

## 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 (364) 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/or transferred in the List met the criteria for listing in the 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 in the List:
  - *Thelymitra orientalis* in the Critically Endangered category.
- Transferring the following species by deleting the species from the Endangered category in the List and including them in the Critically Endangered category in the List:
  - *Lambertia fairallii*
  - *Persoonia micranthera*

*Thelymitra orientalis* is considered threatened due to invasive species, climate change, habitat loss, disturbance and modifications, overabundant native species browsing, grazing and disease.

*Lambertia fairallii* is considered threatened due to disease, climate change, fragmentation and grazing (seed predation).

*Persoonia micranthera* is considered threatened due to disease, habitat loss, disturbance and modifications, fire regimes that cause declines in biodiversity, climate change, 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 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.

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 *Thelymitra orientalis* in the Critically Endangered category in the List.

The Minister was satisfied that the requisite criteria was met for transferring *Lambertia fairallii* and *Persoonia micranthera* by deleting them from the Endangered category and including them 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 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. 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.

The Committee prepared a written assessment on whether the nominated species were eligible for inclusion in the List. The Committee assessed *Thelymitra orientalis* as eligible for inclusion in the Critically Endangered category in the List. The Committee assessed *Lambertia fairallii* and *Persoonia micranthera* as eligible for transferring from the Endangered category and including them 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: paragraphs 184(a) and 184(c) of the *Environment Protection and Biodiversity Conservation Act 1999*.

**Details of the *List of Threatened Species Amendment (364) Instrument 2023***

**Section 1 – Name**

This section provides that the name of this instrument is the *List of Threatened Species Amendment (364) 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 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:

- *Lambertia fairallii*
- *Persoonia micranthera*
- *Thelymitra orientalis*

**Item 2 – SPECIES THAT ARE ENDANGERED**

Item 2 amends the list under the heading “SPECIES THAT ARE ENDANGERED” to omit from the appropriate position the species:

- *Lambertia fairallii*
- *Persoonia micranthera*

**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 (364) 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 *Thelymitra orientalis* in the Critically Endangered category.
- Transfer *Lambertia fairallii* by deleting it from the Endangered category in the List and including it in the Critically Endangered category in the List.
- Transfer *Persoonia micranthera* 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**