

# Biosecurity (Varroa Mite and Other Matters) Amendment Regulation 2023

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Mark Furner, Minister for Agricultural Industry Development and Minister for Rural Communities provide this human rights certificate with respect to the *Biosecurity (Varroa Mite and Other Matters) Amendment Regulation 2023* made under the *Biosecurity Act 2014*.

In my opinion, the *Biosecurity (Varroa Mite and Other Matters) Amendment Regulation 2023*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

### Varroa mite:

The first purpose of the Amendment Regulation is to minimise the risk of varroa mite (*Varroa spp.*) from entering Queensland.

Varroa mite are tiny red-brown external parasites of honey bees. Varroa mite numbers build up over time, eventually killing honey bee nests and hives if miticides or other integrated pest management strategies are not applied. Bee colony death affects honey production and pollination of certain food crops.

In June 2022, varroa mite (*Varroa destructor*) was detected in the Port of Newcastle, New South Wales (NSW). Varroa mite is responsible for the collapse and death of European honey bee colonies wherever it is present overseas. Honey bees are weakened by mites feeding on them as pupae, and adult bees often emerge with deformities.

On 7 November 2022, in response to the detection of varroa mite in NSW, the Chief Executive made a Movement Control Order (MCO). The MCO applies to the whole of the Queensland and prescribes certain requirements to minimise the risk of varroa mite from entering the state.

The MCO was made on 7 November 2022 and expires on 7 February 2023, unless earlier revoked. Under the *Biosecurity Act 2014* (Biosecurity Act), MCOs may be directed at managing, reducing, or eradicating controlled biosecurity matter over a limited period rather than over an extended or indefinite period. For these reasons, a permanent biosecurity zone regulatory provision to prevent the spread of varroa mite is required to be in force by the time the current MCO is to expire.

The Amendment Regulation achieves its first objective by establishing biosecurity zone regulatory provisions for varroa mite as a new Chapter 5, Part 12A of the *Biosecurity Regulation 2016* (Biosecurity Regulation).

The biosecurity zone regulatory provisions reflect the temporary biosecurity measures contained in the MCO and establishes the whole of Queensland as a biosecurity zone. The biosecurity zone requires persons to:

- notify an inspector about the presence of varroa mite; and
- not move varroa mite carriers into Queensland other than in particular circumstances.

### Bee louse

The second objective of the Amendment Regulation is to reduce the regulation of measures to minimise the risk of bee louse (*Braula fly (Braula coeca)*) from entering Queensland.

Bee louse is a small species of wingless fly that lives in honey bee colonies. While bee louse is not considered to be a serious threat to commercial beekeeping or honey production, it can impact honeycomb quality, high infestation levels may lead to malnourishment of the queen, and it is a domestic trade pest.

Under the Biosecurity Act, bee louse is categorised as a prohibited matter, which is matter not found in Queensland, but which would have a significant adverse impact if it entered the State. If prohibited matter is found in Queensland, obligations exist to notify inspectors and to not deal with the biosecurity matter. To reduce the risk of bee louse in Queensland, bee louse carriers are also banned from entering Queensland from a state where bee louse has been found.

Bee louse is established in Tasmania and widespread overseas. Agriculture Victoria was made aware of a suspect detection of bee louse on 20 August 2022, which was confirmed on 22 August 2022. Two further detections were reported on 3 September 2022 at two new properties in Victoria.

The position of the Australian Honey Bee Industry Council (AHBIC) and the Chief Plant Health Managers for NSW, Queensland, Victoria, and South Australia is that bee louse should not be regulated for a variety of reasons including;

- no economic or health impacts based on the experience of Tasmanian beekeepers;
- no international trade implications;
- cost of eradication far outweighs the potential economic benefits to industry; and
- the Queensland Beekeepers Association is a member organisation of AHBIC and are supportive of deregulation.

For these reasons, the Queensland Government has decided to partially deregulate bee louse and bee louse carriers under the Biosecurity Act framework. The only exception to this will be a requirement for persons to report instances where honey bees are showing symptoms of an infestation with bee louse as, because of its the similarity to varroa mite, it could be misidentified.

