

## **EXPLANATORY STATEMENT**

Issued by the Minister for Ageing

*National Health Act 1953*

*Continence Aids Payment Scheme 2010*

Subsection 12(1) of the *National Health Act 1953* (the Act) provides that the Minister may, by legislative instrument, formulate a Continence Aids Payment Scheme under which the Commonwealth makes payments as a contribution towards the cost of buying products that help manage incontinence.

### **Background**

A person will be eligible to participate in the Continence Aids Payment Scheme (CAPS) (the Scheme) if they have permanent and severe incontinence and the person satisfies the other eligibility criteria set out in the instrument.

The Scheme will replace the Continence Aids Assistance Scheme (CAAS). Under the CAAS, in 2009-10 an eligible person was provided with up to \$489.95 worth of products (indexed annually) to assist in managing incontinence. Clients of the CAAS will be taken to be participating in the new Scheme and be eligible for a CAPS payment, provided that they have submitted the relevant information, in the approved transfer form, to Medicare Australia.

A CAPS payment may be directed to a person who satisfies the eligibility criteria (called a 'participating person' in the Scheme) or, where certain requirements have been met, to an 'authorised payment recipient', which includes:

- the person's legal representative;
- the person's Centrelink Payment Nominee;
- the person's DVA Trustee;
- a responsible person who has been approved by the Secretary; or
- an organisation that is authorised, and agrees, to receive a CAPS payment as the person's agent.

This payment framework gives people with permanent and severe incontinence, their legal representatives and carers the flexibility to manage CAPS payments in the way that is most suited to their needs.

A person or an organisation receiving a CAPS payment on behalf of a participating person must ensure that the payment is used exclusively for the purposes of purchasing continence and continence related products for the benefit of the participating person.

**Consultation**

The Department and Health and Ageing has consulted with Medicare Australia, Centrelink and the Department of Veterans' Affairs in formulating the Scheme, and in particular, the arrangements whereby another person may be authorised to sign a CAPS application form and/ or receive a CAPS payment, on behalf of a participating person.

Details of the Scheme are set out in the Attachment.

The Scheme is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

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***DETAILS OF THE CONTINENCE AIDS PAYMENT SCHEME 2010*****1 Name of Scheme**

The scheme is called the *Continence Aids Payment Scheme 2010*. It is referred to as 'the Scheme' throughout this explanatory statement.

**2 Commencement**

The Scheme will commence on 1 July 2010.

**3 Interpretation**

Subsection 3(1) lists the terms that are defined for the purpose of the Scheme.

The person for whom a CAPS payment will be made is a person who suffers from 'permanent and severe incontinence' which is caused by an 'eligible neurological condition' or an 'eligible other condition'. Those key terms, among others, are defined in subsection 3(1) of the Scheme.

Subsections 3(2) and 3(3) are intended to clarify that the Scheme does not seek to affect, or in any way vary, the operation of State or Territory laws concerning the role and powers of a legal representative. A person who is recognised under a State or Territory law as a person's legal representative (such as a guardian or attorney acting under a power of attorney) is recognised by the Scheme as someone who can act for, and on behalf of, the participating person.

**4 Eligibility criteria**

In order to participate in the Scheme and to be the beneficiary of a CAPS payment, a person must satisfy the eligibility criteria set out in section 4. The threshold eligibility test is set out in paragraph 4(1)(a) and requires that a person suffer from 'permanent and severe incontinence'. This is a defined term.

The 'permanent and severe incontinence' must be caused by an 'eligible neurological condition' or an 'eligible other condition'. Parts 1 and 2 of the Schedule list the conditions that are recognised as an 'eligible neurological condition' or an 'eligible other condition'.

A person who has 'permanent and severe incontinence' that is caused by an 'eligible other condition' must also be a Centrelink Pensioner Concession card holder or a dependant of a Centrelink Pensioner Concession card holder.

To be eligible for a CAPS payment, the person must also satisfy the citizenship or residency requirements set out in paragraph 4(1)(b).

Finally, paragraph 4(1)(c) provides that the person must not be ineligible to participate in the Scheme. Subsection 4(2) lists the categories of people who are not eligible to participate

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in the Scheme. This provision operates to exclude certain people from receiving CAPS payments.

The ineligibility provisions are slightly different in respect of CAAS clients for the first 12 months of the operation of the Scheme. A person who was receiving assistance under CAAS immediately before 1 July 2010 and who complies with the requirements set out in the *National Health Amendment (Continence Aids Payment Scheme) Act 2010* (the Amendment Act) regarding transfer from the CAAS arrangements to this Scheme, will cease to be eligible if, after 1 July 2011, the person comes within one of the categories of people listed in subsection 4(2).

