

## **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) will impose requirements on approved providers to keep records and report to the Commonwealth 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, because they are obliged to provide that information to the approved provider under state or territory law.

Approved providers will also be required to keep records and report to the Commonwealth on the number of service staff who have notified the approved provider that they are subject to exemptions or exceptions under state or territory law.

The Commonwealth will be able to report this information to state or territory health authorities, and to publish the information.

The record keeping and reporting requirements for COVID-19 vaccination status of service staff will be extended to services provided not only in a residential setting but also a community setting, consistent with existing requirements to report in relation to home care services, to effectively cover all aged care services.

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

### **Background**

The *Aged Care Act 1997* (Act) provides for the regulation and funding of aged care services. Persons who are approved under the Act to provide aged care services (approved providers) must keep records in accordance with the *Records Principles 2014* (Records Principles), including records pertaining to service staff in certain circumstances. The kind of information approved providers must give to the Secretary of the Department of Health (Secretary) is specified in the *Accountability Principles 2014* (Accountability Principles). The *Information Principles 2014* (Information Principles) enable the Secretary to provide this reported information to state and territory health authorities, and to make the information publicly available.

Vaccination is the most effective protection against coronavirus disease (COVID-19). Collecting and reporting data on the vaccination status of aged care workers across the sector and aged care recipients, is an important measure to provide greater health security for older Australians who are most vulnerable to the impacts of COVID-19.

Each state and territory has put in place, or is in the process of putting in place, public health orders or equivalent instruments under state and territory laws, requiring all residential aged care workers to have received at least a first COVID-19 vaccination by 17 September 2021, or in some cases earlier, unless covered by a relevant exemption or exception under those instruments.

The current Accountability Principles and Records Principles impose requirements on approved providers to keep records and report to the Commonwealth the number of service staff who have voluntarily informed the approved provider they have received a single dose of a COVID-19 vaccination and all required doses of a COVID-19 vaccination. Approved providers are supported to undertake this reporting obligation through the My Aged Care online portal. The current record keeping and reporting requirements do not extend to information provided by service staff who have informed the approved provider of COVID-19 vaccination status where required to do so under state or territory laws.

## **Authority**

Section 96-1 of the 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

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

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 6 September 2021.

## **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* 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.

The consultation indicated general consensus that establishing recording and reporting requirements on residential aged care worker vaccinations would support public health measures on COVID-19, inform any adjustments needed to support workers' access to a COVID-19 vaccination, and provide an indicator to identify the potential level of risk each aged care facility faces in the context of an outbreak and how those facilities, residents and workers can be best supported.

As a result of the above consultation, consultation in relation to these Amending Principles was not considered necessary given the minor nature of the amendments to be made, and the extensive consultation undertaken earlier in the 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 ID 44496**).

## **ATTACHMENT**

### **Details of the Aged Care Legislation Amendment (Vaccination Information) Principles 2021**

**Section 1** states the name of the instrument is the *Aged Care Legislation Amendment (Vaccination Information) Principles 2021* (the Amending Principles).

**Section 2** provides for the commencement of the Amending Principles. The commencement is intended to coincide with the commencement of the first state or territory instruments relating to COVID-19 vaccination of relevant service staff.

**Section 3** states the authority for making the instrument is the Act.

**Section 4** provides each instrument specified in a Schedule 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 definitions of home care setting and transition care into section 4.

##### **Item 2**

This item replaces section 30B with a new purpose for the division. The new purpose is broader than the previous purpose and provides approved providers are to give a report to the Secretary about certain vaccinations that have been received, or not received, by certain service staff and care recipients.

##### **Item 3**

This item replaces the heading of section 30C.

##### **Item 4**

This item adds a new paragraph 30C(1)(aa). This extends the operation of section 30C(1) to flexible care services through which transition care is provided in a residential or community setting.

##### **Item 5**

This item amends paragraph 30C(1)(b) to apply to services provided in a home care setting in addition to those provided in a residential care setting.

**Item 6**

This item replaces paragraphs 30C(1)(d) and (e).

New paragraph 30C(1)(d) places an obligation on approved providers of specified services to give the Secretary a report, on each reporting day, of service staff who inform the approved provider, whether voluntarily or under a law of a State and Territory they have received a single dose of a COVID-19 vaccine.

