



Dental Benefits Bill 2008

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Dental Benefits Bill 2008

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Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Dental Benefits Bill 2008 and the Dental Benefits (Consequential Amendments) Bill 2008, establish the legislative framework for the provision of dental benefits for eligible teenagers under the Government's Teen Dental Plan, from 1 July 2008.

The Dental Benefits Bill 2008 also provides the legal basis for the provision of other dental benefits through the establishment of a Dental Benefits Schedule, allows the Minister for Health and Ageing to make Dental Benefits Rules (the Rules), establishes provisions for the protection and disclosure of protected information, creates offence provisions and provides for the appropriation of funds.

Background

Dental health in Australia

Despite a significant reduction in dental caries (tooth decay) over the last few decades, particularly in children, only some of this improvement has carried through to adulthood, and there remain high levels of oral disease and disability among Australian adults.¹ With estimates of over 19 million untreated decayed teeth, dental caries remains the most prevalent chronic condition affecting health reported in the Australian population.² In

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1. Australian Health Minister's Conference, National Advisory Committee on Oral Health [Healthy mouths healthy lives: Australia's National oral health plan 2004-2013](#), July 2004, p. 6.
 2. Australian Institute of Health and Welfare, [Chronic diseases and associated risk factors in Australia, 2001](#), AIHW, 2002, p. 75.

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addition, some 50 000 people end up in hospital each year with preventable dental conditions.³

Meanwhile, affordable dental care remains difficult to access, with reports of 650 000 people waiting for public dental services.⁴ Expenditure on dental care in Australia is largely borne by individuals, with government funding for dental services low in comparison. In 2005–06, the combined expenditure of all levels of Australian government on dental services totalled \$995 million, comprising \$480 million by the Commonwealth and \$515 million by the States and Territories. Individuals spent \$3.5 billion on dental services, the second most costly individual health expense (behind medications).⁵

Labor's Dental Program

During the 2007 election, Labor promised to provide funding to establish two new dental programs: a Commonwealth Dental Health Scheme and the Teen Dental Plan. Labor argued that the Howard government's dental program known as the Allied Health and Dental Care Initiative (AHDCI), which was first introduced in 2004 and subsequently revised and expanded in the 2007–08 Budget, had failed and was poorly targeted.⁶ Labor proposed redirecting funding for this scheme, some \$377.6 million over four years, to the establishment of a Commonwealth Dental Program and a Teen Dental Plan.⁷

Details of both the proposed Teen Dental Plan and the Commonwealth Dental Health Program are provided by the Minister for Health and Ageing in her second reading speech for this Bill. However, this Bill, along with the *Dental Benefits (Consequential Amendments) Bill 2008*, proposes only the establishment of the Teen Dental Plan.

Together, these proposed initiatives total some \$780 million in Commonwealth government commitment to funding dental services, a significant expansion on the funding commitment under the AHDCI.

Brief details of both schemes are provided below.

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3. The Hon. Nicola Roxon, Minister for Health and Ageing, 'Second Reading Speech: Dental Benefits Bill 2008', *Debates*, House of Representatives, 29 May 2008, p. 61.
 4. *ibid.*
 5. Australian Institute of Health and Welfare, *Health Expenditure Australia 2005-06*, AIHW, Canberra, 2007, Table A3.
 6. The Hon. Kevin Rudd, Prime Minister and the Hon. Nicola Roxon, Minister for Health and Ageing, *Federal Labor clear dental backlog by establishing a Commonwealth Dental Health Program*, joint media release, 18 September 2007.
 7. The Hon. Nicola Roxon, Minister for Health and Ageing, *First steps in implementing new Commonwealth Dental Health Program*, media release, 2 March 2008.

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Commonwealth Dental Health Program

During the 2007 election, Labor promised up to \$290 million to fund a dental program that it claimed would assist up to one million Australians access public dental treatment. The proposal outlined by the Minister in her Second Reading Speech for this Bill gives further details of this program. Under the proposal, funding would be made available to States and Territories to assist them clear public dental waiting list backlogs (estimated at 650 000), by funding up to one million additional dental services over the next three years.

Currently all States and Territories provide some form of public dental care, primarily through public dental clinics or hospitals (although some also use private dentists). During 2005–06, the combined expenditure on public dental services by State and Territory governments was \$515 million; with NSW spending the most (\$134 million) and the ACT the least (\$8 million).⁸ Eligibility for public dental services is often means-tested, so that it is targeted to concession card holders and those on low incomes who cannot afford to access private dental services.

The new Commonwealth Dental Health Program (CDHP) is modelled on the former Keating Government's Commonwealth Dental Health Program. This program provided \$278 million to the States and Territories over four years from 1993–94 to provide dental services to adult concession card holders while also maintaining baseline levels of dental funding. The program was terminated early by the Howard government in 1996.

Funding for the new CDHP is \$290 million over three years, which represents an annual non-inflation adjusted commitment similar to the old CDHP (which had \$278 million over four years). Like the old CDHP, the new CDHP would also require the States and Territories to maintain their level of funding for dental services, as well as report on spending, services and waiting lists.⁹ However, unlike the former CDHP which targeted adult concession card holders, the new program would require the States and Territories to target other priority groups, specifically those with a chronic disease, indigenous people and pre-school children.¹⁰

The provision of dental services under the current AHDCI program will cease from 1 July 2008. Patients who have already commenced dental treatment will continue to receive benefits for services up to 30 June 2008. However, new patients ceased to be accepted for the dental component of the AHDCI from 30 March 2008.¹¹

8. Australian Institute of Health and Welfare, op. cit., Tables B1–B25.

9. The Hon. Nicola Roxon, Minister for Health and Ageing, Second Reading Speech, op. cit.

10. *ibid.*

11. The Hon. Nicola Roxon, Minister for Health and Ageing, *First steps in implementing new Commonwealth Dental health program*, media release, 2 March 2008. See also the 'Health

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Full details of the allocation of funding for the proposed CDHP to the States and Territories have yet to emerge; the Minister for Health and Ageing describes discussions with the States and Territories as being ‘well advanced’.¹² Given that the government has indicated it wants to reduce the current number of funding agreements with the States, it might have sought to include the arrangements for the proposed CDHP as part of a larger funding agreement such as the Australian Health Care Agreements (AHCAs). However, as negotiations for the AHCAs have now been delayed, it seems likely that a separate agreement will be required to manage the funding arrangements for the CDHP.

