

# EXPLANATORY STATEMENT

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

*Environment Protection and Biodiversity Conservation Act 1999*

List of Threatened Ecological Communities Amendment (EC174) Instrument 2023

## Background

The *Environment Protection and Biodiversity Conservation Act 1999* (**Act**) provides for the protection of the environment and the conservation of biodiversity, including the protection and conservation of threatened ecological communities.

Under section 181 of the Act, the Minister must, by legislative instrument, establish a list of threatened ecological communities (**List**) divided into the following categories: critically endangered; endangered; and vulnerable.

Under paragraph 184(a) of the Act, the Minister may, by legislative instrument, amend the list of threatened ecological communities by including items in the List in accordance with Part 13, Division 1, Subdivision AA of the Act.

## Purpose of the Instrument

The purpose of this instrument is to amend the list by including in the endangered category: *Empodisma peatlands of southwestern Australia*, as recommended by the Threatened Species Scientific Committee (**Committee**), having regard to its eligibility for the endangered category under subsection 182(2) of the Act.

The Committee concluded that the *Empodisma peatlands of southwestern Australia* met the criteria specified in regulation 7.02 of the *Environment Protection and Biodiversity Conservation Regulations 2000*, as follows:

- Criterion 2 as **endangered** because it has a **very restricted** geographic distribution and the nature of its distribution makes it likely that the action of a threatening process could cause it to be lost in the **near future**; and,
- Criterion 4 as **endangered** because the reduction in its integrity across most of its geographic distribution is **severe**, as indicated by degradation of the community or its habitat, or disruption of important community processes, that is **severe**.

On the basis of the assessment and advice of the Committee, the Minister was satisfied that this ecological community is eligible to be included in the **endangered** category. In deciding to include it in the List, the Minister only considered matters that relate to whether the ecological community is eligible to be included in that category, and the effect that including the ecological community in that category could have on the survival of the ecological community.

## **Consultation**

Consultation to amend the List under the Act to include the ecological community was undertaken before the legislative instrument was made in accordance with the process outlined in Part 13, Division 1, Subdivision AA of the Act.

A draft assessment was placed on public exhibition, and public comments were sought as required by the Act. Parties with relevant expertise were directly consulted regarding their views. All public submissions received were considered by the Committee and forwarded to the Minister for consideration. 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.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

This instrument will commence on the day after it is registered on the Federal Register of Legislation.

Authority: section 181 and paragraph 184(a) 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 Ecological Communities Amendment (EC174) 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 ecological communities by including the ‘*Empodisma peatlands of southwestern Australia*’ in the endangered category of the list.

The *Empodisma peatlands of southwestern* has been included in the **endangered** category of the list because it met the criteria whereby: its geographic distribution is **very restricted** and the nature of its distribution makes it likely that the action of a threatening process could cause it to be lost in the **near future**; and because the reduction in integrity across most of its geographic distribution is **severe**, as indicated by degradation of the community or its habitat, or disruption of important community processes, that is **severe**.

#### **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**