

## **EXPLANATORY STATEMENT**

Issued by Authority of the Minister for the Environment and Water

*Environment Protection and Biodiversity Conservation Act 1999*

*Environment Protection and Biodiversity Conservation Amendment (2022 Measures No. 1)  
Regulations 2022*

### **Legislative Authority**

The *Environment Protection and Biodiversity Conservation Act 1999* (the Act) provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities, and heritage places.

Subsection 520(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Environment Protection and Biodiversity Conservation Regulations 2000* (the Principal Regulations) are made under section 520 of the Act. The purpose of the Principal Regulations is to prescribe and give effect to various provisions under the Act.

Paragraph 505D(1)(h) of the Act enables regulations made under the Act to prescribe additional functions of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (the Committee).

Subsection 303GO(2) allows regulations made under the Act to specify conditions in relation to a live animal, including dealing with the welfare of the animal; eliminating or minimising the risk of cruel treatment of the animal; and other matters.

### **Purpose**

The purpose of the Environment Protection and Biodiversity Conservation Amendment (2022 Measures No. 1) Regulations 2022 (the Regulations) is to make minor amendments to the Principal Regulations to:

- expand the publication functions of the Committee, consistent with other advice-giving functions; and
- update references to certain codes of practice relating to the welfare of live specimens.

### **Background**

The Committee is established by Division 2B of Part 19 of the Act. The functions of the Committee include providing scientific advice, upon request to the Environment Minister and to Ministers of declared States and Territories, on proposed coal seam gas development, large coal mining development and other matters. The Committee may also provide scientific advice to the Environment Minister in relation to a matter that is protected by a provision of Part 3 of the Act; and to declared State and Territory Environment Ministers in relation to matters requested by that Minister, where the Committee has sufficient expertise in those matters, and the Environment Minister agrees to the Committee providing the advice. Further

functions are prescribed in the Regulations, including functions to publish certain scientific advice.

Part 13A of the Act sets up a system for regulating the international movement of wildlife specimens. It is an offence to commercially export or import a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) specimen or a regulated native specimen, without a permit or exemption. A permit for export may be granted where the commercial export of the specimen would be in accordance with an approved program, operation or plan, such as an approved wildlife trade operation or approved wildlife trade management plan. To declare an approved wildlife trade operation or wildlife trade management plan, the Minister must be satisfied that any welfare conditions prescribed by the Principal Regulations will likely be complied with. Relevant welfare conditions are prescribed by regulation 9A.05. The notes to regulation 9A.05 refer to national codes of practice, which provide further information on the humane treatment of kangaroos, wallabies and crocodiles. Those notes do not have the effect of incorporating the codes by reference, but merely act as a signpost to alert readers that the codes exist and that they set out information which is potentially relevant to the welfare of these animals.

## **Impact and Effect**

### Amendment to the Committee's statutory function to publish advice

It is intended that the amendments made by the Regulations will provide greater transparency to the environmental regulatory process, including giving public access to advice provided by the Committee. This is consistent with other advice-giving functions exercised by the Committee.

Subregulation 15.01A(3) of the Principal Regulations currently empowers the Committee to publish certain advice and other material provided to the Environment Minister or a declared State or Territory Minister in the performance of the Committee's function under paragraphs 505D(1)(a) or (1)(b) of the Act. These functions relate to the provision of scientific advice in relation to proposed coal seam gas developments or large coal mining developments that are likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity.

The publication function set out in subregulation 15.01A(3) currently does not extend to the publication of advice provided to the Environment Minister or a declared State or Territory Minister in the performance of the Committee's functions under paragraphs 505D(2)(a) or (b) of the Act. Those functions concern the provision of scientific advice to the Environment Minister in relation to a matter that is protected by a provision of Part 3 of the Act; and the provision of scientific advice to the Minister of a declared State or Territory in relation to matters requested by that Minister, where the Committee has sufficient expertise in those matters and the Environment Minister agrees to the Committee providing the advice.

State agencies, in particular, are increasingly seeking the Committee's advice on a range of different projects beyond coal seam gas and coal mining, for example, carbon capture and storage, and hydrogen. This amendment is intended to expand the Committee's publication powers under subregulation 15.01A, so that where the Committee gives advice under paragraphs 505D(2)(a) or (b) of the Act, it can also publish that advice. This will allow for advice given under subsection 505D(2) to be made public.

The expanded publication powers will align with the existing publication powers under subregulation 15.01A(3). It is not intended that the reports published under the new publication power will contain or disclose any personal information.

#### Update to references to codes of practice in regulation 9A.05 (Notes 1 and 2)

This minor amendment will update references to three codes of practice relating to the welfare of live specimens contained in the notes to regulation 9A.05. The Proposed Regulations will omit the current notes, which refer to one obsolete code, and substitute a new note which will indicate that national codes of practice dealing with the humane treatment of certain species are published on the department's website. The proposed note does not have the effect of incorporating the codes of practice, but will merely indicate that the codes are available on the department's website and may be of assistance to the reader.

