms that appear in the MA Act. Item 6 would insert the term ‘dental benefit’ into section 3 to ensure that where the phrase ‘dental benefit’ appears in the MA Act, the same meaning as ‘dental benefit’ in the proposed *Dental Benefits Act 2008* will apply.

Under the proposed *Dental Benefits Act 2008*, a ‘dental benefit’ means a dental benefit payable under Part 3 of the *Dental Benefits Act 2008*.

Items 7 to 15

The proposed amendments contained in items 7 to 15 insert references to offences in the proposed *Dental Benefits Act 2008* into the MA Act so that they are relevant offences for the purposes of the MA Act. This will have the effect of triggering Medicare Australia's investigative powers in relation to these offences.

Items 7 and 8 – subsection 3A(1)

The proposed amendments to subsection 3A(1) of the MA Act contained in items 7 and 8 would provide that for the purposes of the MA Act, other than Divisions 2 and 3 of Part IID, a relevant offence is an offence against the proposed *Dental Benefits Act 2008*.

The proposed *Dental Benefits Act 2008* will contain the following offences:

- Five secrecy provision offences relating to the disclosure of protected information:
 - an offence of unauthorised disclosure of protected information by an entrusted public official;
 - an offence of unauthorised disclosure of protected information which was obtained through public interest certification;
 - an offence of soliciting the disclosure of protected information;
 - an offence of soliciting, disclosing or using protected information;
 - an offence of offering to supply protected information.
- A strict liability offence of failure to set out certain particulars in an assignment of benefit agreement.
- A strict liability offence of failure to give a copy of an assignment of benefit agreement.
- Two strict liability offences of making or authorising the making of false or misleading statements in connection with claims for dental benefit, including statements made by employees, agents or associates.
- Two offences of knowingly making or authorising the making of false or misleading statements in connection with claims for dental benefit, including statements made by employees, agents or associates. These offences will carry a higher penalty than the similar strict liability offences referred to above.
- An offence of knowingly giving information that is false or misleading.

The offence provisions in the proposed *Dental Benefits Act 2008* are modelled on the offence provisions that currently appear in the *Health Insurance Act 1973*.

The proposed amendments would also provide that for the purposes of the MA Act, other than Divisions 2 and 3 of Part IID, certain offences against the *Crimes Act 1914* and the *Criminal Code* which are the subject of Medicare Australia investigatory powers in the area of Medicare benefits (as well as other areas), would also be relevant offences in relation to dental benefits. Specifically:

- an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4, or 11.5 of the *Criminal Code*, that relates to an offence against the proposed *Dental Benefits Act 2008*.

Items 9 to 11 – subsection 3A(2)

Subsection 3A(2) of the MA Act provides for definitions of relevant offence for the purposes of Division 2 of Part IID of the MA Act. Division 2 of Part IID provides for a general power by the Medicare Australia CEO to obtain information.

The proposed amendments to subsection 3A(2) contained in items 9 to 11 would provide that a relevant offence is an offence against proposed sections 50, 51, 52, 53 or 54 of the proposed *Dental Benefits Act 2008*. This would align the treatment of these new dental benefit offences with the treatment of similar Medicare benefit offences contained in sections 128A, 128B and 129 of the *Health Insurance Act 1973*.

The amendments would also provide that for the purposes of Division 2 of Part IID, certain offences against the *Crimes Act 1914* and the *Criminal Code*, which are the subject of Medicare Australia investigatory powers in the area of Medicare benefits (as well as other areas), would also be relevant offences in relation to dental benefits. Specifically:

- an offence against section 6, 7 or 7A or paragraph 86(1)(a) of the *Crimes Act 1914* that relates to an offence against section 50, 51, 52, 53 or 54 of the proposed *Dental Benefits Act 2008*; and
- an offence against section 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1, 137.2, 145.2 or 145.3 of the *Criminal Code* that relates to a claim for payment in respect of the rendering of a dental service.

Items 12 to 14 – subsection 3A(2A)

Subsection 3A(2A) of the MA Act provides for definitions of relevant offence for the purposes of Division 3 of Part IID of the MA Act. Division 3 of Part IID relates to searches in relation to possible relevant offences and civil contraventions.

The proposed consequential amendments to section 3A(2A) contained in items 12 to 14 would provide that a relevant offence is an offence against proposed sections 50, 51, 52, 53 or 54 of the proposed *Dental Benefits Act 2008*. This would align the treatment of these new dental benefit offences with the treatment of similar Medicare benefit offences contained in sections 128A, 128B, and 129 of the *Health Insurance Act 1973*.

The amendments would also provide that for the purposes of Division 3 of Part IID, certain offences against the *Crimes Act 1914* and the *Criminal Code*, which are the subject of Medicare Australia investigatory powers in the area of Medicare benefits (as well as other areas), would also be relevant offences in relation to dental benefits. Specifically:

- an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence against section 50, 51, 52, 53 or 54 of the proposed *Dental Benefits Act 2008*; and
- an offence against section 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1, 137.2, 145.2 or 145.3 of the *Criminal Code* that relates to a claim for payment in respect of the rendering of a dental service.

