**EXPLANATORY STATEMENT**

Issued by authority of the Minister for the Environment

**Aboriginal and Torres Strait Islander Heritage Protection (Huskisson Churchyard) Emergency Declaration 2022**

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 in 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 significant Aboriginal area at the former Anglican Holy Trinity Church grounds in Huskisson, New South Wales (the **specified area**).

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* *(Huskisson Churchyard)* *Emergency Declaration 2022* (the **Declaration**) is an emergency declaration made under section 9 of the Act to preserve or protect an area of the former Anglican Holy Trinity Church grounds in Huskisson, New South Wales (being the specified area).

On 14 September 2022, the Minister for the Environment, the Hon Tanya Plibersek MP, received an application from Mr Alfred Wellington on behalf of the Jerrinja Local Aboriginal Land Council (**JLALC**) (the **applicant**) seeking the preservation or protection of the specified area from injury or desecration.

In making the Declaration, the Minister considered the application and was satisfied, for the purposes of section 9, that the specified area is a significant Aboriginal area that is under serious and immediate threat of injury or desecration from planned archaeological investigations.

On 1 November 2022, the Minister consulted the New South Wales Minister for the Environment and Heritage, the Hon James Griffin MP on making a declaration under the Act, in fulfilment of the requirements of subsection 13(2) of the Act.

The Declaration is intended to be an interim measure and is only in place for 30 days, as provided for in the Declaration, and in accordance with the period specified in subsection 9(2) of the Act.

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**

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.

Sections 5-8 of the Declaration provide for 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 of the Act should describe the area with sufficient particulars to enable the area to be identified and contain provisions for and 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 provides for and in relation to the protection and preservation of the area from injury or desecration, in accordance with paragraph 11(b) of the Act.

* Subsection 6(1) provides that the specified area is to be preserved and protected from injury or desecration under section 9 of the Act.
* Subsection 6(2) provides that 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. The provision also sets out the following specified actions which must not be undertaken by a person:
	+ archaeological investigations including ground scraping;
	+ clearing trees in the area;
	+ removing any objects or structures from the area; or
	+ undertaking excavation or construction work in the 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.

Section 7 provides that the Declaration is in force for 30 days beginning on the date the Declaration commences. Under section 8, the Declaration is self-repealing and is repealed at the end of the 30-day period the Declaration is in force.

**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 (Huskisson Churchyard) Emergency Declaration 2022**

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**

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. Where the Minister receives a valid application in relation to a specified area, and is satisfied that the specified area is a significant Aboriginal area, and that it is under serious and immediate threat of injury or desecration, the Minister may, by legislative instrument, make an emergency declaration in relation to the specified area.

This Declaration preserves and protects the significant Aboriginal area at the former Anglican Holy Trinity Church grounds in Huskisson, New South Wales from the serious and immediate threat of injury or desecration attributed to planned archaeological investigations.

**Human rights implication**

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.