Teen Dental Plan

Details of the Teen Dental Plan were formally announced in March 2008.¹³ From 1 July 2008, eligible families—those in receipt of Family Tax Benefit A (FTB(A))¹⁴, or teenagers in receipt of ABSTUDY or Youth Allowance—would be provided with a voucher to allow them to access an annual dental preventative check for teenagers aged between 12 to 17. The voucher would provide a dental benefit for the service up to the value of \$150. The dental check-up can be delivered by either a public or private dentist. The government estimates that this would assist around one million teenagers to access preventative dental care.¹⁵

It is proposed that the Teen Dental Plan would operate in a similar way to Medicare arrangements through a new Dental Benefits Schedule, also to be established by this Bill, and be administered by Medicare Australia. The Government estimates that around one million teenagers would be eligible for the vouchers in any one year. This equates to approximately 55 per cent of the age eligible population.¹⁶

Insurance (Dental Services) Amendment and Repeal Determination 2008’, tabled by the Minister for Health and Ageing on 13 May 2008.

12. The Hon. Nicola Roxon, Minister for Health and Ageing, ‘Second Reading Speech’, op. cit.
13. The Hon. Kevin Rudd, Prime Minister and the Hon. Nicola Roxon, Minister for Health and Ageing, *One million Australian kids to benefit from Teen Dental Plan*, media release, 2 March 2008.
14. Some 1.7 million families received benefits under FTB (A) in 2006–07. Department of Families, Community Services and Indigenous Affairs, *Annual Report 2006–07*, Canberra, p. 167.
15. The Hon. Nicola Roxon, Minister for Health and Ageing, ‘Second Reading Speech’, op. cit.
16. Calculated by Malcolm Park (Senior Researcher, Statistics Section, Parliamentary Library) using Australian Bureau of Statistics (ABS) population estimates.

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Dental Benefits Schedule

Section 61 of this Bill proposes to allow for the establishment of a new Dental Benefits Schedule (DBS) for the payment of dental benefits. The DBS is to be modelled on the Medicare Benefits Schedule (MBS) which provides for the payment of benefits under the *Health Insurance Act 1973* (Health Insurance Act).

However, unlike the MBS which provides for ‘universal benefits’, this Bill proposes provisions that explicitly restrict benefits provided under the DBS to persons specified by age and income status.

The proposed Rules would specify what items in the DBS would attract a Medicare benefit, and the amount that would be payable for each item. However, the Minister for Health and Ageing has indicated that the preventative dental check could include an oral examination, and where required, x-rays, scale and clean and other preventative services. These include fluoride application, fissure sealing and oral hygiene and dietary advice.¹⁷

There is no proposal to index dental benefits listed in the DBS.

Vouchers and payment of benefits

The Teen Dental Plan proposes that eligible teenagers would be issued with vouchers by Medicare Australia, which would entitle them to receive a preventative check from a private or public sector dentist that is reimbursable by Medicare. It is proposed that these vouchers would be issued at regular intervals during the calendar year, commencing from July 2008 up to the end of October 2008, and thereafter in subsequent calendar years at the beginning of the year and then on a monthly basis until October 31, for use before the end of the calendar year. Vouchers are also used by some States and Territories to provide access to dental services.¹⁸

The Bill proposes billing arrangements that are similar to what currently occurs under Medicare, which would allow for a range of billing practices. Under the proposed assignment of dental benefits provisions, the Bill would allow provider dentists to bulk bill Medicare Australia for the check-up service, which is then considered a full payment for the service, so the teenager (or family) would pay nothing. Alternatively, the Bill would allow the dentist to bill the teenager (or his or her family) who can then request a cheque from Medicare Australia be issued in the name of the dental provider (up to the value of

17. The Hon. Nicola Roxon, Minister for Health and Ageing, ‘Second Reading Speech’, op. cit.

18. For example, the Oral Health Fee for Service Scheme in NSW allows eligible patients to access private dental services using a voucher issued by the NSW government. See NSW Department of Health, ‘Oral Health Fee for Service Scheme’, http://www.health.nsw.gov.au/policies/pd/2006/PD2006_087.html, accessed on 3 June 2008.

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\$150). The teenager (or family) would then be responsible for providing the cheque to the dental provider (along with any outstanding fee). The third method of billing proposed under this Bill is where the teenager (or family) pays the dental bill, and then makes a claim to Medicare Australia for a rebate (up to \$150).

Of the three billing practices described above, only one, bulk billing, guarantees that the teenager (or family) would pay nothing for the service. As the Government's own estimates suggest the cost of a dental check-up is around \$290¹⁹ and dentists are free to set their own fees, patients accessing dental benefits who are not bulk billed may be exposed to significant out-of-pocket costs. Data on levels of bulk billing by dentists who participated in the AHDCI are not available, so it is not possible to estimate what levels of bulk billing might be achieved under the Teen Dental Plan.

The Bill proposes to prevent the use of private health insurance to 'top-up' the gap amount between the rebate amount (\$150) and the fee charged by the dentist. This is also consistent with current Medicare arrangements which do not allow this practice.

