

EXPLANATORY STATEMENT

National Health Act 1953

Continence Aids Payment Scheme Amendment (Indexation of CAPS Payment) Instrument 2021

Authority

Section 12 of the *National Health Act 1953* (the Act) provides that the Minister may, by legislative instrument, formulate a Continence Aids Payment Scheme (CAPS), 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 specifies that 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.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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.

Purpose

The *Continence Aids Payment Scheme 2020* provides for a monetary payment to be made to an eligible person, which is intended to contribute towards the cost of purchasing their continence aids.

The *Continence Aids Payment Scheme Amendment (Indexation of CAPS Payment) Instrument 2021* amends the *Continence Aids Payment Scheme 2020* to increase the amount of the CAPS payment in line with the Consumer Price Index (CPI). The amendment will increase the amount of the CAPS payment from \$623.80 to \$635.10.

Consultation

The amount of the CAPS payment was calculated according to an indexation formula based on the CPI figures supplied by the Department of Finance.

This instrument commences on 1 July 2021.

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

Details of this instrument are set out in the Attachment.

Details of the Contenance Aids Payment Scheme Amendment (Indexation of CAPS Payment) Instrument 2021

Section 1 Name

This section provides that the name of the instrument is the *Contenance Aids Payment Scheme Amendment (Indexation of CAPS Payment) Instrument 2021*.

Section 2 Commencement

This section provides that the instrument commences on 1 July 2021.

Section 3 Authority

This section provides that the instrument is made under section 12 of the *National Health Act 1953*.

Section 4 Schedule

This section 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

Contenance Aids Payment Scheme 2020.

Item 1

This item amends subsection 11(1) to provide that the amount of the CAPS payment for a financial year is \$635.10.

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 (Indexation of CAPS Payment) Instrument 2021

This disallowable 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 2020* (CAPS) provides for a monetary payment to be made to an eligible person which is intended to contribute to their costs in purchasing continence aids.

The purpose of the *Continence Aids Payment Scheme Amendment (Indexation of CAPS Payment) Instrument 2021* is to amend the CAPS to increase the amount of the contribution in line with the Consumer Price Index.

Human rights implications

This disallowable legislative instrument engages the right to an adequate standard of living in Article 11 and the right to the enjoyment of the highest attainable standard of physical and mental health in Article 12 of the International Covenant on Economic, Social and Cultural Rights.

The 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

The instrument is compatible with human rights as it further promotes the realisation of relevant rights under Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.

Senator the Hon Richard Colbeck

Minister for Senior Australians and Aged Care Services