

## EXPLANATORY STATEMENT

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

*Environment Protection and Biodiversity Conservation Act 1999*

Environment Protection and Biodiversity Conservation (2023 conservation theme for prioritising nominations of threatened species, threatened ecological communities and key threatening processes) Determination 2022

### Background

The *Environment Protection and Biodiversity Conservation Act 1999* (**Act**) provides for the protection of the environment and conservation of biodiversity, including the protection and conservation of threatened species and ecological communities and the abatement of key threatening processes. The Act requires the responsible Minister to establish and, where warranted, amend lists of threatened species, threatened ecological communities and key threatening processes.

Part 13, Division 1, subdivision AA of the Act outlines the nomination and listing process for threatened species, ecological communities and key threatening processes. Section 194D of the Act provides that prior to inviting nominations for a 12-month assessment period for a Subsection A list under section 194E, the Minister may determine one or more conservation themes that the Minister considers should be given priority in relation to an assessment period.

Conservation themes are also a discretionary consideration for the preparation of a proposed priority assessment list by the Threatened Species Scientific Committee under subsection 194G(2) of the Act.

### Purpose of the instrument

The instrument determines '**species and ecological communities threatened by extreme weather events**' as the conservation theme that the Minister has determined should be given priority for the assessment period commencing 1 October 2023.

### Consultation

Section 194D(3) of the Act states that the rule-maker, when deciding whether to establish a conservation theme under section 194D(1) of the Act, may obtain and consider advice from the Threatened Species Scientific Committee for the purposes of making the determination. That advice was obtained and considered by the Minister prior to the making of this Instrument.

Paragraph 17(1)(a) of the *Legislation Act 2003* states that before the legislative instrument is made, the rule-maker must be satisfied that there has been undertaken any consultation that is considered by the rule-maker to be appropriate.

This Instrument sets a conservation theme for nominations and the setting of the theme does not preclude nominations of any species, ecological community or key threatening process, public consultation was not undertaken. Since this instrument does not apply additional restrictions, impose obligations or preclude the rights of any person, the rule-maker was satisfied that further consultation was not required.

The Act provides that determination of a conservation theme is an optional step in the process for nomination and listing.

## **Commencement/ Operation**

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

The instrument commences on the day after registration on the Federal Register of Legislation. As provided in subsection 194D(4) of the Act, section 42 of the *Legislation Act 2003* (disallowance) does not apply to this instrument.

With respect to the statutory exemption from the disallowance process; a conservation theme determined under this instrument is a discretionary consideration in the statutory process for nominating items to be listed. This determination itself does not apply additional restrictions, impose obligations or preclude the rights of any person. The application of a conservation theme to the decision making process is technical and scientific.

As the instrument is not a disallowable instrument, in accordance with paragraph 15J(2)(f) of the *Legislation Act 2003* a statement of compatibility is not required to be prepared under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Authority: section 194D of the *Environment Protection and Biodiversity Conservation Act 1999*.