The Bill proposes that services can be provided by a dental provider, or on behalf of a dental provider under the supervision of a dentist. This would allow for services to be delivered by a dental hygienist or dental therapist under the supervision of a dentist.

Basis of policy commitment

The measure is a 2008–09 Budget commitment, which delivers on an election promise.

Position of significant interest groups/press commentary

As noted previously, it is proposed that the two new programs—the proposed Teen Dental Plan and the CDHP—replace the former Howard Government's AHDCI which the current Government describes as a 'failed scheme' and 'poorly targeted'.²⁰

Under the AHDCI scheme, people with chronic conditions who were being managed by a GP could access dental benefits through Medicare. However, uptake of services under the scheme was initially slow; in its first three years of operation some 16 000 services were provided and just \$1.8 million in benefits were paid.²¹ Following changes to the scheme

19. The Hon. Kevin Rudd, Prime Minister and the Hon. Nicola Roxon, Minister for Health and Ageing, *Federal Labor to introduce Medicare Teen Dental Plan*, media release, 11 November 2007.

20. The Hon. Nicola Roxon, Minister for Health and Ageing, *op. cit.*

21. From July 2004 to June 2007: Amanda Biggs, Health Insurance Amendment (Medicare Dental Services) Bill 2007, *Bills Digest*, no. 35, 2007-08, Parliamentary Library, Canberra, p. 3.

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that applied from November 2007, uptake of services and payment of benefits increased substantially.²² From November 1 2007 to March 31 2008, some 171 000 dental services were accessed and \$21.8 million in Medicare benefits were paid.²³

Some such as Professor Hans Zoellner, Chairman of the Association for the Promotion of Oral Health, have called for the retention of the AHDCI scheme. He argues, that although experiencing initial problems, recent increases in the uptake of the scheme contradict Labor's argument that the AHDCI scheme was not working. He further argues that funding the two proposed replacement programs 'was money poorly spent', because there were 'no strings attached' for the funding to the States, and the dental checks for teenagers do not include treatment services.²⁴ As noted by another commentator, the proposed Teen Dental Plan does not include funding for further appointments to treat either established disease or prevent future problems, so families may face additional costs associated with treating dental problems identified in the check-up.²⁵ Others have expressed concern that the proposed \$150 voucher 'will not go far enough in the provision of preventative care'.²⁶

The Australian Dental Association (the ADA) has raised similar concerns. While broadly welcoming the Commonwealth Government taking 'responsibility' for dental health, the ADA has nevertheless expressed the view that the two new programs could be 'better linked'.²⁷ The ADA also has concerns that the Teen Dental Plan is too narrow, and fails to provide a 'complete course of treatment', which it argues, could lead to teenagers who require more treatment, moving back onto public sector dental waiting lists.

If this occurs and substantial numbers of teenagers move onto public dental waiting lists, it is not clear if the proposed new CDHP would be sufficiently resourced to provide public

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22. For a full discussion of the changes implemented to the AHDCI see Amanda Biggs, Health Insurance Amendment (Medicare Dental Services) Bill 2007, *Bills Digest*, no. 35, 2007–08, Parliamentary Library, Canberra.
 23. Medicare Statistics, Group N1 Dentist Services, Group N2 Dental Specialist services, Group N3 Dental prosthetics services, https://www.medicareaustralia.gov.au/statistics/dyn_mbs/forms/mbsgtab4.shtml, accessed on 2 June 2008.
 24. Siobhain Ryan, 'Late rush for scheme belies reason for axing', *Weekend Australian*, 17 May 2008, p. 10.
 25. Wendell Evans, 'Budget missed teenage dental needs', *Weekend Australian*, 17 May 2008, p. 31.
 26. Lesley Russell, 'An analysis of the 2008–09 Health Budget', Australian Health Policy Institute, [no date], <http://www.ahpi.health.usyd.edu.au/news/LRBudget0809.pdf>, accessed on 4 June 2008.
 27. Australian Dental Association, *Government fails to deliver on dental health*, media release, 13 May 2008.

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dental services for the new groups that the Government now wants it to target. These include those with chronic diseases who would no longer have access to the AHDCI, pre-school children, and indigenous Australians. State-based public dental programs already provide services to people on low incomes, and to students through school dental services, but as has been noted, there are substantial waiting lists for many of these services, and although the government has committed \$290 million over three years for the new CDHP, some argue that this is less than was provided to the States under the old CDHP.²⁸

Further, while the Minister for Health and Ageing has allowed for public sector dentists to provide the preventative dental check-up, it is not clear how these might be provided in a timely manner, given already long waiting lists for public dental services, and the questions over the levels of funding for the proposed CDHP.

As previously noted, private dentists are free to set their own fees; the fee for a comprehensive dental check-up has been estimated at \$290, significantly higher than the maximum rebate of \$150 proposed under the Teen Dental Plan. Although the Bill proposes to allow dentists to bulk bill, it is not clear how many would choose this option. Some dentists may find the proposed requirements to use approved forms for assignment of benefits and the proposed offence provisions if they fail to do so, disincentives to bulk bill.

If the estimate of \$290 for a dental check-up is correct, and a number of dentists decline to participate in bulk billing arrangements, some families might face high out of pocket costs for the dental check up, which are not reimbursable by private health insurance. Although families with high out of pocket costs associated with out-of-hospital services normally have these expenses ‘counted’ towards the Medicare Safety Net²⁹—which provides reimbursement once certain spending thresholds are reached—these arrangements would not apply to the dental benefits items.³⁰ Those eligible for the Teen Dental Plan are by definition on modest incomes, but they may face additional costs in accessing the dental check-up being offered under the Teen Dental Plan, without the support of the Medicare Safety Net.

