

EXPLANATORY STATEMENT

(Issued by the Minister for the Environment and Energy)

Environment Protection and Biodiversity Conservation Act 1999

List of CITES Species

Declaration of a stricter domestic measure in accordance with section 303CB

The *Environment Protection and Biodiversity Conservation Act 1999* (the Act) provides for the protection of the environment, including wildlife that may be adversely affected by trade, and the implementation of Australia's international environmental responsibilities.

Section 303CA of the Act provides for the establishment of a list of Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) species. Under CITES (Article XIV, paragraph 1), Parties maintain the right to adopt stricter domestic measures regarding the conditions of trade, taking, possession or transport of specimens included in Appendices I, II and III of the Convention, or the complete prohibition thereof. Section 303CB of the Act enables the Minister to declare stricter domestic measures.

All populations of *Loxodonta africana* (African elephant) are included in Appendix I to CITES, with the exception of the elephant populations of Botswana, Namibia, South Africa and Zimbabwe, which are listed on Appendix II for the purpose of allowing limited trade in live and non-live specimens.

The purpose of this instrument is to make a declaration, consistent with section 303CB(2)(a) of the Act, to introduce a stricter domestic measure to treat the populations of *Loxodonta africana* currently included in Appendix II as if they were included in Appendix I to CITES.

Under sections 303CD(6)(b) of the Act, Appendix I listed non-live specimens may only be imported or exported if a certificate has been issued to the effect that the specimen was acquired before the provisions of CITES applied to the specimen (i.e. before 1976 for African elephants). International movement of non-live specimens may also occur as part of a non-commercial exchange of scientific specimens between registered scientific institutions, or for research, educational or exhibition purposes (sections 303CC(3), 303CD(5) and 303FB(a), (b), (c) and (g) of the Act). Appendix I listed live specimens may only be moved internationally for research and education purposes, or as part of an approved cooperative conservation breeding program (sections 303FB (a), (b) and (d) of the Act). As African elephants are not on the *List of species taken to be suitable for live import*, the live import provisions do not apply to the species.

Australia has implemented a stricter domestic measure for African elephants under the Act since 2001. Prior to this, a stricter domestic measure was implemented under the former *Wildlife Protection (Regulations of Exports and Imports) Act 1982*, when some elephant populations were first transferred from Appendix I to Appendix II to CITES. Australia opposed this downlisting and subsequent international proposals to downlist elephant populations due to concerns that the resumption of trade in ivory could lead to increased illegal killing of elephants.

This instrument remakes the stricter domestic measure made under the Act, to ensure that elephants continue to be given the highest level of protection. Illegal killing of elephants for their ivory continues to be a threat to elephant populations across Africa. The 17th Conference of the Parties to CITES (September – October 2016), considered a proposal to include all

African elephant populations in Appendix I to CITES. Australia supported the proposal on the basis that it would provide greater protection to elephant populations, however the proposal was not adopted. Maintaining strict regulation of trade in elephant is consistent with the Australian Government's longstanding commitment to the protection of elephants and position on the prevention of international ivory trade.

This instrument is considered to be minor and machinery in nature and does not alter existing arrangements. As such, public consultation on the re-making of this instrument was not undertaken.

The Office of Best Practice Regulation, Department of Prime Minister and Cabinet, have advised that the regulatory impact of the measure is likely to be minor and that a Regulatory Impact Statement is therefore not required for the re-making of this instrument.

This 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* (Annex A).

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The instrument will commence on 1 April 2017.

Authority: sections 303CB(1) of the *Environment Protection and Biodiversity Conservation Act 1999*.

Statement of Compatibility with Human Rights

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

Amendment to List of CITES Species

Declaration of a stricter domestic measure

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 Legislative Instrument is to declare a stricter domestic measure pursuant to subsection 303CB(1) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to treat populations of the species *Loxodonta africana* (African elephant) currently included in Appendix II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), as if they were included in Appendix I to CITES. The introduction of this stricter domestic measure is required to support Australia's strong commitment to elephant protection and address concerns that trade in elephant ivory could lead to increased illegal killing of elephants.

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.

Josh Frydenberg, Minister for the Environment and Energy