

Australian Capital Territory

# Public Health (Notifiable Conditions) Determination 2026 (No 1)

Disallowable instrument DI2026–66

made under the

Public Health Act 1997, s 100 (Notifiable Conditions—Ministerial determination)

## EXPLANATORY STATEMENT

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The *Public Health Act 1997* (PH Act), Part 6 (Notifiable conditions and public health hazards) provides the legislative framework for monitoring and investigating notifiable conditions. This enables timely public health action to reduce notified conditions' impact on the community.

Under subsection 100(1) of the Act, the Minister may in writing, determine:

- (a) a disease or medical condition to be a notifiable condition; and
- (b) a disease referred to in paragraph (a) to be a transmissible notifiable condition.

This instrument adds hantavirus to the list of notifiable conditions as set out in Schedule 1.

Following a May 2026 outbreak of hantavirus on the *MV Hondius* cruise ship, the World Health Organization (WHO) commenced an internationally coordinated public health response.

The inclusion of hantavirus on the list of notifiable conditions for the ACT is a precautionary and proportionate response to the outbreak. While the likelihood of transmission or outbreak in the ACT is very low, the listing is considered necessary to ensure public health is protected due to the high mortality rate associated with hantavirus. It will allow the ACT to put in place appropriate public health measures and respond to any public health concerns in the event a hantavirus case is detected.

This instrument also updates the term 'monkeypox' to 'mpox' to reflect WHO terminology and to align with the Commonwealth Department of Health, Disability and Ageing's *Series of National Guidelines*.

This instrument also removes yersiniosis as a notifiable condition in the ACT. Yersiniosis is a sporadic, self-limiting gastrointestinal disease with limited requirement for public health intervention in most cases. Given the low incidence in the ACT, the absence of specific public health measures for individual cases, and the

availability of other mechanisms for detecting foodborne disease outbreaks, continued routine notification of yersiniosis in the ACT is unlikely to contribute meaningfully to public health protection or surveillance outcomes.

### **Human rights considerations**

During the development of the determination, due regard was given to its compatibility with the *Human Rights Act 2004* (HR Act).

The determination is considered to engage the following HR Act rights:

- Section 9 – Right to life
- Section 12 – Right to privacy
- Section 22 – Rights in criminal proceedings.

#### **Right to life**

The right to life is concerned with preventing the arbitrary deprivation of life and is directly engaged in the delivery of preventive health programs and medical treatment. Public authorities have a positive obligation to take reasonable steps to safeguard life, including quality of life, in response to known public health risks such as transmissible conditions.

This instrument supports the right to life by enabling health authorities to access critical disease information to reduce transmission and mitigate impacts through public health interventions such as surveillance, communication strategies, and if necessary, public health directions. The collection and use of this data is essential to minimise harm, strengthen healthcare systems, and safeguard population health.

Hantavirus infection is a serious condition that can result in significant illness or death. The inclusion of ‘hantavirus’ as a notifiable condition under this instrument is considered a necessary and proportionate measure to support public health efforts to detect, monitor, and reduce transmission, thereby contributing to the protection of life.

#### **Right to privacy**

The right to privacy is engaged where personal information, including sensitive health information, is collected, used, or disclosed. Notifiable condition schemes necessarily engage the right to privacy through the mandatory reporting of an individual’s health information to public authorities without consent.

Including ‘hantavirus’ as a notifiable condition engages and limits the right to privacy. Consistent with section 28 of the HR Act, the limitation on privacy is considered reasonable and demonstrably justified, and to be in pursuit of a legitimate purpose, namely to support critical health protection activities. The extent of this limitation is confined to the collection and use of information necessary for such activities. Collected information continues to be subject to protections regarding handling, storage and disclosure.

There is a clear and rational connection between any engaged right to privacy regarding notifiable conditions and the ability of health authorities to conduct health activities in response to notifiable conditions.

There are no other less restrictive means available to government for obtaining notifiable condition information due to the statutory protections on health information provided by the *Health Records (Privacy and Access) Act 1997*. The privacy impacts of listing ‘hantavirus’ as a notifiable condition are therefore considered necessary and reasonable to support critical public health measures.

#### Right in criminal proceedings

The right to be presumed innocent until proven guilty is engaged where a law imposes strict liability offences, as such offences do not require proof of fault. Section 102A of the PH Act establishes a strict liability offence for doctors or nurse practitioners failing to notify the Chief Health Officer (CHO) of a notifiable condition in accordance with an applicable code of practice. The inclusion of additional notifiable conditions, such as hantavirus, therefore engages and limits the right to the presumption of innocence as it informs the scope and operation of an existing strict liability offence.

This instrument does not create a new offence or alter the nature or penalty of the existing strict liability provision. While the presumption of innocence is a fundamental human right, the purpose of this minor limitation is considered necessary and is for the legitimate purpose of protecting public health and safety. There is a rational connection between any obligation to notify the CHO about a notifiable condition and effective disease surveillance and response. Consistent with section 28 of the HR Act, this limitation is considered reasonable and demonstrably justified.