Another resource constraint that is likely to be faced in meeting the objectives of both the Teen Dental Plan and the CDHP is the ongoing shortage in the dentistry workforce. It has been estimated that by 2010 there would be 1500 fewer oral health providers than would

28. *ibid.*

29. The Medicare Safety Net introduced in March 2004, is designed to assist patients with high, cumulative out-of-pocket medical costs by providing reimbursement for out-of-pocket costs incurred for medical treatment provided outside a hospital, once certain thresholds are reached. The Safety Net provides reimbursement for 80 per cent of the total out-of-pocket cost once spending exceeds \$529.30 for families in receipt of FTB(A).

30. Personal communication, Department of Health and Ageing, 4 June 2008.

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be needed just to maintain current levels of access.³¹ In particular, the distribution of dentists in regional and remote areas remains significantly less than in metropolitan areas.³² The 2008–09 Budget also allows for additional funding to establish a school of dentistry at James Cook University³³, but it will take some years before dentists graduating from this facility will enter the dentistry workforce.

Although the Teen Dental Plan proposes to allow dental services to be delivered by providers other than dentists, such as dental therapists and dental hygienists, the capacity of this workforce to deliver services is also limited in some areas. While there have been increases in this workforce since 2000, the rural, regional and remote areas remain less well-served as compared to metropolitan regions.³⁴

The requirement under the Teen Dental Plan that vouchers be used before the end of the calendar year in which they have been issued, may create problems if families are unable to arrange a dental check up before the end of that calendar year. This might be a particular problem for families with older teenagers who qualify for FTB(A) after October, when the regular issuing of vouchers is proposed to cease. Although the Bill proposes to allow a family to request a voucher after this date, to be issued up to 15 days before the end of the year, it may still be difficult to arrange a dental appointment before the eligibility for the voucher expires at the end of the calendar year (for example, if the teenager turns 18). The ADA has criticised the proposed scheme for failing to extend services to an older age group—people up to their early twenties—as this age group ‘have shown a significant susceptibility to dental decay’.³⁵

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31. Australian Health Minister’s Conference, National Advisory Committee on Oral Health, op. cit, p. v.
 32. On average metropolitan areas are well served with dentists with 56.2 dentists per 100 000 population. This declines to 33.6 per 100 000 in inner regional areas, 22.6 per 100 000 in outer regional areas and 22.9 per 100 000 in remote areas: D N Teusner, ‘Geographic distribution of the dentist labour force’, *Australian Dental Journal*, vol. 50, no. 2, 2005, pp. 119-22.
 33. The 2008–09 Budget committed \$49.5 million for capital infrastructure and 60 dentistry places each year. See Australian Government, ‘Part 2: Expense Measures’, *Budget Measures 2008–09: Budget Paper No. 2*, p. 134.
 34. D N Teusner, A J Spencer, *Projections of the Australian Dental Labour force*, Australian Institute of Health and Welfare, Canberra, 2003; the Australian Institute of Health and Welfare, ‘Dental prosthetist labour force in Australia, 2003’, *AIHW Dental Statistics and Research Unit Research Report*, no. 25, Adelaide, 2006; the Australian Institute of Health and Welfare, ‘Dental hygienist labour force in Australia, 2003’, *AIHW Dental Statistics and Research Unit Research Report*, no. 22, Adelaide, 2005.
 35. Australian Dental Association, op. cit.

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The proposed introduction of a means-test in order to access dental benefits under the Teen Dental Plan merits some further comment, although as yet, it has not attracted comments from stakeholder groups. The introduction of a means-test to a Medicare program (which this scheme is characterised as) represents a significant shift from the universal principles that have been recognised as underpinning Medicare. The Teen Dental Plan proposes to target benefits to those defined as being in financial need through the application of a means test. Medicare itself has always been characterised as a universal health insurance system. The reason for this characterisation is that the two cornerstones of Medicare are based on universal access (based on clinical need) and universal insurance (via the Medicare levy) for those covered by Medicare.³⁶ Although no commentary has appeared on this issue in relation to this Bill, it may yet become contentious, particularly given that in the past Labor has supported the universal principles of Medicare.³⁷

Committee Consideration

The Senate Standing Committee for the Scrutiny of Bills (the Committee) reviewed the Bill and made specific comment on the following proposed provisions in the Bill:

- strict liability offences in proposed subsections 48(2), 49(2), 50(2) and 51(2), and
- incorporation of extrinsic material in proposed subsection 60(3).

Strict liability offences

The Committee noted that **proposed subsections 48(2), 49(2), 50(2) and 51(2)** of the Bill would create strict liability offences, for which the Committee generally requires an explanation to be provided in the Explanatory Memorandum to the Bill. In this case, the Committee noted the Government's reference to consistency with existing strict liability

36. Amanda Elliot, 'Is Medicare Universal?', *Research Note*, no. 37, Parliamentary Library, 2002–03, <http://www.aph.gov.au/library/pubs/RN/2002-03/03rn37.htm>, accessed on 2 June 2008.

37. For example, see comments by Nicola Roxon describing Medicare as a 'universal entitlement' in the Hon. Kevin Rudd, Prime Minister and the Hon. Nicola Roxon, Minister for Health and Ageing, *New directions for Australia's health: taking responsibility: Labor's plan for ending the blame game on health and hospital care*, August 2007, http://www.alp.org.au/download/070823_dp_new_directions_for_australian_health.pdf, accessed 11 June 2008. Also in a discussion paper on children's health, Labor claimed that under the former Howard government there has been 'a major erosion of the universality of Medicare and the Pharmaceutical Benefits Scheme, which are increasingly two-tiered systems, with access to services and essential medicines based on ability to pay': see 'Goals for Aussie kids: Labor's Children's Health Discussion paper', Australian Labor Party, February 2006.

