

Plant Diseases (Red Imported Fire Ant Importation Restrictions) Declaration 2024

Disallowable instrument DI2024-21

made under the

Plant Diseases Act 2002, s 7 (Meaning of pest), s 8 (Prohibition of introduction etc of plants, insects, diseases and pests) and s 12 (Declaration of area subject to importation restriction)

EXPLANATORY STATEMENT

Declaration of pest

Section 7 (2) of the *Plant Diseases Act 2002* (the **Act**) authorises the Minister to declare that a thing is a pest under the Act.

This instrument declares red imported fire ant (*Solenopsis invicta*) (**fire ant**) as a pest.

This declaration compliments the existing declaration of fire ants as both a notifiable and prohibited pest under the *Pest Plants and Animals (Pest Animals) Declaration 2021 (No 1)* (DI2021–133).

Prohibition of introduction

Section 8 (1) of the Act authorises the Minister to prohibit the introduction into, or transport within or through, the ACT of a pest or anything that the Minister believes on reasonable grounds may contain a pest.

This instrument prohibits the introduction of fire ants.

The Minister may make a prohibition only if the Minister believes on reasonable grounds that the introduction or transport of the pest is likely to increase the risk of the pest becoming established, or spreading, in the ACT. The basis for the Minister making this prohibition is provided for later in this Explanatory Statement.

This declaration compliments the existing offences under section 22 of the *Pest Plants and Animals Act 2005* relating to keeping a prohibited pest animal.

Import restrictions

Section 12 (1) of the Act allows the minister to declare an area of land outside the ACT (the declared area) to be subject to an importation restriction.

The Minister may make a declaration only if they believe on reasonable grounds that the declaration is necessary or desirable to prevent a disease or pest becoming established, or spreading, in the ACT. The basis for the Minister making this import restriction is provided for later in this Explanatory Statement.

A declaration must contain a diagram showing the declared area, which is provided for in schedules 1 and 2.

The declaration does not have retrospective effect. That is, the declaration does not apply to any fire ant carriers that were imported into the ACT before the commencement of the instrument.

It is intended to review the necessity of the restrictions as the national transition to management plan is developed and implemented and revoke the declaration at the appropriate time.

A declaration of import restriction is a disallowable instrument.

Basis for being satisfied the declaration is necessary or desirable – s 8(2) and s 12(2)

Fire ants are regarded as one of the world's worst invasive ant species and is listed:

- as a nationally significant pest under the National Environmental Biosecurity Response Agreement (NEBRA)
- on the [National Priority List of Exotic Environmental Pests, Weeds and Diseases](#);
- on the [National Priority Plant Pests \(2019\)](#).

Fire ants are native to South America but have spread to and become an established pest in the southern United States, Taiwan, mainland China, Puerto Rico, the Virgin Islands, the Bahamas, Antigua, Trinidad, the Turks and Caicos Islands, the Cayman Islands, Hong Kong and Malaysia. There are also reports of infestations in Macau and the Philippines.

The biosecurity risk arising from the introduction and presence of fire ants in the ACT may have a significant biosecurity impact to the economy, the environment, and the community.

It is well established that when it comes to biosecurity, prevention activities provide a greater return on capital than eradication activities, which in turn are greater than containment activities undertaken after the widespread distribution of a species.

Fire ants have the potential to significantly affect agriculture industries. More than 50 agricultural and horticultural crops, as well as turf and nursery species, are affected by fire ants. All are grown in Australia, in areas that fire ants could inhabit.

In the United States of America, fire ants have resulted in residents being unable to use backyards, local parks or play sports in some grounds. It is also estimated that between 85 and 100 deaths have occurred from fire ants.

Similar impacts would occur in Australia. For example, if fire ants were to become established in Australia, it is estimated that each year stings from fire ants will result in about 140,000 medical consultations and 3,000 anaphylactic reactions.¹

Over the last 20 years, fire ants are known to have entered Australia at least 16 times.

Of these known entry events, fire ants were not immediately detected on 6 occasions resulting in establishment at the:

- (a) Port of Brisbane (2001);
- (b) south western suburbs of Brisbane (2001);
- (c) Yarwun (2006 and 2013);
- (d) Port Botany (2014); and
- (e) Brisbane Airport (2015).

