

## **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) 2021*

### **Purpose**

The *Aged Care Legislation Amendment (Vaccination Information) Principles (No. 2) 2021* (Amending Principles) amends the *Accountability Principles 2014* (Accountability Principles), the *Information Principles 2014* (Information Principles) and the *Records Principles 2014* (Records Principles).

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) on a weekly basis how many service staff have informed them that they have, or have not, received a “second dose” of a COVID-19 vaccination (as opposed to “all required doses”). They will also be required to keep records and report on how many residential care recipients have voluntarily informed them that they have received a “second dose” (as opposed to “all required doses”), a third dose or a booster dose of a COVID-19 vaccination. These amendments recognise that an individual may now receive a third dose or a booster dose of a COVID-19 vaccination in their lifetime.

Under the Amending Principles, approved providers will also be required to report to the Secretary on how many residential care recipients and service staff have informed them that they have or have not received an influenza vaccination during that calendar year, and if not, why not. This information will be required to be reported annually on 31 October.

The reporting requirements set out in these Amending Principles will commence on 1 January 2022 and replace previous reporting requirements which were also due to commence on 1 January 2022. This includes Schedule 3 of the *Aged Care Legislation Amendment (Care Recipients and Service Staff Vaccination Recording and Reporting) Principles 2021* and Schedule 2 of the *Aged Care Legislation Amendment (Service Staff Vaccination Recording and Reporting) Principles 2021*, which will be repealed.

The amendments to the Information Principles will enable the Secretary to disclose and the revised vaccination information given to the Secretary under the Amending Principles, or information relating to an analysis of this information, to the head of the relevant State or Territory health body. In addition, these amendments will enable the Secretary to make publicly available the revised vaccination information given to the Secretary under the Amending Principles.

Vaccination is one of the most effective protections against COVID-19. While influenza vaccinations do not protect against COVID-19, they can prevent a person from contracting both influenza and COVID-19 together, which can result in severe health outcomes including hospitalisation and increased pressures on the health system. The collection and reporting of data on the vaccination status of aged care service staff and residential aged care recipients aims to provide greater health security for older Australians who are most vulnerable to the impacts of COVID-19.

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 “all required doses” 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 “all required doses” 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 enable the Secretary to disclose vaccination information provided under the Accountability Principles, or information that relates to an analysis of this information, to the head of the relevant State or Territory health body. The Information Principles also enable the Secretary to make publicly available the vaccination information given to the Secretary under the Accountability Principles where it does not include personal information about an individual person.

## **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

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 for sections 1 to 4 and for Schedule 1, Part 2. Schedule 1, Part 1 commences on 1 January 2022.

### **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.

### **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**).

## **ATTACHMENT**

### **Details of the Aged Care Legislation Amendment (Vaccination Information) Principles (No. 2) 2021**

#### **Section 1**

This section states the name of the instrument is the *Aged Care Legislation Amendment (Vaccination Information) Principles (No. 2) 2021* (Amending Principles).

#### **Section 2**

This section provides that sections 1 to 4 and Schedule 1, Part 2 of the Amending Principles commence the day after the instrument is registered and that Schedule 1 Part 1 commences on 1 January 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**

### **Part 1 – Main Amendments**

#### ***Accountability Principles 2014***

##### **Item 1**

This item inserts new subsections 30BA(1), (2) and (3) and their related headings into Division 3 – Information about vaccinations.

New subsection 30BA(1) 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 influenza vaccination reporting day, the following information in relation to the service:

- the number of service staff who have informed the approved provider, whether voluntarily or as required under a law of a State and Territory, that they have received the annual seasonal influenza vaccination for the calendar year that includes the influenza vaccination reporting day;
- the number of service staff who have informed the approved provider, whether voluntarily or as required under a law of a State and Territory, that they have not received the annual seasonal influenza vaccination for the calendar year that includes the influenza vaccination reporting day because either an exemption applies or the requirement to receive an influenza vaccination does not apply to them; and
- where an exemption applies, the nature of the exemption, or where the requirement does not apply, the reason why it does not apply. This could 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 vaccine.

New subsection 30BA(2) places an obligation on approved providers of multi-purpose services to give the Secretary a report on each influenza 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 inform the approved provider, whether voluntarily or under a law of a State and Territory, they have received an influenza vaccination for the calendar year that includes the influenza vaccination reporting day;
- the number of those service staff who inform the approved provider, whether voluntarily or under a law of a State and Territory, they have not received an influenza vaccination for the calendar year that includes the influenza vaccination reporting day either because they have been granted an exemption under a law of a State or Territory from the requirement, or because the requirement does not apply to them; and
- where an exemption applies, the nature of the exemption or the reason why the requirement does not apply. This could 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 vaccine.

