

Aboriginal and Torres Strait Islander Heritage Protection Amendment Regulations 2004 (No. 1) 2004 No. 176

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 176

Issued by the authority of the Minister for the Environment and Heritage

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

Aboriginal and Torres Strait Islander Heritage Protection Amendment Regulations 2004 (No. 1)

Section 32 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the Act) empowers the Governor-General to make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Regulations have been made under the Act

Subsection 21A(1) of the Act defines a 'local Aboriginal community' as an organisation that is specified in the Schedule to the Act. This subsection also defines 'community area', in relation to a local Aboriginal community, as an area in Victoria declared by the regulations to be the area of that community for the purposes of Part IIA of the Act, which deals with Victorian Aboriginal cultural heritage. Part IIA is the main legislation dealing with the protection of significant Aboriginal areas and objects in Victoria. The provisions of Part IIA were enacted by the Commonwealth in 1987 at the request of the Victorian Government.

Section 21B provides for the delegation of powers under Part IIA to the State Minister (Victoria) and for day-to-day administration by Aboriginal Affairs Victoria.

The Regulations amend the *Aboriginal and Torres Strait Islander Heritage Protection Regulations 1984* (the Principal Regulations) to vary the existing community area boundary descriptions in Schedule 4, Area 23 in the Principal Regulations. The variation would excise part of the community area of the Wurundjeri Tribe Land Compensation and Cultural Heritage Council Incorporated in the area to the south-east of Melbourne and south of the Princes Highway to Western Port Bay.

The Regulations promote the effective operation of Part IIA of the Act, by amending the boundary descriptions for the community area of the Wurundjeri. Aboriginal Affairs Victoria has advised that it considers the proposed boundary approximates the boundary of traditional Boonwurrung country. Aboriginal Affairs Victoria has also advised that it does not consider it appropriate to reassign the area to any specific Boonwurrung group at this time, because parties claiming Boonwurrung ancestry are in dispute over rights to make decisions relating to cultural heritage matters in the area. The Regulations clarify decision-making responsibility in the area to the south-east of Melbourne.

The effect of the Regulations is that when a person makes an application for consent to enter on, or interfere with, Aboriginal places or objects within the area that has been removed from the Wurundjeri, the application will be determined by the Victorian Minister for Aboriginal Affairs. In dealing with the application for consent, the Victorian Minister for Aboriginal Affairs must consider recommendations sought and received in compliance with subsection 21U(6) of the Act.

The Regulations clarify decision-making responsibility in the area and provide a level of certainty for industry and the community in development applications and processes. The Office of Regulation Review has advised that a Regulatory Impact Statement is not required, as the Regulation does not appear to have a direct or significant indirect impact on business.

The Act specifies no conditions that need to be met before the power to make the proposed regulations may be exercised.

The Regulations commence on the date of their notification in the *Gazette*.