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The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Defence Legislation Amendment
(Woomera Prohibited Area) Bill 2014**

No. , 2014

(Defence)

**A Bill for an Act to amend legislation relating to
defence, and for related purposes**

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1 **A Bill for an Act to amend legislation relating to**
2 **defence, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Defence Legislation Amendment*
6 *(Woomera Prohibited Area) Act 2014*.

7 **2 Commencement**

8 This Act commences on the day after this Act receives the Royal
9 Assent.

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3 Schedule(s)

- (1) Each Act, and each set of regulations, that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
- (2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.

1 **Schedule 1—Amendments**

2 **Part 1—General amendments**

3 ***Defence Act 1903***

4 **1 Subsection 71A(1) (definition of *defence premises*)**

5 Repeal the definition, substitute:

6 ***defence premises*** means:

- 7 (a) any of the following that is in Australia, and is owned or
8 occupied by the Commonwealth for use by the Defence
9 Force or the Department:
- 10 (i) an area of land or any other place (whether or not it is
11 enclosed or built on);
 - 12 (ii) a building or other structure;
 - 13 (iii) a vehicle, vessel or aircraft, including any fixed or
14 moveable ramp, stairs or other means of access to, or
15 exit from, the vehicle, vessel or aircraft;
 - 16 (iv) a prohibited area, within the meaning of the *Defence*
17 *(Special Undertakings) Act 1952*; or
- 18 (b) the Woomera Prohibited Area.

19 **2 Subsection 71A(1)**

20 Insert:

21 ***Woomera Prohibited Area*** means the area prescribed under
22 subsection 72TA(1).

23 **3 After Part VIA**

24 Insert:

25 **Part VIB—The Woomera Prohibited Area**

26
27 **72T Definitions**

28 In this Part:

1 **Aboriginal person** means a person of the Aboriginal race of
2 Australia.

3 **acquisition of property** has the same meaning as in
4 paragraph 51(xxxi) of the Constitution.

5 **Anangu Pitjantjatjara Yankunytjatjara lands** means the lands
6 within the meaning of the *Anangu Pitjantjatjara Yankunytjatjara*
7 *Land Rights Act 1981* (SA).

8 **Industry Minister** means the Minister administering the *Offshore*
9 *Petroleum and Greenhouse Gas Storage Act 2006*.

10 **just terms** has the same meaning as in paragraph 51(xxxi) of the
11 Constitution.

12 **Maralinga Tjarutja lands** means the lands within the meaning of
13 the *Maralinga Tjarutja Land Rights Act 1984* (SA).

14 **Minister's permission** means permission under section 72TF.

15 **pastoral lease** means a lease over land in the Woomera Prohibited
16 Area held under the *Pastoral Land Management and Conservation*
17 *Act 1989* (SA).

18 **permission** has the meaning given by subsection 72TC(3).

19 **permit** means a permit under the Rules.

20 **Rules** means the Woomera Prohibited Area Rules made under
21 section 72TP.

22 **standing permission** means permission provided by the Rules
23 under section 72TD.

24 **this Part** includes the Rules.

25 **traditional owner:**

26 (a) in relation to the Maralinga Tjarutja lands, means a
27 traditional owner within the meaning of the *Maralinga*
28 *Tjarutja Land Rights Act 1984* (SA); and

29 (b) in relation to the Anangu Pitjantjatjara Yankunytjatjara lands,
30 means a traditional owner within the meaning of the *Anangu*
31 *Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA).

1 ***Woomera Prohibited Area*** means the area prescribed under
2 subsection 72TA(1).

3 **72TA The Woomera Prohibited Area**

- 4 (1) The Rules may prescribe an area as the Woomera Prohibited Area.
- 5 (2) The area:
- 6 (a) must be intended for use for the purposes of testing war
7 materiel; and
- 8 (b) may be used for those purposes.
- 9 (3) The Rules may, for the purposes of this Part:
- 10 (a) prescribe zones within the Woomera Prohibited Area; and
- 11 (b) make provision for exclusion periods within those zones.

