

EXPLANATORY STATEMENT

(Issued by the authority of the delegate for the Minister for the Environment)

Environment Protection and Biodiversity Conservation Act 1999

List of CITES Species Amendment (2023/005) Instrument 2023

Legislative Authority

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.

Subsection 303CA(1) provides that the Minister must, by legislative instrument, establish a list of species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (the Convention) for the purposes of the Act. Under subsection 303CA(3) of the Act, the list must include all species from time to time included in any of Appendices I, II and III to the Convention. Subsection 303CA(9) of the Act provides that the Minister may amend the list, as necessary, so that it includes all species required to be included in the list under subsection 303CA(3) and so that the notations in the list are consistent with the Convention. Under this provision, the Minister may also correct or update the name of a species.

Under Article XVI, paragraph 1 of the Convention, Parties may at any time submit to the Secretariat a list of species which has been identified as being subject to regulation within its jurisdiction for the purposes of Article II, paragraph 3 of the Convention. Each list submitted under Article XVI, paragraph 1 of the Convention shall be communicated to the Parties as soon as possible after receiving it and the list shall take effect as part of the Appendix III 90 days after the date of communication.

Purpose of the instrument

The purpose of this legislative instrument is to update the List of CITES Species for the purposes of the Act (the List) to include the below amendments.

Cuba's Notification to the Parties 2022/077 (dated 3 November 2022) advised that Cuba requested the Secretariat to amend and include a new species for listing under Appendix III to the Convention.

Cuba has requested the inclusion of Cuban bullfinch (*Melopyrrha nigra*) and Cuban grassquit (*Tiaris canorus*) in Appendix III to the Convention. This amendment is considered to have no practical impact for Australia. Australia did not undertake any stakeholder consultation as Australia is not a range state for the species covered by the listing request (that is, they do not occur naturally in Australia). Further, the species cannot be legally imported to Australia under the Act, as they are not listed in the List of Specimens Taken to be Suitable for Live Import made under section 303EB of the Act.

South Africa's Notification to the Parties 2022/081 (dated 25 November 2022) advised that South Africa requested the Secretariat to amend and include new species for listing under Appendix III to the Convention.

South Africa has requested the inclusion of 18 plant taxa; *Conophytum* spp., *Mestoklema tuberosum*, *Raphionacme zeyheri*, *Crassothonna cacalioides*, *Crassothonna clavifolia*, *Othonna armiana*, *Othonna euphorbioides*, *Othonna retrorsa*, *Tylecodon bodleyae*, *Tylecodon nolteei*, *Tylecodon reticulatus*, *Monsonia herrei*, *Monsonia multifida*, *Monsonia patersonii*, *Pelargonium crassicaule*, *Pelargonium triste*, *Adenia spinosa* and *Portulacaria pygmaea* in Appendix III to the Convention.

This amendment is considered to have a practical impact for Australia for only 5 of the species; *Conophytum* spp., *Othonna retrorsa*, *Tylecodon reticulatus*, *Pelargonium triste* and *Adenia spinosa*, with the remaining species having no impact. For the five species that may affect Australian stakeholders, Australia has been unable to consult with stakeholders due to the timing of the listings. Information about the likely regulatory impact of these listings has been acquired from the Department of Agriculture, Forestry and Fisheries. Australia did not undertake any stakeholder consultation for the remaining species that have no impact as Australia is not a range state for those species covered by the listing request (that is, they do not occur naturally in Australia) nor does Australia trade in specimens of this species.

The 19th Conference of Parties of the Convention (CoP19) (Panama, 14-25 November 2022) agreed to 46 amendments to Appendices I and II. The Convention's Notifications to the Parties 2023/005 (dated 12 January 2023) and 2023/015 (dated 10 February 2023) have advised of the species amendments adopted at CoP19. Seven of the amendments agreed at CoP19 have a delayed entry into force to enable implementation issues to be resolved. CoP19 agreed to delay the listings of requiem sharks (*Carcharhinidae* spp.) and straw-headed bulbul (*Pycnonotus zeylanicus*) in Appendices II and I respectively by 12 months (coming into effect on 25 November 2023); sea cucumbers (*Thelephora* spp.) in Appendix II by 18 months (coming into effect on 25 May 2024); and *Dipteryx* spp. and trumpet trees (*Handroanthus* spp., *Roseodendron* spp., *Tabebuia* spp.) in Appendix II by 24 months (coming into effect on 25 November 2024). CoP19 also agreed to a number of nomenclatural changes and updates to notations for species already included on the Appendices.

Australia is neither a range State (that is, the species do not naturally occur in Australia) for the majority of species covered by the adopted listing proposals for Appendices I and II requests, nor does Australia have an industry in the international trade of the majority of these species. As such, there will be no impacts for Australia arising from the listing amendments for the majority of these species.

The amendments that are relevant to Australia include: listing of an endemic Australian reptile, *Tiliqua adelaidensis*, to Appendix I; four marine species taxa (requiem sharks, hammerhead sharks, guitarfish and sea cucumbers) listings for which Australia is a range State; and two listings for species in which Australia is known to trade roseroots (*Rhodiola* spp.) and brazilwood (*Paubrasilia echinata*). Australia consulted with state and territory governments, the Indigenous Advisory Committee, the Office of the Threatened Species Commissioner, relevant industry bodies, non-government organisations (NGOs) and members of the public on proposed amendments to Appendices I and II of the Convention in advance of CoP19. Feedback provided from this consultation included species-specific scientific information and information on Australian trade. Once decisions were made by CoP19, Australia communicated these outcomes to affected stakeholders.

