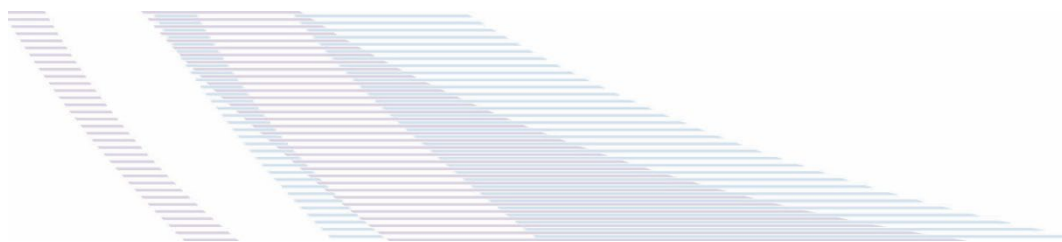




**Prepared for Department of Health and Aged Care
5 September 2023**



Aged Care Legislation Amendment (Implementing Care Reform) Act 2022

Privacy Impact Assessment

Matter number LEX 43345

Matter number 22007259

Department of Health – PIA – *Aged Care Legislation Amendment (Implementing Care Reform) Act 2022*

1. Under changes to legislation that commenced from 1 December 2022, aged care approved providers are required to report new information about their operations. This information will be published on My Aged Care. These new requirements arose from the final report of the Aged Care Royal Commission into Aged Care Quality and Safety (**the Royal Commission**) and are intended to promote transparency, accountability and informed choice about aged care services.
2. The new requirements were given effect by amendments to the *Aged Care Act 1997* (**the Aged Care Act**) and associated legislative instruments, which are described in the Background section of this summary at [22].
3. The Department of Health and Aged Care (**the Department**) commissioned this Privacy Impact Assessment (**PIA**) to examine the privacy impacts of its proposed implementation of the new reporting and publication requirements.¹
4. This document summarises the PIA findings and recommendations, and will be published by the Department on its website (**Recommendation 3**).

Summary of privacy impacts

5. The PIA found that there are a number of privacy measures already embedded in the design and implementation of the legislative amendments. There are also a number of areas where the implementation could be improved to ensure compliance with the Privacy Act and Aged Care Act, minimise privacy risks to individuals and accord with community expectations.
6. These areas for improvement are described from paragraph [7] below. They can be addressed through the implementation of the recommendations set out from paragraph [20] of this summary.

Privacy risks and issues

7. Following is a high-level summary of the findings of the PIA:

Collection of personal information

8. There is a risk of inadvertent collection (and use or disclosure) of third-party personal information² from provider reports on complaints, feedback and improvements (APP 3.1 and APP 6.1). This kind of personal information is not permitted to be published under the new legislation and should not be collected. To

¹ Agencies must take reasonable steps to implement privacy practices, etc. to ensure compliance with the Australian Privacy Principles (**APPs**) in Sch 1 to the *Privacy Act 1988* (**Privacy Act**): APP 1.2. This PIA is a way of identifying possible privacy issues associated with the new legislation and proposing solutions to minimise or eradicate any privacy impacts.

² Information or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not: Privacy Act, s 6(1).

address this, the Department should carefully design the questions put to approved providers and guide them on what information the Department needs. This guidance should also explain that no personal identifiers or identifying details are to be supplied. Examples could be provided to demonstrate circumstances where a person might be reasonably identifiable. See **Recommendations 1 and 2**.

9. Reports must also include demographic information about members of an approved provider's governing body. This may comprise sensitive information,³ which is subject to higher protections under the APPs. The Department already plans to collect demographic information with the individual's consent only. Any consent should meet the requirements for valid consent. Further, it is recommended that the information solicited is reasonably necessary to the functions being exercised (APP 3.1 and 3.3). To comply with this requirement, approved providers will need guidance about what demographic information about board members can or should be provided, to minimise the risk of unnecessary intrusion, the over-collection of personal information, or the collection of inaccurate or incomplete information (APP 3.1 and 10.1). See **Recommendation 5**.

