

# **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 (2023/011018) 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. 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.

Israel's Notification to the Parties 2023/011 (dated 3 February 2023) advised that Israel requested the Secretariat to amend and include a new species for listing under Appendix III to the Convention.

Israel has requested the inclusion of the Palestine viper (*Daboia palaestinae*) 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, the species cannot be legally imported to Australia under the Act, as it is not listed in the List of Specimens Taken to be Suitable for Live Import made under section 303EB of the Act.

The European Union's Notification to the Parties 2023/018 (dated 20 February 2023) advised that the European Union requested the Secretariat to amend and include a new species for listing under Appendix III to the Convention.

The European Union has requested the inclusion of the small Réunion swallowtail (*Papilio phorbanta*) 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. Further, the species cannot be legally imported to Australia under the Act, as it is not listed in the List of Specimens Taken to be Suitable for Live Import made under section 303EB of the Act.

Minor and technical amendments are made to the List to rectify misdescribed listing dates for: zebra pleco (*Hypancistrus zebra*), by omitting “23 Feb 2023” and inserting “3 Jan 17”; southern white rhinoceros (*Ceratotherium simum simum*), by omitting “1 Jul 75” and inserting “4 Feb 77”; common snapping turtle (*Chelydra serpentina*) by omitting “23 Feb 2023” and inserting “21 Nov 16”; and alligator snapping turtle (*Macroclmys temminckii*) by omitting “23 Feb 2023” and substituting “14 Jun 06”. All four date changes reflect the original date the species were first listed on the CITES Appendices.

Other minor and technical amendments to the List rectify misdescribed notations for: *Cactaceae spp.*, *Dalbergia cochinchinensis* and *Dypsis decaryi*. The amendments ensure the List reflects the updated notation agreed at 19<sup>th</sup> Conference of the Parties of the Convention.

Further amendments to the List rectify incorrect specification of the family for *Phrynosoma blainvillii*, *Phrynosoma cerroense*, *Phrynosoma coronatum* and *Phrynosoma wigginsi*. The amendments update the List to clarify that they belong to the Phrynosomatidae family.

Additionally, the amendments update the listing of *Calyptocephalella gayi* to specify the listing date of “27 April 11” being the original date the species was first listed on the CITES Appendices.

### **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 Palestine viper comes into force internationally on 4 May 2023. The small Réunion swallowtail comes into force on 21 May 2023. The legislative instrument for both species was made prior to the Joint Standing Committee on Treaties (JSCOT) reporting on the amendment.

The Department of Foreign Affairs and Trade has been consulted on the amendment.

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.

### **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 (see *Legislation (Exemptions and Other Matters) Regulation 2015*, section 10, item 15). Amendments to the CITES 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 CITES 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, the instrument is subject to automatic self-repeal under section 48A of the *Legislation Act 2003*, 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.

The legislative instrument commences the day after registration. Schedule 1 of the legislative instrument commences on 4 May 2023, with the effect of including the Palestine viper on the List of CITES Species and rectifying the misdescribed amendments. Schedule 2 of the legislative instrument commences on 21 May 2023, with the effect of including the Small Réunion swallowtail on the List of CITES Species. This aligns with the commencement of the amendments advised in the Convention's Notifications to the Parties 2023/011 and 2023/018.