

EXPLANATORY STATEMENT

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

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

Aboriginal and Torres Strait Islander Heritage Protection (Murujuga) Declaration 2025

Legislative Authority

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the Act) provides for the preservation and protection of areas and objects that are of particular significance to Aboriginal and Torres Strait Islander persons in accordance with Aboriginal tradition, from injury or desecration. This includes areas, or objects, that are in Australia or in Australian waters.

Section 10 of the Act allows the Minister to make declarations in relation to areas where the Minister:

- receives an application by or on behalf of an Aboriginal or a group of Aboriginals;
- is satisfied that the area is a significant Aboriginal area and that it is under threat of injury or desecration;
- has received a report under subsection 10(4) of the Act in relation to the area that deals with certain matters, and has considered the report and any representations attached to the report; and
- has considered other matters he or she thinks relevant.

The *Aboriginal and Torres Strait Islander Heritage Protection (Murujuga) Declaration 2025* (the Declaration) is made by the Minister under section 10 of the Act to preserve and protect the declared area from injury or desecration.

In making the Declaration, the Minister was satisfied that the preconditions under section 10 of the Act were met.

Relevant legislative provisions

The purposes of the Act are the preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters that are of particular significance to Aboriginal and Torres Strait Islander people in accordance with Aboriginal or Torres Strait Islander traditions.

Section 3 of the Act defines *significant Aboriginal area* to mean an area of land in Australia or in or beneath Australian waters, an area of water in Australia, or an area of Australian waters, being an area of particular significance to Aboriginals in accordance with Aboriginal tradition. Section 3 of the Act also defines *Aboriginal tradition* to mean the body of traditions,

observances, customs and beliefs of Aboriginals generally or of a particular community or group of Aboriginals, and includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships.

Subsection 3(2) of the Act provides that, for the purposes of the Act, an area shall be taken to be injured or desecrated if:

- it is used or treated in a manner inconsistent with Aboriginal tradition;
- by reason of anything done in, on or near the area, the use or significance of the area in accordance with Aboriginal tradition is adversely affected; or
- passage through or over, or entry upon, the area by any person occurs in a manner inconsistent with Aboriginal tradition.

Subsection 3(3) of the Act provides that an area shall be taken to be under threat of injury or desecration if it is, or is likely to be, injured or desecrated.

A declaration made under subsection 10(1) of the Act in relation to an area is required under section 11 of the Act to describe the area with sufficient particulars to enable the area to be identified, and to contain provisions for and in relation to the protection and preservation of the area from injury or desecration.

Subsection 13(2) of the Act requires the Minister, before making a declaration under subsection 10(1), to consult with the appropriate Minister of the relevant State or Territory as to whether there is, under a law of that State or Territory, effective protection of the area from the threat of injury or desecration.

A failure to comply with a declaration made under subsection 10(1) is an offence (section 22 of the Act).

Legislative pre-conditions

Application

On 9 February 2022, an application was made by Ms Raelene Cooper and Ms Josie Alec, of the Mardudhunera and the Kuruma/ Mardudhunera language groups respectively (the applicants), who sought the preservation and protection from injury or desecration of an area (the specified area) described as Murujuga (or the Burrup Peninsula and the Dampier Archipelago), Western Australia (WA).

The Minister was satisfied that the application was an application under paragraph 10(1)(a) of the Act.

Consideration of report

On 19 August 2022, the then Minister for the Environment and Water nominated Ms Alison Stone (the reporter) to prepare a report (the section 10 report) in relation to the application. On 27 June 2023, the reporter provided the section 10 report to the Department.

In deciding whether to make a declaration, the Minister considered, for the purposes of paragraph 10(1)(c) of the Act, the section 10 report and the representations attached to the report. This included consideration of the matters listed under subsection 10(4) of the Act.

Significant Aboriginal area

For the purposes of subparagraph 10(1)(b)(i) of the Act, the Minister was satisfied that the whole of the specified area, including the declared area, is a significant Aboriginal area. The Minister was satisfied that the area is of particular significance to Aboriginal people in accordance with Aboriginal traditions on the basis of the sacred connection the area holds for the Ngarda-Ngarli through Dreaming, Storylines and Lore. The applicants' claims are supported by the local Aboriginal community including the Murujuga Aboriginal Corporation (MAC) and numerous Murujuga Traditional Owners and Custodians.

