

# Nature Conservation (Protected Native Species List) Criteria and Processes 2025

Disallowable instrument DI2025–307

made under the

**Nature Conservation Act 2014, s 113 (Minister to develop criteria and processes for protected native species list)**

## EXPLANATORY STATEMENT

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This explanatory statement relates to the *Nature Conservation (Protected Native Species List) Criteria and Processes 2025*. It has been prepared to assist the reader. The explanatory statement should be read in conjunction with the instrument.

### Overview

Section 111 (1) of the *Nature Conservation Act 2014* (the *Act*) requires the Minister to make the protected native species list, which comprises native species that are protected native species. Section 111 (2) of the Act divides the protected native species list into four categories: restricted trade, rare, data deficient, and any other category prescribed by legislation. Plants and animals on the list are not yet threatened with extinction but are protected as they may be naturally rare, are subject to wildlife trade /collection or are data deficient.

Section 113 (1) of the Act also requires the Minister to develop criteria for determining whether a species qualifies for inclusion in a category on the protected native species list. Pursuant to section 113 (2), the criteria may only include scientific matters. Pursuant to section 113 (3), in developing the criteria the Minister must have regard to the conservation of the species and the Minister is required to consult with the scientific committee in developing the criteria. Additionally, under section 113 (5), the Minister must establish processes for deciding whether a species is to be included in a category on the list.

This instrument provides for the criteria and processes for the protected native species list, as required by section 113 of the Act. The Minister has consulted with the scientific committee when developing these criteria and processes, as required by section 113 (3) (b). The criteria and processes are a disallowable instrument under section 113 (4) and (6). The instrument revokes the previous protected native species list criteria and processes, the *Nature Conservation (Protected Native Species) Criteria and Processes 2017* (DI2017-294).

## **Protected Native Species List – Eligibility Criteria (Schedule 1)**

Schedule 1 of the instrument provides for criteria that species will need to satisfy to be eligible for listing as a protected native species in the categories of restricted trade, rare and data deficient species.

### **Restricted trade**

A native species is eligible to be included in the restricted trade category of the protected native species list if unrestricted trade in the species is likely to negatively impact wild populations.

The criteria for this category relate to scientific matters and include provisions for protection of native species listed as protected or rare in other Australian jurisdictions, or internationally.

Specifically, the criteria allow for the inclusion of invertebrates and fish that are subject to collection or trade, provided that expert opinion indicates a potential negative impact on their wild populations. Native invertebrates and fish do not have ‘protection’ under the Act unless they are specifically listed as protected or as threatened. Native animals (other than fish and invertebrates) are, by definition, ‘protected’ from being taken without a licence under the Act.

Similarly, the criteria also allow for inclusion of plants that are subject to collection and trade provided that expert opinion suggests a potential negative impact to wild populations.

The restricted trade criteria have been used to assess plant nominations in 2023, which has resulted in the addition of 82 plants to the restricted trade category of the protected native species list.

### **Rare**

A native species is eligible to be included in the rare category on the protected native species list if it is not a threatened native species; it does not have special protection status; and it is rare in the ACT as evidenced by a small distribution, a single or a small population, and inherent rarity due to endemism to the ACT and surrounding bioregions.

Rarity in terms of distribution or geographic range are estimated through the extent of occurrence (EOO) and/or area of occupancy (AOO). Species with restricted distribution are subject to inherent risk where their small area of preferred habitat could potentially be destroyed by a catastrophic event or subject to other sudden processes capable of causing largely irreversible loss of individuals or habitat. A species may also be rare if there is a single and/or small population in the ACT.

Species that are endemic to the ACT and/or bioregions of which the ACT is part are inherently rare because they do not occur elsewhere. The importance of a species’ protection in the ACT also increases where a significant portion of the known entire population occurs in the ACT.

This instrument amends the rare criteria in the *Nature Conservation (Protected Native Species) Criteria and Processes 2017* to:

1. provide thresholds and guidelines on what constitutes a small EOO and AOO;
2. define the term ‘population’;
3. provide a threshold for ‘small population’ in the ACT; and
4. define the term ‘significant proportion’ for clarity.

### **Data deficient**

A native species is eligible to be included in the data deficient category on the protected native species list if there is insufficient information about the species in the ACT for the species to be eligible to be listed as a threatened native species or a protected native species. There have been no changes made to data deficient category.

### **Protected Native Species – Processes (Schedule 2)**

Schedule 2 sets out the protected native species listing processes to be followed for restricted trade, rare and data deficient species. The processes reflect similar processes and roles and responsibilities as those contained within the Act relating to threatened species. The responsibility for assessment has been provided to the Scientific Committee with assistance from the Secretariat.

No changes have been made to schedule 2.

### **Human rights impacts**

The instrument engages the right to a clean, healthy and sustainable environment (section 27C (1) of the *Human Rights Act 2004*). It outlines the criteria and processes for determining native plants and animals in the ACT that require protection. Safeguarding these species reduces the risk of their extinction, contributing to the conservation of biodiversity in the ACT. Biodiversity is crucial for providing essential ecosystem services such as clean air, fresh water, and productive soil, which are vital for human health and economic prosperity for both the present and future generations.

The criteria themselves do not remove or create rights, liberties or obligations except for the obligation on the scientific committee to use the criteria in making an assessment and by the Minister in making a listing decision.

### **Regulatory impact statement**

Section 34 of the *Legislation Act 2001* (***Legislation Act***) generally requires a regulatory impact statement (a ***RIS***) for regulations and disallowable instruments subject to specified exceptions.

In this case, a RIS is not required because the instrument does not impose any appreciable costs on the community or part of the community (*Legislation Act*, section 34 (1)).

Further, a RIS is also not required because under section 36 of the *Legislation Act* a RIS need not be prepared for a disallowable instrument for various reasons. The reasons that are applicable in this case include section 36 (1) (b) and (e):

(b) a matter that does not operate to the disadvantage of anyone (other than the Territory or a territory authority or instrumentality) by—

(i) adversely affecting the person's rights; or

(ii) imposing liabilities on the person;

(e) an amendment of a territory law that does not fundamentally affect the law's application or operation.

The listing of a species has a number of regulatory impacts including licensing of actions that would otherwise constitute an offence and requiring an assessment of the species as part of an environmental impact assessment. These regulatory impacts already exist and are not increased through the updating of the criteria and processes instrument.

This instrument has no significant revenue impacts or additional costs of administration. The changes to the instrument are technical and serve to improve the robustness of the criteria used for assessing the eligibility of species for inclusion in the protected native species list.