

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Environment Protection and Biodiversity Conservation (National Recovery Plan for Leadbeater's Possum (*Gymnobelideus leadbeateri*)) Instrument 2024

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

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 and ecological communities.

Legislative Authority

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

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

Purpose of the Instrument

The purpose of this instrument is to jointly make the National Recovery Plan for Leadbeater's Possum (*Gymnobelideus leadbeateri*) (**Recovery Plan**) with the State of Victoria.

The Leadbeater's possum is listed in the Critically Endangered category in the List of threatened species under section 178 of the Act. The Recovery Plan provides for the research and management actions necessary to stop the decline of, and support the recovery of, the listed threatened species set out in the table, in order to maximise its chances of long-term survival in nature.

The species is endemic to Victoria, and the Recovery Plan covers the full range of the species. The Leadbeater's possum has a restricted range occurring solely within Regional Forest Agreement (RFA) areas. The key threats to Leadbeater's possum include decline in habitat quality and extent, loss of hollow-bearing trees and severe bushfires. The jointly made Recovery Plan was developed by the Department of Climate Change, Energy, the Environment and Water.

Consultation

In accordance with Section 275 of the Act, public comment was invited on the draft Recovery Plan for minimum of three months. A notice inviting comments on the Recovery Plan was

advertised in the *Gazette*, *The Australian* newspaper and on the website of the Australian Government Department of the Environment. 3708 submissions were received on the draft Recovery Plan and, as required by Section 276 of the Act, these comments were considered by the Minister in making the plan.

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.

Section 270 of the 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 Act and the Regulations.

Commencement

This Instrument, comprising of the Recovery Plan, commences on the day after it is registered on the Federal Register of Legislation and 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: Section 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:

- (d) identifying habitats critical to survival of the species;
- (e) identifying populations under particular pressure of survival and the actions needed to protect those habitats;
- (f) stating the estimated duration and cost of the recovery process;
- (g) 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
- (h) 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

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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 Leadbeater's possum, (**Recovery Plan**) with the State of Victoria. The jointly made plan provides for the research and management actions necessary to stop the decline of, and support the recovery of the Leadbeater's possum, *Gymnobelideus leadbeateri*, listed as threatened under the *Environment Protection and Biodiversity Conservation Act 1999*, in order to maximise its 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