Specifically, the Minister accepted that:

- the specified area is sacred to Ngarda-Ngarli, it is a place where everything is connected, through the ancestral creator beings: the land, sky, sea, plants, animals, the Lore and the spiritual world. This belief system underlies life on Murujuga today.
- for the Aboriginal people of the Pilbara region, petroglyphs located within the specified area are the work of Marrga, the ancestral creator beings, who are a permanent reminder of Lore and who retain spiritual power.
- the specified area is home to one of the most significant and diverse collections of petroglyphs in the world. These petroglyphs allow for the teaching and continuation of culture.
- the songs and mythologies relating to many of the images captured on petroglyphs, such as Minyuburru (Seven Sisters Songline), the Fruit Bat Dreaming and Archaic Face, have important meaning across the whole of the Pilbara region, and are central to the applicants' culture.

Threat of injury or desecration

For the purposes of subparagraph 10(1)(b)(ii) of the Act, the Minister was satisfied that the declared area was under threat of injury or desecration.

In particular, the Minister was satisfied that:

- an area known as the Thalu site was under threat on the basis of activities relating to the construction of the Perdaman Urea Project by Perdaman Chemicals and Fertilisers Pty Ltd (Perdaman); and
- disturbed and undisturbed areas within leasehold areas occupied by Woodside Energy Group Ltd (Woodside), the Pilbara Port Authority (PPA), Yara Pilbara and Perdaman were under threat on the basis of past and future ground activities authorised by consents given under section 18 of the *Aboriginal Heritage Act 1972 (WA)* (AH Act), that would allow for the disturbance of Aboriginal sites.

Effective state protection

The Minister was satisfied that the AH Act could generally protect Aboriginal cultural heritage in Western Australia from injury or desecration.

However, in relation to the declared area, the Minister was not satisfied that state level protections would be effective at protecting the declared area from the above threats of injury or desecration for the following reasons:

- the area is subject to section 18 consents that allow for the disturbance of Aboriginal sites;
- only the Aboriginal sites that have a specific condition for protection in the consents are protected under WA legislation;
- the ability of the MAC to appeal a consent decision applies to the Murujuga land dataset area (as defined in regulation 13 of the *Aboriginal Heritage Regulations 1974 (WA)*) only; and
- while the MAC is not prevented from bringing ‘new information’ about cultural heritage to the attention of the relevant WA Minister, the MAC’s right of appeal to a reconsideration decision applies to the Murujuga land dataset area only.

On this basis, the Minister was not satisfied that there is, under WA law, effective protection of the declared area from the threat of injury or desecration.

Decision to make the Declaration

As the Minister was satisfied that the declared area was a significant Aboriginal area and under threat of injury or desecration, the Minister decided to make a declaration under section 10 of the Act to preserve or protect the declared area from injury or desecration, by restricting or prohibiting certain acts.

Impact and Effect

The Declaration preserves and protects the declared area from conduct that will, or is likely to, injure or desecrate the declared area for a period of 10 years beginning on the date the Declaration is registered.

Consultation

Required statutory consultation

On 7 March 2023, former Minister for the Environment and Water, the Hon Tanya Plibersek MP consulted two appropriate WA state ministers regarding whether there is already effective protection of the specified area under WA law, as required under subsection 13(2) of the Act.

On 17 April 2023, Minister Buti responded, providing the information and documentation that the WA Government provided to the section 10 reporter. Minister Buti also noted that the AH Act (as it was then) and the ‘soon to be operative’ Aboriginal Cultural Heritage Act (ACH

Act) ‘include effective and strengthened protection for Aboriginal heritage in Western Australia’ (noting that the ACH Act has since been repealed).

Other consultation conducted

Consultation was undertaken by the reporter as part of the preparation of the report. On 19 October 2022, the reporter published a notice in the Government Notices Gazette (Cth), the West Australian, the Pilbara News and Ngaarda Media’s website (First Nations media in Roebourne).

Four rounds of invitations to comment were conducted during the section 10 report process and an executive summary of the report was circulated to the applicants, proponents and interested parties by the Department of Climate Change, Energy, the Environment and Water (the Department) on 19 April 2024. Additional invitations to comment were issued on 12 July 2024, 10 June 2025 and 4 August 2025 by the Department, providing parties the opportunity to comment on new and relevant information in responses received in relation to the section 10 report executive summary. The June 2025 round included an invitation to comment on the *Murujuga Rock Art Monitoring Program: Monitoring Studies Report 2024*, published on 23 May 2025.

