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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**DEFENCE LEGISLATION AMENDMENT (WOOMERA PROHIBITED AREA)
BILL 2014**

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Defence, Senator the Hon David Johnston)**

DEFENCE LEGISLATION AMENDMENT (WOOMERA PROHIBITED AREA) BILL 2014

GENERAL OUTLINE

The Bill gives effect to the recommendations made in the *Final Report of the Review of the Woomera Prohibited Area*, released on 3 May 2011.

The Review investigated how to use the Woomera Prohibited Area in a way that ensured its full national security and economic potential was realised and proposed that a system be established to improve the co-existence of Defence users and non-Defence users of the area.

The Review recommended that Defence remain the primary user of the area, but it acknowledged that exploitation of the Woomera Prohibited Area's considerable natural resources would likely bring significant economic benefit to South Australia and the nation more broadly. The South Australian Government has assessed that over the next decade about \$35 billion worth of development including iron ore, gold and other projects would be possible. Accordingly, the Review proposed that the Woomera Prohibited Area be opened up for resources exploration and mining to the maximum extent possible within the confines of its primary use for defence of Australia purposes.

Implementation of the Review and operation of the new legislative scheme requires continuing close cooperation between the Defence and resources portfolios, along with other Commonwealth agencies, South Australian Government entities and broader stakeholders.

At the recommendation of the Review, the Woomera Prohibited Area Coordination Office (WPACO) and an independent Advisory Board were established. The role of WPACO is to implement the recommendations of the Review and to support the administration of non-Defence access to the Woomera Prohibited Area, including as the body responsible for issuing access permits, taking into account the broader national interests in the area. The Advisory Board monitors and reports on the balance of national security and economic interests in the Woomera Prohibited Area, oversees the implementation of co-existence arrangements and fosters strategic relationships between Defence and non-Defence users through its ability to seek review of, and make recommendations on, access decisions and permit conditions. The Board will publish a public report annually on the balance of interests in the Woomera Prohibited Area and conduct a review of this every seven years.

The Bill establishes a framework that provides all non-Defence users within the Woomera Prohibited Area and industry more generally with a level of certainty over Defence activity in the area and allows users to make commercial decisions with some assurance as to when they will be requested to leave the area because of Defence activity. The framework re-establishes the primacy of the WPA as a national defence asset and sets up a co-existence scheme that allows access by non-defence users on a conditional basis. These conditions are intended to protect the safety of all

users in the WPA and to ensure the appropriate national security protections for an area used to test defence capability.

The Bill implements the Review recommendations relating to the management of access to the Woomera Prohibited Area through three geographic zones – the red, amber and green zones. Access to the red zone must not be given to new non-Defence users, the one exception being for a geological survey conducted by the South Australian Government in collaboration with Commonwealth agencies.

Existing users including pastoralists, Indigenous groups, the Tarcoola –Darwin railway owner and operators and four existing mining operations in the Woomera Prohibited Area will continue to operate under their current access arrangements governed by the *Defence Force Regulations 1952*. The access regime established by the Bill will apply to new users of the WPA only.

The WPA contains significant Indigenous sites and local Indigenous groups have native title rights and interests in most of the area. Permit holders under this legislation will be required to respect the rights of the local Indigenous groups and comply with all relevant laws pertaining to native title and the protection of these sites. Indigenous groups will retain current access rights and will not require separate permission under this Bill.

The Bill includes the WPA in the defence premises definition in the *Defence Act 1903*. Accordingly, the powers in Part VIA of the Defence Act will apply to new and existing non-Defence users of the WPA.

The Bill will insert a new Part VIB into the *Defence Act 1903*, and amend the definition of defence premises at subsection 71A(1) of that Act to include the Woomera Prohibited Area. This declares the Woomera Prohibited Area as a defence premises for the purposes of Part VIA. Consequently, the powers included in Part VIA will apply to all non-Defence users of the Woomera Prohibited Area.

In broad terms, the amendments:

- Authorise the Minister for Defence to make, by legislative instrument and with the agreement of the Industry Minister, the Woomera Prohibited Area Rules prescribing certain matters, including defining the Woomera Prohibited Area, and the zones to be demarcated within that Area.
- Create a permit system for access and use by non-Defence users of the Woomera Prohibited Area.
- Introduce offences and penalties for entering the Woomera Prohibited Area without permission and for failing to comply with a condition of a permit. An infringement notice scheme and demerit point system will apply to the offence for failing to comply with a permit condition.
- Provide for compensation for any acquisition of property from a person otherwise than on just terms that result from the operation of the new Part VIB of the *Defence Act 1903*.

- Include a technical provision that provides that any declaration or action taken under regulation 35 of the *Defence Force Regulations 1952* in relation to the Woomera Prohibited Area is taken to have always been valid.
- Provide that the Rules may limit the amounts of compensation payable by the Commonwealth for loss or damage in the Woomera Prohibited Area arising from a breach of common law or statutory duty of care in relation to the use of the area for the testing of war materiel.

Financial Impact Statement

This Bill creates a system for the administration of access to the Woomera Prohibited Area (WPA) including a permit system for the different types of non-Defence users of the WPA. It is anticipated that there will be increased non-Defence access to the WPA as a result of the introduction of new access arrangements which will require increased management and coordination by Defence.

The Bill provides that the Woomera Prohibited Area Rules may provide for the introduction of a cost recovery model, at some point in the future, to recover the expenses Defence incurs in managing non-Defence access to the WPA.

The estimated \$5.0 million annual costs associated with the new administrative arrangements required through implementing these amendments to enable access to the WPA will continue to be met from within the existing appropriation to the Department of Defence.

DEFENCE LEGISLATION AMENDMENT (WOOMERA PROHIBITED AREA) BILL 2014

Section 1 – Short title

This clause provides for the citation of the Act as the *Defence Legislation Amendment (Woomera Prohibited Area) Act 2014*.

Section 2 – Commencement

This clause provides that the Bill commences on the day after the Bill receives the Royal Assent.

Section 3 – Schedule

This clause is a formal provision specifying that amendments or repeals are made to the provisions set out in the sections in the schedule.

Schedule 1 – Amendments

Part 1 – General amendments

Defence Act 1903

Item 1 amends subclause 71A(1) of the *Defence Act 1903* to include the Woomera Prohibited Area, as defined in this Bill (see subsection 72TA), in the definition of defence premises.

Including the WPA in the defence premises definition will ensure that the powers in Part VIA of the Defence Act will apply to new and existing non-Defence users of the WPA.

Item 2 includes the definition of Woomera Prohibited Area in the definitions for Part VIA – Security of Defence Premises of the *Defence Act 1903*.

Item 3 inserts a new Part VIB – The Woomera Prohibited Area which sets out the measures relating to the administration of new non-defence use of the Woomera Prohibited Area.

Part VIB – The Woomera Prohibited Area

72T Definitions

Clause 72T provides the definitions that apply to the Part.

72TA The Woomera Prohibited Area

Clause 72TA provides that the Rules made under section 72TP may stipulate the area of land, known as the Woomera Prohibited Area, to which this Part applies. The Woomera Prohibited Area may only include land that is intended for activities

relating to the testing of war materiel. The Rules may define different zones within the Woomera Prohibited Area and prescribe periods of time in relation to the zones, referred to as exclusion periods, when non-Defence users may be excluded from the area.

72TB Application of this Part and Part VII of the Defence Force Regulations 1952

Clause 72TB sets out the instances in which Part VII of the *Defence Force Regulations 1952* will continue to apply to the Woomera Prohibited Area, instead of this Part, after this Part commences.

The Defence Force Regulations will apply in relation to the Woomera Prohibited Area if a person has authority under Part VII of the Regulations and that authority was granted before the commencement of this Part. If Part VII of the Regulations applies to a person, then this Part does not apply to that person.

