

Regulatory Impact Statement

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

DI2016-312

Prepared in accordance with the Legislation Act 2001, section 34

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Executive Summary

This regulatory impact statement (RIS) relates to the *Pest Plants and Animals (Pest Animals) Declaration 2016 (No 1)* (the declaration) made under the *Pest Plants and Animals Act 2005* (PP&A Act).

The objects of the PP&A Act are to protect the ACT's land and aquatic resources from threats from pest plants and animals, promote a strategic and sustainable approach to pest management, and identify and manage pest plants and animals.

The declaration establishes which animals are pest animals, and, in addition, whether their presence must be notified (to allow for rapid management of high-risk species including new incursions) and whether they are prohibited from supply or keeping (to reduce the risk of pest animals escaping or being released and establishing wild populations or spreading in the ACT).

The primary policy failure being addressed through this declaration is the environmental risk posed by trade in exotic fish species and their accidental or deliberate release into waterways. This declaration proposes to prohibit the supply or keeping in the ACT of certain exotic fish species and to further declare several high-risk species as notifiable upon detection.

A second policy failure being addressed is the inconsistent declaration of pest animals as prohibited from supply or keeping under the current legislation. This declaration proposes assigning prohibited status to declared pest animals using standard criteria, and adjusting the status of declared species accordingly.

Changes are also proposed to amend the scientific name of the currently declared pest animals 'Wild Deer species' to include all genera of Wild Deer with established populations in Australia.

The proposed declaration is within the parameters of the authorising law and is not inconsistent with the policy objectives of another territory law. The proposed declaration is appropriately placed in subordinate legislation to the PP&A Act. The proposed declaration does not unduly trespass on existing rights, or, make rights unduly dependent upon non-reviewable decisions.

This RIS complies with the requirements for a subordinate law as set out in part 5.2 of the *Legislation Act 2001*. An explanatory statement for the proposed law has been prepared for tabling.

Purpose

This RIS establishes whether new and amended provisions are required for the declaration of certain animals as pest animals under section 16 of the PP&A Act and assesses the impacts of the proposed provisions. The RIS provides:

- a) background on policy objectives for pest animal management in the ACT;
- b) problems associated with pest animals;
- c) policy objectives;
- d) options to achieve the policy objectives, including benefits and constraints;
- e) background on consultation;
- f) mutual recognition issues; and
- g) a conclusion about the preferred policy option.

Policy objectives for pest animal management in the ACT

The effective management of biosecurity risks is critical to minimising the impact of pest plants and animals, and plant and animal pests and diseases on the ACT's economy, environment and community.

In the ACT, pest animals are managed in accordance with the PP&A Act. The objects of the PP&A Act are to protect the ACT's land and aquatic resources from threats from pest plants and animals, promote a strategic and sustainable approach to pest management, and identify and manage pest plants and animals.

The provisions of the PP&A Act apply to pest animals declared under section 16 of the Act that have the potential to cause economic, environmental or social harm, are established (or have the potential to become established) across a range of land tenures in the ACT or region, have feasible and acceptable means of control, and may be declared or otherwise listed as a pest animal nationally or by regional neighbours.

Pest animals are currently declared by the *Pest Plants and Animals (Pest Animals) Declaration 2005 (No 1)* (the 2005 declaration; DI2005-255). Declared pest animals may also be declared as notifiable (meaning their presence in the ACT must be notified to the director-general within two working days) and/or prohibited from supply or keeping. Declaration as a notifiable pest animal facilitates the early detection, containment and eradication of new incursions by high-risk species. Declaration as a prohibited pest animal reduces the risk from supply or keeping of animals escaping or being released, establishing wild populations and/or spreading in the ACT. Preventing the incursion of new pest animals and detecting and eradicating new incursions are generally the most cost-effective ways to manage pest animals.

Problems

Exotic fish species

When exotic fish species are accidentally or deliberately released into waterways and establish wild populations, they can impact on aquatic plants and animals, water quality and social amenity such as recreational fishing. The import of live animals into Australia (including live fish for the aquarium trade) is controlled under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act; live animal import list) and the *Biosecurity Act 2015* (procedures and requirements to minimise the risk of pests and diseases being introduced with imported live animals). All animals proposed for inclusion on the live animal import list are subject to risk assessment. However, many exotic fish species that are not included on the live animal import list have been brought into Australia, either prior to the enactment of the provisions in the Commonwealth legislation or illegally, and are being bred and supplied freely within and between

jurisdictions. Many of these species have not been subject to risk assessment and may represent significant environmental risk through establishing wild populations or through the introduction of pests and diseases. The inability of the aquarium industry and private keepers to self-regulate with respect to illegal import, breeding and supply of exotic fish species, and the failure of government to prevent significant environmental risk associated with these species, represents regulatory failure.

