

Pest Plants and Animals (Pest Animals) Declaration 2016 (No 1)

Disallowable Instrument DI2016–312

made under the

Pest Plants and Animals Act 2005, s 16 (Declaration of pest animal)

EXPLANATORY STATEMENT

This explanatory statement relates to the Pest Plants and Animals (Pest Animals) Declaration 2016 (No 1) as declared by the Minister for the Environment and Heritage. It has been prepared in order to assist the reader of the disallowable instrument and to help inform debate on it. It does not form part of the disallowable instrument and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the disallowable instrument. It is not, and is not meant to be, a comprehensive description of the disallowable instrument. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being the task of the courts.

Overview

The objects of the *Pest Plants and Animals Act 2005* (the Act) are to protect the ACT's land and aquatic resources from threats from pest plants and animals, to promote a strategic approach to pest management, to identify pest plants and animals, and to manage pest plants and animals.

Section 16 of the Act provides for the Minister to declare an animal to be a pest animal. A declaration may also declare that:

- (a) a pest animal is a notifiable pest animal – in which case its presence must be notified to the director-general within 2 working days;
- (b) a pest animal is a prohibited pest animal – in which case it is an offence to supply or keep the animal.

This instrument declares which animals are pest animals in the ACT.

In developing this declaration, the following criteria were considered:

- The animal has the potential to cause harmful impacts to environmental, economic or social values of the ACT.
- The animal is established, or has the potential to become established, across a range of land tenures in the ACT or in other Australian jurisdictions.

- There are feasible or acceptable means of control of the animal.
- The animal is declared or otherwise listed as a pest animal nationally or by regional neighbours.

Pest animals are declared as notifiable to the director-general where they are considered to be high-risk species that should be prevented from establishing in the ACT and for which eradication is the management goal if an incursion occurs.

Pest animals are declared as prohibited from supply or keeping for the purpose of preventing their establishment or spread in the ACT or in other Australian jurisdictions. Pest animals are not declared as prohibited if they cannot readily be distinguished from animals of the same species that are routinely and legally supplied or kept as domestic pets or livestock, or they are declared as exempt animals under s 155 of the *Nature Conservation Act 2014*.

This instrument makes four substantive changes to the previous declaration of pest animals, which was found in schedule 1 of the former instrument DI2005-255.

- 1) The list of declared fish species in the schedule to this instrument has been expanded by the addition of species from the National Noxious Fish List that were not included in DI2005-255. The purpose of the National Noxious Fish List is to promote consistency in the exotic fish species that can be possessed and traded, particularly noxious species that are not on the live animal import list and are already present in Australia. The National Noxious Fish List has been compiled in tranches based on risk assessments conducted under the national Freshwater Fish Expert Group (FFEG). Nationally-agreed additions to the list are endorsed by the FFEG and the Invasive Plants and Animals Committee (IPAC). The noxious fish added to this instrument include species from tranche 1 that were omitted from DI2005-255 and all species in tranches 2 and 3. Most of the fish species on the National Noxious Fish List do not occur in the ACT and many would be unlikely to establish wild populations as environmental conditions in ACT waters are unsuitable for them. However, these species are declared as prohibited to prevent their supply from the ACT to other Australian jurisdictions where the species could establish wild populations. Weatherloach and *Gambusia*, which are established in the ACT and were declared as pest animals in DI2005-255, have also been declared as prohibited to discourage spread within the ACT and their supply to other Australian jurisdictions (these species are included on the National Noxious Fish List).

Tilapia (*Oreochromis* spp., *Sarotherodon* spp. and *Tilapia* spp.), which were declared as prohibited from supply or keeping in DI2005-255, have also been declared as notifiable pest animals. One species of Tilapia (*Oreochromis mossambicus*) is listed by the IUCN as one of *100 of the World's Worst Invasive Alien Species* and an incursion of this species has recently been detected in northern NSW. Tilapia can tolerate a wide range of environmental conditions and have been recognised for their invasive potential in the Murray-Darling Basin. Early notification of an incursion of this species in the ACT would facilitate its eradication.

