

EXPLANATORY STATEMENT

Issued at the authority of the Minister for Aged Care

Aged Care Act 1997

Aged Care Legislation Amendment (Vaccination Information) Principles 2024 (Amending Principles)

Purpose

The *Aged Care Legislation Amendment (Vaccination Information) Principles 2024* (Amending Principles) amends the *Accountability Principles 2014* (Accountability Principles) and the *Records Principles 2014* (Records Principles).

The Amending Principles revoke the current requirement for approved providers of residential care, certain flexible care, home care services and multi-purpose services to report to the Secretary of the Department of Health and Aged Care (Department):

- on a weekly basis about the number of residential care recipients and service staff who have informed them that they have received one or more specified doses of a COVID-19 vaccine and
- on a yearly basis (as at 31 October) about the number of service staff who have informed them they have received an influenza vaccination

Instead, to reduce the regulatory burden, approved providers will only be required to report on:

- COVID-19 vaccination information voluntarily provided to them by residential care recipients and service staff upon request (ie. on an ad hoc basis)
- influenza vaccinations vaccination information voluntarily provided to them by service staff upon request (ie. on an ad hoc basis)
- influenza vaccinations for residential care recipients as at a specified reporting day (ie. on an annual basis).

Approved providers will also be required to keep up to date records for COVID-19 vaccinations and influenza vaccinations for staff and residential care recipients where the information is voluntarily provided. This is to ensure that when reports are requested by the Secretary, the information provided is current.

The Amending Principles update the requirements for approved providers of residential care, certain flexible care, and home care services, so as to no longer require them to report the specific number of COVID-19 vaccine doses received by residential care recipients and staff members and those who have declared an exemption from the vaccine, along with the nature of the exemption. Additionally, the requirement to report annually on influenza vaccinations received by staff members has been removed and replaced with the requirement to provide this information on request.

Approved providers will now be required to report the number of residential care recipients who have voluntarily informed the provider that they have received one or two COVID-19 vaccinations.

The Amending Principles also update the requirements for approved providers to keep records about the above information.

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

Background

Under sections 63-1(1)(m) and 88-2(1) of the Aged Care Act, the Accountability Principles and the Records Principles currently impose responsibilities on approved providers to keep records and report to the Secretary on a weekly basis. These responsibilities relate to the number of residential care recipients and staff who have informed the provider about certain doses of a COVID-19 vaccine they have received.

In relation to residential care recipients, this includes the number who have received a “single dose”, a “second dose”, a “third dose” (for those who are severely immunocompromised), a “booster dose” or a “winter dose”. The same is currently recorded and reported for service staff except for a “winter dose”.

Approved providers are required to report COVID-19 vaccination information in a form approved by the Secretary, which is currently provided for through the My Aged Care Service and Support online portal.

Approved providers are required to record and report influenza vaccinations for residential care recipients and staff. This includes both those who have received the annual seasonal influenza vaccine and those who have declared an exemption from the vaccine, along with the nature of the exemption.

Approved providers are currently required to report yearly, as at 31 October, to the Secretary for both service staff and residential care recipients who have informed providers they have received the annual seasonal influenza vaccine and those who have declared an exemption from the vaccine, along with the nature of the exemption

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).

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 December 2024.

Consultation

In relation to amendments implemented in 2021 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 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 considers further consultation in relation to these Amending Principles was not necessary given that these requirements are actually reducing the regulatory burden on approved providers.

Impact Analysis

The Office of Best Practice Regulation (now known as the Office of Impact Analysis) was consulted during development of the amendments in 2022 on the regulatory impact for approved providers to maintain vaccination records and reporting requirements. The OBPR previously advised that a RIS was not required for those amendments since they were unlikely to have a more than minor regulatory impact (**OBPR ID21-01203**).

Details of the Aged Care Legislation Amendment (Vaccination Information) Principles (No. 3) 2022

Section 1

This section states the name of the instrument is the *Aged Care Legislation Amendment (Vaccination Information) Principles 2024*.

Section 2

This section provides that the Amending Principles commence on 6 December 2024.

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 current sections **30BA** and **30C** and substitutes new sections.

Section 30BA

Former subsection 30BA(1) required approved providers of residential care services, certain flexible care services and home care services to report information regarding the number of service staff who have voluntarily, or as required by law, disclosed their influenza vaccination status on a specific day. This includes both those who have received the vaccine and those who have declared an exemption from the vaccine, along with the nature of the exemption

New subsection 30BA(1) provides that approved providers of residential care services, certain flexible care services and home care services will be required to, on request by the Secretary, report information about the number of service staff who have voluntarily informed them about whether they have received the annual influenza vaccination for the calendar year. This information must be as at the reporting day that is specified in the request.

Former subsection 30BA(2) required approved providers of multi-purpose services to report information regarding the number of service staff who have voluntarily, or as required by law, disclosed their influenza vaccination status on a specific day. This includes both those who have received the vaccine and those who have declared an exemption from the vaccine, along with the nature of the exemption.

Similar to the above changes to subsection 30BA(1), new subsection 30BA(2) provides that approved providers of multi-purpose services will be required to report information about the

number of service staff who have voluntarily informed them about whether they have received an influenza vaccination upon request by the Secretary.