The National Red Imported Fire Ant Eradication Program is a national cost-shared eradication program which began in 2001 and is seeking to eliminate fire ants from Australia. The ACT Government is a participant and funding contributor to the program.

In Australia, it has been estimated that 6 million square kilometres could become infested by fire ants in 70 years in the absence of publicly funded control of fire ants.² This includes the ability for fire ants to become established as a pest in the ACT.

ABARES estimated that the total consequent losses over a 70-year period would be \$8.5 billion (in 2012 dollars).³

Fire ants are known to be desirable to be kept as specimens by collectors and hobby ant keepers. Fire ants are prone to escape from ant containers, including chewing through silicone and rubber. The escape of fire ants from a collector or hobby ant keeper makes prohibition of importing this species necessary to prevent its spread or establishment in the ACT.

¹ Solley, G.O., Vanderwoude, C., and Knight, G.K. 2002. Anaphylaxis due to red imported fire ant sting. *Medical Journal of Australia*. 176: 521-523

² Scanlan, JC, & Vanderwoude, C 2006, 'Modelling the potential spread of *Solenopsis invicta* Buren (Hymenoptera: Formicidae) (red imported fire ant) in Australia', *Australian Journal of Entomology*, vol. 45, pp. 1–9

³ Hafi A, Spring D, Croft L, Kompas T & Morey K, 2013, [Cost-effectiveness of biosecurity response options to red imported fire ants in South East Queensland](#), ABARES report to client prepared for the National Biosecurity Committee, Canberra, June

On 25 Nov 2023, the NSW Department of Primary Industries confirmed the detection of three fire ant nests – with surveillance ongoing - in South Murwillumbah in north-eastern NSW, 13 kilometres south of the Queensland border.

On 19 January 2024, fire ants were detected in Wardell, New South Wales with surveillance ongoing.

The detections in NSW indicate an increased likelihood that fire ants could spread into NSW through human assisted movement of carrier materials and natural spread.

ACT is an enclave within NSW. Noting the volume of interstate trade between NSW and the ACT of fire ant carriers results in an increased likelihood that fire ants could spread into the ACT from NSW or Queensland through human assisted movement of carrier materials and natural spread of materials.

The listed fire ant carriers are known vectors for fire ants and are thus subject to controls in both Queensland and NSW as part of efforts to eradicate the pest. They are:

- (a) organic mulch;
- (b) soil and anything with soil on it;
- (c) baled material;
- (d) potted plants;
- (e) turf;
- (f) agriculture or earth moving machinery; and
- (g) mining and quarrying materials.

These are subject to similar restrictions under both Queensland and NSW biosecurity orders related to control of fire ants.

Harmonisation of current NSW biosecurity controls seek to minimise compliance costs for those importing the items into the ACT.

Consultation

The ACT Government is represented on the Steering Committee for the National Fire Ant Eradication Program (NFAEP). The Steering Committee includes representatives from state, territory and the federal governments and is led by an independent chair. The steering committee gives guidance and support to the National Red Imported Fire Ant Eradication Program to best achieve its objectives and monitors progress.

Commonwealth and state agriculture ministers met on 6 October 2023 at which an update on eradication efforts under the NFAEP was given. The meeting communique is available at: www.agriculture.gov.au/about/news/stay-informed/communiques/ag-ministers-forum-oct-2023.

Regulatory impact statement

Section 34 of the *Legislation Act 2001* requires a regulatory impact statement (RIS) to be prepared if a proposed subordinate law or disallowable instrument is likely to impose appreciable costs on the community, or a part of the community.

Section 36 (2) of the Legislation Act, however, provides that a RIS does not need to be prepared if it would be against the public interest because of the nature of the proposed law or the circumstances in which it is made.

This declaration is needed urgently to prevent the spread of the fire ant into the ACT and therefore meets the requirements of section 36 (2) of the Legislation Act.

In addition, this proposed disallowable instrument involves the adoption of an Australian intergovernmental agreement or instrument. Section 36 (1)(h) of the Legislation Act provides that a RIS is not required if an assessment of the benefits and costs has already been made and the assessment was made for, or is relevant to, the ACT.

The NFAEP is supported through the National Environmental Biosecurity Response Agreement, which the ACT is a party to.

