

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 (No. 2) 2022

Purpose

The *Aged Care Legislation Amendment (Vaccination Information) Principles (No. 2) 2022* (Amending Principles) amends the *Accountability Principles 2014* (Accountability Principles) and the *Records Principles 2014* (Records Principles).

The Amending Principles require approved providers of residential care, certain flexible care and home care services to keep records and report to the Secretary of the Department of Health (Secretary) in relation to the number of service staff who *have not* received one or more specified doses of a COVID-19 vaccine. This includes not only a single dose or second dose of a COVID-19 vaccine as previously required, but also a booster dose to ensure consistency in the way providers record and report on the doses service staff have not received.

The Amending Principles also impose requirements on approved providers of residential care and certain flexible services to keep records and report to the Secretary the number of care recipients to whom residential care is provided through the service:

- who have informed them that they have received an additional dose ('winter 2022 dose') of a COVID-19 vaccine;
- who have informed them they are unwilling or clinically unsuitable to receive a recommended dose of a COVID-19 vaccine.

Collecting this data on recipients of residential care is critically important in preparing in-reach vaccination programs and outbreak preparedness planning and response, and protecting care recipients, particularly over the upcoming winter season climate and waning protection of the COVID-19 vaccine.

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, relating to the number of service staff and residents who have informed the provider about certain doses of a COVID-19 vaccine they have received.

In relation to service staff, this includes the number who have received a "single dose" or a "second dose" of a COVID-19 vaccine and if not, why not and the number who have received a "booster dose" of a COVID-19 vaccine. In relation to residents, this includes the number who have received a "single dose", a "second dose", a "third dose" (for those who are severely immunocompromised) or a "booster dose".

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 on 27 April 2022.

Consultation

In relation to amendments implemented last 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 last year.

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 (No. 2) 2022*

Section 1

This section states the name of the instrument is the *Aged Care Legislation Amendment (Vaccination Information) Principles (No. 2) 2022* (Amending Principles).

Section 2

This section provides that the Amending Principles commence on 27 April 2022.

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 repeals and substitutes paragraph 30C(1)(f).

Former paragraph 30C(1)(f) requires an approved provider of a residential care service, certain flexible care services or a home care service to give the Secretary a report that includes the number of service staff that have informed the approved provider whether voluntarily or as required that they have not received a single dose or a second dose of a COVID-19 vaccine because either an exemption or an exception under a law of a State or Territory applies to them.

New paragraph 30C(1)(f) extends this paragraph to also include the number of service staff who have not received a booster dose, and makes it clear this paragraph is intended to cover the number of service staff who may not have received any dose of a COVID-19 vaccine as well as those who may have received a single dose but not a second dose or a booster dose, and those who may have received a first dose and second dose but not a booster dose.

This amendment will ensure consistency in the way the number of service staff who have not received dose of a COVID-19 vaccine is reported by approved providers.

Item 2

This item repeals and substitutes paragraph 30C(2)(d).

Former paragraph 30C(2)(d) requires an approved provider of a multi-purpose service to give the Secretary a report that includes the number of service staff specified in paragraph 30C(2)(a) that have informed the approved provider whether voluntarily or as required that they have not received a single dose or a second dose of a COVID-19 vaccine because either an exemption or an exception under a law of a State or Territory applies to them.

New paragraph 30C(2)(d) extends this paragraph to also include the number of service staff who have not received a booster dose, and makes it clear this paragraph is intended to cover the number of service staff who may not have received any dose of a COVID-19 vaccine as well as those who may have received a single dose but not a second dose or a booster dose, and those who may have received a first dose and second dose but not a booster dose.

This amendment will ensure consistency in the way the number of service staff who have not received dose of a COVID-19 vaccine is reported by approved providers.

Item 3

This item repeals the previous definition of “COVID-19 vaccination reporting day” as “25 January 2022” in paragraph 30C(4)(a) and replaces it with a new definition of “3 May 2022” as the new reporting day. (Paragraph 30C(4)(b) also provides the COVID-19 vaccination reporting day includes every following Tuesday).

Item 4

This item inserts new paragraph 30D(1)(i) to require approved providers of certain aged care services to give the Secretary on each COVID-19 reporting day, a report that includes the number of care recipients to whom residential care is provided to the care recipient through the service, who have voluntarily informed the approved provider they have received a winter 2022 dose of a COVID-19 vaccine.