### **Consultation**

The department consulted with the New South Wales Department of Planning and Environment; Queensland Department of Environment and Science; and Victorian Department of Environment, Land, Water and Planning regarding the amendments to the Committee's publication powers relating to the Committee's functions in paragraph 505D(2)(b). All State departments consulted supported the proposed changes and no issues were raised. The department also consulted with the Chair of the Committee on all measures relating to the expansion of the Committee's publication powers. The Chair supported the proposed changes. No consultation was undertaken regarding the updating of the notes to regulation 9A.05, given the very minor nature of this amendment.

Consultation on the draft instrument itself was not undertaken, on the basis that extensive consultation was undertaken on the substance of the amendments to the Committee's functions, and the substance of those amendments were supported by relevant State and Commonwealth stakeholders.

The Office of Best Practice Regulation has advised that the Proposed Regulations are not likely to have a regulatory impact on business, and as such, a Regulatory Impact Statement was not required to be prepared (OBPR ID 03547).

### **Details and Operation**

Details of the Proposed Regulations including commencement details are set out in Attachment A.

The Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Proposed Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act). This instrument will be a disallowable instrument under section 42 of the Legislation Act.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

**Details of the *Environment Protection and Biodiversity Conservation Amendment (2022 Measures No. 1) Regulations 2022***

**Section 1 – Name**

This section provides that the name of the Regulations is the *Environment Protection and Biodiversity Conservation Amendment (2022 Measures No. 1) Regulations 2022*.

**Section 2 – Commencement**

This section sets out, in a table, the date on which the provisions contained in the Regulations would commence. This table provides that the whole of the instrument would commence on the day after the instrument is registered.

**Section 3 – Authority**

This section provides that the Regulations are made under the *Environment Protection and Biodiversity Conservation Act 1999* (the Act).

**Section 4 – Schedules**

This section provides that the *Environment Protection and Biodiversity Conservation Regulations 2000* are amended as set out in the applicable items in Schedule 1.

**Schedule 1 – Amendments**

**Item [1] – Regulation 9A.05 (Notes 1 and 2)**

This item repeals Notes 1 and 2 to regulation 9A.05, which refer to:

- *National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes*, 2008, first edition;
- *National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Non- commercial Purposes*, 2008, first edition; and
- *Code of Practice on the Humane Treatment of Wild and Farmed Australian Crocodiles*, 2009, first edition.

This item then substitutes a new Note, noting the existence of national codes of practice dealing with how to humanely deal with certain species (such as kangaroos, wallabies and crocodiles). The new note indicates that those codes could in 2022 be viewed on the department's website.

This item does not incorporate the codes of practice by reference. The proposed note merely indicates that the codes are available and may be of assistance to the reader.

### **Item [2] – Subregulation 15.01A(3)**

This item omits the existing subregulation 15.01A(3), which is limited in application to material related to the performance of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development’s (the Committee) function under paragraphs 505D(1)(a) or (1)(b) of the Act.

This item then inserts new paragraphs 15.01A(3)(a) and (b). Paragraph 15.01A(3)(a) provides that the Committee has the function of publishing on the internet the following materials:

- the scientific advice provided by the Committee in the performance of its function under paragraph 505D(1)(a), (1)(b), (2)(a) or (2)(b) of the Act;
- the date on which the advice was finalised by the Committee;
- if the advice was provided in the performance of the Committee’s function under paragraph 505D(1)(a) or (1)(b) of the Act—information identifying each proposed coal seam gas development and large coal mining development to which the advice relates;
- any other information in relation to the advice that the Committee considers appropriate.

This item expands the Committee’s publication function under subregulation 15.01A(3) to also apply to material related to the performance of the Committee’s function under paragraphs 505D(2)(a) or (2)(b) of the Act.

Paragraph 15.01A(3)(b) provides that the Committee has the function of publishing that advice and information on the internet within 10 business days of the advice being provided to the Minister, or the Minister of a declared State or Territory that requested the advice.

### **Item [3] – At the end of Part 20**

This item inserts a new regulation 20.12 at the end of Part 20 – Application and transitional provisions. This item provides that the amendment to subregulation 15.01A(3), provided for in Item [2] above, applies only in relation to scientific advice provided by the Committee to the Minister, or a Minister of a declared State or Territory, on or after the date of commencement of the Regulations.

The effect of this item is that any scientific advice provided under the Committee’s functions under paragraphs 505D(2)(a) or (b) of the Act before the commencement of the Regulations would not be covered by the Committee’s publication function in subregulation 15.01A(3).

**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 Amendment (2022 Measures No. 1) Regulations 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 the proposed Environment Protection and Biodiversity Conservation Amendment (2022 Measures No. 1) Regulations 2022 (the Regulations) is to make minor amendments to ensure that the *Environment Protection and Biodiversity Conservation Regulations 2000* remain up-to-date and practical for the regulated community. The amendments update certain publication functions of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development; and update references to certain codes of practice relating to the welfare of live specimens.

**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**