

EXPLANATORY STATEMENT

National Health Act 1953

Continence Aids Payment Scheme Amendment (Indexation of CAPS Payment) Instrument 2023

Purpose and operation

The Continence Aids Payment Scheme (CAPS) provides for a monetary payment (CAPS 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 2023* (the Instrument) 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 \$650.40 to \$676.50.

Authority

The Instrument is made under section 12 of the *National Health Act 1953* (the Act). Section 12 of the Act provides that the Minister may, by legislative instrument, formulate a 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.

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

Commencement

The Instrument commences on 1 July 2023.

Consultation

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

General

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

Details of the Instrument are set out in **Attachment A**.

The Instrument is compatible with the rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility with human rights is set out in **Attachment B**.

Continence Aids Payment Scheme Amendment (Indexation of CAPS Payment) Instrument 2023

Section 1 – Name

This section provides that the name of the Instrument is the *Continence Aids Payment Scheme Amendment (Indexation of CAPS Payment) Instrument 2023*.

Section 2 – Commencement

This section provides that the Instrument commences on 1 July 2023.

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 the 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 Payment Scheme 2020

Item 1 – Subsection 11(1)

Item 1 omits “\$650.40” from subsection 11(1) of the *Continence Aids Payment Scheme 2020* and substitutes with “\$676.50”. This increases the amount of CAPS payment to be made to an eligible person, to assist with the cost of purchasing their continence aids.

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 2023

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* (the Scheme) provides for a monetary payment (CAPS 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 2023* (the Instrument) is to amend the Scheme to increase the CAPS payment in line with the Consumer Price Index (CPI) from 1 July 2023.

Human rights implications

The 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 amount of payment under the Scheme paid to participating persons. This increase is in accordance with movements in the Consumer Price Index. It provides participating persons with further financial support to help meet some of the costs of their continence products.

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.

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