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offences in the Health Insurance Act, as well as the need to reflect current criminal law policy. The Committee stated that:

seeks the Minister's advice whether the 'current criminal law policy' which is referred to is that set out in the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, and, if so, whether the explanatory memorandum might have made that fact clear.³⁸

In addition, the Committee stated:

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.³⁹

Incorporating extrinsic material

The Committee noted that **proposed subsection 60(3)** would allow the Rules to incorporate extrinsic material, which would contravene subsection 14(2) of the *Legislative Instruments Act 2003* (Legislative Instruments Act).

The Committee stated that it:

notes that the explanatory memorandum (page 27) seeks to justify the incorporation of extrinsic material as in force from time to time on the basis that it '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 bill. The Committee notes, however, that the bill does not place any limits on the extrinsic material that may be applied, adopted or incorporated. That is, it does not limit it to the sorts of material cited in the example.⁴⁰

The Committee concluded that:

This clause may insufficiently subject the exercise of legislative power to parliamentary scrutiny, and seeks the Minister's advice as to whether there might not be some limit put upon the exercise of this power.⁴¹

38. Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, no. 4, 4 June 2008, p. 20.

39. *ibid.*

40. *ibid.*, p. 21.

41. *ibid.*

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Financial implications

The *Explanatory Memorandum* details the budgeted total cost for the Dental Benefits Bill 2008 and the Dental Benefits (Consequential Amendments) Bill 2008 as being \$490.7 million over five years. This is less than the \$510 million in funding over three years originally promised in the lead-up to election.⁴²

The budgeted costs include funding for Medicare Australia and Centrelink to introduce administrative changes and to manage the program. The table below shows the annual budgeted costs:

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

Source: Explanatory Memorandum

The government estimates that around 1.1 million teenagers would be eligible for the vouchers each year.⁴³ However, if all the eligible teenagers accessed the scheme each year and claimed up to the maximum rebate of \$150, then the scheme could cost around \$165 million per year, well in excess of the annual forecast costs in the Explanatory Memorandum.⁴⁴ This might suggest that the government does not expect that all of the proposed preventative services would be fully utilised, or that all eligible teenagers would access the scheme.

Main provisions

Part 1—Preliminary

Proposed sections 3 to 7 outline the Act, list definitions used in the Act, describe the meaning of an eligible dental patient with reference to age and income status, describe the meaning of a dental provider and the meaning of a service rendered on behalf of a dental provider.

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42. The Hon. Kevin Rudd, Prime Minister and the Hon. Nicola Roxon, Minister for Health and Ageing, *Federal Labor to introduce Medicare Teen Dental Plan*, op. cit.
 43. Explanatory Memorandum, op cit., p. 1.
 44. Proposed section 65 is a standing appropriation, similar to the standing appropriation in relation to Medicare benefits.

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Part 2—Entitlement to benefits

Proposed section 9 would create a basic entitlement to a dental benefit. **Proposed section 9** also provides that the amount payable for the dental service would be in accordance with the proposed Rules, and that this amount would not exceed the amount of the dental service expense (that is, the fee charged by the dentist).

Part 3—Payment of dental benefits

Division 2 – Payment of dental benefits

Proposed section 11 would authorise Medicare Australia to pay a dental benefit, which may be credited into a bank account, as specified by the proposed Rules or in a manner as determined by the Chief Executive Officer (the CEO) of Medicare Australia.

Proposed section 12 relates to the assignment of benefits (bulk billing), which would allow for the person and the dental provider (or his or her agent pursuant to **proposed subsection 12(4)**) to enter into an agreement, in the approved form, for the person to assign his or her right to the dental benefit as payment in full to the dental provider (or his or her agent pursuant to **proposed subsection 12(4)**) for the dental service.

Proposed section 13 would allow for the assigned benefit to be paid into a bank account as specified by the proposed Rules or in a manner as determined by the CEO of Medicare Australia.

Proposed section 14 would require that a cheque be provided to a person by Medicare Australia, drawn in favour of a dental provider who had rendered dental services (or on whose behalf dental services were rendered) to that person, if requested to do so by that person who has not paid for the dental service.

Division 3 – Claims for dental benefits

Proposed section 15 would allow a claim for an unassigned dental benefit to be lodged with Medicare Australia in the approved form and as specified in the proposed Rules. The proposed section would also allow for a claim for assigned dental benefits under **proposed section 12** to be made within two years after that service is rendered and would allow for this claim to be sent electronically.

Proposed section 16 would allow for a person to apply to the CEO of Medicare Australia for a longer period in which to lodge a claim for assigned benefits and gives the CEO of Medicare Australia discretionary power to allow this.

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Division 4 – When dental benefit is not payable

Proposed section 17 sets out the financial recording requirements of dental providers (or their employees) that must be satisfied for a dental benefit to be payable. These include recording the account or receipt of fees, voucher and assignment of benefit details, the particulars of which are specified in the proposed Rules.

Proposed section 18 would allow for the proposed Rules to specify the conditions which must be satisfied before a dental benefit is payable, including conditions relating to dental services rendered by or on behalf of, or an arrangement with a Commonwealth, State or Territory Government; local governing body or an authority established by law.

Proposed section 19 provides that a dental benefit is not payable if the person has a complying health insurance policy (as defined in the *Private Health Insurance Act 2007* (the Private Health Insurance Act), covering that person’s liability to pay expenses related to a dental service; and that person uses his or her private health insurance to receive a benefit for the dental service.

Proposed section 20 provides that a dental benefit is not payable if the dental service was rendered as part of an episode of hospital treatment, or hospital substitute treatment (as defined under the Private Health Insurance Act).

Proposed section 21 provides that a dental benefit may not be payable if the Rules so specify. **Proposed section 21** also provides examples of such circumstances.

