

## **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 (2024/094) Instrument 2024**

#### **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. Subsections 303CA(9)(b) and (c) of the Act together provide 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 subsection 303CA(9)(a), 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 (29/11/2001)* (the List) to include the below amendments.

Notification to the Parties 2024/094 (dated 27 August 2024) advised that Seychelles requested the Secretariat to amend and include new species for listing under Appendix III to the Convention.

Seychelles has requested the inclusion of *Ailuronyx* spp. (Seychelles geckoes) 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, it does not occur naturally in Australia). Further, these 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.

## **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 Seychelles amendment comes into force internationally on 25 November 2024.

The legislative instrument updating the List to include the species was made prior to the Joint Standing Committee on Treaties (JSCOT) reporting on the amendment. All CITES Parties are required to either implement amendments to the Appendices through their domestic legislation, or take out a reservation to the amendments, within 90 days of a species listing being requested by a Party through a Notification. Undertaking the required regulatory action within the specified timeframes is required for Australia to meet its obligations as a Party to the Convention.

The Department of Foreign Affairs and Trade has been consulted on the amendment. Following the receipt of advice, the Minister for the Environment and Water wrote to the Foreign Minister and the Attorney-General, advising of the proposed amendments to Appendix III and seeking the assistance of the Foreign Minister to refer the matter to the JSCOT.

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

## **Details**

Details of the instrument are set out in [Attachment A](#).

## **Commencement and Operation**

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

The legislative instrument commences on 25 November 2024, with the effect of including *Ailuronyx* spp. on the List. This aligns with the commencement of the amendments advised in the Convention's Notifications to the Parties 2024/94.

Section 42 of the *Legislation Act 2003* (disallowance of legislative instruments) does not apply (see Legislation (Exemptions and Other Matters) Regulation 2015, section 10, item 15). As the instrument is not disallowable, a statement of compatibility is not required under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* (subsection 15J(2) of the Legislation Act).

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. Amendments to the List are required in order to comply with Australia's international obligations under the Convention. The exemption from sunseting 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.

Moreover, the instrument is subject to automatic self-repeal under section 48A of the Legislation Act, as their 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.

***Details of the List of CITES Species Amendment (2024/094) Instrument 2024***

**Section 1 – Name**

This section provides that the name of the Instrument is the *List of CITES Species Amendment (2024/094) Instrument 2024*.

**Section 2 – Commencement**

This section provides that the Instrument commences the day after registration. Schedule 1 to the instrument commences on 25 November 2024.

**Section 3 – Authority**

This section provides that the Instrument is made under paragraphs 303CA(9)(b) and (c) of the *Environment Protection and Biodiversity Conservation Act 1999*. The purpose is to amend the *List of CITES Species for the Purposes of the Act (29/11/2001)*.

**Section 4 – Schedules**

This section is a machinery clause which has the effect that the Principal Instrument (i.e. the List) is amended as set out in the applicable items in Schedule 1, and any other item in Schedule 1 to the Instrument has effect according to its terms.

**Schedule 1 – Amendments**

Schedule 1 sets out the amendments to the List.

**Item 1**

Item 1 amends the List under the heading Phylum: Chordata (Chordates), Class: Reptilia, Suborder: Sauria, to include the following species of Seychelles geckos in the appropriate position from 25 November 2024:

- (a) *Ailuronyx* spp.