A person who is eligible to participate in the Scheme, and whose application has been accepted under section 5, is a 'participating person'.

## **5 Application to participate in the Scheme**

An application to participate in the Scheme is to be made to the Medicare Australia CEO on an approved form (subsection 5(1) and paragraph 5(2)(b)).

Paragraph 5(2)(c) requires that applications be supported by a statement prepared and signed by a health professional. That statement must certify that the person (the applicant in this context) has been diagnosed by a doctor with an 'eligible neurological condition' or 'eligible other condition' which has caused permanent and severe incontinence.

Applications must also be supported by the appropriate information or other documents (as identified in the approved form).

Subsection 5(3) permits an application to be made prior to the commencement of the Scheme. Such applications are taken to have been made under section 5 on the day the Scheme commences.

## **6 Notification to Medicare Australia CEO**

Section 6 imposes notification requirements on a participating person, a legal representative or an authorised representative in the event they become aware that the participating person no longer meets the eligibility criteria. It also imposes notification requirements on a legal representative or an authorised representative in the event they become aware of the death of the participating person.

The notice requirement is intended to ensure that a change in circumstance which impacts on eligibility for a CAPS payment is promptly brought to the attention of the Medicare Australia CEO.

## **7 Decision that a person has ceased to be eligible**

The Medicare Australia CEO is authorised to make a decision, by determination in writing, that a participating person does not meet the eligibility criteria. The power to make that decision is not conditional upon the Medicare Australia CEO first receiving notification of a change in circumstance under section 6.

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Note 1 to section 7 clarifies that the Medicare Australia CEO cannot, prior to 1 July 2011, make a decision that a person does not meet the eligibility requirements, if the person was a CAAS client immediately before 1 July 2010. This guarantees CAAS clients of at least 12 months of participation in the Scheme, provided that they have transferred from the CAAS arrangements to the Scheme in accordance with the Amendment Act.

Note 2 to section 7 states that the Amendment Act provides that if the Medicare Australia CEO decides that a participating person is not eligible to participate in the scheme, he or she must give the person a signed notice that includes the reasons for the decision and advising that the person may apply to the Medicare Australia CEO for a review of the decision. The application for review of the decision is dealt with in section 24 of the scheme.

## **8 When participation ceases to have effect**

In the event that the Medicare Australia CEO has been notified, under section 6 of the Scheme, that a person no longer meets the eligibility requirements, that person ceases to participate in the Scheme as at the date the person no longer met the eligibility criteria.

Alternatively, the Medicare Australia CEO may specify the date on which a person ceases to participate in the Scheme in a determination made under section 7.

## **9 Amount of CAPS payment**

The CAPS payment is \$497.79 for a financial year.

Subsection 9(2) permits the CAPS payment amount to be calculated on a pro rata basis. Where an application is received after the financial year has started, and the application relates to a participating person, the CAPS payment amount that is payable to that person, for that financial year, will be calculated by reference to the remaining number of days in the financial year.

Subsection 9(3) clarifies that a participating person may not receive more than the amount of the CAPS payment for a financial year in any one financial year or more than one payment for the same period in financial year.

## **10 Payment procedure**

A CAPS payment is to be paid to a participating person, to an authorised payment recipient (if an authorised payment recipient has been nominated in an approved form) or, if the participating person has died, to that person's estate.

A CAPS payment will ordinarily be paid as a single transaction. However, people may elect to receive the CAPS payment in two instalments provided they complete the relevant part of the approved form (see also section 11).

All CAPS payments will be made by way of electronic funds transfer to the bank account nominated to the Medicare Australia CEO in the approved form.

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## **11 Payment by instalments**

Section 11 allows a person to elect to have the CAPS payment for a financial year paid in two instalments.

Under subsection 11(2) if a person is a participating person at the beginning of the financial year, the first instalment of the CAPS payment (being half of the amount of the CAPS payment nominated in section 9) will be paid by 30 July in that financial year. The second instalment will be the remaining half of the CAPS payment and will be paid by 31 January in that financial year.

Under subsection 11(3), if an application for a CAPS payment is received after 1 July, but before 1 January in a financial year, and the application has been approved:

- The first instalment will be a pro rata amount calculated for the period starting from the date the application was received and ending on 31 December (inclusive) for that financial year. The first instalment will be paid within 30 days of the approval of the application.
- The amount of the second instalment will be the remaining amount of the CAPS payment for that financial year. The second instalment will be paid in the second half of the financial year, but by no later than 31 January.

Under subsection 11(4), if an application for a CAPS payment is received after 31 December, and the application has been approved, the CAPS payment will be calculated as a pro rata amount for that financial year. It will be paid within 30 days of the application being approved.