Former subsection 30BA(3) included a definition “influenza reporting day” as “31 October 2022; and each subsequent 31 October”.

New subsections 30BA(3), (4) and (5) provide that the Secretary may, at any time, request an approved provider to give to the Secretary a report under subsection (1) or (2). Requests must be in writing, and must specify a reporting day which cannot be more than three years prior to the date of the request. Approved providers must comply with such a request within 7 days after the request is made or as otherwise agreed in writing.

This allows the Secretary to request an approved provider provide a report about service staff influenza vaccinations at any time, as opposed to current arrangements where providers report this information annually.

Section 30C

Former subsection 30C(1) required approved providers of residential care services, certain flexible care services and home care services to report on the number of service staff who have voluntarily, or as required under a law of State and Territory, have informed the provider if they have received a “single”, “second”, and “booster” dose of a COVID-19 vaccine. Providers were also required to report on the number of service staff who have informed them, voluntarily or as required by law, that they are exempt from one or more doses of a COVID-19 vaccine and the nature of their exemption.

New subsection 30C(1) requires approved providers of residential care services, certain flexible care services and home care services to report on request by the Secretary, on the number of service staff who have voluntarily informed the provider they have received a COVID-19 vaccination in the period specified in the request before the reporting day. The Department intends for the period specified in the request to generally be the last 12 months.

Former subsection 30C(2) required approved providers of multi-purpose services, to report on the number of service staff who have voluntarily, or as required under a law of State and Territory, informed the provider if they have received a “single”, “second”, and “booster” dose of a COVID-19 vaccine. Providers were also required report on the number of service staff who have informed them, voluntarily or as required by law, that they are exempt from one or more doses of a COVID-19 vaccine and the nature of their exemption.

New subsection 30C(2) requires approved providers of multi-purpose services to report, on request by the Secretary, on the number of staff who have voluntarily informed them that they have received a COVID-19 vaccination in the period specified in the request before the reporting day. As above in relation to subsection 30C(1), the Department intends for the period specified in the request to generally be the last 12 months.

New subsections 30C(3), (4) and (5) provide that the Secretary may, at any time, request an approved provider to give to the Secretary a report under subsection (1) or (2). All requests by the Secretary are to be in writing and must specify a reporting day that must not be more than 3 years before the request was made. Approved providers must comply with such a request by the Secretary, within 7 days, or as otherwise agreed in writing.

Item 2

This item repeals the previous definition of “influenza vaccination reporting day” in subsection 30CA(2) and substitutes it with a new definition of influenza vaccination reporting day as “31 July 2025 and each subsequent 31 July”. The previous definition of “influenza vaccination reporting day” in subsection 30CA(2) referred to the meaning given by subsection 30BA(3). As subsection 30BA(3) has been repealed and replaced with a new section (see Item 1 above), a new definition is required for subsection 30CA(2). The overall effect of this Item is that certain approved providers will continue to report annually on influenza vaccinations for residential care recipients.

Item 3

This item repeals section **30D** and substitutes a new section.

Former section 30D required approved providers of residential care, certain flexible care and multi-purpose services to report on the number of residential care recipients who had voluntarily, or as required under a law of State and Territory, informed the provider if they had received a “single”, “second”, and “booster” dose of a COVID-19 vaccine. Providers were also required to report on the number of residential care recipients who had informed them, voluntarily or as required by law, that they were exempt from receiving one or more doses of a COVID-19 vaccine and the nature of their exemption. Reporting on this information was required weekly.

New subsection 30D(1) requires approved providers of residential care, certain flexible care and multi-purpose services to report on request by the Secretary, on the number of residential care recipients who have voluntarily informed the provider if they have received a COVID-19 vaccination (and whether they received one or two vaccinations) in the period specified in the request. The Department intends for the period specified in the request to generally be the last 12 months.

New subsections 30D(2), (3) and (4) provide that the Secretary may may a request for a report under subsection (1) at any time. Requests must be in writing and specify a reporting day that must not be more than 3 years before the date the request is made. Approved provider must comply with such a request within 7 days or as otherwise agreed in writing.

Item 4

Insert a new Application section in Part 8 of the Accountability Principles.

New section 62 provides that the amendments introduced by the *Aged Care Legislation Amendment (Vaccination Information) Principles 2024* to sections 30BA, 30C, 30CA and 30D will apply to information provided to an approved provider as specified in those sections, regardless of whether the information was provided before, on or after the commencement of these amendments. This will ensure approved providers can comply with the requirements to report certain vaccination information about care recipients and service staff to the Secretary, even if the information was provided by the care recipients or service staff prior to commencement of the Amending Principles.

Records Principles 2014

Item 5

This item repeals sections 10A, 10B and 10C and substitutes new sections.

Section 10A

Former subsection 10A(1) required approved providers of a residential care service, certain flexible care services or a home care service to keep records, for each calendar year, 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 the annual seasonal influenza vaccination for that year (whether or not under the approved provider's influenza vaccination scheme).