Privacy policies and notices

10. The [My Aged Care Privacy Policy](#) is consumer focussed, and does not include information about the handling of the personal information of approved provider key personnel and members of their governing bodies, including the potential for it to be published online (APP 1.3). This can be addressed through updates to the Privacy Policy. See **Recommendation 4**.
11. The project did not build in a proposed notice of collection to individuals under APP 5. Taking reasonable steps to issue such a notice will provide individuals with transparency about the handling of their personal information in the context of the new requirements and meet the Department's obligations under APP 5. See **Recommendation 6**.

Protected information

12. In addition to complying with the Privacy Act and APPs, the implementation of the new legislation is subject to the 'protected information' provisions of the Aged Care Act.⁴ Given that, on a broad view, information about provider operations could also be the personal information of key personnel, amendments to the *Information Principles 2014* may be necessary to authorise the disclosure of details of the membership of governing bodies in future. This will ensure that the publication is not

³ Sensitive information includes, for example, information or an opinion about an individual's racial or ethnic origin, religious beliefs or affiliations, or sexual orientation or practices, that is also personal information. It also includes health information about an individual: s 6(1) of the Privacy Act.

⁴ These provisions are in Division 86 of the Aged Care Act and set out additional limitations on the recording, disclosure and use of 'protected information.' 'Protected information' relevantly includes personal information and information that relates to the affairs of an approved provider, that was acquired under or for the purposes of the Aged Care Act or the *Aged Care (Transitional Provisions) Act 1997*.

prohibited by the protected information provisions in the Aged Care Act. See **Recommendation 7**.

Overseas disclosure

13. When information is published on a website, it is considered to be disclosed overseas for the purposes of APP 8. In this case, any overseas disclosure of personal information in accordance with the new legislative publication requirements will be required or authorised by or under law, and will be permissible under APP 8. As the proposed website publication accords with the legislative requirements, it is consistent with APP 8. Therefore, no recommendations were made in relation to APP 8.

Data quality

14. The quality of the new information collections will need to be maintained in accordance with APP 10.1. To comply with this requirement, the Department plans to update the information on an annual basis by giving approved providers the opportunity to review and edit, or raise queries or fix requests, in relation to the data. The Department will need to make approved providers aware that they should keep their contact details up-to-date, so that the Department can give them adequate opportunity to review the data and provide input. See **Recommendation 8**.
15. As approved providers will only report on demographic information with the consent of the individuals concerned, there is a risk that the dataset will be inaccurate or incomplete. In addition to supplying approved providers with the guidance described in **Recommendation 5**, specific guidance should be given to providers to assist them to understand their privacy obligations and what is required in relation to demographic information. See **Recommendation 10**.
16. Before pre-existing data is used or disclosed, reasonable steps will need to be taken to ensure the data is accurate, up-to-date, complete and relevant (APP 10.2). Further consideration of this issue was outside of the scope of the PIA so no recommendations have been made.
17. The system in which the information is stored will need an audit log, so that the details of amendments are appropriately captured, and published information is corrected where needed. See **Recommendation 9**.

Security, access and correction

18. The Department's existing privacy and security governance arrangements will apply to the project. These include its privacy policies and procedures, information security measures and training for staff (including contractors). The PIA made no recommendations on APP 11 (security), 12 (access) and 13 (correction).

APPs not considered by the PIA

19. The PIA did not consider the application of APP 2, 4, 7 or 9, as they were not impacted by the amendments.

Recommendations to improve and enhance privacy

20. The PIA made 10 recommendations to address the issues and risks summarised above. If implemented alongside the Department’s existing privacy frameworks and the measures already integrated into the project design, these recommendations will minimise or remove potential privacy impacts of the new reporting and publication requirements.