Subclause 3 includes persons to whom Part VII of the Regulations applies and subclause 4 provides that subclause 3 does not limit subclause 1.

Subclause 5 provides that a person who has authority under Part VII of the Regulations may apply for a permit to access the Woomera Prohibited Area under this Part.

Subclause 6 provides that if a permit is obtained under this Part, that person's authority under Part VII of the Regulations is revoked to the extent of the permit under this Part.

72TC Offence – being in the Woomera Prohibited Area without permission

Clause 72TC introduces an offence to be in the Woomera Prohibited Area without permission if the person is not a member of the Australian Defence Force, the Secretary of the Department of Defence or an Australian Public Servant in the Department of Defence. Permission includes any standing permission issued under clause 72TD, a permit issued under section 72TE or a permission given by the Minister under section 72TF.

The maximum penalty for committing the offence is 120 penalty units or 2 years imprisonment, or both.

72TD Standing permission

Clause 72TD provides that the Woomera Prohibited Area Rules may include provision for a standing permission to be made, which may be subject to conditions and/or other matters. Standing permissions will enable a free right of access to the places included in the permission.

72TE Permits

Subclause 72TE(1) provides that the Woomera Prohibited Area Rules may include provision to issue permits that allow lawful access to the Woomera Prohibited Area. Subclause 2 provides that, in respect of permits, the Rules may set out:

- purposes for which permits may be issued;
- processes for applying for a permit, issuing and renewing permits, suspending and cancelling permits; and
- conditions to which permits are subject.

The issuing of a permit under subsection 1 is not limited by the criteria included in subclause 2.

72TF Minister's permission

Clause 72TF makes provision for the Minister to give a person permission to be at a place in the Woomera Prohibited Area. Permission to access the Woomera Prohibited Area would be granted under this section in instances where it would not be appropriate for a permit to be granted. Examples of when permission under this section would be granted are:

- to allow emergency access to areas of the WPA,
- for dignitaries visiting the WPA, and
- for Commonwealth government employees who need to access the area to perform their duties.

A person must request permission before the Minister may give permission to the person. Permission issued under this section must be written. Subclause 2 specifies that permission must identify by name the person to whom the permission applies and must comply with any requirements prescribed by the Rules. Subclause 3 provides that the permission may be subject to conditions set out in the permission and conditions set out in the Rules. Subclause 4 provides that the Rules may prescribe any other matters the Minister believes is necessary in relation to the permission.

72TG Offence – failing to comply with conditions

Clause 72TG creates an offence for failing to comply with a condition of a permission issued under clause 72TD, clause 72TE or clause 72TF. This is a strict liability offence, however, the defence of honest and reasonable mistake of fact may be raised (*Criminal Code Act 1995* section 9.2).

Permit holders are granted access to the Woomera Prohibited Area on a conditional basis. As the area is used for testing Defence materiel, including weapons, adherence to permit conditions by permit holders is essential to protect the security of Defence activities and to protect the safety of all users of the range. Access to the Woomera Prohibited Area is only possible on a conditional basis and for this reason it is considered reasonable that breaching a condition of a permission should attract a strict liability offence. A strict liability offence provides a solid deterrent to breaching

permit conditions and ensures the integrity of the permit regime, which aims to allow access to the Woomera Prohibited Area by non-Defence users in a safe and secure manner.

Breaching a permit condition will attract a minor penalty of a maximum of 60 penalty units. The conditions that will be attached to each type of permit are set out in Division 3 of the Woomera Prohibited Area Rules 2014. A permission issued under this Part will clearly advise the conditions with which the permission holder will need to comply, including the potential consequences of non-compliance.

72TH Minister may suspend permission

Clause 72TH provides that the Minister may suspend a permission issued under clause 72TD, clause 72TE and clause 72TF when the Minister considers it is necessary for the purposes of the defence of Australia; for example, when there is an urgent national Defence requirement. In such circumstances, the Minister has the power to remove non-defence users from the Woomera Prohibited Area.

Subclause 2 provides that a suspension of permission must be in writing and made in accordance with the requirements prescribed by the Rules.

Subclause 3 provides that a suspension under subsection 1 is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The suspension is exempt from the *Legislative Instruments Act 2003* because it would be issued in circumstances where the removal of non-defence users from the Woomera Prohibited Area was necessary for the defence of Australia; for example, to support an urgent national Defence requirement. As a suspension would have to be complied with immediately to have the intended effect, the normal processes for a legislative instrument would make a suspension unworkable.

72TJ Minister may give directions

Clause 72TJ provides that the Minister may direct a person to do or not do an activity in relation the Woomera Prohibited Area when the Minister considers it necessary for purposes of the defence of Australia or to protect the safety of people.

A direction issued by the Minister may order a person to leave a place or an area on the Woomera Prohibited Area, move or remove property or livestock or secure buildings.

For example, this power would allow the Minister to evacuate the Woomera Prohibited Area of non-defence users in situations where evacuation is necessary to protect the safety of non-defence users.

Subclause 3 provides that the directions listed in subclause 2 are not exhaustive and a direction issued under subclause 1 may be different to the directions listed in subclause 2.

Subclause 4 provides that a direction issued under subsection 1 is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. A direction is exempt from the *Legislative Instruments Act 2003* because it would be issued in circumstances where non-defence users in the Woomera Prohibited Area must do certain activities with immediate effect. A direction would be issued to ensure non-defence activity did not interfere with defence activity in the Woomera Prohibited Area in, for instance, a time of war, or to protect the safety of non-defence users. As a direction would have to be complied with immediately to have the intended effect, the normal processes for a legislative instrument would make a direction unworkable.

Subclause 5 creates an offence for failing to comply with a direction under subclause 1 when a person is given such a direction. The maximum penalty for the offence is 300 penalty units or 5 years imprisonment. The severe penalty is intended to act as a strong deterrent, as failing to comply with a direction has the potential to place human life in danger or prejudice national security. Further, failure to comply with a direction may delay defence activity at a time of heightened Australian Defence Force operations or, more significantly, at a time of national emergency when defence activity at Woomera may need to be intensified.

72TK Compensation for the acquisition of property

Clause 72TK provides that if the operation of the Bill results in an acquisition of property to which paragraph 51(xxxi) of the Constitution applies, and the acquisition is otherwise than on just terms, then the Commonwealth is liable to pay a reasonable amount of compensation to the person whose property is acquired.

Subclause 2 provides that if the Commonwealth and the person cannot agree on a reasonable amount of compensation, then the person may seek resolution in a court for the recovery of compensation from the Commonwealth – the amount to be determined by the court.

72TL Compensation for loss or damage

Clause 72TL provides that the Rules may provide a limit on the amount of compensation payable by the Commonwealth in respect of loss or damage in the Woomera Prohibited Area that is caused because of a breach of common law or a statutory duty of care due to the use of the Woomera Prohibited Area for the purposes of testing war materiel.

The limit does not apply to loss or damage resulting in death or personal injury.

72TM Review of decisions

Internal review

Clause 72TM provides for an internal review process to allow the Minister to review decisions made under clauses 72TF, 72TH and 72TJ. A person affected by a decision made under those clauses may apply in writing to the Minister seeking to have the decision reviewed. The Minister must review the decision and confirm, vary or

revoke the original decision. The Minister must notify the applicant of the reviewed decision within 20 days of receiving the person’s application.

AAT review

Clause 72TM provides that a person may apply to the Administrative Appeals Tribunal to review a decision made by the Minister under clause 72TF.

