

EXPLANATORY STATEMENT

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

Aged Care Act 1997

Information Amendment (Vaccination Reporting) Principles 2021

Purpose

The purpose of the Information Amendment (Vaccination Reporting) Principles 2021 (Amendment) is to enable the Secretary to make information public about the numbers of service staff and care recipients at a particular aged care service who have received certain vaccinations.

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

Background

Section 30C and 30D of the Accountability Principles 2014 require approved providers of residential care services, multi-purpose services, certain flexible care services and home care services to report information to the Secretary about the vaccination of service staff and care recipients against COVID-19, from 27 July 2021. These reporting obligations will also extend to vaccinations against influenza, from 1 January 2022.

Reporting on the vaccination of service staff and care recipients by approved providers of aged care services was introduced to help governments understand the level of risk each aged care facility faces in the event of an outbreak of COVID-19 and inform any adjustments needed to improve access to COVID-19 vaccinations.

Section 86-1 of the *Aged Care Act 1997* (Aged Care Act) provides that information relating to the affairs of an approved provider, which may include information reported by approved providers, is protected information. Paragraph 86-2(e) provides that it is an offence to record, disclose or use protected information unless (among other things) it is authorised under the Aged Care Act or any other Act.

The Amendment will authorise the Secretary to publish information relating to the reports the Secretary receives from approved providers to further support public health measures on COVID-19 and inform governments' vaccination programs and provide the visibility required to protect senior Australians. The information published by the Secretary will be based on information voluntarily provided by service staff and care recipients, to approved providers. This information must not contain any personal information.

Authority

Paragraph 86-9(1)(m) of the Aged Care Act provides that the Information Principles may specify information of a kind which the Secretary may make publicly available about an aged care service.

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 Amendment commences on day after the instrument is registered.

Consultation

Targeted consultation occurred 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, regarding the reporting of de-identified vaccination information about aged care services.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation advised that a RIS was not required for this legislative instrument.

ATTACHMENT

Information Amendment (Vaccination Reporting) Principles 2021

Section 1 provides that the name of the amending principles is the *Information Amendment (Vaccination Reporting) Principles 2021* (Amendment).

Section 2 provides that the Amendment commences the day after the instrument is registered.

Section 3 states that the authority for making the amending principles is the *Aged Care Act 1997* (Aged Care Act).

Section 4 provides the amendments to the *Information Principles 2014* (Information Principles) is to be set out in a schedule of the Amendment.

Schedule 1 – Amendments

Information Principles 2014

Item 1 At the end of section 7

Item 1 inserts a note that information specified in Part 3 of the Information Principles must not include personal information (see subsection 86-9(2)).

Item 2 At the end of section 8

Item 2 inserts a new paragraph 8(e) to the Information Principles which specifies that information given to the Secretary under section 30C or 30D of the *Accountability Principles 2014* (Accountability Principles), may be made publicly available under subsection 86-9(1) of the Aged Care Act.

Sections 30C and 30D of the Accountability Principles requires approved providers of residential care services, multi-purpose services, home care services and flexible care services in the form of short-term restorative care provided in a residential care setting, to report information relating to certain vaccinations received by service staff and care recipients of these services.

Statement of Compatibility with Human Rights

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

Information Amendment (Vaccination Reporting) Principles 2021

The *Information Amendment (Vaccination Reporting) Principles 2021* (Amendment) 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) Act 2011*.

Overview of the Amendment

This Amendment allows the Secretary to make publicly available, information about an aged care service, relating to certain vaccines received by service staff and care recipients. This information is reported to the Secretary by approved providers under sections 30C and 30D of the *Accountability Principles 2014*.

Human rights implications

Right to health

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) promotes the right of all individuals to enjoy the highest attainable standards of physical and mental health. This includes the application of measures for the prevention, treatment and control of epidemic, endemic, occupational and other diseases (Article 12(2)).

The purpose of this instrument is to provide visibility of the roll out of vaccinations in aged care services. This instrument promotes the right to health by assisting the Government and state and territory health authorities to access this critical information in a timely manner, and provides public transparency of measures to protect recipients of aged care services. Understanding the extent of vaccinations is fundamental to inform public health responses to COVID-19.

Right to privacy

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy.

While this instrument allows for the publication of information about aged care service staff and care recipients, it does not interfere with the right to privacy. Subsection 86-9(2) of the Aged Care Act provides that information of kind specified in this Amendment must not contain personal information.

Conclusion

This instrument is compatible with human rights because it promotes the rights to health and does not infringe on the right to privacy.

The Hon Greg Hunt MP
Minister for Health and Aged Care