

## EXPLANATORY STATEMENT

**Issued by the authority of the delegate of the Minister for the Environment and Water  
specified in the enabling legislation**

*Environment Protection and Biodiversity Conservation Act 1999*

List of Exempt Native Specimens Amendment (Commonwealth Cocos (Keeling) Islands  
Marine Aquarium Fish Fishery) Instrument May 2025

### **Legislative Authority**

The *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) places certain obligations on the Commonwealth to protect and conserve Australia's native wildlife by regulating international trade to protect targeted species against over exploitation and to protect Australian and international ecosystems.

Subsection 303DB(1) of the EPBC Act provides that the minister must, by legislative instrument establish a list of exempt native specimens. This list referred to in subsection 303DB(1) of the EPBC Act is contained in the *List of Exempt Native Specimens Instrument 2001 (the List)*. Specimens included in the List are exempt from the trade control provisions that apply to regulated native specimens.

Subsection 303DC(1) of the EPBC Act relevantly provides that the minister may, by legislative instrument, amend the List referred to in section 303DB by including items, deleting items, imposing a condition or restriction to which the inclusion of a specimen in the list is subject, varying or revoking a condition or restriction to which the inclusion of a specimen in the List is subject, or correcting an inaccuracy of updating the name of a species.

### **Strategic Assessment**

Subsection 303DC(1A) of the EPBC Act requires the minister's delegate, in deciding whether to amend the List, to rely primarily on the outcomes of any assessment carried out for the purposes of Divisions 1 or 2 of Part 10 of the EPBC Act.

A strategic assessment is only required for fisheries managed under the *Fisheries Management Act 1991* (Cth) or the *Torres Strait Fisheries Act 1984* (Cth). A strategic assessment may be made for commercial fisheries under Division 1. However, there are no current strategic assessments in respect of the Commonwealth Cocos (Keeling) Islands Marine Aquarium Fish Fishery from which the specimens listed in the Schedule are taken or derived.

The Commonwealth Cocos (Keeling) Islands Marine Aquarium Fish Fishery listed in the Schedule to the instrument is not managed under the aforementioned Acts. This means the EPBC Act does not require there to be a strategic assessment for the purposes of Part 10 of the Act in relation to the Commonwealth Cocos (Keeling) Islands Marine Aquarium Fish Fishery named in the Schedule.

## Specimens that may be included in the list

The List established under subsection 303DB(1) of the EPBC Act must not include a specimen that belongs to a species listed on Australia's List of Migratory Species established under section 209 of the EPBC Act, must not include a specimen that belongs to a species listed on the List of Marine Species established under section 248 of the EPBC Act, and must not include specimens that are derived from taxa that are listed under the listed established under section 303CA of the EPBC Act in relation to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

The minister's delegate was satisfied that the species listed in Schedule 1 are not listed in any of the lists established under sections 209, 248 and 303CA of the EPBC Act.

Subsection 303DC(1C) provides that the minister/delegate is not limited in the matters that may be taken into account when deciding whether to amend the List to include a specimen derived from a commercial fishery. In determining to include the specimens in the List, the minister's delegate had regard to the Australian Government's *Guidelines for the Ecologically Sustainable Management of Fisheries – 2<sup>nd</sup> Edition*.

## Purpose and operation

The purpose of this instrument is to amend the List by:

- omitting in the List specimens that are or are derived from fish or invertebrates taken in the Western Australian Cocos (Keeling) Islands Marine Aquarium Fishery, and any associated notations specified in **Schedule 1** to the instrument.
- inserting in the List specimens that are or are derived from fish or invertebrates taken in the Commonwealth Cocos (Keeling) Islands Marine Aquarium Fish Fishery, with notations that inclusion of the specimens in the List are subject to restrictions or conditions that:
  - the specimen, or the fish or invertebrate from which it was derived, was taken lawfully;
  - the Department of Infrastructure, Transport, Regional Development, Communication and the Arts must inform the Department of Climate Change, Energy, the Environment and Water of any intended material changes to the management arrangements that may affect this approval;
  - the Department of Infrastructure, Transport, Regional Development, Communication and the Arts must inform the Department of Climate Change, Energy, the Environment and Water of any intended changes to fisheries legislation that may affect the legislative instruments relevant to this approval;
  - the Department of Infrastructure, Transport, Regional Development, Communication and the Arts must produce and provide reports on the Commonwealth Cocos (Keeling) Islands Marine Aquarium Fish Fishery to the

Department of Climate Change, Energy, the Environment and Water by 31 March annually, as per Appendix B of the *Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition*;

- the specimens are included in the list until 12 May 2030.