New subsection 10A(1) requires approved providers a residential care service, certain flexible care services or a home care service to record, for each calendar year, the total number of service staff in relation to the service and the number of those service staff who have voluntarily received an annual seasonal influenza vaccination.

Former subsection 10A(2) required approved providers of multi-purpose services to keep records of the number of 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 the annual seasonal influenza vaccination for that year (whether or not under the approved provider's influenza vaccination scheme).

New subsection 10A(2) requires approved providers of a multi-purpose service to keep records, for each calendar year, 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 and the number of those service staff who have voluntarily informed the provider that they have received the annual influenza vaccination for that year.

Section 10B

Former subsection 10B(1) required approved providers of residential care services, certain flexible care services and home care services to record the number of service staff who have voluntarily, or as required under a law of State and Territory, informed the provider if they have received a "single", "second", and "booster" dose of a COVID-19 vaccine. Providers were also required to record the number of service staff who had informed them, voluntarily or as required by law, that they were exempt from receiving one or more doses of a COVID-19 vaccine and the nature of their exemption.

New subsection 10B(1) requires approved providers of residential care services, certain flexible care services and home care services to record, for each calendar year, the number of service staff who have voluntarily informed the provider if they have received a COVID-19 vaccination in that year.

Former subsection 10B(2) required approved providers of multi-purpose services to record the number of service staff who had voluntarily, or as required under a law of State and Territory, informed the provider if they had received a "single", "second", and "booster" dose of a COVID-19 vaccine. Providers were also required to record the number of service staff who have informed them, voluntarily or as required by law, that they were exempt from receiving one or more doses of a COVID-19 vaccine and the nature of their exemption.

New subsection 10B(2) requires approved providers of multi-purpose services to record, for each calendar year, the number of service staff who have voluntarily informed the provider if they have received a COVID-19 vaccination in that year.

Section 10C

Former section 10C required approved providers of residential care services, certain flexible care services or multi-purpose services to record the number of residential care recipients who had voluntarily, or as required under a law of State and Territory, informed the provider if they had received:

- a “single”, “second”, “third”, “booster” or “winter 2022” dose of a COVID-19 vaccine; and
- the annual influenza vaccine for that year.

Providers were also required to record the number of residential care recipients who had voluntarily informed them whether they were willing and clinically suitable to receive the vaccine but had not yet received it or if they were unwilling or clinically unsuitable to receive any or all doses of the vaccine.

New subsection 10C(2) requires approved providers of residential care services, certain flexible care services or multi-purpose services to record, for each calendar day, the total number of residential care recipients who have voluntarily informed them that they have received the annual influenza vaccination for that year.

New subsection 10C(3) requires approved providers of residential care services, certain flexible care services or multi-purpose services to keep records, for each calendar year, on the number of residential care recipients who have voluntarily informed them that they have received one or two COVID-19 vaccinations in that year.

Item 6

This item provides a technical amendment to section 11, by including “(1)” at the start of the section, which is a consequence of the inclusion of subsection 11(2) (see change below under Item 7).

Item 7

As per Item 6, this Item includes new subsection 11(2). Subsection 11(2) provides that an approved provider must retain records that the approved provider is required to keep under section 10A, 10B or 10C of the instrument as in force immediately before 6 December 2024 for a period of 3 years after that date.

Item 8

This item adds a new application provision to the amendments made by the *Aged Care Legislation Amendment (Vaccination Information) Principles 2024*. Specifically, it provides that the amendments to sections 10A, 10B, and 10C of this instrument apply to information provided to an approved provider on or after 6 December 2024, and before 6 December 2024, if the information was required to be kept under sections 10A, 10B, or 10C of this instrument as they were immediately before 6 December 2024.

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 2024

The *Aged Care Legislation Amendment (Vaccination Information) Principles 2024* (Amending Principles) 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 legislative instrument

The Amending Principles amends the Accountability Principles 2014 and the Record Keeping Principles 2014. The purpose of the Amending Principles is to reduce the regulatory burden on approved providers regarding vaccination reporting. It will replace regular reporting for influenza (for service staff only) and COVID-19 vaccinations (for residential care recipients and service staff), with ad-hoc reporting where requested by the Secretary of the Department of Health and Aged Care.

The Amending Principles also update COVID-19 vaccination reporting requirements to no longer require reporting on the specific number of COVID-19 vaccine doses a person advises that they have received. Approved providers will instead be required to report the number of residential care recipients and service staff who have voluntarily informed the provider on their COVID-19 vaccinations, and how many they have had.

The Amending Principles also update the requirements for approved providers to keep and update records about the above information.

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 22 of the *Convention on the Rights of Persons with Disabilities* (CRPD).

The Amending Principles engage these rights 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, but only in circumstances where the information was provided voluntarily. The right to privacy will remain. Where data is categorised, it will remain deidentified, ensuring that individuals are reasonably unidentifiable.

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 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 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 and residential care recipients who have informed the approved provider regarding their COVID-19 vaccination status. 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*. To the extent that aspects of the Amending Principles may limit the right to privacy, those limitations are reasonable, necessary, and proportionate.

The Hon Anika Wells
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