New paragraph 30C(1)(e) places an obligation on approved providers of specified services to give the Secretary a report, on each reporting day, of service staff who inform the approved provider, whether voluntarily or under a law of a State and Territory they have received all required doses of a COVID-19 vaccine.

New paragraph 30C(1)(f) places an obligation on approved providers of specified services to give the Secretary a report, on each reporting day, of service staff who inform the approved provider, whether voluntarily or under a law of a State and Territory, that they have not received a single dose or all required doses of a COVID-19 vaccine either because they have been granted an exemption under a law of a state or territory from the requirement to receive a COVID-19 vaccine, or because the requirement to receive a COVID-19 vaccine does not apply to them. In the latter case, this would include for example, where the state or territory law includes an exception if a person is unable to receive, or has a medical contraindication to, the COVID-19 vaccine.

New paragraph 30C(1)(g) places an obligation on approved providers of specified services to give the Secretary a report, on each reporting day, in respect of service staff to whom paragraph 30C(1)(f) applies, of the nature of the exemption from the requirement to receive a COVID-19 vaccine or the reason why the requirement to receive a COVID-19 does not apply to them.

The report is required to be in a form required by the Secretary which may, for example, specify the categories of exemptions or reasons for non-vaccination required to be reported. Categories may include temporary or permanent exemptions or exceptions, such as medical contraindication, inability to obtain vaccination, or exceptional circumstances reasons, depending on the particular requirements of state and territory laws.

**Item 7**

This item replaces paragraphs 30C(2)(b) and (c).

New paragraph 30C(2)(b) places an obligation on approved providers of a multi-purpose service to give the Secretary a report, on each reporting day, of service staff who inform the approved provider, whether voluntarily or under a law of a State and Territory they have received a single dose of a COVID-19 vaccine.

New paragraph 30C(2)(c) places an obligation on approved providers of a multi-purpose service to give the Secretary a report, on each reporting day, of service staff who inform the approved provider, whether voluntarily or under a law of a State and Territory they have received all required doses of a COVID-19 vaccine.

New paragraph 30C(2)(d) places an obligation on approved providers of a multi-purpose service to give the Secretary a report, on each reporting day, of service staff who inform the approved provider, whether voluntarily or under a law of a State and Territory, that they have not received a single dose or all required doses of a COVID-19 vaccine because they have been granted an exemption under a law of a State or Territory from the requirement to receive a COVID-19 vaccine, or because the requirement to receive a COVID-19 does not apply to them. In the latter case, this would include for example, where the state or territory law includes an exception if a person is unable to receive, or has a medical contraindication to, the COVID-19 vaccine.

New paragraph 30C(2)(e) places an obligation on approved providers of a multi-purpose service to give the Secretary a report, on each reporting day, in respect of service staff to whom paragraph 30C(2)(e) applies, of the nature of the exemption from the requirement to receive a COVID-19 vaccine or the reason why the requirement to receive a COVID-19 does not apply to them.

The report is required to be in a form required by the Secretary which may, for example, specify the categories of exemptions or reasons for non-vaccination required to be reported. Categories may include temporary or permanent exemptions or exceptions, such as medical contraindication, inability to obtain vaccination, or exceptional circumstances reasons, depending on the particular requirements of state and territory laws.

#### **Item 8**

This item replaces the date of 27 July 2021 in subsection 30C(3) with 7 September 2021.

#### **Item 9**

This item replaces the paragraphs 30C(3)(1)(d) and (e), or paragraphs (2)(b) and (c), with the new paragraphs 30C(3)(1)(d),(e) and (f), or paragraphs (2)(b),(c) and (d), so that an approved provider is not required to update reported numbers which have not changed since a previous report.

#### **Item 10**

This item replaces the date of 27 July 2021 in subsection 30C(4) in the definition of reporting day, with 7 September 2021.

#### **Item 11**

This item replaces the heading of section 30D to ensure consistency with the revised heading of section 30C and related headings within the *Records Principles 2014*.