New subsection 30BA(3) provides a definition of “influenza vaccination reporting day” being 31 October 2022 and each subsequent 31 October.

#### **Item 2**

This item amends subsection 30C(1) by changing the term “reporting day” to “COVID-19 vaccination reporting day”.

#### **Item 3**

This item amends paragraph 30C(1)(e) by changing the term “all required doses” to “a second dose”.

#### **Item 4**

This item amends paragraph 30C(1)(f) by changing the term “all required doses” to “a second dose”.

#### **Item 5**

This item amends subsection 30C(2) by changing the term “reporting day” to “COVID-19 vaccination reporting day”.

#### **Item 6**

This item amends paragraph 30C(2)(c) by changing the term “all required doses” into “a second dose”.

#### **Item 7**

This item amends paragraph 30C(2)(d) by changing the term “all required doses” into “a second dose”.

**Item 8**

This item replaces existing subsection 30C(3) and provides that an approved provider is not required to give the Secretary a report under subsections 30C(1) or (2) on the COVID-19 vaccination reporting day if the number of service staff for each of the reporting categories has not changed since the previous report. The report relates to the number of service staff who have informed the approved provider they have received their first or second dose, whether an exemption applies or whether a requirement to report does not apply to them. This could 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 vaccine.

**Item 9**

This item repeals the previous definition of “reporting day” in subsection 30C(4) and replaces it with a new definition of “COVID-19 vaccination reporting day”. The definition means reporting is to occur on 4 January 2022 and on every following Tuesday.

**Item 10**

This item inserts new subsections 30CA(1) and (2).

New subsection 30CA(1) requires approved providers of residential care services, certain flexible care services and multi-purpose services, to give the Secretary a report, on each influenza vaccination reporting day, on the number of care recipients to whom residential care is provided through the service who have voluntarily informed the approved provider, they have received an influenza vaccination for the calendar year that includes the influenza vaccination reporting day.

New subsection 30CA(2) provides a definition of “influenza vaccination reporting day”, which has the same meaning as new subsection 30BA(3), explained above.

**Item 11**

This item amends subsection 30D(1) by changing the term the term “reporting day” to “COVID-19 vaccination reporting day”.

**Item 12**

This item amends paragraph 30D(1)(f) by changing the term “all required doses” to “a second dose”.

**Item 13**

This item adds new paragraph 30D(1)(g), which requires approved providers of certain services to give the Secretary a report, on each reporting day, of the number of residential care recipients who have voluntarily informed the approved provider they have received a third dose of a COVID-19 vaccine.

The note after new paragraph 30D(1)(g) clarifies that care recipients who are assessed by their health practitioner as being immunocompromised may receive a third dose of the COVID-19 vaccine.

This item also adds new paragraph 30D(1)(h), which requires approved providers of certain services to give the Secretary a report, on each reporting day, of the number of residential care recipients who have voluntarily informed the approved provider that they have received a booster dose of a COVID-19 vaccine.

#### **Item 14**

This item repeals existing subsection 30D(2) and substitutes it with new subsection 30D(2) and provides an approved provider is not required to give the Secretary a report under subsection 30D(1) on the COVID-19 vaccination reporting day if the number of residential care recipients for each of the reporting categories has not changed since the previous report. The report relates to the numbers of residential care recipients who have voluntarily informed the approved provider they have received their first, second or third dose or a booster dose of the COVID-19 vaccine.

#### **Item 15**

This item repeals the previous definition of “reporting day” in subsection 30D(3) and inserts a new definition of “COVID-19 vaccination reporting day”. The definition has the same meaning given by new subsection 30C(4), explained above.

### ***Information Principles 2014***

#### **Item 16**

This item replaces references to existing sections in paragraph 6(2)(a) to capture new sections 30BA, 30C, 30CA and 30D to include provisions inserted by these amendments. This allows the Secretary to disclose the numbers that have been reported to the Secretary to the head of a State or Territory body that is responsible for the administration of matters relating to health to assist that body to perform its functions. The Secretary is also able to disclose information that is, or relates to, analysis of the numbers of service staff and care recipients who have, or have not, received the annual seasonal influenza vaccine and first, second or third doses of a COVID-19 vaccine carried out by or on behalf of the Department.

#### **Item 17**

This item replaces references to existing sections in paragraph 8(e) to capture new sections 30BA, 30C, 30CA and 30D to include provisions inserted by these amendments. This allows the Secretary to make publicly available the information collected about an approved provider regarding the numbers of service staff and care recipients who have, or have not, received the annual seasonal influenza vaccine and doses of a COVID-19 vaccine that have been reported to the Secretary.

