

## **EXPLANATORY STATEMENT**

Issued by authority of the Minister for the Environment

### **Aboriginal and Torres Strait Islander Heritage Protection (Wahluu Mount Panorama Site) Emergency Declaration 2021**

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 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.

#### **The Declaration**

The purpose of this Declaration is to preserve and protect the Aboriginal area at the Wahluu Mount Panorama Site.

Part II of the Act (Part II) provides for the protection of significant Aboriginal areas and objects. Under section 9 of the Act, the Minister may, by legislative instrument, make an emergency declaration to preserve and protect a significant Aboriginal area that is under serious and immediate threat of injury or desecration.

The *Aboriginal and Torres Strait Islander Heritage Protection (Wahluu Mount Panorama Site) Emergency Declaration 2021* (the **Declaration**) is an emergency declaration made under section 9 of the Act to preserve or protect an area of Wahluu Mount Panorama (the **specified area**).

On 20 December 2018, the former Minister for the Environment, the Hon Melissa Price MP, received an oral application from the Wiradyuri Traditional Owners Central West Aboriginal Corporation seeking the preservation or protection of the specified area from injury or desecration.

In making the Declaration, the Minister considered the application and a related section 10 report prepared in accordance with the Act, and is satisfied, that the specified area is a significant Aboriginal area that it is under serious and immediate threat of injury or desecration from a proposed go-kart track development by Bathurst Regional Council.

Given the urgency, consultation was not specifically undertaken in relation to the emergency declaration. However, broad consultation has already been undertaken in preparation of the section 10 report.

On 8 October 2020, the Minister consulted the New South Wales Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, the Hon Don Harwin MLC on making a declaration under the Act, in fulfilment of the requirements of section 13(2) of the Act,

This Declaration is intended to be an interim measure and is only in place for 30 days while further assessment is undertaken. If appropriate, further consultation will occur as related applications are duly processed.

The Declaration is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Declaration commences on the day after registration.

#### **Description of provisions**

##### *Part 1 - Preliminary matters*

Part 1 sets out the preliminary matters of the Declaration

Section 1 provides the name of the Declaration.

Section 2 provides the commencement information for the Declaration.

Section 3 provides the authority under which this Declaration is made.

Section 4 provides the definitions used in this Declaration.

#### *Part 2 - Declaration*

Part 2 of the Declaration provides for those matters required to be covered under sections 9 and 11 of the Act.

- Section 9 of the Act provides for the Minister to make emergency declarations in relation to the protection of significant Aboriginal areas.
- Section 11 of the Act provides that a declaration made under section 9 or 10 should describe the area with sufficient particular to enable the area to be identified and contain provisions for an in relation to the protection and preservation of the area from injury or desecration.

Section 5 provides the specified area to which the Declaration applies.

Section 6 is a provision for the purpose of paragraph 11(b) of the Act and provides for and in relation to the protection and preservation of the area from injury or desecration.

- Paragraph 6(a) provides that the specified area is to be preserved and protected from injury or desecration under section 9 of the Act.
- Paragraph 6(b) provides that a person must not carry out any works, which will or are likely to cause injury or desecration to the specified area. The provision also sets out a number of specified works. A person must not :
  - undertake any action that will, or is likely to, adversely affect the use or significance of the specified area in accordance with Aboriginal tradition.
  - conduct any clearing activities, preliminary activities associated with clearing, or any other act that will, or is likely to, injure or desecrate the specified area.
- The note clarifies that it is an offence under the Act if a person engages in conduct that contravenes a provision of a declaration made under Part II of the Act in relation to a significant Aboriginal area.
- Paragraph 6(c) of this Declaration makes it clear that a person must not undertake any action that will, or is likely to, directly threaten the topography of Wahluu Mount Panorama.

Section 7 provides the period for which this Declaration is in force. This Declaration is self-repealing and ceases to be in force the day after the period of effect ends.

## 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 (Wahluu Mount Panorama Site) Emergency Declaration 2021**

This Declaration is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliament Scrutiny) Act 2011*.

#### Overview of the Declaration

The purpose of this Declaration is to preserve and protect the Aboriginal area at the Wahluu Mount Panorama Site. Section 9 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* allows the Australian Government Minister for the Environment to make emergency declarations in relation to areas where the Minister receives a valid application by or on behalf of an Aboriginal or a group of Aborigines, and is satisfied that the area is a significant Aboriginal area, and that it is under serious and immediate threat of injury or desecration, he or she may, by legislative instrument, make a declaration in relation to an area.

This Declaration preserves and protects the significant traditional area on Wahluu Mount Panorama from injury or desecration attributed to a proposed go-kart development by the Bathurst Regional Council.

#### Human rights implications

This Declaration does not engage any of the applicable rights or freedoms.

#### Conclusion

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