The NFAEP was subject to:

- [cost-effectiveness report in 2013 undertaken by ABARES](#)
- [efficiency and effectiveness review in 2019](#)
- [strategic program review in 2021.](#)

These assessments are relevant to the ACT.

It is well established that when it comes to biosecurity, prevention activities provide a greater return on capital than eradication activities, which in turn are greater than containment activities undertaken after the widespread distribution of a species.⁴

The implementation of these restrictions reflects that approach by reducing the risk of introducing fire ants into the ACT to an acceptable level.

Human Rights implications

Human Rights Act 2004 Section 12 – Right to privacy and reputation

Nature of the right and the limitation (ss 28 (a) and (c))

Section 12 (a) of the *Human Rights Act 2004* (HRA) recognises that everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and section 12 (b) recognises the right not to have his or her reputation unlawfully attacked.

Section 5 (3) of the instrument may engage the right to privacy by providing, in schedule 3, that a person must produce a certificate if fire ant carrier material is being moved into the ACT when requested by an inspector.

⁴ See, for instance, AEC Group, *Economic Impact of State and Local Government Expenditure on Weed and Pest Animal Management in Queensland*, October 2002, p i

Examples of such certificates include:

- interstate biosecurity certificate issued by an authorised officer under a corresponding law in a State that relates to plant biosecurity, and
- BioSecure HACCP Biosecurity Certificate.

Legitimate purpose (s 28 (b))

The legitimate purpose of these measures is to manage risks arising from the presence of fire ants in NSW and Queensland that may pose a significant biosecurity impact to the economy, the environment, and the community in the ACT.

Rational connection between the limitation and the purpose (s 28(d))

The provisions in the instrument which may impact the right to privacy of a person are directly linked to biosecurity risk management activities related to the function of the Act and are reasonable and justifiable to achieve the legitimate purpose of the Act.

Provision of certificates is only required if moving fire ant carriers into the ACT.

Certificates are necessary to provide assurance that import conditions have been met.

Proportionality (s 28 (e))

Biosecurity events and the measures required to appropriately manage them are situationally specific and the requirement to create and maintain certificates are appropriately adapted for management of risks related to fire ants.

The Act is subject to several safeguards to minimise the impact on the right to privacy, including:

- (a) limitations on when a premises can be entered (section 21)
- (b) the requirement to produce an identity card (section 22).

The use of certificates to verify compliance with biosecurity treatments or conditions is a commonly used and well-understood method to manage biosecurity risk.

CLAUSE NOTES

Section 1 – Name of instrument

Section 1 provides that the name of the instrument is the *Plant Diseases (Red Imported Fire Ant Importation Restrictions) Declaration 2024* (the Declaration).

Section 2 – Commencement

Section 2 provides this Declaration commences on the day after it is notified.

Section 3 – Declaration of fire ants as a pest

Section 3 declares that red imported fire ant *Solenopsis invicta* (**fire ant**) is a pest under section 7 (2) of the Act.

Section 4 – Prohibition of import or transport of fire ants within the ACT

Section 4 prohibits the introduction into or transport of fire ants within the ACT.

The prohibition on the import of fire ants is absolute.

Section 5 – Declaration of area subject to importation restriction

Section 5 declares the areas in the maps in schedules 1 and 2 (**declared areas**) to be subject to an importation restriction.

These areas harmonised with areas currently subject to biosecurity controls in NSW and QLD and activities under the National Red Imported Fire Ant Eradication Program.

This section specifies that the import restrictions relate to fire ants and that the import restrictions in schedule 3 apply to fire ant carriers imported into, or being sold in, the ACT from a known declared area.

Section 6 – Definitions

This section defines several terms used in the instrument.

Schedule 1 – Declared area (known infested area) in Queensland

Schedule 1 provides a map showing the declared areas in Queensland.

Schedule 2 – Declared area (known infested area) in New South Wales

Schedule 2 provides maps showing the declared areas in NSW.

These areas align with the *NSW Biosecurity (Fire Ant) Emergency Order (No 1) 2024*.

Schedule 3 – Import restrictions for fire ant carriers

Schedule 3 lists the import restrictions as applying to fire ant carriers imported into the ACT from a declared area.

The restrictions have been harmonised with the restrictions in the *NSW Biosecurity (Fire Ant) Emergency Order (No 1) 2024*.