

EXPLANATORY STATEMENT

National Health Security Act 2007

National Health Security (National Notifiable Disease List) Amendment Instrument 2024

Purpose and operation

The purpose of the *National Health Security (National Notifiable Disease List) Amendment Instrument 2024* (the Amending Instrument) is to make three variations to the *National Health Security (National Notifiable Disease List) Instrument 2018* (Principal Instrument).

Background

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). The Minister may include a disease in the NNDL if the Minister considers that an outbreak of the disease would be a public health risk.

The Principal Instrument establishes the NNDL.

The Amending Instrument varies the NNDL to:

- add the disease ‘*Vibrio parahaemolyticus* infection’;
- amend the name of the disease ‘Human coronavirus with pandemic potential’ to ‘Coronavirus disease (COVID-19)’; and
- amend the name of the disease ‘Monkeypox virus infection’ to ‘Mpox’.

Vibrio parahaemolyticus can cause wound infections and moderately severe gastrointestinal disease, commonly via ingestion of raw or undercooked seafood. There is a need to improve timely detection of outbreaks, enable further collection of risk factor information from cases and potential identification of sources of infection to facilitate timely public health action and control in outbreak situations.

On 10 February 2020, ‘Human coronavirus with pandemic potential’ was temporarily listed on the NNDL under subsection 12(1) of the Act. On 9 August 2020, the disease was permanently added to NNDL effective from 10 August 2020. On 11 February 2020, the World Health Organization (WHO) announced that the new coronavirus would be named COVID-19. The name change to ‘Coronavirus disease (COVID-19)’ on the NNDL aligns with the WHO naming convention for the disease.

On 22 May 2022, ‘Monkeypox virus infection’ was temporarily listed on the NNDL under subsection 12(1) of the Act. On 20 November 2022, the disease was permanently added to the NNDL effective from 2 December 2022. On 28 November 2022, the WHO recommended using the preferred term Mpox as a synonym for Monkeypox. The name change to ‘Mpox’ on the NNDL aligns with the WHO naming convention for the disease.

Authority

Subsection 11(1) of the Act provides that the Minister must, by legislative instrument, establish a list of diseases, to be called the NNDL. Subsection 11(3) of the Act provides that the Minister may vary the NNDL by adding a disease if the Minister considers that an outbreak of the disease would be a public health risk or removing a disease if the Minister no longer considers that an outbreak of the disease would be a public health risk.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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

This Amending Instrument commences on 1 January 2025.

Consultation

Subsection 11(5) of the Act provides that in making or varying the NNDL, the Minister must consult with the Commonwealth Chief Medical Officer and each State or Territory Health Minister. The Minister for Health and Aged Care has consulted with the Commonwealth Chief Medical Officer and with each State and Territory Health Minister to make the Amending Instrument.

The proposed addition of the disease ‘*Vibrio parahaemolyticus* infection’ to the NNDL has been endorsed by the Communicable Diseases Network Australia, the Australian Health Protection Committee and the Health Chief Executives Forum.

General

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

Details of the Amending Instrument are set out in **Attachment A**.

The Amending Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

Details of the *National Health Security (National Notifiable Disease List) Amendment Instrument 2024*

Section 1 – Name

Section 1 provides that the name of the instrument is the *National Health Security (National Notifiable Disease List) Amendment Instrument 2024* (Amending Instrument).

Section 2 – Commencement

Section 2 provides that the Amending Instrument commences on 1 January 2025.

Section 3 – Authority

Section 3 provides that the Amending Instrument is made under section 11 of the *National Health Security Act 2007*.

Section 4 – Schedule

Section 4 of the Amending Instrument has the effect that the *National Health Security (National Notifiable Disease List) Instrument 2018* is amended by terms specified in Schedule 1 of the Amending Instrument.

Schedule 1 – Amendments

National Health Security (National Notifiable Disease List) Instrument 2018

Item 1 – Subsection 6(1) (after table item 9)

Item 1 inserts a new table item 9A to replace the previous name of the disease ‘Human coronavirus with pandemic potential’ with ‘Coronavirus disease (COVID-19)’ to ensure that the name of the disease is consistent with the World Health Organization’s (WHO) naming convention for the disease. Placement at table item 9A, rather than amending table item 25A, reflects the position of this disease in alphabetical order.

Item 2 – Subsection 6(1) (table item 25A)

Item 2 repeals table item 25A which reflects the previous name of the disease, ‘Human coronavirus with pandemic potential’. Table item 25A is repealed by virtue of the insertion of new table item 9A.

Item 3 – Subsection 6(1) (table item 38A)

Item 3 amends the name of the disease ‘Monkeypox virus infection’ to ‘Mpox’ to ensure that the name of the disease is consistent with the WHO naming convention for the disease.

Item 4 – Subsection 6(1) (after table item 62)

Item 4 inserts a new table item 62A to include the disease ‘*Vibrio parahaemolyticus* infection’ to the National Notifiable Disease List.

Item 5 – Section 6 (Note)

Item 5 repeals the note at end of section 6 as it is no longer required following clarification of the disease name on the National Notifiable Disease List, in alignment with WHO naming conventions.

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 Instrument 2024

The *National Health Security (National Notifiable Disease List) Amendment Instrument 2024* (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 Disallowable Legislative Instrument

The Amending Instrument amends the *National Health Security (National Notifiable Disease List) Instrument 2018* (the Principal Instrument) to:

- permanently add ‘*Vibrio parahaemolyticus* infection’ to improve detection of outbreaks and facilitate timely public health action; and
- update the already listed ‘Human coronavirus with pandemic potential’ to ‘Coronavirus disease (COVID-19)’ and the ‘Monkeypox virus infection’ to ‘Mpox’ on the NNDL to align with the World Health Organisation’s (WHO) naming conventions for these diseases.

Adding ‘*Vibrio parahaemolyticus* infection’ to the NNDL enables the sharing of information about cases of the disease between States and Territories and the Commonwealth, the WHO and relevant member states. Where information that is shared includes personal information, the *National Health Security Act 2007* (the Act) provides for the use, disclosure and recording of the personal information to be restricted.

Human rights implications

The Amending Instrument engages the following human rights:

- the right to privacy related to protection from arbitrary or unlawful interference with privacy contained in Article 17 of the International Covenant on Civil and Political Rights; 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 obtained further to Division 8 of the Act 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 through 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.

The Hon Mark Butler MP
Minister for Health and Aged Care