The Amendment Regulation achieves its second objective by establishing a prohibited matter regulation in the Biosecurity Regulation, which will prescribe that bee louse is no longer prohibited matter and subject to the requirements of prohibited matter. Relatedly, the subordinate legislation omits section 49 of the Biosecurity Regulation, which contains the

general prohibition on bee louse carriers from entering Queensland other than in particular circumstances.

While the Amendment Regulation generally deregulates bee louse, it establishes a requirement on persons to notify Biosecurity Queensland if a honey bee colony is showing symptoms of a bee louse infestation (a notifiable incident).

## Human Rights Issues

### **Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

The proposed legislation engages two human rights under the *Human Rights Act 2019*, property rights (section 24) and the right to privacy (section 25).

### **Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)**

#### (a) the nature of the right

The right to privacy protects an individual from all interferences and attacks on their privacy, family, home or correspondence (written and verbal). The purpose of this is ‘to protect and enhance the liberty of the person – the existence, autonomy, security and well-being of every individual in their own private sphere’. In the context of the subordinate legislation, the right to privacy protects against arbitrary interference with a person’s private and personal information.

In a human rights context for the purpose of the above rights, ‘arbitrary’ means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to a legitimate aim sought. Because questions of proportionality arise when considering justification of limits on human rights under section 13 of the *Human Rights Act 2019*, it is important to consider the questions below (under headings (b) – (e)) before making a determination as to whether any limitation on the right to privacy will be arbitrary.

Property rights and the right to privacy are drawn from Article 17 of the Universal Declaration of Human Rights.

The right is potentially engaged by the positive obligations for persons to report, and therefore potentially identify themselves and provide information about themselves, to an inspector if they suspect the presence of varroa mite or that a honey bee is showing signs of a bee louse infestation.

#### (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitations on these rights imposed by the Amendment Regulation on these rights is to minimise the significant biosecurity risks presented to the bee industry from an incursion of varroa mite and, to a lesser extent, bee louse infestation. For example, analysis by the Department of Agriculture and Fisheries (DAF) indicated that if the varroa mites become established the costs to the Queensland bee industry would exceed \$220 million over 10 years.

Crop losses in pollination dependent industries such as melons and avocados, which Queensland is a major national producer, would result in even greater losses.

The purpose of the limitations, to ensure that Queensland's bee industry is protected from the harmful effects of harmful biosecurity incursions is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitations on the right to privacy and property rights are directly related to reducing the biosecurity risks associated with the varroa mite and bee louse. Requirements to notify the presence of varroa mite will assist in minimising their risk to the State.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive ways of achieving the purpose of the limitations. The requirements contained in the subordinate legislation have been after thorough consideration and consultation with peak industry bodies.

Providing no government intervention and leaving industry to self-regulate against the risks of varroa mite is not appropriate as this may lead to an inconsistent approach that may more greatly expose industry to the threat of varroa mite. There are limited control options to eradicate varroa mite, and therefore a consistent regulatory response across industry is required.

Similarly, the requirement to notify if a bee louse infestation is part of the government scaling back of the existing regulatory measures to prevent bee louse in the State. As bee louse is currently considered prohibited matter, there already exists a requirement to notify if it is found in the State. Consequently, the regulatory requirements for bee louse proposed by the subordinate legislation presents the least restrictive way of achieving the purpose.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The Amendment Regulation limits the right to privacy of individuals through the imposition on positive requirements on individuals to report the presence of select biosecurity matter, which may result in an interference to privacy.

Balanced against this limitation is the significant biosecurity concerns and if the biosecurity matter if it were to enter Queensland, particularly varroa mite. Without adequate biosecurity requirements, including notification, the viability of the bee industry in Queensland could be compromised. The limitation of these rights through the amendments also protects the broader public interest in ensuring the sustainability and prosperity of Queensland's food industry. When the limitation of the right is balanced against the myriad of public and private benefits from the requirements implemented through the subordinate legislation, it is my opinion that the amendments are reasonably and demonstrably justified in the circumstance.

## Conclusion

I consider that the *Biosecurity (Varroa Mite and Other Matters) Amendment Regulation 2023* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**MARK FURNER**  
MINISTER FOR AGRICULTURAL INDUSTRY DEVELOPMENT AND FISHERIES  
AND MINISTER FOR RURAL COMMUNITIES

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