#### **Item 12**

This item adds a new paragraph 30D(1)(aa). This extends the operation of section 30D(1) to flexible care services through which transition care is provided in a residential setting consistent with current scope for reporting for care recipients. In contrast with reporting requirements for service staff, reporting requirements for care recipients will not be extended to transition care in a community setting.

**Item 13**

This item replaces the date of 27 July 2021 in subsection 30D(2) with 7 September 2021.

**Item 14**

This item replaces the date of 27 July 2021 in the definition of reporting day in subsection 30D(3), with the date of 7 September 2021.

***Information Principles 2014*****Item 15**

This item inserts a definition of service staff into section 4.

**Item 16**

This item renumbers subsection 6(1).

**Item 17**

This item inserts subsection 6(2). This enables the Secretary to disclose information about service staff who have, or have not, received COVID-19 vaccinations provided under sections 30C or 30D of the Accountability Principles, to bodies responsible for state or territory health administration, to assist such a body to perform its functions. For example, information provided may include a risk analysis of the potential for COVID-19 infection in a residential aged care service, which may also draw on other information available to the Secretary. This is intended to support coordinated efforts between governments to lift vaccination levels and to ensure safe aged care services.

Section 86-9(2) of the Act provides that the information disclosed by the Secretary must not include any personal information.

**Item 18**

This item amends paragraph 8(e) to enable the Secretary to make information publicly available about service staff who either have, or have not, received certain vaccinations.

***Records Principles 2014*****Item 19**

This item inserts new definitions of home care setting and transition care.

**Item 20**

This item adds a new paragraph 10A(aa). This extends the operation of section 10A to flexible care services through which transition care is provided in a residential or community setting.

**Item 21**

This item amends paragraph 10A(b) to apply to a flexible care service through which short-term restorative care is provided a home care setting, in addition to a residential care setting.

**Item 22**

This item amends paragraph 10A(b) to apply to services provided in a home care setting in addition to those provided in a residential care setting.

**Item 23**

This item adds a new paragraph 10B(1)(aa). This extends the operation of section 10B(1) to flexible care services through which transition care is provided in a residential or community setting.

**Item 24**

This item amends paragraph 10B(1)(b) to apply to services provided in a home care setting in addition to those provided in a residential care setting.

**Item 25**

This item replaces paragraphs 10B(1)(c) and (d).

New paragraph 10B(1)(c) places an obligation on approved providers of certain care services to keep records of service staff who inform the approved provider, whether voluntarily or under a law of a State and Territory, they have received a single dose of a COVID-19 vaccine.

New paragraph 10B(1)(d) places an obligation on approved providers of certain care services to keep records of service staff who inform the approved provider, whether voluntarily or under a law of a State and Territory, they have received all required doses of a COVID-19 vaccine.

New paragraph 10B(1)(e) places an obligation on approved providers of certain care services to keep records of service staff who inform the approved provider, whether voluntarily or under a law of a State and Territory, that they have not received a single dose or all required doses of a COVID-19 vaccine because they have been granted an exemption under a law of a State or Territory from the requirement to receive a COVID-19 vaccine, or because the requirement to receive a COVID-19 does not apply to them. In the latter case, this would include for example, where the state or territory law includes an exception if a service staff is unable to receive, or has a medical contraindication to, the COVID-19 vaccine.

New paragraph 10B(1)(f) places an obligation on approved providers of certain care services to keep records in respect of service staff to whom paragraph 10B(1)(e) applies, of the nature of the exemption from the requirement to receive a COVID-19 vaccine or the reason why the requirement to receive a COVID-19 does not apply to them.

In order to record this information, approved providers will need to collect certain vaccination information about the service staff. This information is 'health information' and therefore 'personal information' and 'sensitive information' under the *Privacy Act 1988* (Privacy Act). To the extent approved providers collect, use, record and disclose personal information for the purposes of meeting their record keeping and reporting responsibilities under the Records Principles and Accountability Principles, approved providers will be required to do so in accordance with the Privacy Act.



**Item 26**

This item replaces paragraphs 10B(2)(a) and (b).

New paragraph 10B(2)(a) places an obligation on approved providers of a multi-purpose service to keep records of service staff who inform the approved provider, whether voluntarily or under a law of a State and Territory, they have received a single dose of a COVID-19 vaccine.

