

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Environment Protection and Biodiversity Conservation (Recovery Plan—Australian Fairy Tern (*Sternula nereis nereis*)) Instrument 2022

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

Background

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

Legislative Authority

Part 13, Division 5, Subdivision A of the Act provides for the making or adoption, of recovery plans and threat abatement plans for listed threatened species or listed threatened ecological communities, which bind the Commonwealth and Commonwealth agencies.

Subsection 269A(3) of the Act provides that the Minister may make a written recovery plan for the purposes of the protection, conservation and management of a listed threatened species or listed threatened ecological community jointly with one or more of the States and self-governing Territories in which the species or community occurs.

Purpose of the Instrument

The purpose of this instrument is to jointly make the National Recovery Plan for the Australian Fairy Tern with South Australia, Victoria and Western Australia for *Sternula nereis nereis*, a listed threatened species.

Sternula nereis nereis (Australian Fairy Tern) is listed in the Vulnerable category of the Threatened Species List under the Act. *Sternula nereis nereis* (Australian Fairy Tern) is threatened due to the loss and degradation of nesting and foraging habitat, disturbance around nesting sites and predation by introduced species.

The Recovery Plan provides for the research and management actions necessary to stop the decline, and support the recovery of, the Australian Fairy Tern, in order to maximise its chances of long-term survival in nature.

Consultation

In accordance with s 277(1)(a) of the EPBC Act, the Minister was satisfied that an appropriate level of consultation was undertaken. The Recovery Plan was prepared in accordance with the processes outlined in Part 13, Division 1, Subdivision A of the Act.

Section 274 of the Act provides that the Minister must obtain and consider advice from the Threatened Species Scientific Committee (**Committee**) on the content of the Recovery Plan. The Committee recommended that the Recovery Plan be made under the Act.

In accordance with section 275 of the Act, public comment was invited on the draft Recovery Plan from 20 December 2019 until 17 April 2020. A notice inviting comments on the Recovery Plan was advertised in the *Gazette*, *The Australian* newspaper and on the website of the Australian Government Department of Agriculture, Water and the Environment. As required by section 276 of the Act, all comments were considered before making the Recovery Plan. The Minister consulted with the Minister of each State and self-governing Territory in which the Australian Fairy Tern occurs, as required by paragraph 269A(5)(a) of the Act. The South Australian, Victorian and Western Australian Ministers have agreed to jointly make the plan.

Section 270 of the Act and regulation 7.11 of the *Environment Protection and Biodiversity Conservation Regulations 2000 (Regulations)* requires that recovery plans include certain content, such as stating the objectives of the plan and specifying the actions needed to achieve the objectives. The Recovery Plan contains the content prescribed under the Act and the Regulations.

Commencement

The National Recovery Plan for the Australian Fairy Tern commences on the day after this recovery plan is registered on the Federal Register of Legislation.

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

This 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 below.

Authority: Section 269A(3) 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

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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 jointly make the National Recovery Plan for the Australian Fairy Tern (**Recovery Plan**). The Recovery Plan establishes a national framework to guide and coordinate the recovery of the Australian Fairy Tern throughout its range in Australia. The Recovery Plan identifies research and management priorities necessary to assist the long-term recovery of this species. *Sternula nereis nereis* (Australian Fairy Tern) is listed in the Vulnerable category under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) and as such it is an offence to kill, take, trade, keep, move or injure members of this species in or on a Commonwealth area.

The conventions listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* were considered in the preparation of the Recovery Plan.

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 Sussan Ley MP
Minister for the Environment