Decisions made under clauses 72TH and 72TJ are exempt from review by the Administrative Appeals Tribunal because they are decisions that:

- affect the safety of people in the Woomera Prohibited Area and will need to be complied with immediately, or
- affect the defence of Australia; for example, where there is an urgent national Defence requirement. In such an instance, the Minister for Defence is best placed to determine use of a national defence asset and review of such a decision could put national security at risk.

72TN Delegation

Clause 72TN provides that the Minister may delegate, in writing, his or her powers as follows:

Power	Delegation
Clause 72TF (Minister’s permissions)	To a person who holds a position of substantive or acting APS6 or equivalent or higher, in the Department of Defence or an Australian Defence Force officer holding the rank of Commander, Lieutenant Colonel, Wing Commander or higher.
Clause 72TJ(1)(b) (Minister may give directions to protect human life)	To a person who holds a position of substantive or acting EL2 or equivalent or higher in the Department of Defence or an Australian Defence Force officer holding the rank of Navy Captain, Colonel, Group Captain or higher.
Clause 72TM (Review decisions under: - 72TF to give or not give permission - 72TJ(1)(b) to give directions to protect human life)	To a person who holds a position of substantive or acting SES Band 2 or equivalent or higher in the Department of Defence.

72TP The Woomera Prohibited Area Rules

Clause 72TP provides that the Minister may make, by legislative instrument, the Woomera Prohibited Area Rules and that the Rules may prescribe certain matters

required or permitted by the Part or necessary or convenient for carrying out or giving effect to this Part.

Subclause 2 sets out some of the matters to which the Rules may make provision, but this list is not exhaustive and matters outside this list may be prescribed in the Rules. Provision can be made for fees, the review of decisions made under the Part and - review of decisions made under the Rules.

Subclause 3 provides that a fee prescribed under paragraph 2(a) must not be such as to amount to taxation.

The Minister for Defence will agree the Rules with the Industry Minister.

Infringement Notices

Subclause 4 provides that the Rules may provide for an Infringement Notice Scheme that may apply to the offence at subclause 72TG. This scheme will allow a person to pay a penalty to the Commonwealth instead of being prosecuted for that offence.

Subclause 5 provides that an infringement notice penalty must not exceed one fifth of the maximum fine that a court could require a person to pay as a penalty for that offence.

Demerit points

Subclause 6 provides that the Rules may establish a demerit point system whereby a person who has permission to be in the Woomera Prohibited Area may have that permission suspended or cancelled because a certain number of demerit points have been accrued.

Part 2 – Amendments relating to the operation of Part VII of the Defence Force Regulations 1952

Defence Act 1903

Item 4 inserts a new section 121A. The new section is a technical provision that ensures that any declaration or past act taken under regulation 35 of the *Defence Force Regulations 1952* in relation to the Woomera Prohibited Area is taken to have always been valid. This section is inserted to avoid any doubt on the past applicability of the Defence Force Regulations to Woomera Prohibited Area which may arise as a result of the establishment of the new access regime by the Bill.

In order to meet the constitutional requirements to provide just terms compensation, subclause 3 has been inserted to provide that where the declaration or past act would be invalid because of an acquisition of property otherwise than on just terms; the Commonwealth is liable to pay reasonable compensation. In the event that the Commonwealth and a potential claimant do not agree on an amount of compensation, a person may institute proceedings in a court for the recovery of reasonable compensation as determined by a court.

Defence Force Regulations 1952

Item 5 modernises the existing compensation provisions in regulation 36 of the *Defence Force Regulations 1952* so that it reflects modern drafting terminology by providing for reasonable compensation where the operation of regulation 34 or 35 would result in an acquisition of property otherwise than on just terms. In the event that the Commonwealth and a potential claimant do not agree on an amount of compensation, a person may institute proceedings in a court for the recovery of reasonable compensation as determined by a Court.

Statement of Compatibility with Human Rights

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

Defence Legislation Amendment (Woomera Prohibited Area) Bill 2014

This Bill 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 Bill

The Defence Legislation Amendment (Woomera Prohibited Area) Bill 2014 establishes a framework for allowing non-Defence users to access the Woomera Prohibited Area (WPA) at times outside the set 'exclusion periods' which allow Defence to use the area for the testing of war materiel. A permit or permission to access the WPA will have conditions that must be met by the permit or permission holder. An offence is introduced for breaching a permit condition, but the conditions are intended to protect the permit holder's safety and the security of defence activity. The Bill also sets out appropriate compensation mechanisms for any acquisition of property resulting from the operation of the Bill to which paragraph 51(xxxi) of the Constitution applies, where that acquisition is otherwise than on just terms. The Bill retains a person's right to compensation for loss or damage suffered by a person in the WPA caused by Defence activity subject to a cap on compensation as set out in the Woomera Prohibited Area Rules.

The Bill has provision for issuing a standing permission that will allow free right of access to the Woomera Village and major transport routes in the WPA. The Minister may also suspend permission or direct permit holders to do an activity, including, but not limited to, evacuating the area. These provisions are intended to be invoked for the purposes of the defence of Australia or to protect human life.

Access to the area is currently restricted under the *Defence Force Regulations 1952* and people who have existing permissions (existing users) to enter the WPA under these Regulations will not need permission for access under this legislation. Existing users include the South Australian Government, indigenous people, pastoralists, the Darwin-Tarcoola railway owner and operators and some existing mining entities.

The Bill also amends the definition of defence premises at section 71A of the *Defence Act 1903* to include the WPA. This will extend the powers of defence security officials in that Part to apply to the WPA.

The overall intent of the Bill is to implement a regulatory framework to allow access to the WPA, which is primarily a prohibited area for defence purposes, so that the area's economic potential can be realised in addition to it being used for the testing of war materiel.

Human Rights Implications

The amendments are likely to engage the following human rights:

Right to Life – Article 6(1) of the International Covenant on Civil and Political Rights

The right to life provides that countries and agents of the country must not deprive a person of life arbitrarily or unlawfully. Countries also have a duty to take appropriate steps to protect the right to life and to investigate arbitrary or unlawful killings and punish offenders.

The amendment to Part VIA of the *Defence Act 1903* – Security of defence premises – is being proposed so that the powers may be exercised in respect of the WPA. These powers allow appropriately authorised members of the Australian Defence Force to use reasonable and necessary force, including lethal force, to prevent the death of, or serious injury to, a person in connection with an attack on Defence premises. The powers are subject to strict limitations and are in accordance with the Department of Defence’s objective of enhancing the security of defence bases, facilities, assets and personnel in response to the changing nature of security threats.

A security authorised member of the Defence Force may use reasonable and necessary force, up to lethal force, if the member believes that it is necessary to prevent death or serious injury to themselves or others in taking action to protect persons from an actual or imminent attack on defence premises. A security authorised member of the Defence Force may use reasonable and necessary force, up to lethal force, against a person who is attempting to escape being detained by fleeing only if the person has first been called on to surrender and the member believes on reasonable grounds the person can not be apprehended in another manner. Only a security authorised member of the Defence Force – which is a particular, specially trained class of defence security official – may exercise force likely to cause death or serious injury under Part VIA of the *Defence Act 1903*.

The right to life includes a duty on governments to take appropriate steps to protect the right to life of those within its jurisdiction and to investigate arbitrary or unlawful killings and punish offenders. The measures in Part VIA are appropriate as they only authorise reasonable and necessary force in limited circumstances and by authorised and appropriately trained personnel. A security authorised member of the Defence Force who exercises the powers outside of the limits imposed by Part VIA outside of the limits imposed could be investigated and prosecuted under relevant State or Commonwealth law.

Security of the Person and Freedom from Arbitrary Detention – Article 9 of the International Covenant on Civil and Political Rights

The right to personal liberty requires that persons not be subject to arrest and detention except as provided for by law and provided neither the arrest or detention is arbitrary. Under Part VIA a suitably qualified defence security official may restrain and detain a person if:

- a person refuses an identification or search request; or
- the defence official reasonably believes that the person is not authorised to be on the premises or constitutes a threat to the safety of persons on the premises, or has or may commit a criminal offence in relation to the defence premises.