New paragraph 10B(2)(b) places an obligation on approved providers of a multi-purpose service to keep records of service staff who inform the approved provider, whether voluntarily or under a law of a State and Territory, they have received all required doses of a COVID-19 vaccine.

New paragraph 10B(2)(c) places an obligation on approved providers of a multi-purpose service to keep records of service staff who inform the approved provider, whether voluntarily or under a law of a State and Territory, that they have not received a single dose or all required doses of a COVID-19 vaccine because they have been granted an exemption under a law of a State or Territory from the requirement to receive a COVID-19 vaccine, or because the requirement to receive a COVID-19 does not apply to them. (In the latter case, this would include for example, where the state or territory law includes an exception if a service staff is unable to receive, or has a medical contraindication to, the COVID-19 vaccine).

New paragraph 10B(2)(d) places an obligation on approved providers of a multi-purpose service to keep records in respect of service staff to whom paragraph 10B(2)(c) applies, of the nature of the exemption from the requirement to receive a COVID-19 vaccine or the reason why the requirement to receive a COVID-19 does not apply to them.

In order to record this information, approved providers will need to collect certain vaccination information about the service staff. This information is 'health information' and therefore 'personal information' and 'sensitive information' under the Privacy Act. To the extent approved providers collect, use, record and disclose personal information for the purposes of meeting their record keeping and reporting responsibilities under the Records Principles and Accountability Principles, approved providers will be required to do so in accordance with the Privacy Act.

**Item 27**

This item adds a new paragraph 10C(1)(aa). This extends the operation of section 10C(1) to flexible care services through which transition care is provided in a residential setting.

## **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 2021***

The *Aged Care Legislation Amendment (Vaccination Information) Principles 2021* (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 amends the *Records Principles 2014*, *Accountability Principles 2014* to establish requirements on certain approved providers to keep records of service staff who have voluntarily or compulsorily disclosed their vaccination status and give the Secretary a written report about the number of staff who have received certain vaccinations. In addition, the Amending Principles amend the *Information Principles 2014* to allow the disclosure of information relating to the reports received by the Secretary.

#### **Human rights implications**

The instrument engages the following human rights:

- the right to freedom of thought, conscience and religion
- the right to freedom of expression
- the right to safe and healthy working conditions, and
- the right to the enjoyment of the highest attainable standard of physical and mental health

The Amending Principles engage the following human right as contained in Article 18 and 19(2) of the *International Covenant on Civil and Political Rights (ICCPR)*:

- Everyone shall have the right to freedom of thought, conscience and religion; and
- Everyone shall have the right to freedom of expression

These articles state that no one shall be subject to coercion which might impair their freedom to have or to adopt a religion or belief of his choice and ensure that everyone has the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The Amending Principles do not empower approved providers to require service staff to be vaccinated against COVID-19. As such, the collection and reporting of this information, does not restrict a person's right to freedom of thought, conscience, religion and expression.

The Amending Principles further engage the following human rights as contained in article 7(b), article 11 and article 12(1) of the *International Convention on Economic, Social and Cultural Rights (ICESCR)* and articles 25 and 28 of the *Convention of the Rights of Persons with Disabilities (CRPD)*:

- the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular: (b) Safe and healthy working condition;
- the right to an adequate standard of living, including with respect to food, clothing and housing, and to the continuous improvement of living conditions; and
- the right to the enjoyment of the highest attainable standard of physical and mental health.

Vaccination is the most effective protection against COVID-19 for residents in aged care homes and the workers who care for them. Information on the number of service staff at an approved provider and the number of service staff who have received doses of the COVID-19 for all aged care services will be very important to identify the potential level of risk each aged care facility faces in the context of an outbreak and how those facilities, residents and workers can be best supported.

As such, the collection and reporting of this information will enhance the standard of living of care recipients and improve the safety and health of the working conditions of service staff by enabling government to identify and respond to risks of COVID-19 and influenza.

### **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 Amending Principles promote the right to an adequate standard of living, the highest standard of physical and mental health and safe and healthy working conditions without prohibiting or restricting the right to freedom of expression, thought, conscience and religion and the right to work.

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