

EXPLANATORY STATEMENT

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

Environment Protection and Biodiversity Conservation Act 1999

List of Threatened Species Amendment
(*Phascolarctos cinereus* (combined populations of Queensland,
New South Wales and the Australian Capital Territory) (280)) Instrument 2022

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 (**List**) separated into the following categories: Extinct, Extinct in the wild, Critically Endangered, Endangered, Vulnerable and Conservation Dependent.

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 within the List in accordance with Subdivision AA.

The species being transferred to another category in the List met the criteria for listing in the Endangered category under the *Environment Protection and Biodiversity Conservation Regulations 2000* (**Regulations**) (see below).

Purpose of Instrument

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

- Transferring *Phascolarctos cinereus* (combined populations of Queensland, New South Wales and the Australian Capital Territory) (Koala) by deleting it from the Vulnerable category in the List and including it in the Endangered category in the List.

This species is considered threatened by climate change (causing loss of climatically suitable habitat, increased frequency and intensity of drought, heatwaves and bushfires, and declining nutritional value of foliage), clearing and degradation of habitat, mortality due to encounters with vehicles and domestic dogs and disease (Koala retrovirus and *Chlamydia pecorum*).

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

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 *Phascolarctos cinereus* (combined populations of Qld, NSW and the ACT) in the Endangered 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). 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 transfer within the List. The Committee assessed the *Phascolarctos cinereus* (combined populations of Queensland, New South Wales and the Australian Capital Territory) as eligible for transfer from the Vulnerable category to the Endangered category in the List.

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

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

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

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 (*Phascolarctos cinereus* (combined populations of Queensland, New South Wales and the Australian Capital Territory) (280)) Instrument 2022

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:

- Transfer *Phascolarctos cinereus* (combined populations of Queensland, New South Wales and the Australian Capital Territory) by deleting it from the Vulnerable category in the List and including it in the Endangered category in the List.

The species being transferred within the List met the criteria for listing in the relevant category under the EPBC Regulations.

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 Sussan Ley MP
Minister for the Environment**