

## 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 (417) 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 of the Act.

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 of the Act.

The species being included in the List met the criteria for listing in the Endangered 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:
  - *Boronia deanei* subsp. *acutifolia* in the Endangered category.
  - *Boronia deanei* subsp. *deanei* in the Endangered category.
- Deleting the following species from the List:
  - *Boronia deanei* from the Vulnerable category

*Boronia deanei* subsp. *acutifolia* is considered threatened due to fire regimes that cause declines in biodiversity, disease, climate change, site disturbance, invasive species, browsing by livestock.

*Boronia deanei* subsp. *deanei* is considered threatened due to habitat loss, disturbance and modification, 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(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 *Boronia deanei* subsp. *acutifolia* and *Boronia deanei* subsp. *deanei* in the Endangered category in the List.

The Minister was satisfied that *Boronia deanei* 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 *Boronia deanei* subsp. *acutifolia* and *Boronia deanei* subsp. *deanei* as eligible for inclusion in the Endangered category in the List. The Committee assessed *Boronia deanei* 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.

### **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 made under section 184 of the *Environment Protection and Biodiversity Conservation Act 1999*. It is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

Section 48A of the Legislation Act provides that where a legislative instrument only repeals or amends another instrument, without making any application, saving or transitional provisions relating to the amendment or repeal, that instrument is automatically repealed. By virtue of section 48A, if the Instrument is not disallowed, the Instrument will automatically repeal when the disallowance period ends. Once repealed, the sunset regime set out in Part 4 of Chapter 3 of the Legislation Act is no longer relevant to the Instrument.

The Instrument commences the day after registration.

**Details of the *List of Threatened Species Amendment (417) Instrument 2025***

**Section 1 – Name**

This section provides that the title of the instrument is the *List of Threatened Species Amendment (417) 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 ENDANGERED**

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

- (a) *Boronia deanei* subsp. *acutifolia*
- (b) *Boronia deanei* subsp. *deanei*

**Item 2 – SPECIES THAT ARE VULNERABLE**

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

- (a) *Boronia deanei*

**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 (417) 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 *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* to:

- Include *Boronia deanei* subsp. *acutifolia* in the Endangered category.
- Include *Boronia deanei* subsp. *deanei* in the Endangered category.
- Delete *Boronia deanei* from the Vulnerable category in the List.

The 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 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.

**The Hon Tanya Plibersek MP**  
**Minister for the Environment and Water**