

## **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 2022***

### **Purpose**

The *Aged Care Legislation Amendment (Vaccination Information) Principles 2022* (Amending Principles) amends the *Accountability Principles 2014* (Accountability Principles) and the *Records Principles 2014* (Records Principles).

These amendments impose requirements on approved providers of residential care, certain flexible and home care services to keep records and report to the Secretary of the Department of Health (Secretary) how many *service staff* have informed them that they have received a “booster dose” of a COVID-19 vaccination.

These requirements extend the responsibilities of approved providers to record and report to the Secretary how many *residential care recipients* have informed the provider they have received a booster dose of a COVID-19 vaccine, which commenced on 1 January 2022. These requirements were introduced by the *Aged Care Legislation Amendment (Vaccination Information) Principles (No.2) 2021*.

Collecting booster data on service staff (in addition to residential care recipients) is critically important in the context of outbreak preparedness planning and response, and protecting care recipients, particularly given the waning protection of the primary doses of a COVID-19 vaccine and the emergence of Omicron which has caused a surge in COVID-19 cases across the country.

The Amending Principles are a legislative instrument for the purposes of the *Legislation Act 2003*.

### **Background**

The current Accountability Principles and Records Principles impose requirements on approved providers to keep records and report to the Secretary on a weekly basis how many service staff have informed the provider that they have, or have not, received a “single dose” or a “second dose” of a COVID-19 vaccine, and if not, why not. They are also required to keep records and report to the Secretary on how many residential care recipients have informed them that they have received a “single dose” or a “second dose” or a “third dose” of a COVID-19 vaccine. Approved providers are required to report this information in a form approved by the Secretary, which is currently provided for through the My Aged Care online portal.

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.

### **Authority**

Section 96-1 of the *Aged Care Act 1997* (Act) provides that the Minister may make Principles providing for matters required or permitted, or necessary or convenient, to give effect to the relevant Part or section of the Act.

### **Record Keeping**

The Records Principles are made under section 96-1 of the Act and provide for matters set out in Part 6.3 of the Act (or matters necessary or convenient to carry out and give effect to the matters set out in that Part).

### **Reporting**

The Accountability Principles are made under section 96-1 of the Act and provide for matters set out in Part 4.3 of the Act (or matters necessary or convenient to carry out and give effect to the matters set out in that Part).

### **Protection of information**

The Information Principles are made under section 96-1 of the Act and provide for matters set out in Part 6.2 of the Act (or matters necessary or convenient to carry out and give effect to the matters set out in that Part).

### **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.

### **Commencement**

The Amending Principles commence the day after registration.

### **Consultation**

In relation to amendments implemented this year by the *Aged Care Legislation Amendment (Service Staff Vaccination Recording and Reporting) Principles 2021* and the *Aged Care Legislation Amendment (Care Recipients and Service Staff Vaccination Recording and Reporting) Principles 2021*, the Department of Health (Department) undertook consultation with the Aged Care Quality and Safety Commission, the Australian Health Protection Principal Committee's Aged Care Advisory Group and peak aged care organisations and unions.

The Department's consultation indicated a general consensus that establishing recording and reporting requirements in relation to residential aged care worker vaccinations would support public health measures regarding COVID-19. It will also inform any adjustments needed to support access to COVID-19 vaccinations for aged care workers, and help identify the potential level of risk in relation to each aged care facility in the context of an outbreak and how those facilities, residents and workers can be best supported.

The Department considers further consultation in relation to these Amending Principles was not necessary given the minor nature of the amendments and the above-mentioned consultation undertaken earlier in the year. Peak organisations and unions have, however, been advised of these proposed amendments through weekly aged care vaccination stakeholder meetings, with no objections raised. Additionally, the sector has been informed that these new arrangements are expected to commence in the coming weeks.

### **Regulation Impact Statement (RIS)**

The Office of Best Practice Regulation (OBPR) was consulted during development of the Amending Principles on the regulatory impact for approved providers to maintain vaccination records and reporting requirements. The OBPR advised that a RIS is not required for this legislative instrument since it is unlikely to have a more than minor regulatory impact (**OBPR ID21-01203**).

**Details of the Aged Care Legislation Amendment (Vaccination Information) Principles 2022**

**Section 1**

This section states the name of the instrument is the *Aged Care Legislation Amendment (Vaccination Information) Principles 2022* (Amending Principles).

**Section 2**

This section provides that the Amending Principles commence the day after the instrument is registered.