Prohibition from supply or keeping

In the 2005 declaration, prohibition of pest animals from supply or keeping was limited to species without established wild populations in the ACT but with the potential to become established if their supply or keeping remained unregulated. Declaration as a prohibited pest animal was also limited to invertebrates and exotic fish species, as it was considered that the selling, keeping and importing/exporting in relation to other kinds of animals was adequately covered under the *Nature Conservation Act 1980* (note that provisions for declaring prohibited and controlled organisms under this legislation were never used).

High-risk pest animals that have not been declared as prohibited may be commercially or otherwise supplied, moved as a contaminant of a vehicle or machinery, and kept or disposed of without regulation (Part 3 of the PP&A Act). Such actions may contribute to the risk of escape or release, establishment and/or spreading of high-risk pest animals in the ACT. These risks represent regulatory failure.

Wild Deer

Wild Deer species of the genera *Cervus* and *Dama* are declared as pest animals under the 2005 declaration. In 2005, *Cervus* and *Dama* covered the three Wild Deer species (Fallow, Red and Sambar) present in the ACT. Due to a taxonomic change in the genus for Sambar Deer from *Cervus* to *Rusa*, Sambar Deer (*Rusa unicolor*) may be considered to be no longer declared as a pest animal in the ACT. The ACT population of Sambar Deer is expanding and is likely to require management to reduce environmental impacts on native vegetation communities, particularly in parks and reserves in the western half of the ACT. There is also potential for additional species of Wild Deer (Chital Deer and Hog Deer) belonging to the genus *Axis*, to establish in the ACT through natural incursion from NSW or Victoria, or through deliberate introduction from another jurisdiction. Three of these four Wild Deer species (Fallow Deer, Red Deer and Chital Deer) and another species in the genus *Rusa* (*Rusa timorensis* formerly *Cervus timorensis*; Rusa Deer) have been designated extreme threat category pest animals with extreme pest risk status through nationally-endorsed risk assessment processes.

Declaration as a pest animal allows for the development of a pest animal management plan under section 17 of the PP&A Act. A pest animal management plan may outline requirements for managing the environmental and agricultural impact of a pest animal in a cost-effective way if its eradication is impractical, or controlling potential sources of invasion through trade, transport and escape from urban areas. A pest animal management plan can also be used as a mechanism for requiring coordinated management of a declared species across different land tenures in the ACT. The current absence of a declaration for Wild Deer species of the genera *Rusa* and *Axis* as pest animals precludes the future development of a pest animal management plan for these species.

Scope of declaration changes

Note that there has been no systematic review of whether the pest animals included in, or excluded from, this declaration are appropriate. A broader review, including a review of the criteria for declaration, is planned in future, depending on Government priorities.

Objectives of government intervention

- Prevent the entry of new pest animals into the ACT, detect, contain and eradicate new incursions, and minimise the impacts of those pest animals that cannot be eradicated.
- Ensure the pest status of individual species is appropriate given the risks associated with the pest animal and its capacity to spread or be spread to new areas in the ACT.
- Enable the effective management of pest animals by facilitating control measures that are commensurate with the risk.
- Ensure that the applicable measures are consistent with best practice and do not introduce an unnecessary regulatory burden on business.

The preferred option will be the option that best achieves the policy objectives and provides the greatest net benefits to the community.

Options for achieving objectives

This declaration has been prepared in the context of the existing provisions in the 2005 declaration. The options considered in relation to each identified problem were:

- retain the provisions in the 2005 declaration; or
- introduce new or amended provisions to this declaration.

Exotic Fish Species

In response to regulatory failure in the ornamental fish industry and the widespread trade in illegal exotic fish species in Australia (particularly by hobbyists), jurisdictions agreed to develop a national list of high-risk, noxious fish species and a process for determining the risks associated with any species not previously assessed.¹ 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 ACT has endorsed the inclusion of numerous species on the National Noxious Fish List² through its representation on the national Invasive Plants and Animals Committee (and predecessor committees). Listing has been undertaken in four tranches to date. Note that species listed on the National Noxious Fish List may not be able to establish wild populations in all jurisdictions. However, harmonising legislation across jurisdictions reduces the risk of the supply of noxious fish to jurisdictions where the species could become established in the wild.

