

# Animal Diseases (Varroa Mite Import Restriction) Declaration 2023 (No 1)

## Disallowable instrument DI2023-239

made under the

**Animal Diseases Act 2005, s 15 (Import restrictions)**

## EXPLANATORY STATEMENT

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Section 15 (1) of the *Animal Diseases Act 2005* (the Act) authorises the Minister to declare an area outside the ACT to be subject to an import restriction, if the Minister has reasonable grounds for believing that an animal in the area is infected with an exotic disease and the declaration is necessary to prevent the spread of the disease.

Varroasis (*Varroa destructor*) is a declared exotic disease in the ACT under the *Animal Diseases (Exotic Diseases) Declaration 2018* (DI2018-33). Varroasis is a parasitic disease of European honey bees (*Apis mellifera* L.) caused by the exotic mite *Varroa destructor*.

Varroa mites weaken and cause physical damage to bees as well as transmitting various pathogens, including viruses that are currently exotic to Australia. Varroasis has the potential to affect honey production and a wide range of pollination-reliant food crops and crops that support primary food production.

Varroa mite was first detected in the state of New South Wales by the NSW Department of Primary Industries on 22 June 2022. A National Response Plan was initiated on 8 July 2022 to eradicate Varroa mite.

On 19 September 2023, the National Management Group (made up of all states, the Commonwealth and 16 industry partners) decided that eradication of Varroa mites is no longer technically feasible and unanimously decided to move from an eradication program to a management approach.

This instrument declares the State of New South Wales (NSW) to be subject to an import restriction following the detection of Varroa mite in that state on 22 June 2022.

The instrument uses 22 December 2021 as the reference date, being 6 months prior to the initial detection of Varroa mite in NSW on 22 June 2022, to allow for the likelihood of the presence of Varroa mite prior to detection.

The declaration also uses Varroa mite emergency zone demarcations. This is defined in the declaration to reflect the definition of the Varroa mite management emergency zone in NSW as declared in the *Biosecurity (Varroa Mite) Emergency Order (No. 46) 2023* (NSW). A published interactive map of these areas is available at: [Varroa mite emergency response \(nsw.gov.au\)](https://www.nsw.gov.au/health-and-care-services/animal-and-disease-control/pests-and-diseases/varroa-mite-emergency-response)

This declaration prohibits importation into the ACT of European honey bees (*Apis mellifera*)—excluding queen bees, escort bees and queen cells—if those bees or beehives have been in NSW at any time since 22 December 2021 due to the biosecurity risk exceeding acceptable levels.

The import into the ACT of queen bees, escort bees, queen cells, honey supers, beehives and apiary equipment is prohibited where they have been in a NSW Varroa mite management emergency zone at any time since 22 December 2021.

The import into the ACT of queen bees, escort bees, queen cells, honey supers, beehives and apiary equipment from areas in NSW outside of a Varroa mite management emergency zone is permitted subject to meeting certain import conditions to reduce the biosecurity risk to an acceptable level.

These conditions include the creation and retention of movement records for all queen bees, escort bees and queen cells transported into or transitioning through the ACT.

These import restrictions do not apply to apiary products, and new beehives and apiary equipment as new items pose a minimal biosecurity risk.

Section 15 (3) of the Act prescribes the contents of an import restriction declaration, including that it states—

- (a) the animals to which the declaration applies;
- (b) the disease in relation to which the declaration is made;
- (c) the area to which the declaration applies;
- (d) the restrictions on importing into the ACT an animal, animal product or other thing that has, at any time during a stated period, been in the area;
- (e) the restrictions on sale in the ACT of an animal, animal product or thing that has, at any time during a stated period, been in the area; and
- (f) if the declaration is to have effect for a limited period—the period.

Applying section 15 (3) of the Act, the declaration:

- (a) applies to European honey bees (*Apis mellifera*);
- (b) applies to Varroasis (*Varroa destructor*);
- (c) applies to the State of New South Wales;
- (d) prohibits importing into the ACT:
  - (i) European honey bees (excluding queen bees, escort bees and queen cells) that have been in NSW at any time since 22 December 2021; and
  - (ii) queen bees, escort bees, queen cells, beehives and apiary equipment where they have been in an Varroa mite management emergency zone at any time since 22 December 2021;
- (e) places restrictions on the import of queen bees, escort bees, queen cells, honey supers, beehives and apiary equipment that have been in areas in NSW outside

- of a Varroa mite management emergency zone at any time since 22 December 2021; and
- (f) does not provide an expiry date for the declaration.

This instrument revokes the *Animal Diseases (Varroa Mite Import Restriction) Declaration 2022 (No 2)* (D12022-214).

A person commits an offence if the person contravenes a restriction in an import restriction declaration pursuant to section 15 (5) of the Act. The maximum penalty on conviction of this offence is 50 penalty units, imprisonment for 6 months or both.

A declaration of import restriction is a disallowable instrument, for which the Minister must give additional public notice, such as notice on an ACT government website or in a daily newspaper circulating in the ACT.

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.