21. In the table of recommendations that follows:







Refers to recommendations to address compliance risks (recommendations 4 and 6). Implementation is required to achieve compliance with the Privacy Act.








Refers to privacy protection recommendations, aimed at minimising privacy risk and improving privacy protections (recommendations 1, 2, 3, 5, 7, 8, 9 and 10).

Table of recommendations

| # | Type | Recommendation | Department’s Response |
|---|------|---|---|
| 1 | | <p>Expand note for data collection</p> <p>Provide an explanation to providers of what constitutes personal information and that it includes information from which an individual may be reasonably identifiable.</p> | <p>The Department of Health and Aged Care (the Department) has given providers a clear explanation of what constitutes personal information as part of the data collection process. The Department has provided an explanation about the required input in the sections of the IT Build where free text options are given for providing data.</p> <p>The guidance published for providers indicates that:</p> <ul style="list-style-type: none"> no personal identifiers should be included in any response (together with an explanation of what constitutes a personal identifier); and information is not to be included from which an individual may be reasonably identifiable by a person holding other relevant information. <p>The guidance also includes examples of where a person may be reasonably identifiable from particulars that may not appear at first to be personal information, to assist providers to identify such information and remove it.</p> |

| # | Type | Recommendation | Department's Response |
|---|---|---|---|
| 2 |  | <p>Review of final questions for providers</p> <p>Prior to collecting responses about feedback, complaints and improvements, Department to conduct risk assessment of whether responses could contain personal information.</p> | <p>The Department is primarily gathering information concerning feedback, complaints, and improvements through drop-down lists with pre-filled responses, from which no personal information will be collected. While questions allow a free text response by selecting 'other', a restricted character limit reduces the risk of personal information being disclosed.</p> <p>Further, as noted under Recommendation 1, wherever a free text option is provided, providers have been given guidance on how to input the required information in a manner that protects the personal information of individuals.</p> <p>The risk of any personal information being collected from providers' responses, including from free text, has been risk assessed.</p> |
| 3 |  | <p>Consider publication of PIA</p> <p>The Department consider whether this PIA, or an edited or summary version of this PIA, should be published on its websites or otherwise made available on request.</p> | <p>The Department will publish a summary version of this PIA on the Department's website.</p> |
| 4 |  | <p>Privacy Policy Update</p> <p>Department to consider whether the Privacy Policy should be updated to make it clear that it collects, uses and discloses personal information for the purpose of implementing the amendments</p> | <p>The impact of the amendments to the legislation will be considered as part of the Department's review of the My Aged Care Privacy Policy and broader Departmental Privacy Policy to ensure the collection, use and disclosure of personal information associated with the amendments is appropriately reflected.</p> |
| 5 |  | <p>Clear statements regarding diversity information</p> <p>Department to consider whether each collection of demographic information is reasonably necessary for its functions or activities and clearly communicate to providers the information that is required to perform its functions.</p> | <p>The Department has considered and documented its decision about whether the collection of each category of demographic information is reasonably necessary for its functions or activities and has provided clear communications to providers about how the demographic information is required for the Department to perform its functions.</p> |

