

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Environment Protection and Biodiversity Conservation (National Recovery Plan for the Forty-spotted Pardalote (*Pardalotus quadragintus*)) 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 make the National Recovery Plan for the Forty-spotted Pardalote (*Pardalotus quadragintus*) (**National Recovery Plan**) jointly with Tasmania.

The forty-spotted pardalote is listed in the Endangered category in the list of threatened species under section 178 of the Act. The National Recovery Plan provides for the research and management actions necessary to stop the decline of, and support the recovery of the forty-spotted pardalote in order to maximise its chances of long-term survival in nature. The species is endemic to Tasmania, and the National Recovery Plan covers the full range of the species.

The forty-spotted pardalote is found in three areas: on Bruny Island (including Partridge and Snake Islands) and nearby parts of mainland Tasmania, including Tinderbox and Coningham Peninsulas and at Ida Bay; on Maria Island; and in the Strzelecki Range of Flinders Island. The species is only found in forests where white gum (*Eucalyptus viminalis*) is present. The key threats to the forty-spotted pardalote include habitat degradation, inappropriate fire regimes, declining white gum health and nestling parasitism caused by the ectoparasitic fly *Passeromyia longicornis*.

The jointly made National Recovery Plan was developed by the Department for Climate Change, Energy, the Environment and Water. This is the third national recovery plan under the

Act for the forty-spotted pardalote, which displaces the previous plan adopted under the Act in 2006, entitled: Fauna Recovery Plan: Forty-Spotted Pardalote 2006-2010 (see Environment Protection and Biodiversity Conservation Act 1999 - section 269A - Instrument Revoking, Making and Adopting Recovery Plans (28/07/2010) (ACT, NSW)).

Exemption from sunseting

This instrument is exempt from sunseting in accordance with item 1 of the table under section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

This is because the National Recovery Plan has a primary purpose of giving effect to Australia's obligations under the *Convention on Biological Diversity* [1993] ATS 32 (Biodiversity Convention). Specifically, the National Recovery Plan will support the recovery of the forty-spotted pardalote through the development and implementation of a plan within the meaning of Art 8(f) of the Biodiversity Convention.

Consultation

In the development of the National Recovery Plan, a wide range of stakeholders were consulted including Tasmanian government agencies, experts, First Nations, Natural Resource Management bodies, and not-for-profit and community conservation organisations.

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 draft recovery plan was advertised in the *Gazette*, *The Australian* newspaper and on the website of the Australian Government Department of Climate Change, Energy, the Environment and Water. Five submissions were received on the draft recovery plan and, as required by Section 276 of the Act, all these comments were considered by the Minister in making the National Recovery Plan.

The Minister consulted with the Minister of each State and self-governing Territory in which the species occurs, as required by paragraph 269A(5)(a) of the Act. The Tasmanian Minister agreed to jointly make the plan.

In accordance with section 274 of the Act, the advice of the Threatened Species Scientific Committee was also obtained on the content of the National Recovery Plan, and considered by the Minister before making the plan.

Meeting the requirements of section 270 of the EPBC Act

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

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 Act.

Subsection 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 National Recovery Plan was assessed as compliant in this respect. The jointly made National Recovery 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.

Subsection 270(2) of the Act provides that a recovery plan must particularly include the material specified in that subsection. The jointly made National Recovery 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 National Recovery Plan was assessed as compliant in respect of paragraphs (a), (b) and (c) and (ca) of subsection 270(2) of the Act.

Subsection 270(2A) of the Act provides that a recovery plan is only required to address certain matters identified in subsection 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 jointly made National Recovery 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.

Details

Section 1 provides that the name of the instrument is the *Environment Protection and Biodiversity Conservation (National Recovery Plan for the Forty-spotted Pardalote (Pardalotus quadragintus)) Instrument 2024*.

Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 provides that the instrument is made under subsection 269A(3) of the *Environment Protection and Biodiversity Conservation Act 1999*.

Section 4 provides that the National Recovery Plan for the Forty-spotted Pardalote (*Pardalotus quadragintus*) in the instrument is jointly made with Tasmania, as agreed by the Tasmanian Minister.

Commencement

The National Recovery Plan for the Forty-spotted Pardalote (*Pardalotus quadragintus*) commences on the day after this instrument is registered on the Federal Register of Legislation.

This instrument is made under subsection 269A(2) of the Act, and it 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.

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 the Forty-spotted Pardalote (*Pardalotus quadragintus*)) Instrument 2024

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 the Forty-spotted Pardalote (*Pardalotus quadragintus*) (**National Recovery Plan**) with Tasmania. The jointly made National Recovery Plan provides for the research and management actions necessary to stop the decline of, and support the recovery of the forty-spotted pardalote (*Pardalotus quadragintus*), listed as endangered under the *Environment Protection and Biodiversity Conservation Act 1999*, in order to maximise its chances of long-term survival in nature.

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