Additionally, section 72M provides that security authorised members of the Defence Force may use a dog to assist with the conduct of searches and other functions and powers under Part VIA. This includes a power to restrain and detain a person, remove a person from defence premises or arrest a person under 72P (which deals with trespass). Section 72 provides that a member of the Defence Force, a civil police officer or an Australian Federal Police protective service officer may, without warrant, arrest a person for unauthorised entry on defence premises or accommodation.

Under Part VIA, detention is lawful in certain circumstances and the provisions outline the circumstances to be satisfied to ensure detention is not arbitrary.

Freedom of Movement – Article 12 of the International Covenant on Civil and Political Rights

The right to freedom of movement includes the right to move freely within a country for those who are lawfully within the country. The Bill places restrictions on who may enter the WPA, thereby limiting the right to move freely within a country. The WPA is a large area of land located in remote northern South Australia. The Bill introduces an offence for a person who is not a member of the Australian Defence Force, an Australian Public Service employee of the Department of Defence or the Secretary of Defence to be in the WPA without permission.

Limiting the right to freedom of movement is reasonable and necessary as the legislative measures are intended to protect national security and human safety. The WPA is used by Defence for activities relating to the testing of war materiel, the conduct of which could endanger human life should people be in the WPA while an activity is taking place. Therefore, freedom of movement is limited to allow the Government to undertake activity necessary to maintain a modern defence force and protect national security, while also allowing non-Defence users to safely access the WPA to realise the area's economic potential.

The Bill provides the Minister with the power to suspend a permission to be on the WPA, and to direct people with permission to leave the WPA. These powers are intended to ensure that non-Defence users can be evacuated from the WPA in a time of national emergency to allow the area to be used for national defence purposes. The powers are intended to be used for the purposes of protecting national security or to protect human safety, for example to be able to evacuate the WPA when a defence activity suddenly and unexpectedly poses a threat to those in the area.

The Bill provides that a person may seek a review of a decision by the Minister to allow or refuse access to the WPA by way of an internal review process and/or review by the Administrative Appeals Tribunal.

Presumption of Innocence – Article 14(2) of the International Covenant on Civil and Political Rights

The right to the presumption of innocence provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. It imposes on the prosecution the burden of proving a criminal charge and guarantees no guilt can be presumed until the charge has been proven beyond reasonable doubt. The Bill contains offences that apply strict liability or a ‘reverse burden’, which amount to a limitation on the presumption of innocence.

Clause 72TG of the Bill provides a strict liability offence to fail to comply with the conditions of a permission to enter the WPA. The offence carries a relatively low penalty of 60 penalty units and does not impose imprisonment. The defence of honest and reasonable mistake of fact may be raised as per the *Criminal Code Act 1995* section 9.2. A permission issued under the Bill will clearly state the conditions with which the permit holder must comply and the potential consequences of non-compliance. Permission holders will be clearly informed that their access to the WPA is conditional and that failure to comply with the conditions will be an offence of strict liability. The intention of the conditions will be to protect those accessing the WPA (for example, reporting the discovery of war materiel) as well as protecting the security of Defence activity in the area (for example, a permission holder must not enter any cordoned off area). The imposition of a strict liability offence is appropriate because it is likely to significantly enhance the effectiveness of the enforcement regime in deterring a breach of conditions – conditions that are intended to protect the safety of permission holders and the security of defence activity in the WPA.

Clause 72TC provides an offence to be in the WPA without permission if a person is not a member of the Australian Defence Force, an APS employee of the Department of Defence or the Secretary of the Department of Defence. The offence places an evidential burden on the defendant to prove that he/she had permission under one of clause 72TD, clause 72TE or clause 72TF. The shift of the evidential burden of proof is justified because it is clearly more practical and less burdensome for the accused to prove that he/she had permission than for the prosecution to prove that he/she did not have permission. That is, a person can easily show evidence of permission to be in the WPA and in doing so the issue is resolved without the involvement of the police or prosecution.

In these circumstances, reversing the onus of proof is practical and not burdensome.

Protection from arbitrary and unlawful interferences with privacy – Article 17 of the International Covenant on Civil and Political Rights

Article 17 accords everyone the right to protection against arbitrary or unlawful interference with privacy.

Enforcement Powers

Division 3 of Part VIA of the *Defence Act 1903* contains powers to request information or request permission to search a person, vehicle, vessel or aircraft. The powers are intended to prevent or reduce the risk of unauthorised entry to defence

premises (including the WPA), to detect and deal with trespassers and to prevent or reduce the risk of dangerous items entering defence premises or material being unlawfully removed.

Defence security officials must not exercise the powers unless they have produced an identity card for inspection by the person of whom the request is made and unless they have informed the person of the consequences of any refusal to comply with a request. If a person refuses consent, the defence security official may refuse to allow the person, vehicle, vessel or aircraft to pass a defence access control point. Even if a person consents, access may still be refused if the defence security official reasonably believes the person, vehicle, vessel or aircraft is not authorised to pass the access control point, constitutes a threat to the safety of persons on the defence premises, or has committed, or may be used in the commission of a criminal offence on, or in relation to, the defence premises. The defence security official may also restrain and detain the person. This is a limited power for the purpose of placing the person, at the earliest practicable time, in the custody of the a member or special member of the Australian Federal Police, a member of the police force of a State or Territory or protective service officer.

Defence security officials may request a person who is on defence premises to provide evidence of their name, residential address and authority to be on the defence premises in circumstances where he or she reasonably believes that the person is not authorised to be on them. Defence security officials are authorised to restrain and detain a person where the person refuses the request or where the defence security official forms a reasonable belief as set out above.

It is an offence for a defence security official to conduct a limited search of a person or vehicle, vessel or aircraft under Division 3 of Part VIA if the person did not consent to the search.

Division 4 of Part VIA contains powers which specially trained (special) defence security officials can be exercised without consent. The powers operate when a person, vehicle, vessel or aircraft is on defence premises or about to pass an access control point. The powers under Division 4 are the same as those in Division 3 but are framed as requirements rather than requests. If a person refuses to comply with the requirements, or hinders or obstructs a search, or the security official reasonably believes the person does not have authority or has a malicious intent, the special defence security official may refuse to allow the person, vehicle, vessel or aircraft to pass the access control point. Additionally, the special defence security officer may restrain and detain a person, or request that they leave the defence premises. If the person refuses to leave the special defence security official may remove the person.

A special defence security official may use ‘such force against a person or thing as is reasonable and necessary’ in exercising the powers under Part VIA. The limitations on ‘reasonable and necessary’ force are that:

- a defence security official must not subject the person to greater indignity than is ‘reasonable and necessary’; and

- a defence security screening official or a contract defence security guard must not do anything that is likely to cause the death of, or grievous bodily harm, to a person.

The enforcement powers in Part VIA are intended to protect the lives of those who work and live on defence premises, as well as protecting national security information, equipment and capability stored on defence premises. The powers may only be used in the maintenance of these objectives.

Ministerial Directions

Clause 72TJ of the Bill provides that the Minister may issue a direction to do, or not do, specified things in relation to the WPA for the purposes of the defence of Australia or to protect human life. The direction may include, but is not limited to, a direction to leave a place or an area, move or remove property and livestock, and to secure buildings.

A number of pastoralists live in residential houses in the WPA, and while a clause TJ direction would not currently apply to an existing pastoralist, a future holder of a pastoral lease may be affected. It is also possible that the Woomera Village, which is located in the WPA, may need to be evacuated.