Item 15 – subsection 3A(3)

The amendment to subsection 3A(3) of the MA Act would provide that for the purpose of subsections 3A(2) and 3A(2A) of the MA Act, ‘dental service’ has the same meaning as in the proposed *Dental Benefits Act 2008*.

Item 16 – paragraph 8P(4)(b)

Section 8P of the MA Act allows an authorised officer to require a person to give information or produce a document that is in the person’s custody, or under the person’s control, to the Medicare Australia CEO if the authorised officer has reasonable grounds for believing that a relevant offence or civil contravention has been or is being committed and that the information required is relevant to the offence or contravention.

Subsection 8P(4) provides that a patient may be required to provide the Medicare Australia CEO with records containing their own clinical details where those records relate to treatment in respect of which Medicare benefits have been paid or pharmaceutical benefits have been supplied.

The proposed amendment extends the application of subsection 8P(4) to records relating to treatment in respect of which dental benefits have been paid.

The proposed consequential amendments also make an adjustment to the wording in relation to pharmaceutical benefits. This is to ensure that the provision more accurately reflects the definition of ‘pharmaceutical benefit’ set out in Part VII of the *National Health Act 1953*.

Item 17 – subsection 8U(5)

Section 8U of the MA Act allows an authorised officer to conduct searches of premises, with the consent of the occupier, if the authorised officer has reasonable grounds for believing that a relevant offence or relevant civil contravention is being committed, or has been committed within the previous 60 days.

Subsection 8U(5) provides that section 8U applies to premises associated with the rendering of services attracting the payment of Medicare benefits or with the supply of pharmaceutical benefits.

The proposed amendment extends the application of subsection 8U(5) to premises associated with the rendering of services attracting the payment of dental benefits.

The proposed amendment also adjusts the wording in relation to pharmaceutical benefits to ensure that the provision more accurately reflects the definition of ‘pharmaceutical benefit’ set out in Part VII of the *National Health Act 1953*.

Sea Installations Act 1987**Item 18 – Schedule**

This item would insert a reference to the proposed *Dental Benefits Act 2008* into the Schedule of the *Sea Installations Act 1987*, which relates to section 45 of the *Sea Installations Act 1987*. This will have the effect of allowing the provisions of the

proposed *Dental Benefits Act 2008* to apply to persons on sea installations located in adjacent areas.

This insertion aligns with other health benefits that apply to persons on sea installations located in adjacent areas, as both the *Health Insurance Act 1973* and the *National Health Act 1953* are included in the Schedule of the *Sea Installations Act 1987*.

While services under the Teen Dental Plan are not likely to be provided on sea installations, a consistent approach to the payment of Medicare and dental benefits is desirable if other patient groups and a wider range of dental services are covered by the Dental Benefits Schedule in the future.

Social Security (Administration) Act 1999

Items 19 and 20 – section 202

Item 19 would omit all the words appearing after ‘security law’ in subsection 202(1) of the *Social Security (Administration) Act 1999*, and substitute ‘, the *Farm Household Support Act 1992*, the *Dental Benefits Act 2008* or the Family Homelessness Prevention and Early Intervention Pilot’.

Item 20 would omit ‘or the *Farm Household Support Act 1992*’ in subsection 202(2)(d) of the *Social Security (Administration) Act 1999*, and substitute ‘, the *Farm Household Support Act 1992* or the *Dental Benefits Act 2008*.’

Items 19 and 20 would effectively insert a reference to the proposed *Dental Benefits Act 2008* into subsections 202(1) and (2) of the *Social Security (Administration) Act 1999*.

To determine eligibility for the Teen Dental Plan, Medicare Australia needs access to information held by Centrelink, in relation to Youth Allowance, ABSTUDY and Family Tax Benefit Part A, to match with Medicare information.

This amendment to the *Social Security (Administration) Act 1999* will allow provision of this information in relation to Youth Allowance. The amendment will authorise a person to obtain, make a record, disclose and use protected information under the *Social Security (Administration) Act 1999* for the purposes of the proposed *Dental Benefits Act 2008*.

The operation of these amendments to allow for data-matching is not only necessary to the administration and implementation of the Teen Dental Plan, but may also be used for future dental services that may be introduced under the Dental Benefits Schedule, which rely on Youth Allowance eligibility.

Student Assistance Act 1973

Items 21 and 22 – section 351

Items 21 and 22 would insert a reference to the proposed *Dental Benefits Act 2008* into subsections 351(1) and (2) of the *Student Assistance Act 1973*.

To determine eligibility for the Teen Dental Plan, Medicare Australia needs access to information held by Centrelink, in relation to Youth Allowance, ABSTUDY and Family Tax Benefit Part A, to match with Medicare information.

This amendment to the *Student Assistance Act 1973* will allow the provision of information in relation to ABSTUDY. The amendment will authorise a person to obtain, make a record, disclose and use protected information under the *Student Assistance Act 1973* for the purposes of the proposed *Dental Benefits Act 2008*.

The operation of these amendments to allow for data-matching is not only necessary to the administration and implementation of the Teen Dental Plan, but may also be used for future dental services that may be introduced under the Dental Benefits Schedule, which rely on ABSTUDY eligibility.