

EXPLANATORY STATEMENT

National Health Security Act 2007

National Health Security (National Notifiable Disease List) Amendment (Monkeypox) Instrument 2022

Authority

The *National Health Security Act 2007* (the Act) provides for a national system of public health surveillance.

Subsection 11(1) of the Act provides that the Minister must, by legislative instrument, establish a list of diseases, to be called the National Notifiable Disease List (NNDL).

Subsection 11(3) provides that the Minister for Health may vary the list by adding a disease if the Minister considers that an outbreak of the disease would be a public health risk.

Subsection 11(5) provides that in making or varying the list, the Minister must consult the Commonwealth Chief Medical Officer and each State or Territory Health Minister.

Purpose

The purpose of the *National Health Security (National Notifiable Disease List) Amendment (Monkeypox) Instrument 2022* (the Amending Instrument) is to amend the *National Health Security (National Notifiable Disease List) Instrument 2018* to permanently add 'monkeypox virus infection' to the NNDL.

Background

Monkeypox is a viral zoonotic disease endemic in Central and West Africa and occasionally exported to other regions. The monkeypox virus is typically transmitted to people from infected animals such as rodents and primates with secondary, human-to-human transmission relatively limited.

In May 2022, cases of monkeypox were reported in several non-endemic regions, including Europe and North America with no reported travel links to endemic countries, indicating local transmission. Australia first reported cases in travellers returning from these regions on 20 May 2022.

Monkeypox is usually a self-limited disease, but complications such as bronchopneumonia, encephalitis, secondary bacterial infection, and blindness from corneal scarring can occur.

The introduction of monkeypox into Australia, the potential for human-to-human transmission and severe illness in vulnerable populations, poses a significant public health risk to Australia.

‘Monkeypox virus infection’ was temporarily listed on the NNDL under subsection 12(1) of the Act. The *National Health Security (National Notifiable Disease List) Amendment Instrument 2022* provided for temporary listing of the disease and was effective from 2 June 2022 for up to six months. As there is a need to understand the epidemiology and pathogenesis of ‘monkeypox virus infection’ to inform public health response and control measures, the ongoing listing of ‘monkeypox virus infection’ will enable notification of confirmed cases to public health authorities and ensure information is passed on quickly so that response measures can be put in place rapidly.

Adding the disease to the NNDL enables the sharing of information about cases of the disease between States and Territories and the Commonwealth, the World Health Organization and relevant member states. Where information that is shared includes personal information, the Act provides for the use, disclosure and recording of the personal information to be restricted.

Consultation

The Commonwealth Minister for Health and Aged Care has consulted the Commonwealth Chief Medical Officer and with each State and Territory Health Minister. The proposed addition has been endorsed by the Communicable Diseases Network Australia, the Australian Health Protection Principal Committee and the Health Chief Executives Forum.

This Amending Instrument commences on 2 December 2022.

This Amending Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of this instrument are set out in the Attachment.

Details of the Instrument

1 Name of Instrument

This section states that the Amending Instrument is the *National Health Security (National Notifiable Disease List) Amendment (Monkeypox) Instrument 2022*.

2 Commencement

This section provides for the Amending Instrument to commence on 2 December 2022.

3 Authority

This section provides that subsection 11(3) of the *National Health Security Act 2007* provides authority for the making of this Instrument.

4 Schedule

This section provides for the amendment of the Instrument listed in Schedule 1.

SCHEDULE 1 – AMENDMENTS

National Health Security (National Notifiable Disease List) Instrument 2018

Item 1

Item 1 repeals subsection 6(1) (table item 38A), and substitutes with ‘Monkeypox virus infection’.

Item 2

Item 2 omits ‘Note 1’ at the end of section 6 and substitutes it with ‘Note’. This is as it will now be the only note to section 6.

Item 3

Item 3 repeals Note 2 at end of section 6.

Statement of Compatibility with Human Rights

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

National Health Security (National Notifiable Disease List) Amendment (Monkeypox) Instrument 2022

The *National Health Security (National Notifiable Disease List) Amendment (Monkeypox) Instrument 2022* (the Amending Instrument) 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 2011*.

Overview of the Amending Instrument

The Amending Instrument amends the *National Health Security (National Notifiable Disease List) Instrument 2018* (the Principal Instrument) to permanently add ‘monkeypox virus infection’. This will improve the national surveillance of ‘monkeypox virus infection’.

‘Monkeypox virus infection’ was temporarily listed on the Principal Instrument under subsection 12(1) of the *National Health Security Act 2007*. The *National Health Security (National Notifiable Disease List) Amendment Instrument 2022* provided for temporary listing of the disease and was effective from 2 June 2022 for up to six months. As there is a need to understand the epidemiology and pathogenesis of ‘monkeypox virus infection’ to inform public health response and control measures, the ongoing listing of ‘monkeypox virus infection’ will enable notification of confirmed cases to public health authorities and ensure information is passed on quickly so that response measures can be put in place rapidly.

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Human rights implications

The Amending Instrument engages the following human rights:

- the right to privacy contained in Article 17 of the International Covenant on Civil and Political Rights, related to protection from arbitrary or unlawful interference with privacy; and
- the right to the enjoyment of the highest attainable standard of physical and mental health under Article 12 of the International Covenant on Economic, Social and Cultural Rights.

The Amending Instrument is consistent with the right to privacy, as the Act provides that personal information regarding cases of ‘monkeypox virus infection’ is protected

information, with an associated offence provision for unauthorised use or disclosure. The Act permits the lawful sharing of personal information to support public health surveillance. The Act ensures that the impact on individual privacy is not arbitrary and is proportionate to the protection of public health.

The Amending Instrument promotes the right to health as it assists to protect public health in Australia by assisting with the exchange of information, including personal information in accordance with the provisions in the Act, to support public health surveillance. The Amending instrument also supports the rapid investigation and control of communicable disease outbreaks and other matters relating to public health.

Conclusion

The Amending Instrument is compatible with human rights because it promotes the right to the enjoyment of the highest attainable standard of physical and mental health and is consistent with the right to privacy.

Hon Mark Butler

Commonwealth Minister for Health and Aged Care