



National Health Amendment (Continence Aids Payment Scheme) Act 2010

No. 68, 2010

**An Act to amend the law relating to health, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 68, 2010

**An Act to amend the law relating to health, and for
related purposes**

[Assented to 28 June 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *National Health Amendment
(Continence Aids Payment Scheme) Act 2010*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 June 2010
2. Schedule 1	1 July 2010.	1 July 2010

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the National Health Act 1953

1 Subsections 6(1), (2), (5) and (6)

Omit “or the regulations”, substitute “, the regulations or another legislative instrument under this Act”.

2 After Part II

Insert:

Part III—Contenance Aids Payment Scheme

12 Contenance Aids Payment Scheme

- (1) The Minister may, by legislative instrument, formulate a Contenance Aids Payment Scheme, under which the Commonwealth makes payments as a contribution towards the cost of buying products that help manage incontinence.
- (2) A person who satisfies the eligibility criteria that are stated in the legislative instrument is eligible to participate in the scheme.
- (3) Without limiting subsection (1), the legislative instrument may provide for:
 - (a) applications by persons who want to participate in the scheme; and
 - (b) the conditions that must be complied with in order for a person to participate in the scheme; and
 - (c) the amount of the contribution that is payable in each financial year in relation to a person who is participating in the scheme; and
 - (d) investigations to be conducted in order to ensure that persons who are participating in the scheme are eligible to do so; and
 - (e) the functions and powers of the Medicare Australia CEO in relation to the scheme.

13 Secretary or Medicare Australia CEO may request information

- (1) This section applies if the Secretary or Medicare Australia CEO (the *official*) believes, on reasonable grounds, that a person is capable of giving information that is relevant to deciding:
 - (a) whether a contribution is payable to a person under the Contenance Aids Payment Scheme; or
 - (b) the amount of a contribution that is payable to a person under the Contenance Aids Payment Scheme.
- (2) The official may request the person to give the information to the official.
- (3) The request:
 - (a) must be made in writing; and
 - (b) must state what information must be given to the official; and
 - (c) may require the information to be verified by statutory declaration; and
 - (d) must specify a day on or before which the information must be given, which day must be at least 28 days after the day on which the request is made; and
 - (e) must contain a statement to the effect that a failure to comply with the request is an offence.
- (4) The person commits an offence if the person fails to comply with the request.

Penalty: 30 penalty units.
- (5) However, an individual is excused from complying with the request if the giving of the information might tend to:
 - (a) incriminate the individual; or
 - (b) expose the individual to a penalty.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the *Criminal Code*.
- (6) An offence against subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

14 Reviewing decision whether applicant is eligible for the scheme

- (1) This section applies if the Medicare Australia CEO decides that a person who has applied to participate in the scheme is not eligible to participate in the scheme.
- (2) The Medicare Australia CEO must give the person a signed notice that states:
 - (a) the decision; and
 - (b) the day when the decision has effect; and
 - (c) the reasons for the decision; and
 - (d) that, within 28 days after receiving the notice, the person may apply to the Medicare Australia CEO for a review of the decision; and
 - (e) how the person may apply for the review.
- (3) A person who is aggrieved by the Medicare Australia CEO's decision may apply for a review of the decision in the way stated in the legislative instrument that sets out the scheme.
- (4) If an application is made under subsection (3), the Medicare Australia CEO must review the decision and give the person a signed notice that states:
 - (a) the decision; and
 - (b) the day when the decision has effect; and
 - (c) if the decision is that the person is not eligible to participate in the scheme:
 - (i) the reasons for the decision; and
 - (ii) that, within 28 days after receiving the notice, the person may apply to the Administrative Appeals Tribunal for a review of the Medicare Australia CEO's decision.
- (5) An application may be made to the Administrative Appeals Tribunal for the review of the Medicare Australia CEO's decision mentioned in subsection (4).

15 Reviewing decision whether participant is eligible for the scheme

- (1) This section applies if the Medicare Australia CEO decides that a person who is participating in the scheme is not eligible to participate in the scheme.
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- (2) The Medicare Australia CEO must give the person a signed notice that states:
 - (a) the decision; and
 - (b) the day when the decision has effect; and
 - (c) the reasons for the decision; and
 - (d) that, within 28 days after receiving the notice, the person may apply to the Medicare Australia CEO for a review of the decision; and
 - (e) how the person may apply for the review.
- (3) A person who is aggrieved by the Medicare Australia CEO's decision may apply for a review of the decision in the way stated in the legislative instrument that sets out the scheme.
- (4) If an application is made under subsection (3), the Medicare Australia CEO must review the decision and give the person a signed notice that states:
 - (a) the decision; and
 - (b) the day when the decision has effect; and
 - (c) if the decision is that the person is not eligible to participate in the scheme:
 - (i) the reasons for the decision; and
 - (ii) that, within 28 days after receiving the notice, the person may apply to the Administrative Appeals Tribunal for a review of the Medicare Australia CEO's decision.
- (5) An application may be made to the Administrative Appeals Tribunal for the review of the Medicare Australia CEO's decision mentioned in subsection (4).

3 Transitional provisions for CAA Scheme

- (1) This item applies to a person who was receiving assistance under the scheme known as the Continence Aids Assistance Scheme (**CAA Scheme**) immediately before 1 July 2010.
 - (2) If the person gives the following to the Medicare Australia CEO before 30 November 2010, the person is taken to participate, and to be eligible to participate, in the Continence Aids Payment Scheme (**CAP Scheme**):
 - (a) a transfer form, in the form authorised by the Secretary (whether before or after this item commences); and
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- (b) the details of a bank account into which payments under the CAP Scheme are to be made.
- (3) That person is entitled to receive a payment under the CAP Scheme, for the financial year starting on 1 July 2010.
- (4) Until 1 July 2011, the Medicare Australia CEO cannot decide that the person is not eligible to participate in the CAP scheme.
- (5) In this item, **bank account** means an account at an authorised deposit-taking institution within the meaning of the *Banking Act 1959*.
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*[Minister's second reading speech made in—
House of Representatives on 12 May 2010
Senate on 22 June 2010]*

(77/10)
