

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Environment Protection and Biodiversity Conservation (National Recovery Plan for Macadamia species) Instrument 2023

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

Background

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

Legislative Authority

Part 13, Division 5, Subdivision A of the EPBC Act provides for the making or adoption, of recovery plans and threat abatement plans for listed threatened species or listed threatened ecological communities, which bind the Commonwealth and Commonwealth agencies.

Subsection 269A(3) of the EPBC Act provides that the Minister may make a written recovery plan for the purposes of the protection, conservation and management of a listed threatened species or listed threatened ecological community jointly with one or more of the States and self-governing Territories in which the species or community occurs.

Subsection 283(1) of the EPBC Act provides that a recovery plan made or adopted under this Subdivision may deal with one or more listed threatened species and/or one or more listed ecological communities.

Purpose of the Instrument

The purpose of this instrument is to jointly make the National Recovery Plan for Macadamia Species (**Recovery Plan**) with the State of Queensland.

The four threatened species of Macadamias included in the Recovery Plan are listed in either the Endangered or Vulnerable categories in the List of Threatened Species established under section 178 of the EPBC Act. Furthermore, the species occur in one or more of the States which have agreed to the joint making of the Recovery Plan.

The listed species face a range of threats to their long-term survival, particularly clearing and development, habitat fragmentation, small population size, presence of weed species and altered fire regimes. The species included in the Recovery Plan and their listing category under the List of Threatened Species are as follows:

- *Macadamia integrifolia* (Queensland Nut Tree), Vulnerable
- *Macadamia janseni* (Bulburin Nut Tree), Endangered
- *Macadamia ternifolia* (Gympie Nut), Vulnerable

- *Macadamia tetraphylla* (Rough-shelled Bush Nut), Vulnerable

The Recovery Plan provides for the research and management actions necessary to stop the decline and support the recovery of the above listed species, so that their chances of long-term survival in nature are maximised.

This is a new national recovery plan under the EPBC Act for *Macadamia* species, which replaces the previous plan adopted under the Act in 2009, entitled: Costello, G., Gregory, M. and Donatiu, P. 2009. Southern *Macadamia* Species Recovery Plan. Horticulture Australia Limited, Sydney. The recovery plan which was replaced was adopted under the instrument titled '*Environment Protection and Biodiversity Conservation Act 1999 - section 269A - Instrument Adopting Recovery Plans (06/11/2009) (NT, QLD, WA)*'.

Consultation

In accordance with paragraph 277(1)(a) of the EPBC Act, the Minister was satisfied that an appropriate level of consultation was undertaken. The Recovery Plan was prepared in accordance with the processes outlined in Part 13, Division 1, Subdivision A of the EPBC Act.

Section 274 of the EPBC Act provides that the Minister must obtain and consider advice from the Threatened Species Scientific Committee (**Committee**) on the content of the Recovery Plan. The Committee recommended that the Recovery Plan be made under the EPBC Act.

In accordance with section 275 of the Act, public comment was invited on the draft Recovery Plan from 4 March 2019 until 7 June 2019. A notice inviting comments on the Recovery Plan was advertised in the *Gazette*, *The Australian* newspaper and on the website of the Department of Agriculture, Water and the Environment.

As required by section 276 of the Act, all comments were considered before making the Recovery Plan. The Minister consulted with the Minister of each State and self-governing Territory in which the listed species occur, as required by paragraph 269A(5)(a) of the EPBC Act. The Queensland Minister has agreed to jointly make the Recovery Plan. The New South Wales Minister was also consulted on jointly-making the Recovery Plan.

Section 270 of the EPBC Act and regulation 7.11 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (**Regulations**) requires that recovery plans include certain content, such as stating the objectives of the plan and specifying the actions needed to achieve the objectives. The Recovery Plan contains the content prescribed under the EPBC Act and the Regulations.

Commencement

The National Recovery Plan for *Macadamia* Species commences on the day after this legislative instrument is registered on the Federal Register of Legislation.

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

This Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out below.

Authority: subsection 269A(3) of the *Environment Protection and Biodiversity Conservation Act 1999*.

Meeting the requirements of section 270 of the EPBC Act

Section 270 of the Act specifies the content requirements for recovery plans. The Minister cannot make a State or Territory plan as a recovery plan, unless the plan meets the requirements of section 270.

The Department of Climate Change, Energy, the Environment and Water, and the Threatened Species Scientific Committee assessed the plan and both concluded that it complies with the requirements of section 270 of the EPBC Act.

Section 270(1) of the Act provides that a recovery plan must provide for the research and management actions necessary to stop the decline of, and support the recovery of, the listed threatened subspecies concerned so that their long-term chances of survival in nature are maximised. The jointly made plan was assessed as compliant in this respect. The jointly made plan provides an appropriate balance between identified research actions necessary to better understand the ecological requirements of the species, and management actions necessary to deal with the known threats and improve the species' prospects of survival.

Section 270(2) of the Act provides that a recovery plan must particularly include the material specified in that subsection. The jointly made plan states the:

- (a) objectives to be achieved;
- (b) criteria against which achievement of the objectives are to be measured
- (c) actions needed to achieve the objectives; and
- (ca) the threats to the species.

The jointly made plan was assessed as compliant in respect of paragraphs (a), (b) and (c) and (ca) of section 270(2) of the Act.

Section 270(2A) of the Act provides that a recovery plan is only required to address certain matters identified in section 270(2) to the extent it is practicable to do so. This includes:

- (a) identifying habitats critical to survival of the species;
- (b) identifying populations under particular pressure of survival and the actions needed to protect those habitats;
- (c) stating the estimated duration and cost of the recovery process;
- (d) identifying interests that will be affected by the plan's implementation, and organisations or persons who will be involved in evaluating the performance of the recovery plan; and
- (e) specifying major benefits to other native species or ecological communities that will be affected by implementation of the plan.

These items are addressed in the plan to the extent practicable and where information is readily available. Where information is not available, additional actions have been incorporated into the plan for it to be obtained.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Environment Protection and Biodiversity Conservation (National Recovery Plan for Macadamia Species) 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 jointly make the National Recovery Plan for Macadamia Species (**Recovery Plan**) with the State of Queensland. The jointly made plan provides for the research and management actions necessary to stop the decline of and support the recovery of four species of Macadamias listed as threatened under the *Environment Protection and Biodiversity Conservation Act 1999*, in order to maximise their chances of long-term survival in nature.

The conventions listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* were considered in the preparation of the Recovery Plan.

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