In the event that a person ceases to participate in the Scheme prior to 1 January in a financial year, subsection 11(5) states that the second instalment is not payable.

## **12 Payment to transferred person**

This section is applicable to CAAS clients who transferred to the Scheme in accordance with the arrangements set out in the Amendment Act.

Under subsection 12(2), a person who has transferred from the CAAS arrangements to the Scheme is entitled to a CAPS payment for the 2010-11 financial year and in each subsequent financial year, as long as the person's participation in the Scheme has not ceased, either because:

- a change in circumstance means the person is no longer eligible to participate in the Scheme; or
- the person dies;

prior to 1 July in any subsequent financial year.

Subsection 12(3) provides that for the financial year beginning on 1 July 2010, the Medicare Australia CEO is to pay the CAPS payment within 30 days of receiving a completed transfer

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form or if the person elects to receive the CAPS payment in two instalments pay half the CAPS payment no later than 30 days after receiving the transfer form and half after 1 January 2011 but no later than 31 January 2011.

Subsection 12(4) provides that for a financial year after 30 June 2011, the CAPS payment for the person must be paid no later than 31 July in that financial year or, if the person has elected to receive the CAPS payment in two instalments, in the manner specified in subsection 11(2).

Finally if a person gives the transfer form to the Medicare Australia CEO before 1 July 2010, the form is taken to have been provided on 1 July 2010.

### **13 Payments to approved person**

The Medicare Australia CEO must make a CAPS payment for a participating person (called an approved person for the purposes of this section).

The amount of the CAPS payment will be determined by section 9.

An approved person is entitled to continue to receive a CAPS payment in each financial year following the financial year in which their application is approved, provided that the person has not ceased to participate in the Scheme.

The timeframes in which CAPS payments are to be made are set out in subsection 13(3) and depend on whether the person is a participating person at the beginning of the financial year, has elected to be paid in instalments, or makes an application for a CAPS payment after the financial year has started.

### **14 Notice of details of payments**

The Medicare Australia CEO will issue a written statement setting out the details of a CAPS payment. Statements will be issued to:

- the participating person; or
- the participating person's correspondence recipient; and
- if the payment was made to an organisation on behalf of a participating person, to that organisation.

### **15 Interpretation**

Part 4 of the Scheme makes provision for a person (an 'assisted person') who is unable to act on his or her own behalf due to a physical or mental impairment. Section 15 defines the term 'assisted person'.

### **16 Ceasing representation of a person**

Section 16 sets out the circumstances in which a person will no longer be regarded, for the purposes of this Scheme, as representing an assisted person.

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If a person was recognised as representing an assisted person under social security or veterans' entitlements law, and has sought to rely on that representative arrangement for the purposes of this Scheme, in the event that the person ceases to be a representative under those laws, the person also ceases to represent the assisted person for the purposes of the Scheme.

Paragraph (b) confirms that if a person may authorise another to do something in accordance with Part 4 of the Scheme, that person may also revoke the authorisation. A revocation must be notified to the Medicare Australia CEO, in writing.

Paragraph (c) confirms that a person who has been authorised to act on another's behalf, may terminate the authorised representative arrangement. The person must notify the Medicare Australia CEO, in writing, that they have ended the representative arrangement.

## **17 Authorised representative**

Section 17 establishes an arrangement whereby an assisted person, who does not have a legal representative, may nevertheless be represented for the purposes of the Scheme.

Under subsection 17(2) an authorised representative may include:

- The person who is recognised by Centrelink as the assisted person's correspondence nominee for the purposes of the social security law;
- The person who is recognised by the Department of Veterans' Affairs as the assisted person's trustee for the purposes of veterans' entitlements law; or
- A responsible person who has been approved by the Secretary (under section 20) as an authorised representative.

The intention of section 17 is that an authorised representative may complete and sign a CAPS payment application form for an assisted person and can nominate themselves as the assisted person's authorised representative. However, subsection 17(2) makes it clear that an authorised representative will not be the assisted person's representative for the purposes of receiving CAPS payments. This provision must be read in conjunction with section 19, and in particular, subsection 19(2).

Subsection 17(4) imposes an obligation on an authorised representative to act in the interests of the assisted person.

## **18 Correspondence recipient**

Section 18 provides flexibility in terms of designating a person who is to receive correspondence that is directed to an applicant, or a participating person, in connection with the Scheme. This is in recognition of the fact that a number of people may contribute to the care of a person with permanent and severe incontinence and that it may be more convenient for one of those people to receive CAPS related correspondence.

