

EXPLANATORY STATEMENT

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

Environment Protection and Biodiversity Conservation Act 1999

List of Threatened Species Amendment (374) Instrument 2023

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.

Subsection 178(1) of the Act provides that the Minister must, by legislative instrument, establish a list of threatened species separated into the following categories: Extinct, Extinct in the wild, Critically Endangered, Endangered, Vulnerable and Conservation Dependent. This list referred to in subsection 178(1) of the Act is contained in the *Declaration under s178, s181, and s183 of the Environment Protection and Biodiversity Conservation Act 1999* (**List**).

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.

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

The species being included in the List met the criteria for listing in the Endangered and Critically Endangered category under the *Environment Protection and Biodiversity Conservation Regulations 2000* (**Regulations**).

The species being deleted from the List did not meet the criteria for listing in any category under the Regulations.

Purpose of Instrument

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

- Including the following species:
 - *Eucalyptus phoenix* in the Critically Endangered category.
 - *Leptospermum jingera* in the Critically Endangered category.
 - *Cassinia heleniae* in the Endangered category.
 - *Viola improcera* in the Endangered category.
- Deleting the following species from the List:
 - *Eucalyptus* sp. *Howes Swamp Creek* (M.Doherty 26) from the Endangered category.

Eucalyptus phoenix is considered threatened due to fire, climate change and invasive species.

Leptospermum jingera is considered threatened due to fire, climate change, disease and invasive species.

Cassinia heleniae is considered threatened due to fire, climate change and habitat loss, disturbance and modification.

Viola improcera is considered threatened due to climate change, invasive species, habitat loss, disturbance and modification and fire.

Eucalyptus sp. *Howes Swamp Creek* (M.Doherty 26) is considered ineligible for listing under any category because it is not considered to be a distinct species.

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

Subsection 186(2B) of the Act provides that in deciding whether to delete a native species from a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to whether the native species is eligible to be included in that category or the effect that the inclusion of the native species in that category is having, or could have, on the survival of the species.

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.

Subsection 179(4) of the Act provides that a native species is eligible to be included in the Endangered category at a particular time if, at that time, it is not critically endangered and it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.

Regulation 7.01 of the Regulations provides that for section 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 that the requisite criteria were met for including *Eucalyptus phoenix* and *Leptospermum jingera* in the Critically Endangered category in the List, and including *Cassinia heleniae* and *Viola improcera* in the Endangered category in the List. The Minister was satisfied that *Eucalyptus* sp. *Howes Swamp Creek* (M.Doherty 26) did not meet the requisite criteria for inclusion in any category in the list.

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.

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) of the Act. Any public comments received that were relevant to the survival of the species were

considered by the Threatened Species Scientific Committee (**Committee**) as part of the assessment process.

The Committee prepared a written assessment of whether the nominated species was eligible for inclusion in the List. The Committee assessed *Eucalyptus phoenix* and *Leptospermum jingera* as eligible for inclusion in the Critically Endangered category in the List. The Committee assessed *Cassinia heleniae* and *Viola improcera* as eligible for inclusion in the Endangered category in the List. The Committee assessed *Eucalyptus* sp. *Howes Swamp Creek* (M.Doherty 26) as ineligible for inclusion in any category in the List.

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

Given the extensive consultation undertaken on the proposed listing contained in the legislative instrument, it was not necessary to consult on the text of the instrument itself.

Details/ Operation

Details of the Instrument are set out in Attachment A.

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

The Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A statement of compatibility is set out in Attachment B.

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

Details of the *List of Threatened Species Amendment (374) Instrument 2023*

Section 1 – Name

This section provides that the name of this instrument is the *List of Threatened Species Amendment (374) Instrument 2023*.

Section 2 – Commencement

This section provides that this instrument commences on the day after it is registered.

Section 3 – Authority

This section provides that this instrument is made under section 184 of the *Environment Protection and Biodiversity Conservation Act 1999*.

Section 4 – Schedules

This section specifies that the *Declaration under s178, s181, and s183 of the Environment Protection and Biodiversity Conservation Act 1999* (principal instrument) is amended as outlined in Schedule 1 of the instrument.

Schedule 1- Amendments

Declaration under s178, s181, and s183 of the Environment Protection and Biodiversity Conservation Act 1999

Item 1 – SPECIES THAT ARE CRITICALLY ENDANGERED

Item 1 amends the list under the heading “SPECIES THAT ARE CRITICALLY ENDANGERED” to include in the appropriate position the following species:

- (a) *Eucalyptus phoenix*
- (b) *Leptospermum jingera*

Item 2 – SPECIES THAT ARE ENDANGERED

Item 2 amends the list under the heading “SPECIES THAT ARE ENDANGERED” to include in the appropriate position each of the following species:

- (a) *Cassinia heleniae*
- (b) *Viola improcera*

Item 3 – SPECIES THAT ARE ENDANGERED

Item 3 amends the list under the heading “SPECIES THAT ARE ENDANGERED” to omit in the appropriate position the following species:

- (a) *Eucalyptus* sp. *Howes Swamp Creek* (M.Doherty 26)

Statement of Compatibility with Human Rights

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

List of Threatened Species Amendment (374) Instrument 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 amend the *Environment Protection and Biodiversity Conservation Act 1999* list of threatened species to:

- Include *Eucalyptus phoenix* in the Critically Endangered category.
- Include *Leptospermum jingera* in the Critically Endangered category.
- Include *Cassinia heleniae* in the Endangered category.
- Include *Viola improcera* in the Endangered category.
- Delete *Eucalyptus* sp. *Howes Swamp Creek* (M.Doherty 26) from the Endangered category in the List.

These species being included in the List met the criteria for listing in the relevant category under the *Environment Protection and Biodiversity Conservation Regulations 2000*.

The species being removed from the List did not meet the criteria for listing in any relevant categories under the *Environment Protection and Biodiversity Conservation Regulations 2000*.

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