Most of the species agreed in Tranche 1 of the National Noxious Fish List² were included in the 2005 declaration. It is proposed to declare the remainder of species in Tranche 1, and species in Tranches 2 and 3, as pest animals that are prohibited from supply or keeping under this declaration. The majority of these species are not included on the live animal import list, with the exception of two species that may be imported for commercial aquaculture in secure recirculation systems (Siberian Sturgeon and Beluga). Declaration as prohibited pest animals of the species in Tranche 4 of the National Noxious Fish List will be considered in consultation with community and industry groups.

¹ http://www.dpi.nsw.gov.au/data/assets/pdf_file/0011/288425/Management-of-ornamental-fish-in-Australia.pdf

² Ibid.

Prohibition from supply or keeping

Extending the prohibition of supply or keeping to high-risk pest animals with wild populations established in the ACT reduces the risk of the accidental or deliberate spread of these species into uninfested areas, or an increase in the size or genetic diversity of established populations. Similarly, extending prohibition of supply or keeping to all kinds of pest animals (not just invertebrates and fish) reduces the risk of escape, deliberate release, establishment or spread of a wider range of exotic pest species that have not been regulated under nature conservation legislation.

In this declaration it is proposed to declare all pest animals as prohibited from supply or keeping unless they are:

- routinely and legally traded and kept as pets or livestock (ie, where wild animals of the species cannot be readily distinguished from animals owned by people); or are
- declared as exempt animals under s 155 of the *Nature Conservation Act 2014*.

Application of the above criteria means that the following pest animals become prohibited from supply or keeping:

1. All exotic fish species listed in Tranches 1-3 of the National Noxious Fish List.
2. Redfin Perch (*Perca fluviatilis*). This pest fish species is not currently listed on the National Noxious Fish List and is already established in lowland waterways in the ACT. Redfin Perch prey on other fish and invertebrates, can destroy fisheries in enclosed waters, and carry Epizootic Haematopoietic Necrosis Virus, which can transmit to susceptible native fish including the listed threatened species Macquarie Perch (*Macquaria australasica*) and Silver Perch (*Bidyanus bidyanus*). Declaration of Redfin Perch as a prohibited pest animal is intended to reduce the risk of accidental or deliberate spread to currently uninfested waterways of the ACT. Declaration of Redfin Perch as a prohibited pest animal is consistent with its classification as a Class 1 Noxious Fish in NSW under the *Fisheries Management Act 1994*. Heavy penalties apply for possessing and importing live Class 1 Noxious Fish in NSW.
3. European Red Fox (*Vulpes vulpes*) and European Wasp (*Vespula germanica*). These species are already declared as pest animals. The European Red Fox is an extreme threat category pest animal with extreme pest risk status, as endorsed by the former national Vertebrate Pests Committee (now the Invasive Plants and Animals Committee) on 22 June 2009. The European Wasp is a public health risk. Declaring the European Red Fox and European Wasp as prohibited pest animals will discourage reckless supply, reckless use of a vehicle or machinery to spread a pest animal, and reckless keeping or reckless disposal of these species under the provisions of the PP&A Act.

Note that one group of related exotic fish species on the National Noxious Fish List known as Tilapia (*Oreochromis* spp., *Sarotherodon* spp. and *Tilapia* spp.), which were prohibited from supply or keeping in the 2005 declaration, will also be 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.

Wild Deer

Wild Deer species of the genera *Cervus* and *Dama* are already declared as pest animals under the PP&A Act. It is proposed to amend the scientific name for Wild Deer species to include the genera *Rusa* and *Axis* to allow for the development of pest animal management plans for Sambar Deer (already in the ACT), and for Chital Deer and Hog Deer (species that could migrate naturally into the ACT from NSW or Victoria, or be deliberately introduced from another jurisdiction).