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The person for whose benefit the CAPS payment is to be made (i.e. the applicant or the participating person) or that person's legal representative or authorised representative, may nominate the correspondence recipient.

## **19 Authorised payment recipient**

Section 19 establishes a framework under which a CAPS payment may be paid to a person other than the participating person or the participating person's legal representative (called an authorised payment recipient in this section).

The intention of this section is to ensure that a CAPS payment made in respect of a person who is eligible to participate in the Scheme is directed to a person who is best placed to help the assisted person to use the funds to purchase continence and continence related products.

An authorised payment recipient may be:

- the person who is the assisted person's payment nominee for the purposes of the social security law;
- the person who is the assisted person's trustee or agent for the purposes of veterans' entitlement law;
- a responsible person who has been approved by the Secretary under section 20; or
- an organisation authorised in accordance with subsection 21(1).

Paragraph 19(2)(b) makes it clear that the person's legal representative may override arrangements whereby a CAPS payment is to be made to an authorised payment recipient acting as the agent of the assisted person.

## **20 Responsible person for a participating person**

An individual may be approved to act as an assisted person's or minor's authorised representative and/ or authorised payment recipient for the purposes of the Scheme. The term 'assisted person' is defined at section 15.

The approval is to be made by the Secretary and is conditional upon the Secretary being satisfied that:

- if there are already existing representative arrangements in place, that the existing representative (i.e. the legal representative or the authorised representative) does not object to the individual's approval as a responsible person; and
  - the individual seeking to be approved as a responsible person contributes to the person's care, or provides assistance to the person; and
  - the approval of the individual as a responsible person - where the approval is for the receipt of a CAPS payment - is for the benefit of the person; and
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- the individual seeking to be approved as the responsible person will only use the funds as a contribution towards the cost of purchasing continence and continence related products for the assisted person.

The Secretary can revoke the approval of a person as a responsible person at any time, if the Secretary thinks it appropriate, having regard to the factors set out above.

## **21 Organisations authorised to receive CAPS payments**

Section 21 permits an arrangement whereby:

- an applicant or a participating person; or
- an assisted person's legal representative; or
- an assisted person's authorised representative or an authorised payment recipient (other than an organisation);

may authorise a CAPS payment to be paid to an organisation.

The Medicare Australia CEO is to be notified of the authorisation of this payment arrangement, in the approved form, along with the organisation's agreement to receive a CAPS payment as an agent of the person to whom the payment relates.

If an organisation agrees to receive a CAPS payment, subsection 21(4) imposes a number of obligations with which the organisation must comply. Those obligations include, for example:

- assisting the person to use the CAPS payment to obtain appropriate continence aids;
- informing the person of any unused CAPS payment amount 30 days before the end of the financial year to which the payment relates;
- refunding any unused portions of a CAPS payment; and
- informing Medicare Australia if the organisation becomes aware that the person does not meet the eligibility criteria.

The organisation must also keep records which detail the amount of a CAPS payment received, when the payment was received and how the CAPS payment has been used. The organisation must also be in a position to inform the participating person, or their authorised representative, about how the CAPS payment has been used. This would include providing a balance of any unused portion of the CAPS payment.

The Secretary has the power, under subsection 21(7), to direct the Medicare Australia CEO, in writing, not to make a CAPS payment to an organisation. This power is available if the Secretary is satisfied that the payment arrangement is not operating for the benefit of the participating person or the organisation has failed to comply with its obligations under the Scheme. The participating person and the organisation concerned will be notified of action taken by the Secretary under subsection 21(7).

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Under subsection 21(8), if a direction is given under subsection 21(7), the Medicare CEO must comply with the direction and the Secretary must inform the participating person and the organisation in writing that the organisation is no longer able to act as the authorised payment recipient.

## **22 Debts**

If a CAPS payment has been paid in respect of a person who is not a participating person, or is no longer a participating person, the payment amount is a debt due to the Commonwealth and is recoverable by the Medicare Australia CEO.

## **23 Investigations**

In order to ensure that an applicant or a participating person is eligible to participate in the Scheme, the Medicare Australia CEO is authorised to conduct investigations relevant to ascertaining the person's eligibility. It is anticipated that the conduct of investigations will include the collection of personal information relevant to determining whether the person meets the eligibility requirements.

## **24 Review of decisions**

A person who is aggrieved by a decision regarding participation in the Scheme (under section 5), or a decision that the person has ceased to be eligible to participate in the Scheme (under section 7), may ask the Medicare Australia CEO to review that decision.

Subsection 24(2) sets out how an application for review is to be made.

## **25 Schedule**

Parts 1 and 2 of the Schedule list the conditions that are recognised as an 'eligible neurological condition' or an 'eligible other condition'.

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