

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Aged Care and Senior Australians

National Health Act 1953

National Health (Continence Aids Payment Scheme) Amendment (Indexation of CAPS Payment) Instrument 2019

Authority

This Instrument is made under section 12 of the *National Health Act 1953* (the Act).

Background

The Act relates 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’.

Purpose

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 this Instrument is to increase that contribution in line with the Consumer Price Index.

Consultation

Indexation of the CAPS uses a formula based on the indexation figures supplied by the Department of Finance. As this is in accordance with policy upon which consultation was undertaken with Legal Advice and Legislation Branch in April 2019, no specific consultation was undertaken with respect to this instrument.

Commencement

This Instrument commences on 1 July 2019.

This Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

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.

Details of the National Health (Continence Aids Payment Scheme) Amendment (Indexation of CAPS Payment) Instrument 2019

Clause 1 states that the name of the instrument is the *National Health (Continence Aids Payment Scheme) Amendment (Indexation of CAPS Payment) Instrument 2019*.

Clause 2 sets out the commencement date of the instrument.

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 section 12.

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 substitutes a new subsection 9(1) that provides for the indexation of the amount of CAPS payment for a financial year. Indexation is by CPI, from \$596.60 to \$609.70.

Statement of Compatibility with Human Rights

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

National Health (Continence Aids Payment Scheme) Amendment (Indexation of CAPS Payment) Instrument 2019

This legislative instrument 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 Legislative Instrument is to increase the contribution in line with agreed indexation arrangements for this payment.

Human rights implications

This Legislative Instrument is compatible with the human rights to an adequate standard of living and to the enjoyment of the highest attainable standard of physical and mental health contained in articles 11 and 12 of the International Covenant on Economic Social and Cultural Rights.

This Legislative Instrument increases the dollar amount of payment under CAPS paid to participating persons. The increase is in accordance with movements in the Consumer Price Index. The increased amount helps to ensure that the level of payment made to participating persons is maintained.

Conclusion

This Legislative Instrument is compatible with human rights because it enhances the protection of human rights.

Senator the Hon Richard Colbeck

Minister for Aged Care and Senior Australians