Part 4—Dental benefits vouchers

Although this part deals specifically with the issuing of vouchers under the proposed Teen Dental Plan, the Explanatory Memorandum points out that the provisions in this part could allow vouchers to be issued for other dental services in the future.⁴⁵

Proposed section 23 provides that a person is eligible for a voucher provided they satisfy the age requirement and the means-test requirement in **proposed section 24** below. The section specifies that the person must be aged at least 12 years (or will turn 12 in the particular calendar year), but is under 18 years of age on 1 January of that calendar year.

Proposed subsection 24(1) sets out a ‘basic rule’ to be applied when assessing whether a person satisfies the means test. Under the ‘basic rule’, a person will satisfy the means-test if he or she:

- receives an ABSTUDY payment pursuant to **proposed subsection 24(4)**

45. Explanatory Memorandum, p.9.

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- receives youth allowance
- is an FTB(A) teenager, or
- belongs to a class of persons as specified by the proposed Rules.

Proposed subsection 24(2) explains when a person would be considered an FTB(A) teenager.

In some cases, there is a ‘section 16 determination’ in force. A ‘section 16 determination’, as defined in **proposed subsection 24(3)**, is a determination under the *New Tax System (Family Assistance) Act 1999*, and refers to a situation where a person is eligible to receive a FTB(A) payment by instalment, including one who chooses to defer payment of the instalment in order to avoid a potential FTB(A) debt. A ‘section 16 determination’ may also apply to the teenager’s partner.

A teenager would also be considered an FTB(A) teenager if other considerations are satisfied, including:

- the teenager or teenager’s partner having received an FTB lump sum payment (as defined in **proposed subsection 24(3)**) in the previous financial year, or
- an FTB recipient in relation to the teenager (as defined in **proposed subsection 24(3)**) received an FTB lump sum payment, as defined, in the previous year.

The Rules may also specify classes of persons who would be regarded as FTB(A) teenagers.

Proposed section 25 would allow for the proposed Rules to specify the time, or method of calculating the time, at which a person satisfies the means test, as well as when a person is an FTB(A) teenager.

Proposed section 26 would allow for the Rules to specify that each eligible person in a specified class of eligible persons qualifies for a voucher in a calendar year relating to a specific dental service.

Division 3 – Issue of vouchers

Proposed section 27 provides for the issuing of vouchers by the CEO of Medicare Australia. Vouchers would normally be issued before 31 October of a calendar year, in order to limit the distribution of vouchers late in the year where there would be limited opportunity to use them. However, this proposed provision would also allow for a voucher to be issued before the end of the calendar year, if a person becomes eligible, but not if the request is made within 15 days of the end of the calendar year. **Proposed subsection 27(5)** would allow for more than one voucher to be issued in a calendar year (for example, in the case where there are equal shared care arrangements), however only one dental benefit is payable.

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The Rules may specify alternative dates and/or time limits to what is provided in the Bill. In addition, the Rules may specify when more than one voucher for a dental service may be issued for a person in any calendar year.

Proposed section 27 applies subject to **proposed sections 28** and **29**.

Proposed section 28 provides that a voucher is not required to be issued if a person dies before the voucher is issued.

Proposed section 29 would allow the Rules to specify circumstances where a voucher does not have to be issued.

Proposed section 30 provides that the voucher must specify the type of dental service to which it gives access. In the case of the Teen Dental Plan, this is a preventative dental check-up.

Proposed section 31 specifies that a voucher would remain effective from the date it is issued until the end of the calendar year. However, the Rules may specify a different time of effect.

Proposed section 32 would allow for the proposed Rules to provide for other matters, including matters relating to requests for vouchers, the period of effect of vouchers, the persons to whom vouchers are to be issued and lost vouchers.

Part 5 – Disclosure of protected information

Proposed subsection 34(1) provides that it is an offence for an entrusted public official (or former entrusted public official), with a duty, function or power under the legislation, to disclose protected information to another person, if such disclosure is not authorised under Part 5 of the proposed Act. Such an offence attracts a maximum penalty of imprisonment for two years or 120 penalty units⁴⁶, or both.

Proposed subsection 34(2) identifies who would be an ‘entrusted public official’, listing the CEO, employees, or consultants of Medicare Australia, the Minister for Health and Ageing, as well as the Secretary of the Department of Health and Ageing and any person employed or engaged by that Department.

‘Protected information’ is defined in **proposed subsection 34(3)** as information relating to a person other than the person who obtained it in the course of exercising his or her duties, functions or powers under the proposed Act; or such information if obtained by way of an authorised disclosure on public interest grounds under **proposed section 36**.

46. A penalty unit is currently \$110: *Crimes Act 1914* subsection 4AA(1).

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Proposed sections 35 – 41 outline the circumstances in which a disclosure of protected information is authorised under the Act. These include when such information:

- is disclosed during the course of one’s own official duties, functions or exercise of powers under the proposed Act; or to enable someone else to perform duties or functions, or to exercise powers, under the proposed Act; or the *Medicare Australia Act 1973* (Medicare Australia Act)
- is certified⁴⁷ to be in the public interest and disclosure is in accordance with the Rules
- is authorised (either expressly or impliedly) to be disclosed to a particular person by the person to whom the information relates
- reasonably needs to be disclosed to enforce the criminal law, a law imposing a pecuniary penalty or the protection of public revenue⁴⁸
- should be disclosed to prevent or lessen a serious and imminent threat to a person’s life or health⁴⁹
- is disclosed to the professional body responsible for overseeing dental providers, where that information relates to a dental provider (or the dental services rendered by or on behalf of a dental provider), provided the protected information of a dental provider’s patient is only disclosed when necessary in connection with reporting to the professional body,⁵⁰ and
- is disclosed to specified persons (including employees of Centrelink and Medicare Australia) for the purposes of administering the proposed Act.