On 19 August 2025, correspondence was sent to several parties, including the applicant, the WA Government and industry participants operating in the declared area, inviting them to comment on the recommendation that the Department was proposing to make to the Minister in relation to a declaration under section 10 of the Act. The parties were informed of potential restrictions or prohibitions that might be included in a declaration and were afforded an opportunity to meet with Departmental representatives to discuss those restrictions and prohibitions, as well as other matters relating to the potential making of a declaration. Departmental representatives met with parties in person during the week of 25 August 2025 and were subsequently provided with written submissions by those parties. Some of the responses also addressed perceived impacts a declaration would have on their pecuniary and proprietary interests.

The Minister had regard to the above information when deciding to make the Declaration, and in relation to the scope of the Declaration. On the issue of pecuniary and proprietary interests, the Minister was not satisfied that the claims made by parties operating in the declared area outweighed factors that supported the making of a declaration.

As a result of the consultation outlined above, it was considered unnecessary to undertake additional consultation in relation to the specific instrument.

Details/ Operation

The Declaration commences 12 months after the date of registration on the Federal Register of Legislation.

As set out in Attachment A, the prohibitions in the Declaration do not apply where a person has prior written agreement from the MAC to undertake certain activities. The commencement timeframe will enable affected parties to:

- determine what existing agreements are in place for activities that might otherwise contravene the Declaration; and
- negotiate agreements contemplated in the commitment by governments, industry and the MAC outlined in the MAC Statement of Intent, signed in early 2024.

While these negotiations are taking place, it is reasonable and expeditious to allow this process to progress. The Minister assesses the risks to the specified area, including the declared area, during the period of negotiation will be reduced.

Details of the Declaration are set out in Attachment A.

Incorporation by Reference

The Declaration incorporates a reference to an electronic file held by the Department of Climate Change, Energy, the Environment and Water, titled ‘ATSIHP_Declared_Area_Murujuga.shp’. That file contains the geographical information systems spatial dataset for the declared area as at 10 September 2025. The Department will publish the map on its website.

Other

The Declaration is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

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

Authority: section 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

ATTACHMENT A

Details of the *Aboriginal and Torres Strait Islander Heritage Protection (Murujuga) Declaration 2025*

Part 1 – Preliminary matters

Section 1 – Name

This section provides that the name of the legislative instrument is the *Aboriginal and Torres Strait Islander Heritage Protection (Murujuga) Declaration 2025* (the Declaration).

Section 2 – Commencement

This section provides for the Declaration to commence 12 months after the date of registration on the Federal Register of Legislation.

The commencement day for the Declaration is in accordance with paragraph 14(1)(b) of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the Act), which provides that a declaration made under Part II of the Act comes into operation on the day after the day of its registration under the *Legislation Act 2003* or such a later date as is specified. A section 10 declaration is made under Part II of the Act.

An explanation for this timeframe is set out in pages 5 and 6 of the Explanatory Statement.

Section 3 – Authority

This section provides that the Declaration is made under section 10 of the Act.

Section 4 – Definitions

This section sets out the definitions used in the Declaration. The note provides that a number of expressions used in the Declaration are defined in section 3 of the Act. These include the key definitions of ‘Aboriginal’ and ‘Aboriginal remains’.

A key definition in the Declaration is *declared area*. The definition in section 4 is a ‘signpost’ definition and refers readers to section 5 where that term is substantively defined. Other key definitions are *Aboriginal site* and *Aboriginal object*.

An *Aboriginal site* is any place of particular significance to Aboriginals where traditions, customs, ceremonies or beliefs are practised or observed in accordance with Ngarda-Ngarli tradition.

An *Aboriginal object* is any object or thing of particular significance to Aboriginals in accordance with Ngarda-Ngarli tradition, including but not limited to petroglyphs, rock art, middens, stone arrangements, paintings, artefacts, Aboriginal remains, fish traps, fish increase sites, stone tools, scarred trees, or any other object or thing made, created, used or arranged by Aboriginals in accordance with Ngarda-Ngarli tradition.

Part 2 – Declaration to preserve and protect a significant Aboriginal area

Section 5 – Declared area

Subsection 10(1) of the Act provides that the Minister may, by legislative instrument, make a declaration to preserve or protect a specified significant Aboriginal area that is under threat of injury or desecration.

In making the declaration, the Minister must be satisfied that the area is a significant Aboriginal area (within the definition in subsection 3(1) of the Act); and that it is under threat of injury or desecration (within the meaning in subsections 3(2) and 3(3) of the Act). An assessment of these matters against the legislative criteria is set out at pages 2 to 4 of the explanatory statement to the Declaration.

Paragraph 11(a) of the Act provides that such a declaration must describe the area that the declaration relates to with sufficient particulars to enable the area to be identified.