### ***Records Principles 2014***

#### **Item 18**

This item inserts a new subheading for the new subsection 10A(1) to make it clear, that this subsection, explained below only applies to residential care services, certain flexible care services and home care services.

#### **Item 19**

This item inserts “(1)” in front of the existing provision to make it new subsection (1).

**Item 20**

This item inserts new subsection 10A(2). New subsection 10A(2) requires approved providers of multi-purpose services to keep records for each calendar year regarding service staff in relation to the service who:

- access or are reasonably likely to access any premises where residential care is provided; and
- have informed the approved provider, whether voluntarily or as required under a State or Territory law, that they have received the annual seasonal influenza vaccination for that calendar year.

This includes where a service staff member has received the annual seasonal influenza vaccination outside of the approved provider's influenza vaccination scheme.

**Item 21**

This item amends paragraph 10B(1)(d) by changing the term "all required doses" to "a second dose".

**Item 22**

This item amends paragraph 10B(1)(e) by changing the term "all required doses" to "a second dose".

**Item 23**

This item amends paragraph 10B(2)(b) by changing the term "all required doses" to "a second dose".

**Item 24**

This item amends paragraph 10B(2)(c) and by changing the term "all required doses" to "a second dose".

**Item 25**

This item replaces existing paragraphs 10C(d) and (e) with new paragraphs (d), (e), (f), (g) and (h). This amendment requires approved providers to keep records about:

- for each calendar year, the number of residential care recipients who have voluntarily informed the approved provider that they have received the annual seasonal influenza vaccination for that calendar year; and
- the number of residential care recipients who have voluntarily informed the approved provider that they have received a single, second, third or a booster dose of a COVID-19 vaccine. Records of any dose of a COVID-19 vaccine given before or after the commencement of these paragraphs is intended to be covered by these paragraphs.

The note after new subsection (g) clarifies that care recipients who are assessed by their health practitioner as being immunocompromised may receive a third dose of a COVID-19 vaccine.



## **Part 2 – Other Amendments**

### ***Aged Care Legislation Amendment (Care Recipients and Service Staff Vaccination Recording and Reporting) Principles 2021***

#### **Items 26 and 27**

These items repeal Schedule 3 and its operation from the *Aged Care Legislation Amendment (Care Recipients and Service Staff Vaccination Recording and Reporting) Principles 2021*. Schedule 3 set out influenza vaccination reporting requirements relating to service staff and residential care recipients which were to commence in 2022. These requirements have been replaced by amendments made in Schedule 1 to the Amending Principles.

### ***Aged Care Legislation Amendment (Service Staff Vaccination Recording and Reporting) Principles 2021***

#### **Items 28 and 29**

These items repeal Schedule 2 and its operation from the *Aged Care Legislation Amendment (Service Staff Vaccination Recording and Reporting) Principles 2021*. Schedule 2 set out approved provider reporting requirements relating to the number of service staff who had informed the approved provider that they had received the annual seasonal influenza and COVID-19 vaccines, which were to commence in 2022. These requirements have been replaced by amendments made in Schedule 1 to the Amending Principles.

## **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 (No. 2) 2021***

The *Aged Care Legislation Amendment (Vaccination Information) Principles (No. 2) 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) 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) on a weekly basis how many service staff have informed them that they have, or have not, received a “second dose” of a COVID-19 vaccination (as opposed to “all required doses”). They will also be required to report on how many residential care recipients have voluntarily informed them that they have received a “second dose” (as opposed to “all required doses”), a third dose or a booster dose of a COVID-19 vaccination. These amendments recognise that an individual may now receive a third dose or a booster dose of a COVID-19 vaccination in their lifetime.

Under the Amending Principles, approved providers will also be required to report to the Secretary on how many residential care recipients and service staff have informed them that they have or have not received an influenza vaccination during that calendar year, and if not, why not. This information will be required to be reported annually on 31 October.

The amendments to the Information Principles will enable the Secretary to disclose and the revised vaccination information given to the Secretary under the Amending Principles, or information relating to an analysis of this information, to the head of the relevant State or Territory health body. In addition, these amendments will enable the Secretary to make publicly available the revised vaccination information given to the Secretary under the Amending Principles.

#### **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 and have not received a second dose of a COVID-19 vaccine, and the number of residential care recipients who have received a second, third or a booster dose of a COVID-19 vaccine. The Amending Principles also engage the right to privacy by requiring certain approved providers to report on and keep records of the numbers of service staff and residential care recipients who have informed them that they have received the annual seasonal influenza vaccination. The Amending Principles also permit the Secretary to disclose this information (and any analysis related to it) to State and Territory health bodies and to make this information publicly available.

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* 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 numbers of service staff or care recipients who fall within relevant categories. 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, this information will not be made public.

**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**