12 **72TB Application of this Part and Part VII of the *Defence Force***
13 ***Regulations 1952***

- 14 (1) After the commencement of this Part, Part VII of the *Defence*
15 *Force Regulations 1952* applies only to the following:
- 16 (a) an Aboriginal person in the Woomera Prohibited Area
17 exercising native title rights or rights under the *Native Title*
18 *Act 1993*;
- 19 (b) an Aboriginal person in the Woomera Prohibited Area:
- 20 (i) exercising rights under section 47 of the *Pastoral Land*
21 *Management and Conservation Act 1989* (SA); or
- 22 (ii) exercising rights under the *Aboriginal Heritage Act*
23 *1988* (SA), or involved in the protection of sites, objects
24 or remains protected under that Act;
- 25 (c) a traditional owner in the Woomera Prohibited Area for
26 purposes related to the Maralinga Tjarutja lands;
- 27 (d) a traditional owner in the Woomera Prohibited Area for
28 purposes related to the Anangu Pitjantjatjara Yankunytjatjara
29 lands;
- 30 (e) a person in the Woomera Prohibited Area who is employed
31 or engaged by, or is acting for, or on behalf of, a person
32 covered by paragraphs (a) to (d);
- 33 (f) a person in the Woomera Prohibited Area who is
34 accompanied by a person covered by paragraphs (a) to (e);

Schedule 1 Amendments
Part 1 General amendments

- 1 (g) an Aboriginal person who:
2 (i) has been invited onto the Maralinga Tjarutja lands or
3 Anangu Pitjantjatjara Yankunytjatjara lands; and
4 (ii) is in the Woomera Prohibited Area for purposes related
5 to the invitation;
- 6 (h) a person in the Woomera Prohibited Area who is acting for,
7 or on behalf of, South Australia;
- 8 (i) a person in the Woomera Prohibited Area who is
9 accompanied by a person covered by paragraph (h);
- 10 (j) a person who:
11 (i) holds a pastoral lease (whether the person's interest in
12 the lease was acquired before or after the
13 commencement of this Part); and
14 (ii) is in the Woomera Prohibited Area for purposes related
15 to the lease;
- 16 (k) a person who:
17 (i) is employed or engaged by, or is acting for, or on behalf
18 of, a person who holds a pastoral lease; and
19 (ii) is in the Woomera Prohibited Area for purposes related
20 to the lease;
- 21 (l) a person in the Woomera Prohibited Area who is
22 accompanied by a person covered by paragraph (j) or (k);
- 23 (m) a person who:
24 (i) is the owner or operator of the Tarcoola to Darwin
25 railway; and
26 (ii) is in the Woomera Prohibited Area for purposes related
27 to the operation of the railway;
- 28 (n) a person who:
29 (i) is employed or engaged by, or is acting for, or on behalf
30 of, a person who is the owner or operator of the
31 Tarcoola to Darwin railway; and
32 (ii) is in the Woomera Prohibited Area for purposes related
33 to the operation of the railway;
- 34 (o) a person in the Woomera Prohibited Area who is
35 accompanied by a person covered by paragraph (m) or (n);
- 36 (p) a person who has authority for the purposes of Part VII of the
37 *Defence Force Regulations 1952* to be at a place in the
38 Woomera Prohibited Area and the authority was given before
39 the commencement of this Part.
-

1 (2) If Part VII of the *Defence Force Regulations 1952* applies to the
2 person, this Part does not apply to the person.

3 *Effect of permit on existing authority*

4 (3) Subsections (1) and (2) do not prevent a person from applying for a
5 permit.

6 (4) Authority for the purposes of Part VII of the *Defence Force*
7 *Regulations 1952* for a person to be at a place in the Woomera
8 Prohibited Area is revoked to the extent that a permit provides (or
9 provided) permission for the person to be at the place.

10 **72TC Offence—being in the Woomera Prohibited Area without**
11 **permission**

12 (1) A person commits an offence if:

13 (a) the person is not:

14 (i) a member of the Defence Force; or

15 (ii) the Secretary; or

16 (iii) an APS employee in the Department; and

17 (b) the person is at a place in the Woomera Prohibited Area.