Subsection 5(1) of the Declaration provides that the declared area is the area known as Murujuga, Western Australia, which is the area identified in the geographical information systems spatial dataset titled ‘ATSIHP_Declared_Area_Murujuga.shp’ held by the Department of Climate Change, Energy, the Environment and Water on 10 September 2025.

The declared area reflects part of the area specified in the section 10 application, which the Minister was satisfied is both a significant Aboriginal area (within the meaning of subsection 3(1) of the Act) and under threat of injury or desecration (within the meaning in subsections 3(2) and 3(3) of the Act).

Subsection 5(2) of the Declaration provides that the declared area does not include parts of Dampier Road, Burrup Road and The Esplanade as shown in the spatial dataset referenced in subsection (1).

A note under subsection 5(2) of the Declaration refers readers to Schedule 1 to the Declaration, which provides a map illustrating the declared area.

Section 6 – Protection and preservation of the declared area

Paragraph 11(b) of the Act provides that a declaration made under subsection 10(1) of the Act must contain provisions for, and in relation to, the protection and preservation of the area from injury or desecration.

Section 6 of the Declaration is made for the purposes of subsection 10(1) and paragraph 11(b) of the Act, and provides for and in relation to, the protection and preservation of the declared area from injury and desecration.

Subsection 6(1) of the Declaration provides that to protect and preserve the declared area, a person must not move, damage, deface, or otherwise disturb an Aboriginal site or Aboriginal object in the declared area. An Aboriginal object includes petroglyphs and rock art (see definition of Aboriginal object in section 4).

Subsection 6(2) of the Declaration provides that subsection 6(1) does not apply:

- (a) to a Traditional Owner or Traditional Custodian acting in accordance with Ngarda-Ngarli tradition;
- (b) to emergency services personnel acting in the course of their duties;
- (c) where a person has received prior written agreement from the MAC to move, damage, deface or otherwise disturb an Aboriginal site or Aboriginal object.

For the purposes of paragraph 6(2)(c), prior written agreement from the MAC includes agreements reached before and after the commencement of the Declaration.

Subsection 6(3) of the Declaration provides, for the purposes of subsection 6(1), an Aboriginal site or Aboriginal object is taken not to be moved, damaged, defaced or otherwise disturbed by, or as a result of, industrial gaseous emissions.

A note under subsection 6(3) of the Declaration refers readers to subsection 22(1) of the Act, which provides that a person commits an offence if the person engages in conduct that contravenes the provisions of a declaration.

Section 7 – Period of effect

Section 7 of the Declaration provides that the Declaration has effect for 10 years beginning on the date the instrument is registered.

Section 8 – Repeal

Section 8 of the Declaration provides that the Declaration will be repealed the day after the end of the period specified in section 7 of the Declaration.

Schedule 1 – Declared area

This item provides a map 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 (Murujuga) Declaration 2025

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

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the Act) provides for the preservation and protection of areas, objects and remains that are of particular significance to Aboriginal and Torres Strait Islander persons from injury or desecration. This includes areas, or objects and remains, that are in Australia or in Australian waters.

Part II of the Act provides for the protection of significant Aboriginal areas and objects. Section 10 of the Act allows the Minister to make declarations in relation to areas where the Minister receives an application by or on behalf of an Aboriginal or a group of Aboriginals, is satisfied that the area is a significant Aboriginal area and that it is under threat of injury or desecration, has received a report in relation to the area that deals with certain matters and has considered the report and any representations attached to the report, and has considered other matters he or she thinks relevant.

The *Aboriginal and Torres Strait Islander Heritage Protection (Murujuga) Declaration 2025* (the Declaration) is made by the Minister under section 10 of the Act. The purpose of the Declaration is to preserve and protect the declared area from the threat of injury or desecration. The declared area is part of the area known as Murujuga, Western Australia.

Consistent with section 10 of the Act, the Minister was satisfied that the declared area is a significant Aboriginal area and that it is under threat of injury or desecration from development.

Human rights implications

This Legislative Instrument engages the following rights:

- right to self-determination in Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- right to enjoy and benefit from culture in Article 27 of the ICCPR and Article 15 of the ICESCR;

- right to equality and prohibition on discrimination in Articles 2, 16 and 26 of the ICCPR and Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- right to freedom of thought, conscience and religion or belief in Article 18 of the ICCPR.

The right to self-determination

The rights of peoples to freely determine their political status and freely pursue their economic, social and cultural development is contained in Article 1 of the ICCPR and Article 1 of the ICESCR. The right is a collective right applying to groups of peoples, in contrast to rights to culture which protect the rights of individuals within a group.

