

EXPLANATORY STATEMENT

(Issued under the Authority of the Minister for the Environment)

Environment Protection and Biodiversity Conservation Act 1999

Amendment to the list of threatened species made under section 178 of the
Environment Protection and Biodiversity Conservation Act 1999 (227)

Background

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

Subsection 178(1) of the Act provides that the Minister must, by legislative instrument, establish a list of threatened species (the **List**) separated into the following categories: Extinct, Extinct in the wild, Critically Endangered, Endangered, Vulnerable and Conservation Dependent.

Paragraph 184(a) of the Act relevantly provides that the Minister may, by legislative instrument, amend the List referred to in section 178 by including items within the List in accordance with Subdivision AA.

The species being included in the List and transferred to other categories within the List (one fish species, one amphibian species and five plant species) met the criteria for listing in the relevant category under the EPBC Regulations (see below).

Purpose of the instrument

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

- including *Antrophyum austroqueenslandicum* (Lamington Ox Tongue Fern) on the List in the Critically Endangered category

This species is threatened because of the species' restricted area of occupancy and geographic distribution and its occurrence is severely fragmented with a continuing decline in habitat and number of populations and individuals. Listing under the EPBC Act will provide protection to the species and enable Commonwealth investment in recovery action.

Subsection 186(1) of the Act provides that the Minister must not include a native species on the List (whether as a result of a transfer or otherwise) in a particular category unless satisfied it is eligible to be included in that category.

Subsection 179(3) of the Act provides that a native species is eligible to be included in the critically endangered category at a particular time if, at that time, it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria.

Regulation 7.01 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (the **Regulations**) relevantly provides that for subsection 179 of the Act, a native species is in the critically endangered, endangered or vulnerable category if it meets any of the five criteria for the category mentioned in the table to that provision.

The Minister was satisfied the species being included in the Critically Endangered category on the List met this criterion.

Consultation

The process for making amendments to the List to include or transfer an item is set out in Part 13, Division 1, Subdivision AA of the Act. Consultation was undertaken before the Instrument was made, in accordance with the processes outlined in Part 13, Division 1, Subdivision AA of the Act.

Subsection 189(1) provides that the Minister must obtain and consider advice from the Threatened Species Scientific Committee (the Scientific Committee), in deciding whether to make an amendment covered by paragraph 184(1)(aa), (b) or (d).

Notice of the proposed amendment and a consultation document was made available for public comment for a minimum of 30 business days as required by subsection 194M(3). Any public comments received that were relevant to the survival of the species were considered by the Scientific Committee as part of the assessment process.

The Scientific Committee also conducted targeted consultation with relevant experts regarding their views including:

- relevant researchers from Australian universities
- relevant state and territory governments
- relevant non-government organisations.

The Scientific Committee prepared a written assessment of whether the nominated species was eligible for inclusion in the List. The Committee assessed the *Antrophyum austroqueenslandicum* as eligible for inclusion on the List in the Critically Endangered category.

In making this instrument, the Minister considered the Scientific Committee's written assessments and the comments received during the consultation period in accordance with Part 13, Division 1, Subdivision AA of the EPBC Act.

This Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Instrument commences the day after registration.

Authority: sections 178 and 184(a) of the *Environment Protection and Biodiversity Conservation Act 1999*.

Statement of Compatibility with Human Rights

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

Amendment to the list of threatened species made under section 178 of the *Environment Protection and Biodiversity Conservation Act 1999 (227)*

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 this Instrument is to amend the *Environment Protection and Biodiversity Conservation Act 1999* list of threatened species to:

- Include one species in the Critically Endangered category (*Antrophyum austroqueenslandicum*, Lamington Ox Tongue Fern)

The species being included within the list met the criteria for listing in the relevant category under the EPBC Regulations.

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.