Cost benefit analysis

Alternative options	Benefits and constraints
<p data-bbox="188 304 785 371"><u>1. Declaration of exotic fish species as prohibited from supply or keeping</u></p> <p data-bbox="188 412 785 479">Limit declaration of prohibited exotic fish species to those already declared as pest animals.</p> <p data-bbox="188 878 785 1012">Expand the declaration of prohibited exotic fish species to include species present in Australia that have been assessed to pose a risk to the ACT and/or other jurisdictions.</p>	<p data-bbox="809 412 914 439">Benefits</p> <p data-bbox="809 448 1377 546">There are no benefits from limiting prohibited exotic fish species to those already listed in the 2005 declaration.</p> <p data-bbox="809 591 954 618">Constraints</p> <p data-bbox="809 627 1393 833">The current declaration allows for many exotic fish species that have been assessed to be a risk to the ACT or other Australian jurisdictions to be freely supplied or kept in the ACT. Fish keepers would remain unaware that the species they are supplying or keeping pose a pest or disease risk.</p> <p data-bbox="809 878 914 904">Benefits</p> <p data-bbox="809 913 1402 1406">The risk to the ACT and other jurisdictions of exotic fish species escaping or being released, establishing wild populations and/or spreading to uninfested areas is reduced. The ACT meets its commitment to implement an agreed national approach to the management of pest and disease issues associated with the ornamental fish trade. Fish keepers are given clear guidance on the risk associated with species already present in Australia that are absent from the live animal import list. There is no significant additional administrative burden in increasing the number of exotic fish species declared as prohibited from supply or keeping.</p> <p data-bbox="809 1451 954 1478">Constraints</p> <p data-bbox="809 1487 1399 1800">There would be minimal regulatory impact as people currently keeping exotic fish species that will become prohibited are not committing an offence unless they are reckless about whether they supply (s 20), use a vehicle or machinery to spread (s 21), keep (s 22) or dispose of (s 24) animals in a way that would or would be likely to result in the spread of prohibited pest animals of that kind.</p> <p data-bbox="809 1845 1399 1975">The legislation requires amendment to preclude the supply or keeping of prohibited pest animals under most circumstances except by permit. On amendment, keepers of exotic fish species that</p>

	<p>have become newly prohibited under this instrument could be required to apply for a permit to keep these animals for their natural life span under the condition that they are not bred, supplied to another person or released into the wild.</p> <p>Businesses currently commercially supplying exotic fish species that will become prohibited could be disadvantaged by the offence of commercial supply of a prohibited pest animal (s 19). It is recommended that the circumstances under which a permit can be issued to supply a prohibited pest animal (s 23) should be limited to purposes such as research, teaching and display under conditions that would not result or would not be likely to result in the spread of animals of that kind.</p>
<p><u>2. Criteria for declaration of pest animals as prohibited from supply or keeping are standardised and applied to all pest animals</u></p> <p>Limit declaration of prohibited pest animals to invertebrates and exotic fish species already declared as prohibited pest animals and not present in the ACT.</p>	<p>Benefits</p> <p>There are no benefits in limiting the prohibition from supply or keeping to invertebrates and exotic fish species not present in the ACT.</p> <p>There are no benefits from excluding other kinds of pest animals from being prohibited from supply or keeping unless they are routinely and legally kept or traded as pets or livestock, or are exempt animals under s 155 of the <i>Nature Conservation Act 2014</i>.</p> <p>Constraints</p> <p>The current declaration allows for exotic animal species that have been assessed to be a risk to the ACT or other Australian jurisdictions to be freely supplied or kept. The selling, keeping and importing/exporting of pest animals other than invertebrates and exotic fish species has not been regulated under the former <i>Nature Conservation Act 1980</i> as anticipated in the explanatory statement for the 2005 declaration. Owners are unaware that the species they are supplying or keeping pose a risk from establishing wild populations or spreading in the ACT if they escape or are released.</p>

