

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

List of Specimens taken to be Suitable for Live Import Amendment (4 species of Vinegar Flies, *Drosophila* spp.) 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 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 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 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 as mentioned in paragraph 303EC(1)(a), 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.

Purpose

The List of Specimens taken to be Suitable for Live Import Amendment (Four species of Vinegar Flies, *Drosophila* spp.) Instrument 2022 (the Amendment Instrument) amends the Live Import List to include *Drosophila subobscura*, *Drosophila bifasciata*, *Drosophila azteca*, *Drosophila eugracilis* in Part 2 with the condition: *Research only. High security facilities only.*

This amendment to the list to include *Drosophila subobscura*, *Drosophila bifasciata*, *Drosophila azteca*, *Drosophila eugracilis* 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 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 Agriculture, Water and the Environment's website and public comments sought between 12 December 2021 and 4 February 2022. Three responses were received in total and included the Victorian and South Australian Governments with no objection to the amendment, and a final comment from a member of the public who objected to the amendment.

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 Agriculture, Water and the Environment consulted with relevant Commonwealth, state and territory agencies for the environment, conservation and agriculture between 23 August and 19 September 2022. No comments were received.

The department concluded that any risks of the 4 species establishing feral populations and impacting on the Australian environment would be adequately mitigated by limiting import of this species to: *Research only. High security facilities only.*

In accordance with section 391 of the EPBC Act, the Minister considered the precautionary principle in making a decision to include an item on the Live Import List. This requires consideration of any threat of serious or irreversible environmental damage as a result of the decision. The assessment report considered the potential threat of irreversible damage to the environment if *Drosophila* spp. were to be introduced and determined from the available

scientific literature that there was a low risk of *Drosophila* spp. becoming an environmental pest.

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

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 *Drosophila subobscura*, *Drosophila bifasciata*, *Drosophila azteca*, *Drosophila eugracilis* 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

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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 2 of the *List of Specimens taken to be Suitable for Live Import (29/11/2001)* to include *Drosophila subobscura*, *Drosophila bifasciata*, *Drosophila azteca*, *Drosophila eugracilis* (Vinegar Flies) 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