**Section 3**

This section provides the authority for making the instrument is the *Aged Care Act 1997*.

**Section 4**

This section provides that each instrument specified in a Schedule to the Amending Principles is amended or repealed as set out in the Schedule and any other item in a Schedule has effect according to its terms.

**Schedule 1 – Amendments**

***Accountability Principles 2014***

**Item 1**

This item inserts new paragraph 30C(1)(ea) to subsection 30C(1).

New subsection 30C(1)(ea) places an obligation on approved providers of residential care services, certain flexible care services and home care services, to give the Secretary a report, in a form approved by the Secretary, on each COVID-19 vaccination reporting day, the following information in relation to the service:

- the number of those service staff who have informed the approved provider, whether voluntarily or as required under a law of a State or Territory, that they have received a booster dose of a COVID 19 vaccine, that includes the COVID-19 vaccination reporting day.

**Item 2**

This item inserts new paragraph 30C(2)(ca) to subsection 30C(2).

New paragraph 30C(2)(ca) places an obligation on approved providers of multi-purpose services to give the Secretary a report on each COVID-19 vaccination reporting day, the following information in relation to the service staff who access, or are reasonably likely to access, any premises where residential care is provided through the service:

- the number of those service staff who have informed the approved provider, whether voluntarily or as required under a law of a State or Territory, that they have received a booster dose of a COVID 19 vaccine, that includes the COVID-19 vaccination reporting day.

**Item 3**

This item amends subsection 30C(3) by inserting “(ea)” after “(e)” to provide that an approved provider is not required to give the Secretary a report under subsection (1) or (2) on a COVID- 19 vaccination reporting day if the number of service staff who have informed the provider they have received a booster dose of a COVID-19 vaccine has not changed since the previous report.

**Item 4**

This item amends subsection 30C(3) by inserting “(ca)” after “(c)” to provide that an approved provider is not required to give the Secretary a report under subsection (1) or (2) on a COVID- 19 vaccination reporting day if the number of service staff who have informed the provider they have received a booster dose of a COVID-19 vaccine has not changed since the previous report.

**Item 5**

This item repeals the previous definition of “COVID- 19 vaccination reporting day” as “4 January” in subsection 30C(4)(a) and replaces it with a new definition of “25 January” as the new reporting day, and every following Tuesday.

***Records Principles 2014*****Item 6**

This item inserts new paragraph 10B(1)(d) to subsection 10B(1).

New paragraph 10B(1)(d) requires approved providers of residential care services, certain flexible care services and home care services to keep a record:

- of the number of service staff in relation to the service who have informed the approved provider, whether voluntarily or as required under a law of a State or Territory, that they have received a booster dose of a COVID 19 vaccine.

Records of any booster dose of a COVID-19 vaccine given before, or after, the commencement of this paragraph is intended to be covered by this paragraph.

**Item 7**

This item inserts new paragraph 10B(2)(b) to subsection 10B(2).

New paragraph 10B(2)(b) requires approved providers of multi-purpose services to keep a record:

- of the number of service staff in relation to the service who have informed the approved provider, whether voluntarily or as required under a law of a State or Territory, that they have received a booster dose of a COVID 19 vaccine.

Records of any booster dose of a COVID-19 vaccine given before, or after, the commencement of this paragraph is intended to be covered by this paragraph.

## **Statement of Compatibility with Human Rights**

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

### ***Aged Care Legislation Amendment (Vaccination Information) Principles 2022***

The *Aged Care Legislation Amendment (Vaccination Information) Principles 2022* (Amending Principles) are 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 the legislative instrument**

The Amending Principles will impose requirements on approved providers of residential care, certain flexible and home care services to keep records and report to the Secretary of the Department of Health (Secretary) how many service staff have informed them that they have received a “booster dose” of a COVID-19 vaccination.

#### **Human rights implications**

The Amending Principles potentially engage the following human rights 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 potentially engages the right to the protection against arbitrary or unlawful interference with privacy, including in respect of persons with disability, by requiring certain approved providers to keep records and report to the Secretary on the number of service staff who have received a booster dose of a COVID-19 vaccine.

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 record and disclose 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.

The Amending Principles, as with the existing provisions, only require approved providers to disclose the number of service staff who have received a booster dose of a COVID-19 vaccine. They do not require the disclosure of names or other identifying information in relation to individuals. Further, 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.

### **Conclusion**

The Amending Principles are 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*.

**The Hon Greg Hunt**  
**Minister for Health and Aged Care MP**