18 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

19 (2) Subsection (1) does not apply if the person has permission to be at
20 the place.

21 (3) The person has *permission* to be at the place if:

22 (a) a standing permission provides permission for the person to
23 be at the place; or

24 (b) a permit provides permission for the person to be at the place;
25 or

26 (c) the person has the Minister's permission to be at the place.

27 **72TD Standing permission**

28 (1) The Rules may provide permission for a person to be at a place in
29 the Woomera Prohibited Area.

30 (2) The permission may be subject to conditions set out in the Rules.

- 1 (3) The Rules may make provision for, and in relation to, other matters
2 in relation to standing permission.

3 **72TE Permits**

- 4 (1) The Rules may make provision for, and in relation to, permits that
5 provide permission for persons to be at places in the Woomera
6 Prohibited Area.
- 7 (2) The Rules may make provision in relation to the following:
8 (a) the purposes for which permits may be issued;
9 (b) applying for permits;
10 (c) issuing and renewing permits;
11 (d) suspending and cancelling permits;
12 (e) conditions to which permits are subject.
- 13 (3) Subsection (2) does not limit subsection (1).

14 **72TF Minister's permission**

- 15 (1) The Minister may, on request, give written permission for a person
16 to be at a place in the Woomera Prohibited Area.
- 17 (2) The permission must:
18 (a) specify the person by name; and
19 (b) be given in accordance with any requirements set out in the
20 Rules.
- 21 (3) The permission may be subject to one or more of the following:
22 (a) conditions imposed by the Minister and set out in the
23 permission;
24 (b) conditions set out in the Rules.
- 25 (4) The Rules may make provision for, and in relation to, other matters
26 in relation to Minister's permission.

27 **72TG Offence—failing to comply with conditions**

- 28 (1) A person commits an offence if:
29 (a) the person has permission to be at a place in the Woomera
30 Prohibited Area; and

- 1 (b) the person does, or refuses or fails to do, an act or thing; and
2 (c) doing, or refusing or failing to do, the act or thing results in a
3 failure to comply with a condition of the permission.

4 Penalty: 60 penalty units.

- 5 (2) Subsection (1) is an offence of strict liability.

6 **72TH Minister may suspend permission**

7 (1) The Minister may suspend a permission if the Minister considers it
8 necessary for the purposes of the defence of Australia.

9 (2) The suspension must be:

- 10 (a) in writing; and
11 (b) in accordance with any requirements set out in the Rules.

12 (3) A suspension under subsection (1) is not a legislative instrument.

13 **72TJ Minister may give directions**

14 (1) The Minister may direct a person to do, or not to do, one or more
15 specified acts or things in relation to the Woomera Prohibited Area
16 if the Minister considers it necessary:

- 17 (a) for the purposes of the defence of Australia; or
18 (b) to protect human life.

19 (2) The direction may include one or more of the following:

- 20 (a) a direction to leave a place or an area;
21 (b) a direction to move, or remove, property or livestock;
22 (c) a direction to secure buildings.

23 (3) Subsection (2) does not limit subsection (1).

24 (4) A direction made in writing under subsection (1) is not a legislative
25 instrument.

26 *Offence—failing to comply with direction*

27 (5) A person commits an offence if:

- 28 (a) the person is given a direction under subsection (1); and
29 (b) the person refuses or fails to comply with the direction.

1 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

2 **72TK Compensation for acquisition of property**

- 3 (1) If the operation of this Part would result in an acquisition of
4 property from a person otherwise than on just terms, the
5 Commonwealth is liable to pay a reasonable amount of
6 compensation to the person.
- 7 (2) If the Commonwealth and the person do not agree on the amount
8 of the compensation, the person may institute proceedings in a
9 court of competent jurisdiction for the recovery from the
10 Commonwealth of such reasonable amount of compensation as the
11 court determines.

12 **72TL Compensation for loss or damage**

13 The Rules may limit amounts payable by the Commonwealth in
14 respect of loss or damage in the Woomera Prohibited Area arising
15 from a breach of a common law or statutory duty of care in relation
16 to the use of the Woomera Prohibited Area for the purposes of
17 testing war materiel.

