

EXPLANATORY STATEMENT

(Issued under the Authority of the Minister for the Environment)

Environment Protection and Biodiversity Conservation Act 1999 (Cth)

Instrument under section 209(1)(b)

The *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (the **Act**) provides for the protection of the environment, especially matters of national environmental significance and the conservation of biodiversity, including the protection and conservation of listed migratory species.

Section 209(1) of the Act provides for a list of migratory species (the **List**) that are included in Appendices to the Bonn Convention, and in the Annexes to the Japan-Australia Migratory Bird Agreement (**JAMBA**), the China-Australia Migratory Bird Agreement (**CAMBA**) or other international agreements approved by the Minister (Republic of Korea-Australia Migratory Bird Agreement (**ROKAMBA**)).

The purpose of this legislative instrument is to amend the list of migratory species pursuant to section 209(1)(b) of the Act so that the list includes all species required to be included under section 209(3)(b), following amendments to the Annex to the CAMBA. The amendments become effective on 30 June 2015, 90 days after the date on which Australia and China exchanged diplomatic notes (Article I(2)(c) of the CAMBA).

At the 10th CAMBA Consultative Meeting in 2012, Australia proposed the addition of 10 species to the Annex of the CAMBA: the Red-tailed Tropicbird (*Phaethon rubricauda*), Swinhoe's Storm-Petrel (*Hydrobates monorhis*), Short-tailed Shearwater (*Ardenna tenuirostris*), Pacific Golden Plover (*Pluvialis fulva*), Oriental Plover (*Charadrius veredus*), Arctic Jaeger (*Stercorarius parasiticus*), Long-tailed Jaeger (*Stercorarius longicaudus*), Gull-billed Tern (*Gelochelidon nilotica*), Roseate Tern (*Sterna dougallii*) and Oriental Reed Warbler (*Acrocephalus orientalis*). These species regularly and predictably migrate between Australia and China and meet the criteria set under Article I(1) of the CAMBA.

Australia also proposed the removal of 28 species from the Annex of the CAMBA: the Northern Shoveler (*Anas clypeata*), Leach's Storm-Petrel (*Oceanodroma leucorhoa*), Sooty Shearwater (*Puffinus griseus*), Yellow Bittern (*Ixobrychus sinensis*), Great Egret (*Egretta alba*), Cattle Egret (*Ardeola ibis (Bubulcus ibis)*), Eastern Reef Egret (*Egretta sacra*), Glossy Ibis (*Plegadis falcinellus*), White-bellied Sea Eagle (*Haliaeetus leucogaster*), Sarus Crane (*Grus antigone*), Red-legged Crake (*Rallina fasciata*), Corncrake (*Crex crex*), Lesser Golden Plover (*Pluvialis dominica*), Ringed Plover (*Charadrius hiaticula*), Caspian Plover (*Charadrius asiaticus*), Pheasant-tailed Jacana (*Hydrophasianus chirurgus*), Painted Snipe (*Rostratula benghalensis*), Latham's Snipe (*Capella hardwickii (Gallinago hardwickii)*), Eurasian Curlew (*Numenius arquata*), Dunlin (*Calidris alpina*), Grey Phalarope (*Phalaropus fulicarius*), Caspian Tern (*Hydroprogne tschegrava*), Black Tern (*Chlidonias niger*), Lesser Crested Tern (*Sterna bengalensis*), Great Reed-Warbler (*Acrocephalus arundinaceus*), Arctic Willow Warbler (*Phylloscopus borealis*), Yellow-headed Wagtail (*Motacilla citreola*) and White Wagtail (*Motacilla alba*). These species do not migrate between the two countries and were removed from the Annex, however, a number of these species remain on the Annexes to JAMBA and ROKAMBA.

Of the 10 species added to the Annex of the CAMBA, six are already afforded protection as listed migratory species under the Act, as provided for in Section 209(3)(b) of that Act. The Oriental Reed Warbler, Red-tailed Tropicbird, Gull-Billed Tern and Swinhoe's Storm Petrel are the remaining four species that are required to be added to the list of migratory species under the Act.

The 17 species that are being removed from the list of migratory species do not meet the migratory species listing criteria. Their removal will mean that decisions made under Part 9 of the Act ('Approval of actions') will be based on an accurate reflection of the current knowledge of migratory birds. In turn this will reduce unnecessary regulatory impact, and contribute to the efficiency and effectiveness of the current regulatory reform process.

The following Commonwealth, state and territory agencies were consulted regarding the recommended amendments to the Annex to the CAMBA:

- Australian Government Department of the Prime Minister and Cabinet
- Australian Government Attorney-General's Department
- Australian Government Department of the Environment
- Australian Government Department of Foreign Affairs and Trade
- Australian Government Department of Agriculture
- Australian Government Department of Industry
- Australian Government Department of Defence
- Department of Primary Industries, Parks, Water and Environment (Tasmania)
- Department of Environment and Primary Industries (Victoria)
- Office of Environment and Heritage (New South Wales)
- Department of Environment and Heritage Protection (Queensland)
- Department of Environment, Water and Natural Resources (South Australia)
- Department of Land Resource Management (Northern Territory)
- Department of Parks and Wildlife (Western Australia)
- Environment and Sustainable Development Directorate (Australian Capital Territory)

In July 2014, the Minister for the Environment, the Hon Greg Hunt, wrote to the Prime Minister and relevant Commonwealth Ministers advising them of the proposed amendments.

Consultation with state and territory representatives from the agencies listed above occurred in 2013 and 2014, through the Wetlands and Waterbirds Taskforce.

No agencies raised any concerns regarding the recommended amendments. Relevant scientific authorities were consulted through Birdlife Australia and Australian universities and were supportive of the amendments.

The Instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (Cth).

The Instrument commenced on 30 June 2015.

Authority: section 184(1)(b) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Amendment to the list of migratory species under section 209 of the *Environment Protection and Biodiversity Conservation Act 1999*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of this Instrument is to amend the *Environment Protection and Biodiversity Conservation Act 1999* list of migratory species by adding four and deleting 17 bird species pursuant to section 209(1)(b) of the Act so that the list includes all species required to be included under section 209(3)(b), following amendments to the Annex to the CAMBA. The amendments become effective on 30 June 2015, 90 days after the date on which Australia and China exchanged diplomatic notes (Article I(2)(c) of the CAMBA).

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Minister for the Environment