This requirement is intended to capture all residents of aged care facilities who receive an additional dose of the COVID-19 to increase their vaccine protection before the winter season, as was recommended by ATAGI on 25 March 2022.

This item also inserts a new paragraph 30D(1)(j) and (k) to require approved providers to include within this report the number of the care recipients to whom residential care is provided to the care recipient through the service who have voluntarily informed the approved provider that they are:

- willing and clinically suitable to receive one or more doses of a COVID-19 vaccine, but have not received any dose of a COVID-19 vaccine, or
- unwilling or clinically unsuitable to receive any dose of a COVID-19 vaccine.

Item 5

This item amends subsection 30D(2) by omitting “(1)(e), (f), (g) and (h)” and substituting “(1)(e) to (k)” to provide that an approved provider is not required to give the Secretary a report under subsection (1) on a COVID-19 vaccination reporting day if the number of care recipients referred to in each of paragraphs on that day is the same as in the last report given by the approved provider under subsection (1).

Records Principles 2014

Item 6

This item repeals and substitutes paragraph 10B(1)(e).

Former paragraph 10B(1)(e) requires an approved provider of a residential care service, certain flexible care services or a home care service to keep records of the number of service staff who have informed the approved provider whether voluntarily or as required that they have not received a single dose or a second dose of a COVID-19 vaccine because either an exemption or an exception under a law of a State or Territory applies to them.

New paragraph 10B(1)(e) extends this paragraph to also include the number of service staff who have not received a booster dose, and makes it clear this paragraph is intended to cover the number of service staff who may not have received any dose of a COVID-19 vaccine as well as those who may have received a single dose but not a second dose or a booster dose, and those who may have received a first dose and second dose but not a booster dose.

This amendment will ensure consistency in the way the number of service staff who have not received dose of a COVID-19 vaccine is recorded by approved providers.

Item 7

This item repeals and substitutes paragraph 10B(2)(c).

Former paragraph 10B(2)(c) requires an approved provider of a multi-purpose service to keep records of the number of service staff in relation to the service who access, or are reasonably likely to access, any premises where residential care is provided through the service, who have informed the approved provider whether voluntarily or as required that they have not received a single dose or a second dose of a COVID-19 vaccine because either an exemption or an exception under a law of a State or Territory applies to them.

New paragraph 10B(2)(c) extends this paragraph to also include the number of service staff who have not received a booster dose, and makes it clear this paragraph is intended to cover the number of service staff who may not have received any dose of a COVID-19 vaccine as well as those who may have received a single dose but not a second dose or a booster dose, and those who may have received a first dose and second dose but not a booster dose.

This amendment will ensure consistency in the way the number of service staff who have not received dose of a COVID-19 vaccine is recorded by approved providers.

Item 8

This item inserts new paragraphs 10C(i) to require approved providers of a certain aged care services to keep records of the number of these care recipients to whom residential care is provided to the care recipient through the service who have voluntarily informed the approved provider they have received a winter 2022 dose of a COVID-19 vaccine.

This item also inserts a new paragraph 10C(j) and (k) to require approved providers to keep records of the number of care recipients to whom residential care is provided through an aged care service who have voluntarily informed the approved provider that they are:

- willing and clinically suitable to receive one or more doses of a COVID-19 vaccine but they have not received any dose of a COVID-19 vaccine, or
- unwilling or clinically unsuitable to receive any dose of a COVID-19 vaccine.

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) Act 2011*.

Overview of the legislative instrument

The Amending Principles require approved providers of residential care, certain flexible care and home care services to keep records and report to the Secretary in relation to the number of service staff who *have not* received a specified dose of a COVID-19 vaccine.

The Amending Principles also impose requirements on approved providers of residential care and certain flexible services to keep records and report to the Secretary the number of care recipients to whom residential care is provided through the service:

- who have informed them that they have received an additional dose (‘winter 2022 dose’) of a COVID-19 vaccine;
- who have informed them they are unwilling or clinically unsuitable to receive a recommended dose of a COVID-19 vaccine.

Human rights implications

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 certain statistical information relating to the vaccination status of residents and service staff. 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.

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