

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Environment and Water

Environment Protection and Biodiversity Conservation Act 1999

List of Threatened Species Amendment (412) Instrument 2025

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 of threatened species, List of threatened ecological communities and List of threatening processes* (**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(c) of the Act relevantly provides that the Minister may, by legislative instrument, amend the List referred to in section 178 by transferring items from one category in the list to another category in the list in accordance with Subdivision AA.

The species being included and/or transferred 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**).

Purpose of Instrument

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

- Including the following species:
 - *Eucalyptus scopulorum* in the Critically Endangered category.
 - *Prostanthera tallowa* in the Endangered category.
- Transferring the following species by deleting the species from the Vulnerable category in the List and including it in the Critically Endangered category in the List:
 - *Nematolepis rhytidophylla*

Eucalyptus scopulorum is considered threatened due to fire regimes that cause declines in biodiversity, climate change, and disease.

Prostanthera tallowa is considered threatened due to fire regimes that cause declines in biodiversity, climate change, invasive species, disease, and habitat modification and disturbance.

Nematolepis rhytidophylla is considered threatened due to fire regimes that cause declines in biodiversity, climate change, disease, and invasive 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 was met for including *Eucalyptus scopulorum* in the Critically Endangered category in the List and including *Prostanthera tallowa* in the Endangered category in the List. The Minister was satisfied that the requisite criteria was met for transferring *Nematolepis rhytidophylla* from the Vulnerable to the Critically Endangered category within 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 *Ecualyptus scopulorum* as eligible for inclusion in the Critically Endangered category in the List. The Committee assessed *Prostanthera tallowa* as eligible for inclusion in the Endangered category in the List. The Committee assessed *Nematolepis rhytidophylla* as eligible for transfer from the Vulnerable to the Critically Endangered category within 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.

Other

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 full statement of compatibility is set out in Attachment B.

The Instrument is an amendment instrument made under section 184 of the Act. It is a legislative instrument for the purposes of the *Legislation Act 2003* (**Legislation Act**).

The Instrument commences the day after registration.

Sunsetting and disallowance requirements

The Instrument is subject to the disallowance process under section 42 of the Legislation Act and the sunseting regime set out in Part 4 of Chapter 3 of the Legislation Act. However, section 48A of the Legislation Act has the effect that, because the Instrument only amends another instrument, if it is not disallowed it will be automatically repealed at the end of the disallowance period. Once repealed, the sunseting regime has no practical effect on the Instrument.

The List amended by the Instrument is exempt from sunseting in accordance with table item 24 in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, which specifies that sunseting requirements do not apply to instruments made under section 178, 181 or 183 of the Act. This sunseting exemption has applied to the List since the sunseting regime was established by the Legislation Act on 1 January 2005. This means that the amendments given effect by the Instrument will be enduring.

The List is not appropriate for sunseting, to ensure threatened species have ongoing regulatory protection under the Act. Species on the list may be threatened beyond 10 years and require continued protection through conservation advice, recovery plans and the assessment and approval processes under the Act. Amendments are made to the list following a stringent statutory review process set out in the Act, which provides an appropriate review mechanism to ensure the currency and accuracy of the List.

Details of the *List of Threatened Species Amendment (412) Instrument 2025*

Section 1 – Name

This section provides that the title of the instrument is the *List of Threatened Species Amendment (412) Instrument 2025* (the Instrument).

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Schedules

This section is a machinery clause which provides that the *Declaration under s178, s181, and s183 of the Environment Protection and Biodiversity Conservation Act 1999 - List of threatened species, List of threatened ecological communities and List of threatening processes* (Principal Instrument) is amended as set out in the applicable items in Schedule 1, and any other item in Schedule 1 to the Instrument has effect according to its terms.

Schedule 1- Amendments

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 each of the following species:

- (a) *Eucalyptus scopulorum*
- (b) *Nematolepis rhytidophylla*

Item 2 – SPECIES THAT ARE ENDANGERED

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

- (a) *Prostanthera tallowa*

Item 3 – SPECIES THAT ARE VULNERABLE

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

- (a) *Nematolepis rhytidophylla*

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 (412) Instrument 2025

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 Instrument is to amend the *Environment Protection and Biodiversity Conservation Act 1999* list of threatened species to:

- Include *Eucalyptus scopulorum* in the Critically Endangered category.
- Include *Prostanthera tallowa* in the Endangered category.
- Transfer *Nematolepis rhytidophylla* from the Vulnerable to the Critically Endangered category.

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

Human rights implications

This Disallowable 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