

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

List of Specimens taken to be Suitable for Live Import Amendment (Emerald Tree Monitor) Instrument 2022

Instrument under subparagraphs 303EC(1)(a)(i) and 303EC(1)(a)(iii)

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 in 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 of the list comprises a list of unregulated specimens exempt from the requirement for an import permit under the EPBC Act. Part 1 must not contain a CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) specimen. Part 2 of the list 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.

Subsection 303EC(1) of the 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.

For each specimen included in Part 2 of the Live Import List, subsection 303EC(7) of the Act provides that there is to be a notation that states whether the inclusion of the specimen in that part of the list is subject to restrictions or conditions and, if so, the nature of those restrictions or conditions.

Subsection 303EC(8) of the Act sets out that a restriction or condition referred to in subsection 303EC(7) may:

- consist of a quantitative limit in relation to the import of the specimen; or
- relate to the circumstances of the import of the specimen; or

- relate to the source of the specimen; or
- relate to the circumstances in which the specimen was taken.

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 as mentioned in paragraph 303EC(1)(a), the Minister:

- must consult such other Minister or Ministers as the Minister considers appropriate; and
- must consult such 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 sections 303ED or 303EE; or
- the amendment is made following consideration of a relevant review under section 303EJ.

Subsection 303EE(3) provides for an assessment to be made of the potential impacts on the environment of the amendment.

Purpose

The *List of Specimens taken to be Suitable for Live Import Amendment (Emerald Tree Monitor) Instrument 2022* (the Amendment Instrument) amends the Live Import List to include *Varanus prasinus* (emerald tree monitor) in Part 2 with the conditions: For eligible non-commercial purpose only, excluding household pets.

This amendment to the list to include *Varanus prasinus* 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 amendment was given to the Minister, in accordance with subsection 303EE(3).

Consultation

In accordance with paragraph 303EF(2)(b) of the EPBC Act, the draft assessment report was published on the Department of Climate Change, Energy, the Environment and Water (formally Department of Agriculture, Water and the Environment)'s website and public comments were sought between 4 November and 7 December 2020. Four responses were received; three were not supportive of the amendment and one was neutral.

The issues raised in the responses included whether *Varanus prasinus* is native and present in Queensland and is permitted to be kept and bred in captivity, the risk of imported *Varanus prasinus* harbouring disease(s) currently absent in Australia, such as varanid herpesvirus 1, that may negatively impact native varanids, the impact of importing *Varanus prasinus* that may be illegally sourced from the wild (in Indonesia) and laundered through captive-breeding facilities with falsified documentation concerning their origin, and the possibility that listing may encourage illegal trade of *Varanus prasinus* into and within Australia.

The assessment report prepared under s 303EE(3) concluded that any risks of the species establishing a feral population and impacting on the environment would be adequately mitigated by limiting import of this species for eligible non-commercial purpose only, excluding household pets, that imported specimens must be sourced from a registered/licensed zoo or wildlife park and be imported into a zoo or wildlife park approved under state or territory legislation to hold this species.

Consultation concerning the amendment to Part 2 of the Live Import List was also carried out, in accordance with paragraph 303EC(3)(c) of the EPBC Act. In this case, the Department of Climate Change, Energy, the Environment and Water (formally Department of Agriculture, Water and the Environment) consulted with relevant Commonwealth, state and territory agencies for the environment, conservation and agriculture.

This instrument was drafted following detailed consultation with the above stakeholders on the proposed inclusion of *Varanus prasinus* to the Live Import List.

The final assessment report 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 *Varanus prasinus* in Part 2 of the Live Import List.

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

Environment Protection and Biodiversity Conservation Act 1999

List of Specimens taken to be Suitable for Live Import Amendment (Emerald Tree Monitor) Instrument 2022

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 2 of the *List of Specimens taken to be Suitable for Live Import (29/11/2001)* to include *Varanus prasinus* (emerald tree monitor) 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 MP
Minister for the Environment and Water