

1994

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PUBLIC HEALTH ACT 1928

PUBLIC HEALTH (CANCER REPORTING) REGULATIONS

EXPLANATORY MEMORANDUM

Circulated by the Authority of the Minister for Health

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Outline

Section 12 of the *Public Health Act 1928* ('the Act') empowers the Executive to make regulations for the purposes of the Act on a wide range of matters such as the prevention of disease, maintenance of health, control of food and drug preparation, licensing and inspection of hospitals and boarding houses, garbage disposal and the control and destruction of noxious vermin. As well, the Act provides for the appointment of the Medical Officer of Health ("MOH") and of health inspectors.

The Public Health (Cancer Reporting) Regulations make cancer a notifiable disease and require the maintenance of a "cancer register". Information collected through notifications and maintenance of such a register will be combined with information collected in other jurisdictions and applied for health research purposes.

Broadly, the Regulations impose upon pathologists, employers or persons in charge of pathologists, managers of hospitals and nursing homes and holders of registration certificates for private hospitals, an obligation to notify the MOH of the occurrence or treatment of cancer. Further information or clarification may be sought by the MOH from the medical practitioners of cancer patients in certain circumstances.

The Regulations protect persons providing notifications or information from civil or criminal liability thereby arising and all information acquired under the Regulations is to be treated as confidential.

Financial considerations

The cost of establishing, maintaining and running the cancer register (including data entry and analysis) is expected to be approximately \$95,000 per annum.

Details of the Regulations follow.

Citation and Commencement

Regulations 1 and 2 provide for the method of citation of the Regulations and state that the Regulations will commence upon Gazettal.

Interpretation

Regulation 3 provides an interpretation of terms used in the Regulations. In particular the clause defines the word "cancer" for the purposes of the Regulations. The effect is that all forms of cancer with the exception of certain less serious types of skin cancers are required to be notified to the MOH for recording in the register.

Obligation to notify

Regulation 4 provides that the MOH must be notified if cancer is found as a result of a pathological test, a patient in a hospital or nursing home is found to have cancer, or a person is treated for cancer at a hospital or nursing home. Thus, the cancer is to be monitored at various stages. That is, a notification is required at the stage the cancer is initially identified by a pathologist or discovered in a hospital or nursing home, at the stage that patient is treated for cancer in a hospital or nursing home and if the patient is transferred to another hospital or nursing home for treatment, that facility must also notify the MOH.

Subregulation 4(2) provides that there is no requirement to give more than one notice within a 12 month period in relation to a cancer already notified by a person, or a natural progression from it. However, the corollary is that if after 12 months a patient is continuing cancer treatment a further notification must be provided to the MOH. Thus, if a person is receiving on-going chemotherapy or radiotherapy treatment (which can occur many times within a 12 month period) a notification is not required each and every time. In such a case, a notification will be given when treatment is commenced followed by a further notification after 12 months if treatment is continuing at the same hospital.

Subregulation 4(3) imposes an obligation on the following persons to provide the relevant notifications:

- (a) in relation to a specimen tested by a pathologist -
 - (i) the person in charge of the hospital laboratory where the pathologist is employed;
 - (ii) the pathologist's employer in the case where the test was performed elsewhere than in a hospital laboratory; or
 - (iii) the pathologist; or
- (b) in relation to a patient in a hospital or nursing home found to have cancer or being treated for cancer -
 - (i) the holder of the registration certificate of a private hospital; or
 - (ii) the person in charge of the facility.

Request for information or clarification

Regulation 5 allows the MOH to make a written request for further information or clarification from the patient's medical practitioner, provided that the MOH is satisfied that the medical practitioner had attended the patient within the previous 12 months. This provision is intended to overcome any shortfall in the knowledge of, or information available to, the person completing the notification form under regulation 4.

Protection of persons giving notice, etc.

Regulation 6 provides that a notification given under regulation 4, or further information or clarification given under regulation 5, shall not amount to a breach of professional behaviour and persons providing such information are protected from actions for civil or criminal liability thereby arising.

Cancer register

Regulation 7 establishes the cancer register and requires the MOH to maintain it and enter any particulars, information or clarifications obtained under regulations 4 or 5.

Provision of particulars from the register

Regulation 8 provides that the MOH may disclose particulars from the register to the person responsible for a cancer registry in a State or another Territory, where the person to whom the particulars relate normally resides in that State or Territory, or to a person approved by the Minister. Such an approval will not be given unless the person is involved in the collection of cancer statistics or medical research. Arrangements for such exchange of information have been agreed by the Australasian Association of Cancer Registries.

Notice of Decision

Regulation 9 is a standard provision stating that if Ministerial approval under paragraph 8(1)(b) is refused, the person affected and the MOH must be notified within 28 days. The notice must contain a statement to the effect that a review of the decision may be sought from the Administrative Appeals Tribunal and that a statement containing reasons for the decision may be obtained in accordance with section 26 of the *Administrative Appeals Tribunal Act 1989*.

Review of decision

Regulation 10 provides that a person may apply to the Administrative Appeals Tribunal for a review of the Minister's decision to refuse approval under paragraph 8(1)(b).

Confidentiality

Regulation 11 prohibits a person from unlawfully making a record of, or divulging or communicating to any person any information or document acquired under these Regulations. A penalty of \$1000 applies for a breach of this regulation.

Subregulation 11(2) preserves the operation of any other law relating to the confidentiality of information or documents.