The Declaration promotes the right to self-determination for people of Aboriginal and Torres Strait Islander descent, and in particular for the Ngarda-Ngarli, as it preserves and protects the declared area from injury or desecration.

The declared area is of particular significance to Aboriginal people in accordance with Aboriginal traditions on the basis of the sacred connection the area holds for the Ngarda-Ngarli through Dreaming, Storylines and Lore. The significance of the declared area has been attested to in detailed information provided by the applicant and supporting parties, which has been accepted by the Minister.

The Declaration will prohibit any person from moving, damaging, defacing, or otherwise disturbing any Aboriginal site or Aboriginal object (including, but not limited to, petroglyphs and rock art) in the declared area.

Therefore, the Declaration promotes the right to self-determination under Article 1 of the ICCPR and Article 1 of the ICESCR. It positively engages this right by ensuring that the specified area is preserved and protected for Aboriginal people to enjoy in accordance with their customs and traditions, and to freely pursue their social and cultural development.

The right to enjoy and benefit from culture

The right to enjoy and benefit from culture is contained in Article 27 of the ICCPR and Article 15 of the ICESCR. Article 27 of the ICCPR protects the rights of individuals belonging to ethnic, religious and linguistic minorities within a country to enjoy their own culture, practise their own religion and use their own language. Article 15 of the ICESCR protects the right of all persons to take part in cultural life.

In General Comment No. 23 (CCPR/C/21/Rev.1/Add.5 (1994)), the Human Rights Committee stated that Article 27 is directed towards ‘ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole’. The Committee also observed that ‘culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples... The enjoyment of those rights may require positive legal measures of protection’.

In General Comment No. 21 (E/C.12/GC/21 (2009)) the United Nations Committee on Economic, Social and Cultural Rights stated that the ‘strong communal dimension of indigenous peoples’ cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity’.

The Declaration ensures that the area known as Murujuga, Western Australia, is not damaged or disturbed in particular ways. This promotes the right to enjoy and benefit from culture under Article 27 of the ICCPR and Article 15 of the ICESCR as it ensures the protection of the declared area and preserves it for Aboriginal people to enjoy in accordance with culture and tradition.

The right to equality and non-discrimination

Articles 2, 16 and 26 of the ICCPR affirm the rights of all people to be treated equally. Article 2 of the ICERD further prohibits discrimination on the basis of race.

The Declaration specifies that the declared area is a significant Aboriginal area and prohibits any action that will or is likely to adversely affect the use or significance of the declared area in accordance with Aboriginal tradition. In doing so, the Declaration favours the interests of Aboriginal people over those of other persons on the basis of race, with the result that other persons do not benefit from being able to take particular actions in the declared area.

While this Declaration constitutes differential treatment on the basis of race, it can be characterised as a ‘special measure’ with the meaning of Article 1(4) of the ICERD. Article 1(4) provides that special measures shall not be deemed as racial discrimination, provided that the measure:

- is taken for the sole purpose of securing adequate advancement of a certain racial or ethnic group or individual;
- is necessary to ensure the equal enjoyment or exercise of human rights and fundamental freedoms for the group or individual;
- does not, as a consequence, lead to the maintenance of separate rights for different racial groups; and
- is not continued after the objectives for which it was taken have been achieved.

The Declaration meets the requirements of Article 1(4) because it:

- preserves and protects the declared area for the benefit of the Aboriginal people;
- has the sole purpose of protecting the rights of Aboriginal people to continue to enjoy their own culture and undertake traditional activities in the declared area; and
- is necessary, as otherwise the rights of the Aboriginal people in relation to the declared area will not be preserved.

The right to freedom of thought, conscience and religion or belief

Article 18 of the ICCPR protects the right of individuals to think freely, and to entertain ideas and hold positions based on conscientious or religious or other beliefs. Subject to certain

limitations, persons also have the right to demonstrate or manifest religious or other beliefs, by way of worship, observance, practice, and teaching.

The Declaration promotes this right as it preserves and protects the declared area that is considered to be a spiritually significant Aboriginal area. The Declaration allows the Traditional Custodians to continue to express their spiritual and cultural connection to the area and practice their beliefs.

Therefore, the Declaration promotes the right to freedom of thought, conscience and religion or belief under Article 18 of the ICCPR.

Conclusion

This Legislative Instrument is compatible with human rights because it promotes the protection of the human rights as set out above. To the extent that it may limit certain human rights, those limitations are reasonable, necessary and proportionate.

The Hon. Murray Watt MP
Minister for the Environment and Water