

Australian Capital Territory

Animal Diseases (Exotic Disease Quarantine Area) Declaration 2024 (No 3)

Disallowable instrument DI2024–203

made under the

Animal Diseases Act 2005, s 19 (1) (Exotic disease quarantine area)

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the *Animal Diseases (Exotic Disease Quarantine Area) Declaration 2024 (No 3)* (the **declaration**). It has been prepared to assist the reader of the declaration. It does not form part of the declaration and has not been endorsed by the Assembly.

This explanatory statement clarifies the intent of the declaration and must be read in conjunction with the declaration. It is not, and is not intended to be, a comprehensive description of the declaration.

This declaration contains minor amendments to the *Animal Diseases (Exotic Disease Quarantine Area) Declaration 2024 (No 2)* (DI2024-207), to include that the Chief Veterinary Officer may authorise the movement of a declared animal, animal product or equipment which would otherwise be unauthorised, and to move the exceptions provided under schedule 2 of the instrument to apply to declared animal products, rather than declared animals. The *Animal Diseases (Exotic Disease Quarantine Area) Declaration 2024 (No 2)* will be revoked when this declaration commences.

Overview

Section 19 of the *Animal Diseases Act 2005* (the Act) provides for the Minister to make an exotic disease quarantine declaration. This declaration is necessary to prevent the spread of the avian influenza (highly pathogenic) disease, which has been confirmed in numerous poultry farms across Australia including one case in the ACT. The current detection in the ACT has been linked to the outbreak in NSW, being a genetically identical virus, and known high risk movements between the premises, being eggs and egg trays.

The declaration identifies areas in the ACT's northwest, including the divisions of Hall, Fraser, Dunlop, Charnwood, Spence, Flynn, Melba, Evatt, McKellar, Lawson, Macgregor, Strathnairn, Macnamara, Latham, Holt, Higgins, Florey, Scullin, Page, Belconnen, Hawker, Weetangera, Macquarie, Cook and Whitlam as an exotic disease

quarantine area. This area will be referred to as the *control quarantine area* to differentiate it from the *restricted quarantine area* declared by *Animal Diseases (Exotic Disease Quarantine Area) Declaration 2024 (No 1)*. The declaration covers all avian species. This includes but is not limited to commercial layer and broiler poultry, backyard chickens, and pet, captive, and zoo birds.

The declaration recognises the critical nature of the highly pathogenic avian influenza (the *disease*) outbreaks across Australia, and the recent outbreak in the ACT. This allows implementation of control measures to limit the spread of the disease in the ACT, and lead to eventual eradication of the disease. The complete eradication of the disease aligns with the nationally agreed management approach. The declaration also implements controls to ensure coordination with the current NSW and Victorian jurisdictional responses to the threat.

These restrictions are to reduce the movement of not only birds, but also other materials, objects and equipment deemed as high risk for transmitting the disease. Live infected birds are actively producing virus particles and so are an obvious high risk, however, other fomites (any object capable of transmitting disease) are also heavily implicated in the spread of avian influenza, as observed in this current outbreak, and other outbreaks in the country.

Restrictions in the control quarantine area are important in the early period of the outbreak to assist with monitoring and control of the spread of the disease. Depending on the progression of the disease it is hopeful that restrictions may be reduced in the control area over time.

Efforts have been made to separate eggs purchased from commercial retailers (for example, supermarkets) and those produced by backyard chickens and on the infected property within the control quarantine area. Commercial eggs are cleaned and sanitised, primarily for food safety reasons, but this process will also destroy avian influenza virus, and so commercial eggs purchased by the consumer are unlikely to contribute to the spread of the disease. The restrictions are not designed to prevent the entry of commercial eggs from outside the exotic disease quarantine areas that have been commercially processed into the ACT's quarantine areas to be sold by commercial retailers.

Section 10 of the Act provides that a declaration may commence on or before the day the declaration is notified if the Minister (or delegate) is satisfied that the circumstances are of such seriousness and urgency that its commencement before notification is necessary to prevent a disease becoming established, or spreading, in the ACT. It is crucial the exotic disease quarantine area is put in place as a matter of priority to minimise the risk of the disease potentially spreading in the event backyard poultry have already contracted the disease.

The situation will be monitored closely by the ACT Government and the instrument may be amended or revoked depending on the progression of the outbreak.

Human Rights

The declaration engages and may limit the right to freedom of movement and the right to work and other work-related rights in the *Human Rights Act 2004 (HRA)*. The limitations are reasonable and proportionate in accordance with the test in

section 28 of the HRA. The measures in the declaration have a critical purpose, which is to minimise the spread of the disease in the ACT.

The limitation on the right to the freedom of movement (HRA, section 13) only applies to someone who is intending to move a declared animal, declared animal products or equipment used in the care of birds, as defined by the declaration. This limitation is necessary as the movement of birds and any object capable of transmitting the disease are heavily implicated in the spread of the disease. There are no other reasonably available and less restrictive alternatives to avoid the risk of the spread of the disease from one site to another.

The limitation on the right to work and other work-related rights (HRA, section 27B) apply to the owners of poultry businesses whose premises fall within the control quarantine area. This limitation is necessary as the movement of birds and any object capable of transmitting the disease are heavily implicated in the spread of the disease. The ACT Government is working very closely with affected businesses. There are provisions under the Act that provide compensation for animals, premises or other things that are destroyed to control and prevent the spread of the disease. There are no other reasonably available and less restrictive alternatives to avoid the risk of the spread of the disease.

Regulatory Impact Statement (RIS)

Section 34 of the *Legislation Act 2001* (the *Legislation Act*) provides that if a proposed subordinate law or disallowable instrument (the proposed law) is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law must arrange for a RIS to be prepared for the proposed law.

Section 36 (2) of the *Legislation Act*, however, provides that a RIS does not need to be prepared for a proposed law if it would be against the public interest because of the circumstances in which the prepared law is made. The declaration is being made in urgent circumstances to minimise the risk of the spread of a highly pathogenic disease and it is therefore against the public interest to delay making the declaration in order to prepare a RIS.

Scrutiny of Bills Committee Terms of Reference

The Declaration is consistent with the Legislative Assembly's Scrutiny of Bills Committee Terms of Reference. The declaration:

1. is in accordance with the general objects of the Act. The declaration is being made to protect the health and welfare of animals and to protect markets relating to the animals and animal products.
2. does not unduly trespass on rights previously established by law.
3. does not make rights, liberties and/or obligations unduly depended upon non-reviewable decisions.