

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Environment Protection and Biodiversity Conservation (Recovery Plans) Revocation Instrument 2024

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

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 and ecological communities.

Legislative Authority

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

Subsection 283A(1) of the Act provides that the Minister may, by legislative instrument, revoke a recovery plan for a listed threatened species or a listed threatened ecological community if the Minister decides under section 269AA not to have a recovery plan for the species or community.

Purpose of the Instrument

On 28 March 2022, the former Minister for the Environment (the former Minister) made decisions under section 269AA of the Act not to have recovery plans for 176 species and ecological communities. Of the total 176 species and ecological communities, 79 did not have a recovery plan.

The purpose of this instrument is to revoke recovery plans in place for the remaining 97 species and ecological communities under subsection 283A(1) of the Act to give effect to the former Minister's decisions. The affected recovery plans were adopted or made under subsection 269A of the Act and are set out in Schedule 1 to this instrument.

Background

The former Minister's decisions to not have recovery plans for 97 species and ecological communities were made under section 269AA of the Act, which required the former Minister to take account of comments received in response to a notice inviting comments.

Regulation 7.10A of the *Environment Protection and Biodiversity Conservation Regulations 2000* (the Regulations) outlines the requirements relating to the publication of a notice, that is required to be published under paragraph 269AA(5)(b) of the Act, inviting comments when the Minister intends to make a subsequent recovery plan decision that there should not be a recovery plan for a species or ecological community. The notice, required by paragraph 269AA(5)(b) of the Act, must be published at an appropriate location on the

internet and in a daily newspaper that circulates in the relevant State or self-governing Territory. Regulation 7.10A also provides that comments must be made in writing or electronically.

Regulation 7.10B of the Regulations specifies that the general publication requirements of publishing the initial and every subsequent recovery plan decision, under subsection 269AA(9) of the Act, are satisfied by publishing the decisions at an appropriate location on the internet.

The publication requirements set out under regulations 7.10A and 7.10B of the Regulations were met. To satisfy the requirements under regulation 7.10A, a notice inviting comment from the public was published in *The Australian* newspaper and on the former Department of Agriculture, Water and the Environment website with instructions on how to provide comment. Comments were received both electronically and by written letter.

To satisfy the requirements under regulation 7.10B, notice of recovery plan decisions was published on the former department's website at the time of the former Minister's decision. Notice was also provided on the profile for each affected species on the Species Profile and Threats database which is publicly available.

In making decisions in relation to the affected species, the former Minister considered the advice of the Threatened Species Scientific Committee and comments received during public consultation and accepted the Committee's advice in all instances. The former Minister then decided not to have a recovery plan for 176 species and ecological communities, including 97 species and ecological communities for which a recovery plan had previously been made. The former Minister's reasons were published at the time of her decision.

Recovery plans are exempt from sunseting in accordance with item 1 of section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. This is because recovery plans made under section 269A of the Act have a primary purpose of giving effect to Australia's obligations under the *Convention on Biological Diversity* [1993] ATS 32. This instrument revokes the relevant recovery plans to ensure that they cease to have effect in accordance with the former Minister's decisions not to have recovery plans for the relevant species.

Details

Details of this instrument are set out in Attachment A.

Commencement

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. It commences on the day after it is registered on the Federal Register of Legislation.

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 in Attachment B.

Details of the *Environment Protection and Biodiversity Conservation (Recovery Plans) Revocation Instrument 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Environment Protection and Biodiversity Conservation (Recovery Plans) Revocation Instrument 2024* (the revocation instrument).

Section 2 – Commencement

This section provides that the revocation instrument commences on the day after it is registered on the Federal Register of Legislation (FRL).

Section 3 – Authority

This section provides that the revocation instrument is made under subsection 283A(1) of the Act .

Section 4 – Schedule 2

This section provides for the amendment or repeal of instruments as set out in Schedule 2 to the revocation instrument.

Section 5 – Definitions

This section defines terms frequently referred to throughout, and abbreviations used in, the revocation instrument.

Section 6 – Revocation of recovery plans

This section provides that the recovery plans for the listed threatened species and threatened ecological communities specified in Schedule 1 to the revocation instrument are revoked under subsection 283A(1) of the Act.

Schedule 1—Revocation of recovery plans

Schedule 1 to the revocation instrument lists recovery plans for a total of 97 species and ecological communities that are revoked by section 6 of this instrument under subsection 283A(1) of the Act.

Column 1 of the table in Schedule 1 specifies the name of each listed threatened species and ecological communities that had a recovery plan in place but was the subject of a decision by the former Minister not to have a recovery plan.

Column 2 of the table in Schedule 1 sets out the title of the recovery plan for the listed threatened species and ecological community mentioned in column 1.

Column 3 of the table in Schedule 1 specifies the title of the legislative instrument in which the recovery plan mentioned in column 2 was made.

Column 4 of the table in Schedule 1 specifies the FRL identifier, which is a unique identification number given to the legislative instrument mentioned in column 3 on the Federal Register of Legislation.

Schedule 2—Repeals

Schedule 2 to the revocation instrument lists six instruments that are repealed under subsection 283A(1) of the Act by section 4 of the instrument:

1. *Environment Protection and Biodiversity Conservation Act 1999 section 269A Adoption of a Territory Plan as a Recovery Plan (01/01/2006)*;
2. *Environment Protection and Biodiversity Conservation Act 1999 - section 269A - Instrument Adopting Recovery Plans (NSW, SA, WA) (20/06/2011)*;
3. *National Recovery Plan for Tectaria devexa*;
4. *National Recovery Plan for the Abbott's Booby (Papasula abbotti)*;
5. *Recovery Plan for the following Seabirds: Round Island Petrel – Pterodroma arminjoniana, Herald Petrel – Pterodroma heraldica, Antarctic Tern (New Zealand) – Sterna vittata bethunei, Antarctic Tern (Indian Ocean) – Sterna vittata vittata, Blue Petrel – Halobaena caerulea, Fairy Prion (southern) – Pachyptila tutur subantarctica, Heard Shag – Phalacrocorax nivalis, Macquarie Shag – Phalacrocorax purpurascens, Soft plumaged Petrel – Pterodroma mollis, Australian Lesser Noddy – Anous tenuirostris melanops 2005-2010*;
6. *Whale Shark (Rhincodon typus) Recovery Plan 2005-2010*.

The recovery plans made in the six instruments listed in Schedule 2 are revoked by section 6 of this instrument. For this reason, as part of revoking the recovery plans, it is appropriate to repeal the instruments to ensure that both the recovery plans and the instruments that made the recovery plans are no longer in force on the FRL.

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 (Recovery Plans) Revocation Instrument 2024

This Disallowable 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 Disallowable Legislative Instrument

The purpose of this Legislative Instrument is to revoke recovery plans that were made or adopted under the (Environment Protection and Biodiversity Conservation Act 1999) for 97 species and ecological communities.

The reason for revoking these recovery plans is that a decision has been made by the Minister not to have recovery plans for the relevant species and ecological community.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Delegate of the Minister for the Environment and Water