<p>Establish standard criteria for declaring pest animals as prohibited from supply or keeping and apply to all kinds of pest animals.</p>	<p>Benefits Prohibition provides clear guidance that there is a risk associated with the declared pest animal escaping or being released. Prohibition from supply or keeping reduces the risk of animals establishing wild populations or spreading in the ACT. There is no significant additional administrative burden in increasing the number of pest animal species declared as prohibited from supply or keeping.</p> <p>Constraints There is no immediate regulatory impact from applying these criteria to declared pest animals (other than exotic fish species being supplied commercially - see item 2 above) because the European Red Fox and European Wasp are not routinely or legally supplied or kept as pets or livestock, and the fox is not an exempt animal under s 155 of the <i>Nature Conservation Act 2014</i> (and would therefore require a licence to be kept). No licences have been issued to allow a fox to be kept under the <i>Nature Conservation Act 2014</i>. The European Wasp is not considered an 'animal' as defined by s 11 of the <i>Nature Conservation Act 2014</i>.</p>
<p>3. <u>The scientific name for Wild Deer species is expanded to include all genera of deer with established wild populations in Australia.</u></p> <p>The scientific name for Wild Deer species remains unchanged and Wild Deer species declared as pest animals only include <i>Cervus</i> and <i>Dama</i> species.</p> <p>The scientific name for Wild Deer species is expanded to include Wild Deer species in the genera <i>Cervus</i>, <i>Dama</i>, <i>Rusa</i> and <i>Axis</i>.</p>	<p>Benefits There are no benefits from retaining the current situation.</p> <p>Constraints Sambar Deer, which are already present in the ACT and are increasing in numbers, are no longer declared as a pest animal because they are now classified under the genus <i>Rusa</i>. There is no provision for developing a pest animal management plan (a notifiable instrument under the PP&A Act) for Sambar Deer or to manage an incursion or deliberate introduction of Chital Deer or Hog Deer (genus <i>Axis</i>) under the PP&A Act.</p> <p>Benefits A pest animal management plan could be developed under the PP&A Act to prescribe</p>

	<p>management requirements for Red, Fallow and Sambar Deer already present in the ACT and for Chital and Hog Deer should there be an incursion or deliberate introduction of these species into the ACT. Deer species belonging to the four genera have been designated as extreme threat category species with extreme pest risk status through nationally-endorsed risk assessments.</p> <p>Constraints</p> <p>There is no immediate regulatory impact associated with declaring all genera of Wild Deer with established wild populations in Australia as pest animals under the PP&A Act. Potential regulatory impacts associated with a pest animal management plan for Wild Deer would need to be considered if such a plan was developed. A pest animal management plan could specify the methods to be used for managing deer and/or require land managers to undertake certain actions to manage deer (eg, take part in a coordinated control programme).</p>
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Consultation

The proposed new and amended provisions for the declaration were released for public comment through the ACT Government Time to Talk community consultation process between 20 November 2015 and 15 January 2016. Written invitations to provide a submission were also sent to 20 aquarium businesses, the Canberra District Aquarium Society, the RSPCA, the Australian Veterinary Association, deer hunting groups, the Conservation Council ACT Region, the United Ngunnawal Elders Council and the ACT Rural Landholders Association.

Fifty written submissions were received on the proposed new and amended provisions. The submissions relating to exotic fish species, the European Red Fox and Wild Deer species have assisted in the development of the declaration and explanatory statement. Key issues raised during consultation and their implications for the pest animals declaration are summarised at [Attachment A](#).

Note that there is no requirement under the PP&A Act for the minister to consult on changes to the declaration.

Note also that the ornamental fish industry is represented on the national scientific and technical working groups tasked with the listing and risk assessment processes for the development of the National Noxious Fish List.

Mutual recognition

A range of legislation operates at local, state/territory and national levels in Australia to manage biosecurity threats including threats from pest animals. The primary post-border responsibility for pest animal management is provided for in state and territory legislation. Mutual recognition is not

a critical issue for pest animal management in the ACT. However, where possible, the ACT will aim to align its pest animal provisions with NSW biosecurity legislation.

Consistency with Scrutiny of Bills Committee Terms of Reference

The instrument is consistent with the Legislative Assembly's Scrutiny of Bills Committee Terms of reference.

1. The instrument is made under a ministerial power found in the PP&A Act.
2. The instrument is in accordance with the general objects of the Act under which it is made, including the objects of the Act to protect the ACT's land and aquatic resources from pest plants and animals, and identify pest plants and animals.
3. The instrument does not unduly trespass on rights previously established by law. The declaration of an animal as a pest animal provides a statutory basis for the management of that species within a strategic policy context. The regulatory impact of the declaration is that it allows the Minister to prepare a pest animal management plan which is a notifiable instrument. A written pest management direction may be given to the occupier of premises to do or not do something in relation to the declared pest animal at the premises. For pest animals that are also declared as notifiable and/or prohibited, the regulatory impact is that the pest animal must be notified to the director-general within two working days and/or that supply or keeping of the pest animal is prohibited.
4. The instrument does not make rights, liberties and/or obligations unduly dependent on non-reviewable decisions. It is reviewed by the Assembly through provisions for disallowance.
5. The instrument does not unduly impact on any rights, liberties and/or obligations of individuals. In declaring a pest animal as prohibited from supply or keeping there is a potential conflict with s 27 (2) (b) of the *Human Rights Act 2004*, that:

Aboriginal and Torres Strait Islander peoples hold distinct cultural rights and must not be denied the right [...] to have their material and economic relationships with the land and waters and other resources with which they have a connection under traditional laws and customs recognised and valued.