Clause 72TJ is intended to be used for the purposes of the defence of Australia or to protect human life in the WPA. For instance, if a Defence activity unexpectedly and suddenly posed a risk to the life of those on the WPA, the Minister would issue a direction to evacuate the WPA. In this instance the right would be limited only to protect life or because the WPA was needed for defence purposes in a national emergency situation.

Right to security of the person and freedom from arbitrary detention - Article 9 of the International Covenant on Civil and Political Rights

Section 72P authorises a member of the Defence Force, a member or special member of the Australian Federal Police, a protective services officer or a member of the police force of a State or Territory to arrest a person, without warrant, if the member reasonably believes that the person is on defence premises or accommodation and is not authorised to be there. The power of arrest in this section is limited by section 72K in that if a member arrests a person under section 72P, he or she must bring the person to a member of the Federal, State or Territory police force as soon as practicable after the arrest.

The right to enjoy and benefit from culture – Article 27 of the International Covenant on Civil and Political Rights

The right to enjoy and benefit from culture is contained in Article 27 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 15 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Article 27 of the ICCPR protects the rights of individuals belonging to minorities within a country to enjoy their own culture. Article 15 of the ICESCR protects the right of all persons to take part in cultural life.

The United Nations Human Rights Committee has stated that culture can manifest itself as a particular way of life associate with the use of land resources, especially in the case of Indigenous peoples, which may include such traditional activities as fishing or hunting and the right to live on lands protected by law.

The United Nations Committee on Economic, Social and Cultural Rights has stated that Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected.

The Bill has not altered the rights of Indigenous people to access their traditional lands in the Woomera Prohibited Area. Clause 72TB clarifies the pre-existing rights under the *Defence Force Regulations 1952* for specified Indigenous people; or someone employed, engaged by, or acting for, or on behalf of those people; or someone accompanied by those people, to continue to access their traditional lands in the Woomera Prohibited Area. Additionally, all new non-Defence users of the Woomera Prohibited Area must comply with all relevant laws, including those related to Indigenous land and sites, as a condition of access.

Conclusion

The provisions of the Bill engage a number of human rights and do so in order to allow a prohibited defence area to be used for non-defence purposes in a manner that protects the safety of the non-defence users and maintains the necessary security for carrying out activities for defence of Australia purposes. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

David Johnston
Minister for Defence

Regulation Impact Statement – Implementation of Non-Defence User Management Arrangements for the Woomera Prohibited Area

Introduction

A review to make recommendations about the best use of the Woomera Prohibited Area (WPA) in the national interest was announced by the then Minister for Defence in May 2010 (Review into Security and Economic Interests in the Woomera Prohibited Area). The review was established in response to increasing demand for access to the WPA by the resources sector and the challenge this posed to Defence activity. The review was led by Dr Allan Hawke AC, supported by a small inter-departmental secretariat.

The review consulted extensively to obtain the views of individuals and groups that had an interest in the future use of the WPA. The final review report was released on 4 February 2011 and made a number of recommendations aimed at improving the co-existence of the various parties that had an interest in the WPA. The focus of the recommendations was to improve the management of the WPA in a way that would meet Defence's testing requirements while also creating conditions to make it commercially viable for other sectors, particularly resources, to invest in operations in the WPA.

The then Government agreed to the implementation of the Hawke Review recommendations for management of non-Defence use of the WPA via three phases: a moratorium on access for a period while new management arrangements were established, a transition phase based on standard deeds of access and a final legislated permit system.

The transition phase is currently operating.

Draft legislation to implement the final phase in the form of the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013 was introduced into the last Parliament, but lapsed when Parliament was prorogued.

A RIS was not conducted for this previous bill as the then Prime Minister granted an exemption on the basis of exceptional circumstances from the RIS requirements for the Government's response to the Final Report of the Review of the Woomera Prohibited Area (Hawke Review) in 2011.

Background to the WPA

The Woomera Prohibited Area (WPA) is a globally unique military testing range. It covers nearly 124,000 square kilometres in north-west South Australia, approximately 450 kilometres NNW of Adelaide. It is the largest land range in the world, comparable in size to England, with a centre line of over 600 kilometres. The WPA's size, remote location and quiet electromagnetic environment make it an ideal test and evaluation site for Australia and its allies and partners.

The WPA was established in 1947 as a long-range weapons testing facility by the United Kingdom and Australia under the Anglo-Australian Joint Project, which wound down during the 1970s. The use of the WPA by Defence declined during the 1980s and 1990s and it was opened up to non-Defence users including the resources sector. Changes in the strategic environment since the late 1990s have resulted in an increasing requirement for access to WPA facilities for the testing and evaluation of weapons systems. The range is now, in parts, in near constant use. The South Australian Government advised the Hawke Review that the Woomera Test Range contributes around \$16 million (at 2007-08 prices) a year to the SA economy. The overall value to the Australian community of testing activity is difficult to value.

Existing regulation

The WPA was most recently declared a Prohibited Area under the Defence Force Regulations 1952 (DFRs) on 12 July 1989 for the 'testing of war material' under the control of the Royal Australian Air Force. Under Regulations 34 and 35 of the DFRs the Commonwealth has the authority to control access to the WPA and place conditions on access to protect persons, property and official secrets. This provides the authority for the existing test range management arrangements, which include the deeds of access issued since the moratorium period ended on 5 October 2012.

Competing interests in the WPA

The majority of the WPA is South Australian Crown land and is covered by pastoral leases and resources tenements granted by the South Australian Government. Additionally, several other groups other than Defence have an interest in the WPA. Managing access by non-Defence parties to a weapons testing range comes with a high level of risk. Working or residing on a weapon testing range presents significant safety issues that need to be carefully managed, and Defence needs to prevent unauthorised people from being able to witness or access testing activities or equipment for security reasons. To ensure these risks are properly managed, non-Defence users need to be certain of their responsibilities, and Defence requires adequate authority to enforce conditions of access.

Prior to the Hawke Review, access to the WPA was granted to non-Defence users on an ad hoc basis. Indigenous groups and pastoralists had an established presence on the WPA before it was declared a prohibited area. The WPA is of cultural and spiritual significance to several Indigenous groups and Indigenous people regularly access the range with Defence's permission. There are currently 26 pastoral leases, issued by the South Australian Government, in the WPA. Details of pastoralist activities that impact on Defence's use of the range are shared with Defence and factored into Defence's testing schedule. Defence excludes pastoralists from areas of their leasehold and Indigenous people from the WPA for specified periods so it can carry out testing safely and securely.

Four mines – Prominent Hill, Challenger, Cairn Hill and Peculiar Knob – operate in the WPA and key transport infrastructure, including the Stuart Highway and the Adelaide to Darwin railway, bisect the WPA.

The WPA is highly prospective and the South Australian Government estimated at the time of the Hawke Review that more than \$35 billion in developments – iron ore, gold and uranium projects – could be possible over the next decade. The south-east corner of the WPA hosts the same geological providence as the adjacent Olympic Dam mine (the world's largest uranium deposit) and could potentially be one of the most prospective areas in Australia.

The resources boom (in particular, rising resources prices up until 2011) prompted increasing interest in the resources potential of the WPA. This coincided with the increasing Defence use of the WPA for war materiel testing. Although resources prices have begun falling they are still at relatively high levels as is demand, historically, so resources sector interest can be expected to continue in the immediate future, if at slightly dampened levels.

The presence of unauthorised people in the WPA where weapons testing is taking place gives rise to public safety and national security issues. The Hawke Review addressed how to manage the potentially competing national security and economic interests in the WPA.

