

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 (347) 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 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**).

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 transferred 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:

- Including the following species in the List:
 - *Melanodryas cucullata cucullata* in the Endangered category
 - *Aphelocephala leucopsis* in the Vulnerable category
 - *Climacteris picumnus victoriae* in the Vulnerable category
 - *Neophema chrysostoma* in the Vulnerable category
 - *Stagonopleura guttata* in the Vulnerable category
- 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:
 - *Cyclopsitta diophthalma coxeni*

Melanodryas cucullata cucullata is considered threatened by habitat loss, degradation and fragmentation, climate change, competition with noisy miners, fire regimes which cause biodiversity decline and invasive species.

Aphelocephala leucopsis is considered threatened by habitat loss, degradation, fragmentation and climate change.

Climacteris picumnus victoriae, is considered threatened due to habitat loss, degradation and fragmentation, climate change, fire regimes which cause biodiversity decline, competition with noisy miners and other hollow nesting species and invasive species.

Neophema chrysostoma is considered threatened by habitat loss and degradation, fire regimes which cause biodiversity decline, climate change, predation, competition for nest hollows and disease.

Stagonopleura guttata is considered threatened by habitat loss, degradation and fragmentation, fire regimes which cause biodiversity decline, climate change, competition and predation.

Cyclopsitta diophthalma coxeni is considered threatened by habitat loss, fragmentation and degradation, fragmented populations and low population size, climate change, disease and illegal avicultural trade.

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 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.

Subsection 179(5) of the Act provides that a native species is eligible to be included in the Vulnerable 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 were met for including *Melanodryas cucullata cucullata* in the Endangered category in the List.

The Minister was satisfied that the requisite criteria were met for including *Aphelocephala leucopsis*, *Climacteris picumnus victoriae*, *Neophema chrysostoma* and *Stagonopleura guttata* in the Vulnerable category in the List.

The Minister was satisfied that the requisite criteria were met for transferring *Cyclopsitta diophthalma coxeni* by deleting it from the Endangered category and including it in the Critically 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 for each of the four species were 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. Due to the nature of this consultation process, it was considered unnecessary to undertake additional consultation following the drafting of this specific instrument.

The Committee prepared a written assessment on whether the nominated species were eligible for inclusion in the List. The Committee assessed *Melanodryas cucullata cucullata*, for inclusion in the Endangered category in the List. The Committee assessed *Aphelocephala leucopsis*, *Climacteris picumnus victoriae*, *Neophema chrysostoma*, *Stagonopleura guttata* as eligible for inclusion in the Vulnerable category in the List. The Committee assessed *Cyclopsitta diophthalma coxeni* as eligible for transferring from the Endangered category and including it in the Critically 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.

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

Details of the *List of Threatened Species Amendment (347) Instrument 2023*

Section 1 – Name

This section provides that the name of this instrument is the *List of Threatened Species Amendment (347) 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- Amendments

Declaration under s178, s181, and s183 of the Environment Protection and Biodiversity Conservation Act 1999

Item 1 – SPECIES THAT ARE ENDANGERED

Item 1 amends the heading “SPECIES THAT ARE ENDANGERED” under the *Declaration under s178, s181, and s183 of the Environment Protection and Biodiversity Conservation Act 1999* to include in the appropriate position the following species:

- *Melanodryas cucullata cucullata*

Item 2 – SPECIES THAT ARE VULNERABLE

Item 2 amends the heading “SPECIES THAT ARE VULNERABLE” under the *Declaration under s178, s181, and s183 of the Environment Protection and Biodiversity Conservation Act 1999* to include in the appropriate position each of the following species:

- *Aphelocephala leucopsis*
- *Climacteris picumnus victoriae*
- *Neophema chrysostoma*
- *Stagonopleura guttata*

Item 3 – SPECIES THAT ARE CRITICALLY ENDANGERED

Item 3 amends the heading “SPECIES THAT ARE CRITICALLY ENDANGERED” under the principal instrument to include in the appropriate position the species *Cyclopsitta diophthalma coxeni*.

Item 4 – SPECIES THAT ARE ENDANGERED

Item 4 amends the heading “SPECIES THAT ARE ENDANGERED” under the principal instrument to omit the species *Cyclopsitta diophthalma coxeni*.

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 (347) 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 include the following species in the Endangered category in the List:

- *Melanodryas cucullata cucullata*

The purpose of this Instrument is to amend the *Environment Protection and Biodiversity Conservation Act 1999* list of threatened species (List) to include the following species in the Vulnerable category in the List:

- *Aphelocephala leucopsis*
- *Climacteris picumnus victoriae*
- *Neophema chrysostoma*
- *Stagonopleura guttata*

The purpose of this Instrument is to amend the *Environment Protection and Biodiversity Conservation Act 1999* list of threatened species (List) to:

- Transfer *Cyclopsitta diophthalma coxeni* by deleting it from the Endangered category in the List and including it in the Critically Endangered category in the List.

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

