

Australian Capital Territory

# Nature Conservation (Special Protection Status) Declaration 2012 (No 2)

Disallowable instrument DI2012–111

made under the

**Nature Conservation Act 1980, s 33 (special protection status)**

## EXPLANATORY STATEMENT

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The *Nature Conservation Act 1980* (the Act) specifies the legislative framework for the protection of flora and fauna in the ACT. The Act contains provisions for a number of types of protection for plants and animals including the special protection status (SPS). This protection status provides the highest level of statutory protection that can be given and provides for increased penalties for unauthorized activities and more stringent licensing constraints.

Special protection status is enacted through a written declaration by the Conservator of Flora and Fauna (the Conservator) under section 33 of the Act. This section grants SPS for the following conditions:

- if a Commonwealth Act or international agreement entered into by the Commonwealth aims to protect members of species of migratory animals (s33(1));
- if the Conservator believes on reasonable grounds that a species is threatened with extinction(s33(2)(a)); or
- if the Minister makes a declaration under section 38 of the Act that a species is endangered (s33(2)(b)).

Section 47 (3) of the *Legislation Act 2001* states that an instrument may make provision about a matter by applying a law of another jurisdiction, or an instrument, as in force only at a particular time. There is an exception to this when the authorising law specifically displaces section 47(3). The Act does not displace section 47(3) for the purposes of section 33.

Previous declarations about SPS made by the Conservator refer to lists of threatened species under the EPBC Act. Therefore, because of section 47(3) of the Legislation Act a change to the EPBC Act may require the Conservator to make a new declaration to ensure the law, as amended, applies.

On 2 May 2012, the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities listed the combined Queensland, NSW and ACT koala populations (*Phascolarctos cinereus*) as threatened for the purposes of section 178 of the EPBC Act.

It is necessary to make a new declaration under section 33 of the Act to ensure that the declaration of species with SPS incorporates the recent addition of the above koala populations to the Commonwealth list of threatened species.

The new declaration is required solely to ensure the instrument refers to the latest list of threatened species as noted above. The new declaration by the Conservator ensures koalas are given SPS in the ACT. The instrument is similar to previous declarations but with some modifications for clarity of wording.

The instrument declares any species listed as threatened under section 178 of the EPBC Act to have SPS status (section 3(2)(a) of the instrument). This applies only to the EPBC list as it exists immediately before the commencement of the instrument.

The instrument also includes the following attachments or lists for the purposes of identifying species declared to have SPS. The lists in the attachments are unchanged from the previous instrument. The attachments are as follows:

- schedule 1 – list of agreements for the purpose of section 3 (1) of the instrument relating to a declaration under section 33(1) of the Act. This schedule lists international agreements that the Commonwealth has entered into in relation to the protection of specified species of migratory animals. Migratory animals identified in these agreements are given SPS status;
- schedule 2 – list of species for the purpose of section 3 (2) (b) of the instrument relating to a declaration under section 33(2)(a) of the Act. This schedule lists species that the Conservator believes on reasonable grounds to be threatened with extinction. These species are given SPS; and
- schedule 3 – list of species for the purpose of section 3 (3) relating to a declaration under s33(2)(b) of the Act. Schedule 3 lists species which have been declared by the Minister under section 38 of the Act as endangered species. These species are given SPS.