

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

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 make legislative instruments amending the list of threatened native species by transferring items from one category in the list to another category in the list, in accordance with the nomination and listing process outlined in the Act.

The species being included 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:

- Transferring the following species by deleting the species from the Endangered category in the List and including it in the Critically Endangered category in the List:
  - *Daviesia pseudaphylla*
  - *Leucopogon gnaphalioides*
- 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 frondosa*
- Including the following species in the List:
  - *Bertya mollissima* in the Endangered category.

*Daviesia pseudaphylla* is considered threatened due to disease, habitat loss, disturbance and modification and climate change.

*Leucopogon gnaphalioides* is considered threatened due to disease, habitat loss, disturbance and modifications, invasive and native species and climate change.

*Nematolepis frondosa* is considered threatened by fire regimes that cause declines in biodiversity, human disturbance, exotic invasive species, problematic native species, pathogens and disease.

*Bertya mollissima* is considered threatened due to climate change, habitat disturbance and modification 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 transferring *Daviesia pseudaphylla* and *Leucopogon gnaphalioides* by deleting these from the Endangered category and including them in the Critically Endangered category in the List.

The Minister was satisfied that the requisite criteria was met for transferring *Nematolepis frondosa* by deleting it from the Vulnerable category and including it in the Critically Endangered category in the List.

The Minister was satisfied that the requisite criteria was met for including *Bertya mollissima* 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 on whether the nominated species were eligible for inclusion in the List. The Committee assessed *Daviesia pseudaphylla* and *Leucopogon gnaphalioides* as eligible for transferring from the Endangered category to the Critically Endangered category. The Committee assessed *Nematolepis frondosa* as eligible for transferring from the Vulnerable category to the Critically Endangered category. The Committee assessed *Bertya mollissima* as eligible for inclusion in the Endangered 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: Paragraphs 184(a) and 184(c) of the *Environment Protection and Biodiversity Conservation Act 1999*.

**Details of the *List of Threatened Species Amendment (361) Instrument 2023***

**Section 1 – Name**

This section provides that the name of this instrument is the *List of Threatened Species Amendment (361) 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* is amended as outlined in Schedule 1 of the instrument.

**Schedule 1- Amendment**

*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 each of the following species:

- *Daviesia pseudaphylla*
- *Leucopogon gnaphalioides*
- *Nematolepis frondosa*

**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:

- *Bertya mollissima*

**Item 3 – SPECIES THAT ARE ENDANGERED**

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

- *Daviesia pseudaphylla*
- *Leucopogon gnaphalioides*

**Item 4 – SPECIES THAT ARE VULNERABLE**

Item 4 amends the list under the heading “SPECIES THAT ARE VULNERABLE” to omit the species *Nematolepis frondosa*.

## **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 (361) 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 (List) to:

- Transfer *Daviesia pseudaphylla* by deleting it from the Endangered category in the List and including it in the Critically Endangered category in the List.
- Transfer *Leucopogon gnaphalioides* by deleting it from the Endangered category in the List and including it in the Critically Endangered category in the List.
- Transfer *Nematolepis frondosa* by deleting it from the Vulnerable category in the List and including it in the Critically Endangered category in the List.
- Include *Bertya mollissima* in the Endangered category.

The species being included and/or 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 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**