

# **EXPLANATORY STATEMENT**

**Issued by the authority of the Minister for Aged Care**

***National Health Act 1953***

***Continence Aids Payment Scheme Amendment 2016***

The *National Health Act 1953* (the Act) is an Act relating to the provision of pharmaceutical, sickness and hospital benefits, and of medical and dental services.

Section 12 of 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.

Paragraph 12(3)(c) of the Act states ‘...the legislative instrument may provide for ... the amount of the contribution that is payable in each financial year in relation to a person who is participating in the scheme’.

***Continence Aids Payment Scheme Amendment 2016 (the Amendment)***

The Continence Aids Payment Scheme 2010 (CAPS) makes a monetary payment to an eligible person which is intended to contribute towards their costs in purchasing continence aids.

The purpose of the Amendment is to increase the contribution in line with the Consumer Price Index (CPI).

The Amendment is a legislative instrument for the purposes of the *Legislation Act 2003*.

## **Commencement**

This Amendment commences on 1 July 2016.

## **Reliance on subsection 33(3) of the *Acts Interpretation Act 1901***

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

## **Consultation**

Indexation of the CAPS uses a formula based on the CPI supplied by the Department of Finance. As this is in accordance with general policy upon which consultation was undertaken, no specific consultation was undertaken with respect to this amendment.

## **Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) has advised that no Regulation Impact Statement is required (OBPR ID 16993).

**Details of the Continence Aids Payment Scheme Amendment 2016**

**Clause 1** states that the name of the instrument is the *Continence Aids Payment Scheme Amendment 2016*.

**Clause 2** sets out the commencement date of the Amendment.

**Clause 3** provides that the authority for the making of the instrument is the *National Health Act 1953*.

The authority for making the specific amendments is paragraph 12(3)(c).

**Clause 4** provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

***Continence Aids Payments Scheme 2010***

**Item 1 – Subsection 9(1)**

This item provides for the indexation of the amount of CAPS payment for a financial year.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Continence Aids Payment Scheme Amendment 2016**

The *Continence Aids Payment Scheme Amendment 2016* is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of Legislative Instrument**

The *Continence Aids Payment Scheme 2010* (CAPS) makes a monetary payment to an eligible person which is intended to contribute towards their costs in purchasing continence aids. The purpose of the Amendment is to increase the contribution in line with agreed indexation arrangements for this payment.

#### **Human Rights Implications**

This legislative instrument is compatible with the right to an adequate standard of living and to enjoyment of the highest attainable standard of physical and mental health, as set out in articles 11 and 12 of the International Covenant on Economic Social and Cultural Rights and articles 25 and 28 of the Convention on the Rights of Persons with Disabilities.

This legislative instrument increases the dollar amount of payment under CAPS paid to participating persons. The increased amount helps to ensure that the level of payment made to participating persons keeps pace with increases in the CPI.

#### **Conclusion**

This legislative instrument is compatible with human rights as it promotes the right to an adequate standard of living and the right to the highest attainable standard of physical and mental health.

**[The Minister for Aged Care, the Hon Sussan Ley]**