- 2) Redfin Perch (*Perca fluviatilis*) is not included on the National Noxious Fish List but has been declared as a prohibited pest animal in this instrument because of its known and potential impacts in the ACT and other Australian jurisdictions. Redfin Perch prey on other fish and invertebrates, can destroy fisheries in enclosed waters, and carry Epizootic Haematopoietic Necrosis Virus which they can transmit to susceptible native fish including the threatened species Macquarie Perch (*Macquaria australasica*) and Silver Perch (*Bidyanus bidyanus*). Declaration of Redfin Perch as a prohibited pest animal allows for the development of a pest animal management plan to manage environmental impacts and prohibits commercial supply (Act, s 19), and reckless supply (s 20), keeping (s 22) and disposal (s 24), which would or would be likely to result in the spread of Redfin Perch. Prevention of the spread of Redfin Perch into waters in which it is not currently established, for example, through translocation by anglers, is a recognised management issue in the *ACT Pest Animal Management Strategy 2012-2022*. Declaration of Redfin Perch as a pest animal in the ACT is consistent with its classification as a Class 1 Noxious Fish in NSW under section 209 of the *NSW Fisheries Management Act 1994*. Heavy penalties apply to possessing, selling and importing live Class 1 Noxious Fish in NSW.
- 3) The European Wasp and the European Red Fox were declared as pest animals in DI 2005-255 but have been declared as prohibited pest animals in this instrument because they are not routinely or legally kept as domestic pets or livestock and are not exempt animals under s 155 of the *Nature Conservation Act 2014*. Prohibition will discourage reckless supply (s 20), reckless use of a vehicle or machinery (s 21), reckless keeping (s 22) or reckless disposal (s 24) that would or would be likely to result in the spread of these species.
- 4) Deer species of the genera *Axis* and *Rusa* have been declared as pest animals in addition to species of *Cervus* and *Dama* declared previously in DI2005-255. Representative species of *Axis* and *Rusa*, including Chital Deer (*Axis axis*) and Rusa Deer (*Rusa timorensis* formerly *Cervus timorensis*), are both designated as extreme threat category species with extreme pest risk status in nationally-endorsed risk assessments.^{1,2} The addition of the genus *Rusa* will reinstate the declaration of Sambar Deer (*Rusa unicolor*, formerly *Cervus unicolor*) as a pest animal in the ACT. The declaration of *Axis* species, which are not established in the ACT, is aimed at facilitating the management of these species should there be an incursion or deliberate introduction from another Australian jurisdiction. Note that declaration of a species as a pest animal does not by itself impose a requirement for land managers to control the species in the ACT. A requirement to control deer would need to be prescribed in a pest animal management plan made under the Act.

The declaration under section 16 is a disallowable instrument. This instrument revokes the former declaration of pest animals (DI2005-255).

¹ <http://www.pestsmart.org.au/risk-assessment-for-australia-chital-deer>

² The Risk Assessment for Australia - Rusa Deer (*Cervus timorensis*) is not available online.

Section 22 of the Act provides that it is an offence for a person to keep a prohibited pest animal if the person is reckless about whether the animal is a prohibited animal and is reckless about whether keeping the animal would result or would be likely to result in the spread of prohibited animals of that kind. A person who keeps a pest animal prohibited by this instrument will thus not be committing an offence unless they are reckless as to the spread of that animal. This means that, for example, a person who keeps a fish that is declared as a prohibited pest animal is unlikely to be committing an offence if they keep that fish isolated in a tank and do not allow it to spread into public waters.

Outline of provisions

Clause 1 states the name of the instrument.

Clause 2 states that the instrument commences on the day after its notification day.

Clause 3 makes reference to the schedule, which lists animals that this instrument declares as pest animals.

Clause 4 revokes the previous instrument.