Administration of the WPA since the Hawke Review

The Final Report of the Hawke Review was accepted by the then Government in May 2011. The Woomera Prohibited Area Coordination Office (WPACO) was set up in the Department of Defence. Since the moratorium ended in October 2012, WPACO has implemented the recommendations of the Hawke Review, under the authority of the DFRs, through an administrative regime of deeds of access for resources companies and permits for opal miners and tourists. This period since the moratorium is known as the transition phase and continues to operate today.

Users that had permission to access the WPA before the acceptance of the Hawke Review – the South Australian Government, Indigenous groups, pastoralists, rail owners and operators, and the four existing mines – continue to access the WPA under these permissions and there is no requirement for them to transition to the proposed new arrangements, although they can choose to opt in.

The Review recommended introducing a comprehensive range management framework to increase use of the WPA in Australia's national interest by better balancing national security and economic interests. Several measures were recommended to improve administration of the range and to provide non-Defence users and potential users with a greater level of certainty regarding their access rights and responsibilities while operating within a prohibited area.

Defence has implemented a number of administrative changes to the way it manages the range to better meet the needs of non-Defence users including:

- Developed, in consultation with the resources sector, a standard deed of access for exploration activity in the WPA. The deed is publicly available and can be accessed at <http://www.defence.gov.au/woomera/docs/Deed-of-Access-template.pdf>.

- Developed standard permits for opal mining and tourist activities.
- Divided the WPA into four zones, allocated each zone a maximum period in which Defence may conduct testing and set out the notification requirements for Defence use of each zone. This provides non-Defence users forewarning about when they will be required to evacuate the range due to Defence testing. The zones and Defence time allocation for each zone are as follows:
 1. A red zone in the south-east corner of the WPA to be reserved for continuous and exclusive Defence use (apart from existing pastoral leases).
 2. An amber zone 1, which would provide a buffer zone around the red zone where co-existence would occur subject to a high level of Defence use (Defence use can take place for up to 140 days a year in blocks of seven days duration, during these times new non-Defence users will need to evacuate completely).
 3. An amber zone 2, which would provide a corridor for long range Defence testing extending from the red zone to the north-west corner of the WPA, but also subject to co-existence (Defence use can take place for up to 70 days a year in blocks of seven days duration).
 4. A green zone, which would comprise the remainder of the WPA and would be subject to only occasional Defence use of up to 56 days each year. Six months notice of any exclusion period would be given for non-Defence users with a permanent presence in the WPA.

Part of the comprehensive range management framework recommended by the Hawke Review was to provide non-Defence users with access to the WPA through a permit system with conditions that could be enforced through an offence and penalty regime. Such a scheme would require a legislative basis. The Hawke Review stated that a legislative scheme would provide non-Defence users with certainty around their access rights and responsibilities and would provide Defence with the certainty it needs to enforce access conditions to ensure the safety and security of testing activities.

Problem

Under authority provided for by Regulations 34 and 35 of the DFRs, Defence has established a more comprehensive range management regime by improving its administration practices. This has provided non-Defence users with a greater level of certainty around their ability to access and use the WPA than previous arrangements. However, due to the current administrative nature of Defence's range management procedures, non-Defence users are still seeking longer-term increased certainty, through legislation, of these arrangements.

Given the scale of investment and the period of operation of mines, the resources sector in particular requires long-term certainty around its ability to access the WPA and the conditions attached to that access. Without this certainty around the conditions of access, it is difficult for the resources sector to justify the high level of investment required to conduct mining or other activity in the WPA. Indeed, in

submissions to the Senate Inquiry into the lapsed bill, Arrium Mining submitted the following:

First, Arrium strongly supports this proposed new scheme to regulate access to, and coexistence within, the WPA. It is Arrium's submission that this legislation-based scheme is characterised by the following major advantages:

- *it strongly implements the co-existence principles of the Hawke Report, including a conditional presumption of access to the WPA for non-Defence users (see Section 17 of the Rules);*
- *it has high levels of transparency about the issue of access to the WPA which is very positive for investment confidence and perceptions about regulatory certainty;*
- *it is a scheme that has a high level of flexibility which enables the multitude of stakeholders and circumstances in the WPA to be managed appropriately and on a case-by-case basis; and*
- *it contains thorough merits review mechanisms which should help ensure that the inherent, but reasonable, flexibility of the scheme can always be tested (if necessary) to ensure that it is being administered reasonably in all the then-current circumstances.*

(source:http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed_inquiries/2010-13/woomera2013/submissions)

All resources companies that currently have a known interest in the WPA have been consulted throughout the Review and legislation development process. Submissions from these companies have not raised any concerns around the implementation of the legislative framework. Feedback from the resources sector has been supportive of a legislative scheme, particularly as it provides a greater level of regulatory certainty and introduces a merits review mechanism for decisions made that impact on the sector.

Objectives

The overall policy objective is to maintain an effective Defence testing facility while accommodating economic interests in the WPA. The objective is to provide increased certainty and transparency for non-Defence users regarding conditions of their access to the WPA, particularly to support significant long-term investment, while also protecting national security and public safety.

Options

This RIS assesses the relative merits of two options for implementing the recommendations of the Hawke Review. The first option is to retain the range management arrangements as administrative procedures under the authority of the DFRs, which is the status quo. The second option is to proceed to introduce these arrangements as legislative provisions along with appropriate enforcement mechanisms.

Option 1 (Status quo option) – Non-Defence access to WPA managed administratively under authority of Defence Force Regulations 1952

Non-Defence access to the WPA is granted on a case-by-case basis according to Defence's ability and requirement to monitor compliance with access conditions.

Permission for access is granted either by a standardised deed of access or a permit, depending on the activity the user wants to undertake. The only exception is a deed of access for mining, which is not standard and is negotiated with each company.

The DFRs contain enforcement powers and offence provisions including:

- a power to remove a person from the WPA who does not have permission;
- an offence to be on the WPA without authority; and
- an offence to breach a condition of an authority granting access to the WPA.

Option 2 (Legislative option) – Non-Defence access to WPA managed under a permit and enforcement system set out in legislation

Option 2 provides for management of non-Defence access to the WPA through a legislated permit and enforcement system. This would be implemented through legislation, including statutory rules.

The proposed bill would:

- Authorise the Minister for Defence, with the agreement of the Minister for Industry, to make, by legislative instrument, the WPA Rules prescribing certain matters, including defining the WPA, and the zones to be demarcated within that Area.
- Create a permit system for access and use by non-Defence users of the WPA.
- Declare the WPA as a defence premise. Consequently, the powers included in Part VIA will apply to the WPA. This means Defence will have powers to refuse entry, stop and search persons and vehicles entering or in the WPA, remove persons from the WPA and seize things within the WPA.
- Introduce offences and penalties for entering the WPA without permission and for failing to comply with a condition of a permit. An infringement notice scheme and demerit point system will apply to the offence for failing to comply with a permit condition.
- Provide for compensation for acquisition of property from a person otherwise than on just terms in the application of Part VIB of the Bill.
- Provide for compensation for loss or damage suffered by a person who has permission to be on the WPA caused by negligent use of the area for Defence purposes.

The proposed rules would provide for the detailed arrangements to give effect to the proposed bill, including prescribing an area as the WPA and the provision for zones and exclusion windows limiting access to new non-Defence users within those zones. The access arrangements proposed within the rules reflect the recommendations of the Hawke Review and, for the resources sector, are based on those developed for the Minerals Exploration Deed of Access, providing long-term certainty for non-Defence users of the WPA.

The draft rules would also provide for:

- the process to obtain and renew permission to be at a place within the WPA;
- the process by which permits may be subject to suspension or cancellation including the ability for a permit holder to have the Minister for Defence review a decision in relation to a cancellation of a permit;
- the Secretary of the Department of Defence to be able to appoint people to be authorised officers to give infringement notices;
- demerit points which may be incurred when a person pays the penalty contained in an infringement notice or is convicted or found guilty of an offence; and
- a cap on compensation payable to a person for loss or damage suffered in the Woomera Prohibited Area, not resulting in death or personal injury, of \$2 million.

