

EXPLANATORY STATEMENT

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

(Issued by the authority of the Minister for the Environment)

Purpose and operation

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the **Act**) preserves and protects significant traditional areas, objects and remains, that are of particular significance to Aboriginal persons and Torres Strait Islanders, from injury or desecration. This includes an area of land in Australia or beneath Australian waters, an area of water in Australia or an area of Australian waters.

The Act recognises the body of traditions, observances, customs and beliefs of Aboriginal and Torres Strait Islanders generally or of a particular community or group thereof, including any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships.

Part II of the Act provides for the protection of significant Aboriginal areas and objects. Under section 10 of the Act, the Minister may, by legislative instrument, make a declaration to preserve or protect a significant Aboriginal area that is under threat of injury or desecration.

In addition to the power to make this instrument under section 10 of the Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

On 5 April 2019, the Minister made the *Aboriginal and Torres Strait Islander Heritage Protection (Bellwood Sacred Site) Declaration 2019* (the **Declaration**) under section 10 of the Act. The purpose of the Declaration is to preserve and protect parts of the Bellwood Sacred Site in Nambucca Heads, New South Wales (the **declared area**) from injury or desecration posed by residential development, logging, and access by the public. The Bellwood Sacred Site is a significant Aboriginal area that is of particular significance to the Gumbaynggirr Nation.

The purpose of this instrument is to correct drafting errors in the Declaration relating to the coordinates defining Part 3 of the declared area. This amendment reflects the Minister's original intention in making the Declaration.

Background

On 16 December 2016, the former Minister for the Environment and Energy, the Hon Josh Frydenberg MP, received a letter from the Nambucca Heads Local Aboriginal Land Council (the **Applicant**) seeking the preservation and protection of an area known as Bellwood Sacred Site in Nambucca Heads, New South Wales from injury or desecration. The application was subsequently varied to seek protection of a larger area in June 2018.

The initial letter and subsequent correspondence together constituted a single application in respect of the larger area (the **application area**).

On 5 April 2019, the Minister made the Declaration under section 10 of the Act. The Declaration commenced on 10 April 2019 and applies to the declared area, which consists of the whole of Part 1, Part 2 and Part 3 as defined in Schedule 1 of the Declaration.

On 26 August 2019, the Minister was made aware of an error in the Declaration, specifically in relation to the coordinates defining Part 3 of the declared area.

Consultation

The relevant private landowner of land adjacent to Part 3 of the declared area was consulted in obtaining the correct coordinates.

Details of the *Aboriginal and Torres Strait Islander Heritage Protection Amendment (Bellwood Sacred Site) Declaration 2019*

Section 1 – Name of Instrument

This section specifies the name of the instrument is the *Aboriginal and Torres Strait Islander Heritage Protection Amendment (Bellwood Sacred Site) Declaration 2019* (the Amendment Declaration).

Section 2 – Commencement

This section provides that the Amendment Declaration commences on the day after registration.

Section 3 – Authority

This section sets out the provision of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* under which the Amendment Declaration is made.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Section 1 – Schedule 1, section 3 (table)

This section amends the Declaration so that the table at Schedule 1, section 3 of the Declaration is replaced with a table that includes the correct coordinates for Part 3 of the declared area.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

*Aboriginal and Torres Strait Islander Heritage Protection Amendment (Bellwood Sacred Site)
Declaration 2019*

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

This legislative instrument corrects drafting errors in the Declaration relating to the coordinates defining Part 3 of the declared area in the *Aboriginal and Torres Strait Islander Heritage Protection (Bellwood Sacred Site) Declaration 2019* (the **Declaration**). This amendment reflects the Minister's original intention in making the Declaration.

Human rights implications

This instrument does engage any of the applicable rights or freedoms.

Conclusion

This instrument is compatible with human rights as it does not raise any human rights issues.