## **Consultation**

The import conditions are harmonised with the restrictions currently in place in other jurisdictions which are also free of Varroasis. In developing this instrument, the Environment, Planning and Sustainable Development Directorate consulted with the state governments of NSW and Victoria, the Honey Bee Industry Council and the ACT Beekeepers Association.

## **Regulatory impact statement (RIS)**

The *Legislation Act 2001* (Legislation Act) requires a RIS for certain proposed subordinate laws and disallowable instruments. Section 36 (2) of the Legislation Act 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 exotic disease Varroasis into the ACT and therefore meets the requirements of section 36 (2) of the Legislation Act.

## **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 7(4)(j) of the instrument may engage the right to privacy in section 12 (a) of the HRA by providing that, if requested by an authorised person under the Act, a person importing queen bees, escort bees, queen cells, beehives and apiary equipment into the ACT produce a copy of the movement record to that authorised person.

*Legitimate purpose (s 28 (b))*

The legitimate purpose of these measures is to manage animal disease risks arising from the presence of Varroasis (*Varroa destructor*) in NSW that may pose a biosecurity risk to honey production and a wide range of pollination-reliant food crops and crops that support primary food production.

*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 movement records to an authorised person is only required for the importation of queen bees, escort bees, queen cells, honey supers, beehives and apiary equipment into the ACT.

Movement records are necessary to:

- (a) trace an incursion of Varroa mite into the ACT resulting from importation; and
- (b) assess compliance with the provisions of the import conditions by the importer.

*Proportionality (s 28 (e))*

Biosecurity events and the measures required to appropriately manage them are situationally specific and the requirement to create and maintain movement records are appropriately adapted for management of animal disease risks related to Varroa mites.

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

- (c) limitations on when a premises can be entered (section 66)
- (d) the requirement to produce an identity card (section 67).

The use of movement records to track is a commonly used and well-understood method to manage animal disease risk.

## CLAUSE NOTES

### Section 1 – Name of instrument

Section 1 provides that the name of the instrument is the *Animal Diseases (Varroa Mite Import Restriction-Declaration) 2023 (No 1)* (the Declaration).

### Section 2 – Commencement

Section 2 provides that this Declaration commences on the day after it is notified in accordance with the provisions of the *Legislation Act 2001*.

### Section 3 – Declaration

This instrument declares that NSW is the area to which this Declaration applies as required by section 15 (3) (c) of the Act.

### Section 4 – Declared animals

This instrument declares that European honey bees (*Apis mellifera* L.) are the animals to which this Declaration applies as required under section 15 (3) (a) of the Act.

Varroasis affects the adult European honey bee (*Apis mellifera* L.) which is the bee species used in commercial beekeeping in Australia. Native bees cannot be hosts of Varroa mites.

### Section 5 – Disease to which declaration relates

This instrument declares that Varroasis (*Varroa destructor*) is the disease to which this Declaration applies as required under section 15 (3) (b) of the Act.

Varroasis (*Varroa destructor*) is a declared exotic disease in the ACT under *Animal Diseases (Exotic Diseases) Declaration 2018* (DI2018-33). The disease is caused by the exotic parasitic mite *Varroa destructor*.

### Section 6 – Varroa mite management emergency zone

This instrument reflects the definition of a ***Varroa mite management emergency zone*** as defined in section 4 of the *Biosecurity (Varroa Mite) Emergency Order (No. 46) 2023* (NSW).

For the purposes of this instrument, inter alia, a person may be considered to know or ought to reasonably have known that Varroa mite has been detected or has been suspected of having been detected if it is listed as a Varroa mite emergency zone on the NSW Department of Primary Industries (DPI) website.

The NSW DPI updates Varroa mite emergency zone demarcations to reflect current biosecurity risk and to inform biosecurity responses through a published interactive map at: [Varroa mite emergency response \(nsw.gov.au\)](https://www.nsw.gov.au/primary-industries/biosecurity/varroa-mite-emergency-response).

## Section 7 – Restrictions on importing

Section 7 declares the import restrictions at schedule 1 as applying in the ACT.

### *Exclusions*

This instrument does not apply to apiary products, and new apiary equipment and beehives which have not been in contact with bees.

### *Prohibitions which apply*

The updated import restrictions aims to:

- protect the ACT from the introduction of Varroa mite by maintaining an appropriate level of protection
- provide business continuity for ACT beekeeping enterprises in the ACT
- facilitate best practice care and management of honey bees.

This instrument maintain a total ban on movements and imports of:

- European honey bees (excluding queen bees, escort bees and queen cells) from NSW
- queen bees, escort bees, queen cells, honey supers, beehives and apiary equipment from areas within a Varroa Mite Management Emergency Zone.

The ACT will permit the movement and import of queen bees, escort bees, queen cells, honey supers and apiary equipment from areas outside of a Varroa mite management emergency zone.

Import conditions are subject to mandatory bee management, traceability, monitoring and reporting requirements being met.

## Section 8 – Definitions

This section defines a number of terms used in the instrument.

## Section 9 Revocation

This instrument revokes the *Animal Diseases (Varroa Mite Import Restriction-Declaration) 2022 (No 2)* (DI2022-214).