

SUPPLEMENTARY EXPLANATORY STATEMENT

Issued by the authority of the Minister for Health and Aged Care

Aged Care Act 1997

Aged Care Legislation Amendment (Vaccination Information) Principles 2021

Purpose

The *Aged Care Legislation Amendment (Vaccination Information) Principles 2021* (Amending Principles) commenced on 6 September 2021.

On 29 September 2021, the Senate Scrutiny of Delegated Legislation Committee requested the Explanatory Statement be updated to include such an assessment, to address the concerns the Committee raised about the adequacy of the Amending Principles' explanatory materials.

This Supplementary Explanatory Statement includes an assessment of the Amending Principles' compatibility with the right to privacy. It should be read in conjunction with the Amending Principles' initial Explanatory Statement.

Details of the Supplementary Explanatory Statement on the Aged Care Legislation Amendment (Vaccination Information) Principles 2021

Item 1

After the first line of the first paragraph under the heading “**Human rights implications**” of the Statement of Compatibility with Human Rights, add:

- the right to the protection against arbitrary or unlawful interference with privacy

Item 2

After the first paragraph under the heading “**Human rights implications**” of the Statement of Compatibility with Human Rights, add:

The Amending Principles engage the right to privacy under Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 15 of the *Convention on the Rights of Persons with Disabilities* (CRPD).

The Amending Principles engage this right by requiring approved providers to keep records and report to the Secretary the number of service staff who have informed the approved provider they have received a single dose of a COVID-19 vaccination or all required doses of a COVID-19 vaccination. The Amending Principles also require approved providers to keep records and report to the Secretary the number of service staff who have informed the approved provider they are subject to exemptions or exceptions under a state or territory law. This will engage the right to privacy to the extent that any of the figures are so small that a person is reasonably identifiable.

The Information Principles 2014 currently enable the Secretary to make publicly available the vaccination information (except personal information) given to the Secretary under the Accountability Principles, and to disclose any analysis of the vaccination information, to the head of the relevant State or Territory health body. This vaccination information will include information given to the Secretary under the Accountability Principles, as amended by the Amending Principles.

The right to privacy under Article 17 of the ICCPR can be limited to achieve a legitimate objective, where the limitations are lawful and not arbitrary. The term ‘unlawful’ in Article 17 of the ICCPR means that no interference can take place except as authorised under domestic law. Additionally, the term ‘arbitrary’ means that any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. The Committee has interpreted ‘reasonableness’ to mean that any limitation must be proportionate and necessary in the circumstances.

The objective of the Amending Principles is to support public health responses to prevent the spread of COVID-19 and to provide greater health security for older Australians who are most vulnerable to the impacts of COVID-19. This is a legitimate objective that falls within the permissible purposes of protecting the rights of those receiving care and protecting public health.

The Amending Principles are also reasonable, necessary and proportionate to achieving this objective. To the extent that an approved provider is required under the Amending Principles to collect and record information that is personal information, including sensitive information, as defined under the *Privacy Act 1988*, this information will be considered protected information for the purposes of the *Aged Care Act 1997* (Aged Care Act) and be covered by the secrecy provisions under Part 6.2. These provisions carry significant penalties, including imprisonment, for unauthorised use or disclosure, which is aimed to protect and ensure the safe handling of protected information.

Further, the Amending Principles, as with the existing provisions, only require approved providers to disclose the number of service staff who have informed the approved provider regarding whether or not they have received a single dose of a COVID-19 vaccination or all required doses of a COVID-19 vaccination, and if not why not. They do not require the disclosure of names or other identifying information in relation to individuals. To the extent that any information reported to the Secretary can reasonably identify an individual due to, for example, a small data set, under the Aged Care Act, the Secretary is prohibited from publishing this information.