47. Subsection 36(2) provides that such an instrument is not a legislative instrument, and therefore is not disallowable. As to disallowance of legislative instruments, see *Legislative Instruments Act 2003* sections 42, 44.

48. Disclosure would only be permitted to an agency whose functions include enforcement and protection under **proposed subsection 38(1)**, for the purpose of such enforcement or protection. Under **proposed subsection 38(2)**, ‘agency’ would include a State or Territory police force; or any other enforcement authority or officer relating to the law of that State or Territory.

49. This decision is based on the reasonable belief that disclosure of such information is necessary to prevent or minimise that threat: **proposed subsection 39(1)**.

50. Disclosure of the protected information is based on the reasonable belief of the Secretary of the Department or the CEO of Medicare Australia that the dental provider should be reported to the professional body. However, disclosure of the patient’s protected information may not be made if such information identifies that patient, unless the Secretary of the Department or the CEO of Medicare Australia believes on reasonable grounds that such disclosure is necessary in reporting the dental provider to his or her professional body. As to the meaning of ‘professional body’: see **proposed subsection 40(3)**.

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Proposed section 42 would prohibit an entrusted public official (or former entrusted public official) from being required to disclose protected information—obtained by that official in the course of performing his or her duties or functions, or exercising powers, under the proposed Act—to a court or tribunal (except for the purposes of the proposed Act).

Proposed section 43 provides that it would be an offence for a person to disclose protected information obtained through public interest certification under **proposed section 36**, when such disclosure is not authorised. Such offence would attract a maximum penalty of imprisonment for two years or 120 penalty units, or both.⁵¹

Proposed sections 44 – 46 create offences relating to other types of disclosure of protected information. These include soliciting disclosure of prohibited information; soliciting, disclosing or using protected information; and offering to supply (or holding oneself as being able to supply) protected information. All such offences attract a maximum penalty of imprisonment for two years or 120 penalty units,⁵² or both.

Part 6 – General offences and recovery provisions

Part 6 of the Bill establishes general offence provisions relating to assignment agreements and the giving of information. Recovery provisions are also established in the case of false or misleading statements or prior overpayments.

The Part outlines seven offences and these are modelled on existing offences in the Health Insurance Act. The Explanatory Memorandum justifies the alignment with similar provisions in the Health Insurance Act⁵³ as a way to ensure consistency in patients' treatment and practitioners' administrative arrangements relating to billing and claiming.⁵⁴

Proposed section 48 would create an offence when a dental provider, or his or her agent, enters into an agreement, in which particulars of a dental service must be set out in approved form, and the provider has not set out those particulars in the agreement before the other person signs the agreement.

Proposed section 49 would create an offence for a dental provider, or his or her agent, to not give a copy of the (signed) agreement to the other person as soon as practicable after it has been signed.

51. A penalty unit is currently \$110: *Crimes Act 1914* section 4AA.

52. *ibid.*

53. In particular, see Part VII of the *Health Insurance Act 1973*.

54. Explanatory Memorandum, *op. cit.*, p. 18.

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The penalty for each of those offences is 10 penalty units⁵⁵ and both offences are strict liability offences.⁵⁶ Noting the comments by the Senate Committee Scrutiny of Bills Committee discussed earlier, further clarification in the explanatory memorandum about the use of strict liability offences is preferable. However, it is likely that the strict liability nature of the offences would enhance the deterrent effect of the provision, encouraging providers to take particular care in completing assignment agreements.⁵⁷

Proposed sections 50 and 51 provide for two strict liability offences relating to false or misleading statements. The penalty for making an oral or written statement (in connection with a claim for a dental benefit) that is false or misleading would be 20 penalty units.⁵⁸

Proposed subsection 50(3) also requires that any prosecution under this section must be instituted within three years of the time when the false or misleading statement was made.

Proposed section 51 would create an offence for an employee, agent or associate of a person to make a false or misleading statement that is substantially used by that person to make another false or misleading statement that is capable of being used in connection with a claim for a dental benefit.

The strict liability nature of the offences in **proposed sections 50 and 51** is justified by the need to ensure that providers and their employees guard against the possibility of contravention and ensure the accuracy of their claiming arrangements. Again, these offence provisions and their penalties are consistent with similar offences that currently exist under the Health Insurance Act. However, please refer to the Senate Committee Scrutiny of Bills Committee's comments regarding strict liability offences as discussed earlier in this Digest.

Proposed sections 52 and 53 would create offences relating to knowingly making false or misleading statements that could be used to claim a dental benefit. This includes statements made by employees, agents or associates. Again, these offence provisions are similar to those in the Health Insurance Act.⁵⁹ The maximum penalty for these offences is five years imprisonment, 100 penalty units⁶⁰ or both, which is consistent with existing similar provisions. Imprisonment as an alternative punitive measure is justified to serve as a disincentive to engage in the prohibited conduct. The Explanatory Memorandum justifies the departure from preferred penalty benchmarks on the grounds that consistency

55. A penalty unit is currently \$110: *Crimes Act 1914* section 4AA.

56. As to strict liability, see *Criminal Code* section 6.1.

57. Explanatory Memorandum, op. cit., p. 21.

58. A penalty unit is currently \$110: *Crimes Act 1914* section 4AA.

59. Health Insurance Act 1973 section 128B.

60. A penalty unit is currently \$110: *Crimes Act 1914* section 4AA.

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is necessary because practitioners would be making parallel claims under Medicare and the Dental Benefits Scheme.⁶¹ However, this does not seem to be a realistic justification on the grounds that it would not be common practice for a dentist to claim under both Medicare and the Dental Benefits Scheme for the one patient at any one time. While some dentists already provide services under Medicare, relating to surgical procedures done in hospital, only preventative dental care (check-ups, clean, fissures etc) is covered by the proposed Dental Benefits Scheme.