| # | Type | Recommendation | Department's Response |
|---|---|---|---|
| 6 |  | <p>Privacy Notices to approved providers</p> <p>The Department prepares a privacy notice and ensures that it is displayed to approved providers accessing the new IT Build.</p> | <p>The Department has included a privacy notice that displays whenever providers access the new IT Build to enter their data as part of their reporting obligations under s 63-1G of the <i>Aged Care Act</i>.</p> |
| 7 |  | <p>Consider authority to publish Governing Body Membership information</p> <p>The Department to consider whether the proposed future publication of information collected under s 53E(d)-(f) of the Accountability Principles should be authorised under s 8A of the Information Principles.</p> | <p>The Department is not intending to publish the information collected under s 53E(d)-(f) of the Accountability Principles at this point in time. The Department will consider whether information collected under s 53E(d)-(f) of the Accountability Principles should be authorised under s 8A of the Information Principles prior to future publication of this information.</p> |
| 8 |  | <p>Remind providers to update contact information</p> <p>The Department remind providers to keep their details up to date and require providers to agree to updating their contact information in the portal terms of use</p> | <p>Individuals accessing the new IT Build do so through the Government Provider Management System (GPMS), which includes an existing Contact Details page providing a statement around keeping those details up to date. To assist with updates, providers will be given a newsletter reminder when data is to be collected or available for preview. Providers are also able to nominate more than one user to enter and preview data.</p> |
| 9 |  | <p>Monitoring amendments by providers</p> <p>The Department is to audit and monitor amendments to information made by providers in the new IT Build.</p> | <p>It is anticipated that the Department's IT Build will have an auditing function so that details of amendments made by providers to data submitted to the Department are appropriately captured for auditing and monitoring.</p> |

| # | Type | Recommendation | Department's Response |
|----|---|---|---|
| 10 |  | <p>Guidance to approved providers for diversity information</p> <p>Department to provide guidance to approved providers as to what is required in relation to demographic information.</p> | <p>The Department has given approved providers appropriate guidance in relation to the completion of questions relating to demographic information. This guidance includes:</p> <ul style="list-style-type: none"> information on how to obtain valid consent and instructions about what to do when consent has not been obtained by the provider (the information is not to be included); a statement indicating that demographic information should not be drawn from assumptions about diversity but from how individuals identify and describe themselves; that individuals are not obliged to respond to diversity questions; and that information on diversity received with consent from key personnel is to be reported to the Department to be published on My Aged Care. <p>In providing this guidance, the Department also informed approved providers of the reasons for collecting and reporting demographic information, including that the information may assist aged care recipients to find the right care for them.</p> |

Background

22. This PIA concerns amendments made to the Aged Care Act to implement recommendations of the final report of the Royal Commission. Among the urgent reforms recommended by the Commissioners was the publication of information about the operation of approved providers on the My Aged Care website: **Recommendation 88(e)**.⁵
23. The reforms are intended to promote transparency, accountability and informed choice about aged care services by ensuring that good-quality comparative

⁵ <https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-recommendations.pdf>; Recommendation 88(e) states 'an approved provider must provide an annual report to the Secretary of the Australian Department of Health containing information (as set out in the text below) to be made publicly available through My Aged Care.'

information about providers and services is reported to the Department and made publicly available.

24. The reforms were given effect by legislative amendments to the Aged Care Act, the *Accountability Principles 2014* and the *Information Principles 2014* as amended by the:
 - 24.1. *Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022*
 - 24.2. *Aged Care Amendment (Implementing Care Reform) Act 2022*
 - 24.3. *Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022*
 - 24.4. *Aged Care Legislation Amendment (Transparency of Information) Principles 2023.*
25. Amendments to the Aged Care Act introduced the new ss 63-1G and 86-10 of the Aged Care Act, requiring providers to report and the Department to publish provider operations information. This will involve additional handling of personal information by the Department.

Providers will report operations information

26. Through new IT infrastructure, approved providers will report a variety of new information to the Department. Relevant to the Department's privacy obligations, this means the Department will be collecting additional information, which may include personal information, from approved providers.
27. The kinds of information that approved providers must report includes:
 - 27.1. an attestation statement signed by the governing body in relation to the approved provider's compliance with its responsibilities
 - 27.2. information about feedback, complaints and improvements
 - 27.3. information about diversity and inclusion
 - 27.4. information about governing body membership.
28. The Department will also collect the personal information of one or more approved provider representatives to assist care recipients to escalate concerns.

The Department will publish operations information on My Aged Care

29. The Department will publish the new information (summarised at paragraphs 27 and 28) on My Aged Care. This will be integrated with existing information about approved providers' finances, and service provision and use.