Public consultation included a written invitation to the United Ngunnawal Elders Council to provide a submission on the proposed new and amended provisions of the declaration. No submission was received from the Elders Council or any other individual or group identifying as an Aboriginal or Torres Strait Islander.

Conclusion and Preferred Option

Adoption of the new and amended provisions proposed for the pest animal declaration is the preferred policy option. The benefits of including the new and amended provisions outweigh the constraints of maintaining the status quo.

Key issues from public consultation

Exotic fish species (two submissions)

A research institution expressed concern that declaration of *Gambusia* species as prohibited from supply or keeping could affect the status of current licences issued under other ACT legislation for the import (s 25 of the *Fisheries Act 2000*), keeping (s 273 of the *Nature Conservation Act 2014*) and use or breeding (s 27 of the *Animal Welfare Act 1992*) of *G. holbrooki* for the purposes of research and teaching. However, under the current provisions of the PP&A Act, the research institution would only be liable for an offence if its actions were reckless and resulted or would be likely to result in the spread of *G. holbrooki*. Under the specified licence conditions, it is unlikely that importing, keeping, using or breeding of these animals would result in the spread of *G. holbrooki*. The status of the current licences will remain unchanged and reissuing of licences will be unaffected by the prohibition of *G. holbrooki* from supply or keeping.

The decision to declare ‘some exotic fish species’ (not identified in the submission) as prohibited from supply or keeping was questioned when there is no risk of them establishing wild populations in the ACT because the aquatic environment is unsuitable. These species are being declared as prohibited to prevent them being supplied to, or kept within, other Australian jurisdictions where they are at risk of establishing wild populations. Harmonisation of legislation to prohibit trade in exotic pest fish species nationally is a primary purpose underpinning the development of the National Noxious Fish List.³

One submission stated that many fish keepers collect species such as *Gambusia* and Redfin Perch to feed live to aquarium fish such as Murray Cod. Prohibition of *Gambusia* and Redfin Perch would mean that people in possession of a bucket containing live fish could be committing an offence if they were reckless about whether keeping the animal would result or would be likely to result in the spread of the species. Aquarium fish keepers could avoid committing an offence by killing declared prohibited fish species caught using permitted fishing gear (as declared under s 17 of the *Fisheries Act 2000*) before taking them away from the part of the public waters from which they were taken (see s 79 of the *Fisheries Act 2000*). Aquarium fish do not need to be fed live fish to survive so there is no significant regulatory impact on people currently catching these fish to feed to their aquarium fish.

Some species of exotic fish newly declared as prohibited from supply or keeping may already be being supplied or kept by hobbyists or the aquarium industry in the ACT. Under the current provisions of the PP&A Act, people already in possession of these fish species at the date of notification of the declaration would not need to euthanise or otherwise dispose of their fish, providing they are not reckless about the supply, use of a vehicle or machinery, keeping or disposal of the fish in a way that would or would be likely to result in the spread of the species. This needs to be clearly communicated to exotic fish keepers prior to notification so that they do not illegally release fish into waterways when they become prohibited from supply or keeping to protect themselves from prosecution. Note that the release of live fish into public waters is an offence under s 79 of the *Fisheries Act 2000* without the conservator’s written approval or unless the fish was taken from the part of the public waters into which it is released.

Businesses commercially supplying species that will become prohibited from supply or keeping would be unable to continue commercial supply. However, no aquarium business provided a public

³ Ibid.

submission expressing concerns about the new and amended provisions. Therefore, the prohibition of exotic fish species from supply or keeping is unlikely to have a significant regulatory impact on commercial aquaria.

European Red Fox

Five submissions expressed the view that foxes should not be declared as pest animals that are prohibited from supply or keeping. Reasons given were that prohibition would result in:

- rescued or domesticated foxes currently being kept as pets being released secretly, or otherwise disposed of in inhumane ways;
- people keeping foxes or finding injured or orphaned foxes would not take them to be treated or euthanised by a vet; and
- community opposition to euthanising rescued or domesticated companion animals.