Proposed section 54 provides for an offence of knowingly giving information that is false or misleading. Again, this offence is similar to section 129 of the Health Insurance Act. As with **proposed sections 52 and 53**, this offence would be consistent with existing similar arrangements for Medicare benefit arrangements.

Proposed section 55 provides that the abovementioned offences (**proposed sections 52, 53, 54**) are indictable offences.⁶² **Proposed subsection 55(2)** provides that the offences could be dealt with summarily if both parties consent and the court is satisfied that is proper to do so. If the court does deal with any of these offences summarily, **proposed subsection 55(3)** provides that the court cannot impose a penalty greater than imprisonment for six months or ten penalty units.⁶³

Proposed section 56 provides for the recovery of amounts paid in the case of false or misleading statements. Two conditions must be satisfied:

- a dental benefit is paid, and
- as a result of the making of a false or misleading statement, the amount of dental benefit paid exceeds the amount that should have been paid.

The excess amount is recoverable as a debt due to the Commonwealth. **Proposed subsection 56(3)** provides that the debt is recoverable whether or not the amount was paid to the person by or on behalf of whom the statement was made and whether any person has been convicted of an offence in relation to the making of the false or misleading statement.

Proposed section 57 provides for interest to be payable to the Commonwealth on an excess amount recoverable under **proposed subsection 56(2)**. **Proposed subsection 57(2)** outlines the circumstances in which interest is payable. **Proposed subsection 57(5)**

61. Explanatory Memorandum, op. cit., p. 23.

62. An indictable offence is an offence against the law of the Commonwealth punishable by imprisonment for a period of more than 12 months, unless the contrary intention appears: the Crimes Act 1914 section 4G.

63. A penalty unit is currently \$110: *Crimes Act 1914* section 4AA.

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provides that interest is payable at the rate prescribed under the *Health Insurance Regulations 1975*.

Proposed section 58 would allow the CEO of Medicare Australia to reduce the dental benefit payment because of a prior overpayment. The amount of the reduction is calculated in accordance with **proposed subsections 58(3) to (5)**.

Part 7—Dental Benefits Rules

Proposed section 60 would allow the Minister to make the Rules by legislative instrument.⁶⁴ **Proposed subsection 60(1)** provides that these Rules may provide for matters required or permitted by the proposed Act to be provided, or matters that are necessary or convenient in order to give effect to the proposed Act. **Proposed subsection 60(2)** may confer power on the Minister or the CEO of Medicare Australia. Under **proposed subsection 60(3)** the Rules may incorporate matters contained in other legislative instruments. **Proposed subsection 60(4)** has the effect of allowing matters to be incorporated into the Rules that would not be allowed under the Legislative Instruments Act. Note the Committee's comments on this issue, as previously discussed in this Digest.

Proposed subsection 61(1) provides for the Rules to establish a Dental Benefits Schedule (DBS) that sets out the items for dental benefits services and the dental benefit payable (or a method for determining such amount payable) for each of the dental services. **Proposed subsection 61(2)** provides that the Rules may set out the rules for interpretation of the DBS.

Proposed subsection 62(1) provides that the specification of a dental service in an item in the DBS may be unconditional or subject to conditions, limitations or restrictions as specified in the Rules or the DBS.

Under **proposed subsection 62(2)**, these conditions, limitations or restrictions could include imposing a monetary limit on the amount of dental benefit payable, in respect of a specified dental service, or dental services provided to an eligible patient, or dental services provided to an eligible patient during a specified period.

Part 8—Other matters

Proposed subsection 64(1) would confirm that, in addition the normal functions of the CEO of Medicare Australia relating to the Medicare Australia Act, the CEO of Medicare Australia has additional the functions as conferred on him or her under the proposed Act.

64. As to disallowance of legislative instruments, see *Legislative Instruments Act 2003* sections 42, 44.

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Proposed **subsection 64(2)** further provides that anything done by or on behalf of the CEO of Medicare Australia, in performing those additional functions, is taken to have been done for the purposes of performing functions under the Medicare Australia Act.

Proposed **section 65** provides that dental benefits payable under the proposed Act would be payable out of the Consolidated Revenue Fund. This makes the payment of dental benefits a standing appropriation, in the same way as the standing appropriation for Medicare benefits under the Health Insurance Act.

Proposed **section 66** provides for the Secretary of the Department of Health and Ageing to delegate, in writing, his or her powers under the proposed Act to an Senior Executive Service (SES) employee,⁶⁵ or acting SES employee of the Department, who must comply with any directions of the Secretary.

Proposed **section 67** would give the Governor-General discretionary power to make regulations that prescribe matters required or permitted to be prescribed by the proposed Act; or which are necessary or convenient to give effect to the proposed Act.

Concluding comments

This Bill proposes to establish a legislative framework for the payment of means-tested dental benefits, in a manner that is, to a limited extent, similar to the payment of medical benefits under Medicare arrangements.

The Bill enacts an election commitment to introduce a Teen Dental Plan from July 2008. It proposes that eligible teenagers in receipt of FTB(A), youth allowance or ABSTUDY, receive a voucher that entitles them to obtain an annual preventative dental check-up from a provider dentist, reimbursable from Medicare. The value of the voucher is \$150, which may be lower than the fee charged by a dentist.

Commentators have expressed concerns, including concerns that the value of the voucher would be insufficient to meet the cost of the preventative dental check-up; follow-on treatment services are not provided which would lead to added pressure on public dental waiting lists; or that the age eligibility criteria are too narrow. Some commentators have also expressed support for the ADHCI, which is due to cease after July 2008.

Finally, as previously mentioned, the capacity of the current dental workforce to meet the demand for dental services that is likely to flow as a result of this proposed Bill is limited.

65. As to the meaning of SES employee, see *Public Service Act 1999* section 7.

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