

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

List of Specimens taken to be Suitable for Live Import Amendment (*Acaciothrips ebneri*) Instrument 2022

Instrument under subparagraph 303EC(1)(a)(i)

Issued under authority of the Minister for the Environment and Water

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), a live specimen is taken to be suitable for import if it is included on the *List of Specimens Taken to be Suitable for Live Import (29/11/2001)* (Live Import List).

Legislative Background

The Live Import List was established under section 303EB of the EPBC Act and has two parts. Part 1 comprises a list of unregulated specimens exempt from the requirement for an import permit under the EPBC Act. Part 1 of the list must not contain a CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) specimen. Part 2 comprises a list of allowable regulated specimens that can be imported with a permit issued by the Minister, along with notation of any restrictions or conditions attached to the inclusion of a specimen.

Subsection 303EC(1) of the EPBC Act relevantly provides that the Minister may, by legislative instrument, amend the Live Import List by:

- including items in a particular part of the list;
- deleting items from a particular part of the list;
- imposing a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject;
- varying or revoking a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject; or
- correcting an inaccuracy or updating the name of a species.

Amendments to include an item can be made either on the initiative of the Minister, under section 303ED of the EPBC Act, or by application from a person made under section 303EE of the EPBC Act.

Subsection 303EC(3) of the EPBC Act provides that before amending the list referred to in section 303EB, the Minister:

- must consult each other Minister or Ministers as the Minister considers appropriate; and

- must consult each other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and
- may consult such other persons and organisations as the Minister considers appropriate.

Further, subsection 303EC(5) of the EPBC Act provides that the Minister must not amend the list referred to in section 303EB by including an item in the List, unless:

- the amendment is made following consideration of a relevant report under section 303ED or section 303EE; or
- the amendment is made following consideration of a relevant review under section 303EJ.

Subsection 303EE(4) provides for Biosecurity Australia to prepare a report on the potential impacts on the environment if the specimen were to be imported. In accordance with the *Environment Protection and Biodiversity Conservation Regulations 2000 s 9A.07(2)*, this report is of an assessment undertaken for the purpose of importing and releasing a biological control agent. A report under subsection 303EE(3) does not apply to the proposed amendment.

Purpose

The *List of Specimens taken to be Suitable for Live Import Amendment (Acaciothrips ebneri) Instrument 2022* amends the Live Import List to include *Acaciothrips ebneri* (a gall thrip) in Part 1.

This amendment to the list to add *Acaciothrips ebneri* was initiated by an application made to the Minister under section 303EE of the EPBC Act. An assessment of the potential impacts on the environment of the proposed amendments was reported to the Minister, in accordance with section 303EE(4).

Consultation

In accordance with paragraph 303EF(2)(b) of the EPBC Act, the draft assessment report was published on the Department of Agriculture, Water and the Environment's website and public comments were sought in December 2021. No comments were received.

Consultation concerning the amendment to Part 1 of the Live Import List was also carried out, in accordance with subsection 303EC(3) of the EPBC Act. In this case, the Department of Agriculture, Water and the Environment consulted with relevant Commonwealth, state and territory agencies for the environment, conservation and agriculture. One state submission was received supporting the release of the thrip. No changes to the risk analysis were required as a result of the submission.

Given the extensive consultation undertaken on the proposed listing contained in the legislative instrument, it was not necessary to consult on the text of the instrument itself.

The final report under s 303EE was provided to the Minister. In accordance with paragraph 303EC(5)(a) of the EPBC Act, the Minister considered the report before deciding to amend the list to include *Acaciothrips ebneri* in Part 1 of the Live Import List.

The Minister considered that listing this species in Part 1 of the Live Import List poses little risk to the Australian environment and has the potential to control the weed *Vachellia nilotica* subsp. *Indica* (prickly acacia), a serious environmental pest.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. It commences the day after registration.

Statement of Compatibility with Human Rights

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

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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 Part 1 of the *List of Specimens taken to be Suitable for Live Import (29/11/2001)* to include *Acaciothrips ebneri* (a thrip) in accordance with section 303EC of the *Environment Protection and Biodiversity Conservation Act 1999*.

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.

**The Hon Tanya Plibersek
Minister for the Environment and Water**