Summary of main requirements by user group:

User group (new users)	Option 1	Option 2
Resources companies	For a new mine, a negotiated deed of access required and conditions apply. Approval required for all personnel. Approval required for any specific period of access. Notification of changes of circumstances, eg ownership/control	Mining and production permit required and conditions apply. Approval required for all personnel. Approval required for any specific period of access. Notification of changes of circumstances, eg ownership/control
Opal/precious stones miners and prospectors	Access permit required and conditions apply. Approval required for any specific period of access.	Access permit required and conditions apply. Approval required for any specific period of access.
Tourists and tourism operators (to use other than specified roads)	Access permit required and conditions apply.	Access permit required and conditions apply.
Environmental, etc researchers	Deed of access required and conditions apply	Permit required and conditions apply.

Existing non-Defence users of the WPA – Indigenous groups, pastoralists, rail owners and operators and the four existing mines – will retain their existing permissions and continue to access the WPA under the provisions contained in the DFRs. The proposed bill provides that these existing groups would be exempt from the application of the proposed legislation.

Minor amendments to the DFRs are proposed to include a change of control provision to require Ministerial consent for any transfer of ownership or change in the

ownership of the shares of the company. This would apply where a change in ownership would result in a controlling interest in the company being held by a person other than the present holder of such an interest.

This requirement for businesses is of minor and machinery nature and would not represent a significant cost to businesses – that is, any cost associated with complying with this requirement would be significantly below \$1,000.

Impact Analysis

From the table above, it is clear that the requirements on users to comply with either option 1 or 2 are very similar. This is because the regulatory requirements are similar – what this proposal is seeking to do is not impose additional requirements on non-Defence users of the WPA, but rather to provide a more certain basis for the administrative procedures that are currently in place. The overall objective is to provide non-Defence users with a greater level of long-term certainty around their access to the WPA, and the conditions attached to that access.

Regardless of whether option 1 or 2 is taken, there are going to be compliance costs associated with allowing non-Defence access to a prohibited area used for weapons testing. Having conditions placed on non-Defence users' access is necessary in any circumstance to ensure safety of people and security of Defence activity. The aim is to ensure that all users – Defence and non-Defence alike – have the greatest level of certainty around these access conditions.

Option 2 offers businesses involved in mining an overall cost saving as applying for a mining production permit will cost substantially less than negotiating an individual deed of access, which is the current requirement. Saving would be made through a reduction in the time and administration involved in applying for and receiving a permit, compared with negotiating a deed of access.

An estimate has been included of the likely reduction in time and resources involved in negotiating access to the WPA in Option 2. Defence estimates a cost to individual companies of \$174,000 as an upfront cost to negotiate a deed of access for mining production. It is estimated that applying for a permit, which involves completing a standard form, would be a minor cost (Defence has estimated \$500). This estimate takes account of the fact that Option 2 provides a set timeframe for Defence to determine the application, whereas negotiating a deed of access for mining would take a longer period of time as Defence would be involved earlier and for longer in the process. Having the set period for determining a permit application would reduce costs from delays in decision making for applicants.

For the purposes of costing the options, Defence has assumed that four new mines might begin operation in the WPA over the next decade. This assumption has been estimated from the past decade in which three mines opened in the WPA. Defence has estimated that with the improved access arrangements provided for in the proposed legislation there would be a 25% increase in active mining operations in the area in the first decade. This estimate is made factoring in the long lead time involved in mining investments and the increase in mining over the last 10 years. The estimated

increase of 25% in the next 10 years is subject to the economic conditions in the mining sector.

Costs for other groups, including opal miners, environmental groups, tourists and other recreational users would remain the same as the requirements for these groups under each option are the same. Under both options 1 and 2, these groups would be required to apply for a permit to access the WPA.

Impact groups

The main groups affected by the options are:

- Business: mineral and energy resources companies (both exploration and mining companies), opal miners.
- Government: Defence, as both the principal user of the WPA and the administrator of the access arrangements.
- Community: tourists, other recreational users.

Option 1 - Benefits

The benefits of continuing the current administrative management of non-Defence access to the WPA are:

Business

- Defined periods, under administrative arrangements, when non-Defence users might be excluded from the WPA, and forward notification about the timing of the exclusion periods.
- Certainty over conditions of access, which are included in the deed of access or the permit depending on the type of user.

Government

- Provides Defence with a timetable for when it may conduct testing activity in the WPA.
- Although not the intent, in theory, Defence retains more flexibility to alter the exclusion period timetable if required as it is an administrative process only (that is, there is no legal requirement for Defence to have exclusion periods or give notification about when they will occur).

Community

- Provides opal miners, environmental groups, tourists and other recreational users with forewarning about the WPA exclusion periods for Defence activity.

Option 1 – Costs

The costs of continuing the current administrative management of non-Defence access to the WPA are:

Business

- Negotiating a mining deed of access is the one area where a cost will be different between the two options as there will be an up-front cost to negotiate the deed under Option 1 (Option 2 is a standard permit). In consultation with the South Australian Department of Manufacturing, Industry, Trade, Resources and Energy, Defence estimates that it will involve a team of mining specialists and lawyers. We estimate the costs to be approximately \$174,000, which is based on the following:

Costs to negotiate a deed of access for mining production in the WPA

Service	Daily Rate	Number of Days	Total
Mining expertise (a geotechnical engineer and assistant technical support)	\$2,400	20	\$48,000
Legal: partner	\$4,800	15	\$72,000
Legal: senior associate	\$2,700	20	\$54,000
Total			\$174,000

- The conditions of all other deeds of access are not negotiable and are publicly available in a template; however, business remains concerned that Defence may change the conditions of the template deed for future non-Defence users, theoretically without consultation with potential users, and this presents a potential risk of unknown additional costs.
- Being a contractual arrangement, businesses have no right of review for decisions made by Defence in relation to access, as they would under option 2.
- Although the exclusion periods are currently notified by Defence with forewarning, the requirement for the exclusion periods and the notification timeframe are administrative processes only and so there is less certainty in the arrangements. Without a legislative basis, it is more difficult for business to make significant long-term investments in the WPA.

Government

- It is expected to cost more to administer a deed of access for mining than a resources production permit, due to the cost to the Australian Government to have legal negotiators.
- There is no administrative enforcement scheme to manage compliance with access conditions. All non-compliance must currently be dealt with through the courts, which is an expensive and resource-intensive process.

Community

- Applying for a permit has a minimal time cost for opal miners, environmental groups, tourists and other recreational users. There would be no financial cost to submit an access application.

Option 2 – Benefits

The benefits of implementing non-Defence user access arrangements to the WPA in legislation are:

Business

- The exclusion periods and notification periods would be set out in legislation – giving business greater investment certainty on the legislated exclusion periods and notification deadlines.
- Conditions of an access permit are set out in legislation – any amendment to the conditions would need to go through normal Parliamentary processes, including consultation with affected groups.
- The proposed legislation contains a right of review – both internal review by the Minister for Defence and external review by the Administrative Appeals Tribunal – for many decisions that can be made under the proposed legislation. This provides business with avenues to appeal decisions not favourable to it.
- A defined enforcement scheme for compliance with conditions will provide greater certainty of outcomes than the current court-based approach.
- It is expected that applying for a permit may cost business less than entering into a deed of access.

Government

- Reduces administrative effort associated with negotiating and executing individual deeds.
- Provides an administrative enforcement scheme for compliance with conditions by non-Defence users. This offers a more efficient and defined way of managing compliance than the court system (particularly for minor breaches). A defined scheme to manage non-compliance is expected to result in better adherence by non-Defence users to their access conditions, increasing safety and security of all users and minimising potential disruption to Defence activity.

