**EXPLANATORY STATEMENT**

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

# Environment Protection and Biodiversity Conservation Act 1999

Environment Protection and Biodiversity Conservation (Species - *Erythroxylum* sp*.* Cholmondely Creek (J.R.Clarkson 9367) (Northern Territory population) (319)) Determination 2023

**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 517(1) of the Act provides that the Minister may, by legislative instrument, determine that a distinct population of biological entities is a species for the purposes of this Act.

**Purpose of Instrument**

The purpose of this Instrument is to determine that the following population of biological entities is a species for the purposes of the Act:

* *Erythroxylum* sp. Cholmondely Creek (J.R.Clarkson 9367) (Northern Territory population)

**Consultation**

Advice from the Threatened Species Scientific Committee was sought and considered prior to the making of the Instrument. The Committee recommended that *Erythroxylum* sp.Cholmondely Creek (J.R.Clarkson 9367) (Northern Territory population) be determined as a species for the purposes of the Act as set out above.

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. As this Instrument only determines a population of biological entities as a species for the purposes of the Act, public consultation was not undertaken on this Instrument, however consultation was conducted on the assessment of *Erythroxylum* sp. Cholmondely Creek (J.R.Clarkson 9367) (Northern Territory population)for listing as a threatened species.

Notice of the proposed amendment to the list of threatened species and a consultation document was made available for public comment, with the above taxonomic description of the species. Any public comments received that were relevant to the eligibility or survival of the species were considered by the Scientific Committee as part of providing their advice to the Minister.

**Commencement**

This Instrument is a legislative instrument for the purposes of the Legislation Act 2003 and commences the day after registration.

This Instrument is exempt from sunsetting, pursuant to paragraph 54(2)(b) of the *Legislation Act 2003* and section 12 of the *Legislation (Exemption and Other Matters) Regulation 2015.* This Instrument is exempt from sunsetting because determinations made under section 517 of the Act are designed to be enduring and not subject to regular review, especially as the need to consider such biological entities as species may endure regardless of any statutory deadlines. Should these instruments be subject to the sunsetting regime, this would undermine the accuracy of lists made under sections 178, 209 or 248 of the Act upon the sunsetting of these determination instruments. An exemption for instruments made under section 517 of the Act remains consistent with existing exemptions provided for the lists of threatened species, migratory species and marine species under the Act.

Authority: subsection 517(1) of the *Environment Protection and Biodiversity Conservation Act 1999.*

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| **Statement of Compatibility with Human Rights**  *Prepared in accordance with Part 3 of the  Human Rights (Parliamentary Scrutiny) Act 2011*  **Environment Protection and Biodiversity Conservation  (Species - *Erythroxylum* sp. Cholmondely Creek (J.R.Clarkson 9367)  (Northern Territory population) (319)) Determination 2023**  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 determine that the following population of biological entities is a species for the purposes of the Act:   * *Erythroxylum* sp. Cholmondely Creek (J.R.Clarkson 9367) (Northern Territory population)   **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 Tanya Plibersek MP**  **Minister for the Environment and Water** |