

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 (391) 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.

The species being included in the List met the criteria for listing in the Vulnerable and 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:
 - *Ardenna grisea* in the Vulnerable category.
 - *Phaethon rubricauda westralis* in the Endangered category.

Ardenna grisea is considered threatened due to human disturbance, climate change, and predation.

Phaethon rubricauda westralis is considered threatened due to predation and climate change.

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(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 or endangered and it is facing a high risk of extinction in the wild in the medium-term 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 *Ardenna grisea* in the Vulnerable category in the List. The Minister was satisfied that the requisite criteria was met for including *Phaethon rubricauda westralis* 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) 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.

The Committee prepared a written assessment of whether the nominated species were eligible for inclusion in the List. The Committee assessed *Ardenna grisea* as eligible for inclusion in the Vulnerable category in the List. The Committee assessed *Phaethon rubricauda westralis* 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: section 184 of the *Environment Protection and Biodiversity Conservation Act 1999*.

Details of the *List of Threatened Species Amendment (391) Instrument 2023*

Section 1 – Name

This section provides that the name of this instrument is the *List of Threatened Species Amendment (391) 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* (principal instrument) 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 VULNERABLE

Item 1 amends the list under the heading “SPECIES THAT ARE VULNERABLE” to include in the appropriate position the following species:

- (a) *Ardenna grisea*

Item 2 – SPECIES THAT ARE ENDANGERED

Item 2 amends the list under the heading “SPECIES THAT ARE ENDANGERED” to include in the appropriate position the following species:

- (a) *Phaethon rubricauda westralis*

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 (391) 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 to:

- Include *Ardenna grisea* in the Vulnerable category.
- Include *Phaethon rubricauda westralis* in the Endangered category.

The species being included 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**