Community

- Provides opal miners, environmental groups, tourists and other recreational users with forewarning about the WPA exclusion periods for Defence activity.

Option 2 – Costs

The costs of implementing non-Defence user access arrangements to the WPA in legislation are:

Business

- Applying for a permit, in an approved form; although these costs are expected to be less than entering into a deed of access.

Government

- Managing an administrative enforcement scheme would likely cost more than one that relies only on the court process, due the amount of administrative effort involved.

Community

- Applying for a permit would have a minimal time cost for opal miners, environmental groups, tourists and other recreational users. There would be no financial cost to submit an access application.

Consultation

Defence has prepared a single-stage RIS for this proposal as the legislation introduced into the previous parliament lapsed with the 2013 election. As no decision had been previously announced by the current Government an options-stage RIS is not required. It is also noted that extensive consultation on the proposal was undertaken prior to the introduction of the legislation into the previous Parliament, with a summary provided below.

Hawke Review

The Hawke Review team consulted extensively with stakeholders to obtain the views of individuals and groups with an interest in the WPA, including representatives from the South Australian Government, the Australian Government, the resources industry, pastoralists, Indigenous groups, the Woomera community, and Defence and its international partners. The secretariat advertised nationally inviting interested parties to make a submission to the review and maintained a public website.

Twenty five submissions were received from a range of contributors in addition to input from the South Australian Government and key Australian Government stakeholders. Key themes that emerged from the submissions were the importance of the WPA to a variety of users, the amount invested by industry groups and Defence, the differing approaches to managing non-Defence users' access and the challenges involved in communicating requirements and expectations between user groups.

The Review's analysis of the key themes and preliminary observations arising from the consultations and submissions are contained in the Review's Interim Report which can be accessed at:

<http://www.defence.gov.au/woomera/review/papers/WoomeraInterimReport.pdf>.

The Interim Report identified the requirements of WPA user groups, assessed the extent to which these requirements were being met, and proposed mechanisms to support better co-existence. It concluded that introducing a comprehensive range management framework would increase use of the WPA in the national interest by

better balancing national security and economic interests. Public comment was sought on the Interim Report before recommendations were finalised for inclusion in the Final Report, which can be accessed at:

<http://www.defence.gov.au/woomera/review/papers/WoomeraFinalReport.pdf>.

Three organisations provided written comment on the Interim Report.

Consultation on the proposed legislation

As part of the public consultation process, an information paper on the proposed legislative framework for the WPA was released and distributed widely to stakeholders and interested parties in April 2013. The paper provided a general overview of the policy framework proposed for implementation in the legislative package. Concurrently, the draft bill was developed and referred to Australian Government and South Australian Government stakeholder agencies for review and comment, with proposed amendments being incorporated where appropriate.

The proposed legislation built upon the consultation activities that occurred during the conduct of the Hawke Review in 2010-2011, together with the public consultation regarding the Minerals Exploration Deed of Access developed during the moratorium period in 2012. The then Ministers for Defence and Resources and Energy released an exposure draft of the bill for stakeholder and other public consultation on 8 May 2013. The draft was also brought to the attention of all other identified stakeholders and interested parties, and published on the WPACO website.

The South Australian Government hosted a public consultation workshop, chaired by WPACO, on 10 May 2013, to discuss the bill. Stakeholders and interested parties provided feedback through the workshop and by written submission.

Feedback was considered and, where appropriate, the exposure bill was amended to take feedback into account. This led to amendments which included express and specific recognition of the existing authorities for existing users, including Indigenous groups.

Consultation with Indigenous groups

Many of the concerns raised by Indigenous stakeholders relate to their existing arrangements and are not directly related to, or caused by, provisions in the proposed bill and require other forms of resolution. Defence is working to resolve these concerns.

Defence is responding seriously to issues about existing arrangements that have been raised through this consultation process, and is committed to working cooperatively with Indigenous stakeholders on a continuing basis into the future. Defence acknowledges that open communication, mutual respect and trust will be key elements of the successful management of the WPA, and it is working with Indigenous groups to develop working level agreements to guide successful co-operation in the WPA.

Woomera Prohibited Area Rules

Section 72TP to the proposed bill provides for the Minister for Defence to make Woomera Prohibited Area Rules, with the agreement of the Minister for Industry. This provision ensures that the rules may only be amended by the Minister for Defence with the agreement of the Minister for Industry.

Senate inquiry during the previous Parliament into the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013 and Woomera Prohibited Area Rules

The bill introduced into the last Parliament was referred to the Senate Foreign Affairs Defence and Trade Legislation Committee for inquiry. Only one mining company provided a submission to the inquiry and this was positive about both the proposed legislation and the way the co-existence management regime had been implemented to date.

The railway owners and operators made submissions identifying concerns about lack of certainty over the standing permission to be granted in the bill and also over the length of any possible suspension of access.

Indigenous and conservation groups identified concerns over lack of protection for Indigenous sacred sites and conservation areas with the increased mining and Defence activity expected to occur.

Conclusion/Recommendation

The proposed change is to implement existing administrative procedures for non-Defence users to access the WPA in legislation. The reason for this regulatory change is to provide non-Defence users with long-term certainty around their ability to access the WPA and the conditions attached to that access. The consultation process has shown that affected non-Defence users support the proposed regulatory change.

The Departments of Defence and Industry support the proposed amendments.

Implementation and Review

In implementing legislation, Defence will make use of the existing management arrangements as far as possible, including updating the website to provide access to permit applications and to make available information on the rights and responsibilities of permit holders under the legislation.

As recommended by the Hawke Review, the Woomera Prohibited Area Advisory Board will review all aspects of the coexistence arrangements, including any legislation, in 2018. Additionally, Defence is working to establish a Reference Group as a consultative body and working level agreements with Indigenous groups will be established. Protocols with the railway operators will also be developed.

Regulatory Burden and Cost Offset (RBCO) Estimate Table

Average Annual Compliance Costs (from Business as usual)				
Sector/Cost Categories	Business (Resources sector)	Not-for-profit	Individuals	Total by cost category
Administrative Costs	-69,100	N/A	N/A	-69,100
Substantive Compliance Costs	0	N/A	N/A	0
Delay Costs	0	N/A	N/A	0
Total by Sector	-69,100	N/A	N/A	-69,100
Annual Cost Offset				
	Agency	Within portfolio	Outside portfolio	Total by sector
Business	0	0	0	0
Not-for-profit	0	0	0	0
Individuals	0	0	0	0
Total by source	0	0	0	0
Proposal is cost neutral? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no Proposal is deregulatory <input checked="" type="checkbox"/> yes <input type="checkbox"/> no Balance of cost offsets \$69,100				

Defence has estimated that the cost of maintaining option 1 as the regulatory basis for access to the WPA for the resources sector would be \$69,100 per year for 10 years. This figure is based on the assumption that four mines would begin operation in the WPA within the next decade and that it would cost each mine \$174,000 total to gain access to the WPA for mining production by negotiating a deed of access for mining production with Defence. Applying for a permit instead of a deed of access would save time and administration costs as discussed in the Impact Analysis for Option 2.

Defence estimates that the cost for applying for a permit for mining production in the WPA under Option 2 would be \$500, which would include the cost of filling out the permit application form and clearing it through the necessary authorities within a company. For the estimated four companies (see Impact Analysis section on page 8 for an explanation of how Defence extrapolated this figure) this would be a total cost of \$2000 over 10 years, or \$200 per year for 10 years. This figure deducted from the overall cost saving offered by option 2 produces a total saving of \$69,100 per year over 10 years for the mining production sector.