Suggested management approaches included:

- provision of a 'grandfather' clause for foxes already domesticated and kept as pets;
- that prohibition should exclude foxes that are desexed, vaccinated and securely housed; and
- that authorised officers could give approval for foxes to be kept in captivity with or without conditions (as in the *Local Land Services (European Red Fox) Pest Control Order 2014 (NSW)*).

Foxes are not an exempt animal under the *Nature Conservation Act 2014* and currently require a nature conservation licence to be kept. No nature conservation licences have been issued to allow keeping of foxes in the ACT. Inclusion of a 'grandfather' clause in the declaration to allow currently domesticated foxes to be kept for their natural life span (with or without conditions) is considered inappropriate as it would be rewarding illegal behaviour. Declaration of the fox as a prohibited pest animal will indicate clearly to the public that foxes cannot be recklessly kept or disposed of. As no fox is currently being kept legally in the ACT, there will be no regulatory impact on lawfully-acting people by declaring foxes as prohibited from supply or keeping. Five submissions supported the declaration of foxes as a prohibited pest animal.

Deer

Declaration of additional genera of deer (*Rusa* and *Axis*) as pest animals was opposed in six submissions. Reasons included:

- the view that Sambar Deer (*Rusa unicolor*) should be managed as a game species (as in Victoria and NSW) because they provide a valuable resource and an economic benefit;
- a concern that declaration may result in the use of lethal control measures on additional animal species;
- concern that there is insufficient evidence either through research or national risk assessment processes that deer are causing or could cause significant environmental damage;
- that declaration of deer could lead to more onerous requirements for landowners and a reduction in transparency and monitoring of animal welfare concerns;
- that *Axis* species are not yet in the ACT; and
- that declaration of additional deer species would fail to protect the welfare of these species.

There is no provision under ACT legislation for the declaration or management of any species as a game animal and recreational hunting on public land is prohibited because of potential risks to public safety. Hunting is permitted on rural leases with an appropriate firearms licence and written permission from the landholder/occupier.

All risk assessments undertaken for *Cervus*, *Dama*, *Axis* and *Rusa* species using nationally-endorsed risk assessment processes (the Bomford model) have identified deer as extreme threat category species with extreme pest risk status.

There is sufficient published quantitative evidence of damage in Australian ecosystems to warrant a precautionary approach towards Sambar Deer and their declaration as a pest animal. Studies in Victoria, where Sambar Deer are more prevalent and have been established for a longer period than in other jurisdictions, indicate damage to at least two threatened plant species from antler rubbing and extensive browsing of a range of understorey species that also occur in the ACT. Some of these understorey species are browsed preferentially. Observed damage in Namadgi National Park includes deer wallows and antler rubbing leading to partial ringbarking of trees. Collation of existing deer records by the ACT Parks and Conservation Service has indicated an increase in the frequency of sightings of Sambar Deer in the ACT in recent years. Sambar Deer are listed as a Potentially Threatening Process in Victoria, and Herbivory and Environmental Degradation by Feral Deer is listed as a Key Threatening Process in NSW. Research by the ACT Parks and Conservation Service is in progress to provide quantitative data on environmental impacts associated with Sambar Deer in the Cotter Catchment.

The decision to undertake control of a pest animal and the humaneness of the control methods used is independent of the process to declare an animal as a pest animal. The ACT Government bases its current deer control programs on a standard operating procedure for ground shooting of feral deer (<http://www.pestsmart.org.au/ground-shooting-of-wild-deer/>). The ACT Government encourages the use of national model codes of practice for the humane control of feral animals and standard operating procedures (where available) by all land managers.

Animals (including deer of the genus *Axis*) may be declared as pest animals even if they have not established wild populations in the ACT for the purpose of discouraging activities that could lead to their establishment (eg, deliberate introduction) and/or where they are declared or otherwise listed as a pest animal nationally or by regional neighbours.

There is no regulatory impact or adverse animal welfare consequence associated with the declaration of Wild Deer species of the genera *Rusa* and *Axis* as pest animals in the ACT. There are no additional requirements on landholders to manage wild deer populations imposed through the declaration. Declaration will allow for the development of a pest animal management plan should a requirement for such a plan arise in future.