

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999 (Cth)

Instrument under section 184(1)(a)

(Issued under the Authority of the Minister for Sustainability, Environment, Water, Population and Communities)

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the **Act**) provides for the protection of the environment and conservation of biodiversity, including the protection and conservation of threatened species.

Section 178 of the Act provides for a list of threatened species (the **List**) separated into particular categories being, extinct, extinct in the wild, critically endangered, endangered, vulnerable and conservation dependent.

Section 184 of the Act provides that the Minister may, by legislative instrument, amend the List to include an item in the List, delete an item from the List or, transfer an item from one category in the List to another category.

The process for making amendments to the List is set out in Part 13, Division 1, Subdivision AA of the Act.

Background

The purpose of the Instrument is to amend the List by including *Phascolarctos cinereus* (combined populations of Queensland, New South Wales and the Australian Capital Territory) in the vulnerable category of the List. The combined koala (*Phascolarctos cinereus*) populations of Queensland, New South Wales and the Australian Capital Territory have been determined by the Minister, pursuant to section 517 of the Act, to be a species for the purposes of the Act.

Consultation

Consultation was undertaken before the Instrument was made, in accordance with the process outlined in Part 13, Division 1, Subdivision AA of the Act.

The Threatened Species Scientific Committee (the **Committee**):

- prepared a nomination for the koala at the national scale and included it in the Finalised Priority Assessment List for the assessment period commencing 1 October 2008;
- sought public comment on the nomination in May 2009 and 223 responses were received and considered in preparation of the Committee's advice;
- provided an initial advice to the Minister for Sustainability, Environment, Water, Population and Communities on 30 September 2010, recommending that the koala was not eligible for listing at the national scale; and
- revised the advice in November 2011 in response to new information and a Senate inquiry into Australia's koala population, the final report of which was published in September 2011 as 'The koala – saving our national icon'.

The Committee also consulted specific parties with relevant expertise regarding their views including:

- University and institutional koala researchers;
- Natural Resource Management Boards within the koala's range;
- relevant state and territory government departments; and
- relevant state and territory scientific committees.

The Committee's revised advice included a recommendation that the species remained ineligible at the national scale. The Committee also recommended that the best conservation outcome would be achieved by determining that the combined koala (*Phascolarctos cinereus*) populations of Queensland, New South Wales and the Australian Capital Territory be considered a species for the purposes of the Act and that this entity be added to the List in the vulnerable category.

Section 194Q(6) of the Act requires the Minister, when deciding whether to add an item to the List, to have regard to the Committee's assessment of the item, and the public comments received by the Committee under section 194M. The Committee's revised advice and a copy of the public comments on the item received by the Committee were provided to, and considered by, the Minister in the making of the Instrument.

The Instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (Cth).

The Instrument commenced on the day after it was registered on the Federal Register of Legislative Instruments.

Statement of Compatibility with Human Rights

The 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* (Cth). The Instrument does not engage any of the applicable rights or freedoms.

Authority: section 184(1)(a) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).