Other amendments include minor administrative changes for consistency across the list. This includes adding a notation to several Appendix III listings (for *Gnetum montanum*, *Meconopsis regia*, *Podocarpus neriifolius* and *Tetracentron sinense*) which were missing the notation assigned to those listings. Two entries (for *Cattleya trianaei* and *Vanda coerulea*) are superfluous due to genus entry (*Orchidaceae* spp.) covering those species and have been deleted. Finally, due to nomenclature changes listing *Pachypodium windsorii* as a species in its own right instead of being considered part of *Pachypodium baronii* (listed in Appendix I in 1990), *Pachypodium windsorii* has been added to Appendix I to reflect the intent of the original Appendix I listing (with the original Appendix I listing date 18 January 1990).

The Convention's Notifications to the Parties 2023/015 noted an error in Notification to the Parties No. 2022/081 about the name of one of the species proposed for inclusion in Appendix III for South Africa, *Othonna cacalioides* (not *Crassothonna cacalioides*) is included in Appendix III.

Consultation

Australia does not propose to enter a reservation to the amendments. The action is consistent with Australia's strong commitment to the Convention and international cooperation for the protection and conservation of wildlife more generally. The Office of Impact Analysis has advised that the amendments will have minor regulatory impact.

The Cuban bullfinch, Cuban grassquit, *Conophytum* spp., *Mestoklema tuberosum*, *Raphionacme zeyheri*, *Crassothonna clavifolia*, *Othonna armiana*, *Othonna cacalioides*, *Othonna euphorbioides*, *Othonna retrorsa*, *Tylecodon bodleyae*, *Tylecodon nolteei*, *Tylecodon reticulatus*, *Monsonia herrei*, *Monsonia multifida*, *Monsonia patersonii*, *Pelargonium crassicaule*, *Pelargonium triste*, *Adenia spinosa*, *Portulacaria pygmaea* and the majority of the CoP19 amendments comes into force internationally on 23 February 2023. CoP19 agreed to delay the listings of requiem sharks and straw-headed bulbul in Appendices II and I respectively by 12 months (coming into effect on 25 November 2023); sea cucumbers in Appendix II by 18 months (coming into effect on 25 May 2024); and *Dipteryx* spp. and trumpet trees in Appendix II by 24 months (coming into effect on 25 November 2024). The legislative instrument was made prior to the Joint Standing Committee on Treaties (JSCOT) reporting on the amendment.

The Department of Foreign Affairs and Trade have been consulted on the amendments.

This update to the list of CITES species is in accordance with Australia's international commitment to implement the Convention. The amendments put into effect by this legislative instrument are considered to have minor impact on Australia.

Operation and commencement

This update to the CITES list is a legislative instrument for the purposes of the *Legislation Act 2003*.

Section 42 of the *Legislation Act 2003* (disallowance of legislative instruments) does not apply to this instrument (see *Legislation (Exemptions and Other Matters) Regulation 2015*, section 10, item 15). Amendments to the list are required in order to comply with Australia's international obligations under the Convention. The exemption from disallowance therefore ensures continuity in Australia's compliance with obligations under international law. Furthermore, the assessment of whether to include species on the list are decisions of a technical and scientific nature.

Section 12, item 24 of the *Legislation (Exemptions and Other Matters) Regulation 2015* provides that instruments made under s 303CA of the EPBC Act are exempt from sunseting. This instrument facilitates Australia's compliance with international obligations, in particular CITES. Moreover, instrument is subject to automatic self-repeal under section 48A of the *Legislation Act 2003*, as its sole purpose is to amend the List. Therefore the exemption from sunseting would have no practical effect, since the instrument will have self-repealed well prior to end of the ordinary 10 year sunset period.

Schedule 1 of the legislative instrument commences on 23 February 2023, with the effect of including the Cuban bullfinch, Cuban grassquit, *Conophytum* spp., *Mestoklema tuberosum*, *Raphionacme zeyheri*, *Crassothonna clavifolia*, *Othonna armiana*, *Othonna cacalioides*, *Othonna euphorbioides*, *Othonna retrorsa*, *Tylecodon bodleyae*, *Tylecodon nolteei*, *Tylecodon reticulatus*, *Monsonia herrei*, *Monsonia multifida*, *Monsonia patersonii*, *Pelargonium crassicaule*, *Pelargonium triste*, *Adenia spinosa*, *Portulacaria pygmaea* and the majority of the CoP19 amendments on the list. Schedule 2 of the legislative instrument commences on 25 November 2023, with the effect of including the requiem sharks and straw-headed bulbul on the list.

Schedule 3 of the legislative instrument commences on 25 May 2024, with the effect of including the sea cucumbers on the list. Schedule 4 of the legislative instrument commences on 25 November 2024, with the effect of including *Dipteryx* spp. and trumpet trees on the list.

This aligns with the commencement of the amendments advised in the Convention's Notifications to the Parties 2022/077, 2022/081, 2023/005 and 2023/015. The remainder of the instrument outside of the Schedules commences on the day after the instrument is registered.