Listing these specimens in the List will allow export of these specimens without the need for export permits, until the date specified in Schedule 1. A link to the declaration is accessible via the Department of Climate Change, Energy the Environment and Water's website at <https://www.dcceew.gov.au/environment/marine/fisheries/commonwealth/cocos-aquarium>.

The only effect of this instrument is to allow continued export of these specimens subject to the conditions provided in the notation as specified in the Schedule.

## **Incorporation**

Commonwealth Acts and disallowable instruments (or instruments which were disallowable under Commonwealth legislation at any time before 1 January 2005) referred to in this instrument are incorporated as in force from time to time (subsections 14(1)(a) and 14(3) of the *Legislation Act 2003*) (Legislation Act). However, references to Commonwealth instruments which are exempt from disallowance are incorporated as in force at the time this instrument commences (paragraph 14(1)(b) of the Legislation Act).

All Commonwealth legislation can be freely accessed at the Federal Register of Legislation – <https://www.legislation.gov.au/>.

All state and territory primary legislation referred to in the Schedule to the instrument is incorporated as in force from time to time (section 10A of the *Acts Interpretation Act 1901* as applied by paragraph 13(1)(a) of the Legislation Act). All state and territory subordinate legislation referred to in the Schedule to the instrument is incorporated as in force at the time this instrument commences (paragraph 14(1)(b) of the Legislation Act).

All state and territory legislation incorporated by reference in the instrument can be freely accessed at Western Australian legislation at <https://www.legislation.wa.gov.au/>.

The Australian Government's *Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition* establish the criteria for assessment of the ecological sustainability of the relevant fishery's management arrangements. The guidelines are incorporated as in force on 1 August 2007. The guidelines are freely accessible to all persons via the Department's website at: <https://www.dcceew.gov.au/environment/marine/publications/guidelines-ecologically-sustainable-management-fisheries>.

## **Consultation**

Subsection 303DC(3) of the EPBC Act provides that before amending the List, the minister must consult such other Commonwealth minister or ministers and such other minister or ministers of each State and self-governing Territory, as the minister considers appropriate.

The minister may also consult with such other persons and organisations as the minister considers appropriate.

The Commonwealth Department of Infrastructure, Transport, Regional Development, Communication and the Arts has been consulted and supports amending the List to include product derived from the Commonwealth Cocos (Keeling) Islands Marine Aquarium Fish Fishery.

In addition, the proposal to amend the list was advertised on the Department of Climate Change, Energy, the Environment and Water's website and comment was invited from interested people from 29 November 2024 to 29 January 2025.

Two comments were received. One comment stated support for the application for the fishery to be approved under Part 13A of the EPBC Act as the management operations were consistent with the objectives and management provisions of the Cocos (Keeling) Islands Marine Park's IUCN IV Habitat Protection Zone.

The second comment indicated that it did not support live marine ornamental fish exports. It cited a lack of information on the welfare impacts of the current trade, the absence of information on transit mortality levels, the limited information available on the primary target species, and the absence of any management consideration of climate change

All comments received were taken into account in the decision to include specimens derived from the Commonwealth Cocos (Keeling) Islands Marine Aquarium Fish Fishery in the List.

Given the consultation on proposed decision, it was not necessary to consult on the text of the instrument itself.

### **Details/Operation**

Details of the Instrument are set out in Attachment A.

### **Sunsetting and disallowance requirements**

The Instrument is subject to the disallowance process under section 42 of the Legislation Act and the sunseting regime set out in Part 4 of Chapter 3 of the Legislation Act. However, section 48A of the Legislation Act has the effect that, because the Instrument only amends another instrument, if it is not disallowed it will be automatically repealed at the end of the disallowance period. Once repealed, the sunseting regime has no practical effect on the Instrument.

The List amended by the Instrument is exempt from sunseting in accordance with table item 24 in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, which specifies that sunseting requirements do not apply to instruments made under section 303DB of the EPBC Act. This sunseting exemption has applied to the List since the sunseting regime was established by the Legislation Act on 1 January 2005. This means that the amendments given effect by the Instrument will be enduring.

The List is not appropriate for sunseting. The List is a list of native specimens that are exempt from export regulations. Specimens included on the list (in the exact form listed and

subject to stated conditions) may be allowed to be exported without a permit. The List includes only specimens that are, or are derived from, Australian native animals and plants.

Listing these specimens in the list will allow the export of these specimens without the need for export permits until the date specified in Schedule 1.

Amendments are made to the list following a stringent statutory review process set out in the EPBC Act, which provides an appropriate review mechanism to ensure the currency and accuracy of the List.

### **Other**

The Instrument is 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.

This instrument is legislative instrument for the purposes of the Legislation Act.

Authority: section 303DC(1) of the *Environment Protection and Biodiversity Conservation Act 1999*

**Details of the *List of Exempt Native Specimens Amendment (Commonwealth Cocos (Keeling) Islands Marine Aquarium Fish Fishery) Instrument, May 2025***

**Section 1 – Name**

This section provides that the title of the instrument is the *List of Exempt Native Specimens Amendment (Commonwealth Cocos (Keeling) Islands Marine Aquarium Fish Fishery) Instrument, May 2025* (the Instrument).

**Section 2 – Commencement**

This section provides that the Instrument commences on the day after it is registered.

**Section 3 – Authority**

This section provides that the Instrument is made under paragraph 303DC(1)(a) of the *Environment Protection and Biodiversity Conservation Act 1999*.

**Section 4 – Definitions**

This section sets out definitions of terms used in the instrument.

**Section 5 – Schedules**

This section is a machinery clause which provides that the *List of Exempt Native Specimens Instrument 2001* (Principal Instrument) 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**

**Item 1 – Freshwater and Marine Animals**

Item 1 amends the List under the heading “Freshwater and Marine Animals” to omit specimens in the table that are or are derived from fish or invertebrates taken in the Western Australian Cocos (Keeling) Islands Marine Aquarium Fishery, and associated notations in the Schedule to the Instrument.

**Item 2 – Freshwater and Marine Animals**

Item 1 amends the List under the heading “Freshwater and Marine Animals” to insert into the List; in the place of the omitted row/s, specimens that are or are derived from fish or invertebrates taken in the Commonwealth Cocos (Keeling) Islands Marine Aquarium Fish, with notations that inclusion of the specimens in the list are subject to restrictions or conditions that the specimen, or the fish or invertebrate from which it is derived, was taken lawfully, and that the specimens are included in the List until the date specified in the Schedule to the Instrument.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **List of Exempt Native Specimens Amendment (Commonwealth Cocos (Keeling) Islands Marine Aquarium Fish Fishery) Instrument, May 2025**

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Disallowable Legislative Instrument**

The purpose of this instrument is to amend the *Environment Protection and Biodiversity Conservation Act 1999* List of Exempt Native Specimens (the List) to:

- omit from the List specimens that are or are derived from fish or invertebrates taken in the Western Australian Cocos (Keeling) Islands Marine Aquarium Fishery, and any associated notations specified in the Schedule to the Instrument.
- insert in the List specimens that are or are derived from fish or invertebrates taken in the Commonwealth Cocos (Keeling) Islands Marine Aquarium Fish Fishery, with notations that inclusion of the specimens in the List are subject to restrictions or conditions that:
  - the specimen, or the fish or invertebrate from which it was derived, was taken lawfully;
  - the Department of Infrastructure, Transport, Regional Development, Communication and the Arts must inform the Department of Climate Change, Energy, the Environment and Water of any intended material changes to the management arrangements that may affect this approval;
  - the Department of Infrastructure, Transport, Regional Development, Communication and the Arts must inform the Department of Climate Change, Energy, the Environment and Water of any intended changes to fisheries legislation that may affect the legislative instruments relevant to this approval;
  - the Department of Infrastructure, Transport, Regional Development, Communication and the Arts must produce and provide reports on the Commonwealth Cocos (Keeling) Islands Marine Aquarium Fish Fishery to the Department of Climate Change, Energy, the Environment and Water by 31 March annually, as per Appendix B of the Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition;
  - the specimens are included in the list until 12 May 2030.

Listing these specimens in the List will allow the export of these specimens without the need for export permits while an approved wildlife trade operation declaration for the Commonwealth Cocos (Keeling) Islands Marine Aquarium Fish Fishery is in force. A link to the declaration is accessible via the Department of Climate Change, Energy, the Environment and Water's website at <https://www.dcceew.gov.au/environment/marine/fisheries/commonwealth/cocos-aquarium>.

The only effect of this instrument is to allow continued export for these specimens subject to the conditions provided in the notations of the Schedule.

### **Human rights implications**

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Jessica Hoey, Director, Ocean and Wildlife Branch (Delegate of the Minister for the Environment and Water)**