18 **72TM Review of decisions**

19 *Internal review*

- 20 (1) A person whose interests are affected by any of the following
21 decisions may, by writing, apply to the Minister for a review of the
22 decision:
- 23 (a) a decision under section 72TF to give, or not to give, written
24 permission for a person to be at a place in the Woomera
25 Prohibited Area;
- 26 (b) a decision to suspend a permission under section 72TH;
- 27 (c) a decision to give a direction under section 72TJ.
- 28 (2) On application for review of the decision, the Minister must:
- 29 (a) review the decision; and
- 30 (b) confirm, vary or revoke the decision.

1 (3) Within 20 business days after receiving the application, the
2 Minister must give the person written notice of the decision on the
3 review.

4 *AAT review*

5 (4) Applications may be made to the Administrative Appeals Tribunal
6 for review of decisions of the Minister on the review of a decision
7 under section 72TF to give, or not to give, written permission for a
8 person to be at a place in the Woomera Prohibited Area.

9 (5) To avoid doubt, a decision under section 72TF to give written
10 permission for a person to be at a place in the Woomera Prohibited
11 Area includes a decision to give such permission subject to
12 conditions imposed by the Minister.

13 **72TN Delegation**

- 14 (1) The Minister, by writing, may delegate his or her power under
15 section 72TF (Minister's permission) to:
- 16 (a) an APS employee who holds or performs the duties of an
17 APS 6 position, or an equivalent or higher position, in the
18 Department; or
 - 19 (b) an officer of the Navy who holds the rank of Commander or
20 a higher rank; or
 - 21 (c) an officer of the Army who holds the rank of
22 Lieutenant- Colonel or a higher rank; or
 - 23 (d) an officer of the Air Force who holds the rank of Wing
24 Commander or a higher rank.
- 25 (2) The Minister, by writing, may delegate his or her power under
26 paragraph 72TJ(1)(b) (direction to protect human life) to:
- 27 (a) an APS employee who holds or performs the duties of an
28 Executive Level 2 position, or an equivalent or higher
29 position, in the Department; or
 - 30 (b) an officer of the Navy who holds the rank of Captain or a
31 higher rank; or
 - 32 (c) an officer of the Army who holds the rank of Colonel or a
33 higher rank; or
 - 34 (d) an officer of the Air Force who holds the rank of Group
35 Captain or a higher rank.

- 1 (3) The Minister, by writing, may delegate his or her power under
2 section 72TM to review the following decisions to an APS
3 employee who holds or performs the duties of an SES Band 2
4 position, or an equivalent or higher position, in the Department:
5 (a) a decision under section 72TF to give, or not to give, written
6 permission for a person to be at a place in the Woomera
7 Prohibited Area;
8 (b) a decision to give a direction under paragraph 72TJ(1)(b)
9 (direction to protect human life).

10 **72TP The Woomera Prohibited Area Rules**

- 11 (1) The Minister may, by legislative instrument and with the
12 agreement of the Industry Minister, make Woomera Prohibited
13 Area Rules prescribing matters:
14 (a) required or permitted by this Part to be prescribed by the
15 Rules; or
16 (b) necessary or convenient to be prescribed for carrying out or
17 giving effect to this Part.
- 18 (2) Without limiting subsection (1), the Rules may:
19 (a) prescribe fees for doing any act or providing any service for
20 the purposes of this Part and prescribe the circumstances and
21 ways in which fees can be refunded, waived or reduced; and
22 (b) make provision for, and in relation to, the review of decisions
23 made under this Part or the Rules.
- 24 (3) A fee prescribed under paragraph (2)(a) must not be such as to
25 amount to taxation.

26 *Infringement notices*

- 27 (4) The Rules may provide for a person who is alleged to have
28 committed an offence against subsection 72TG(1) to pay a penalty
29 to the Commonwealth as an alternative to prosecution.
- 30 (5) The penalty must not exceed one-fifth of the maximum fine that a
31 court could impose on the person as a penalty for that offence.

1

Demerit points

2

- (6) The Rules may establish a demerit points system under which a permit may be suspended or cancelled if the holder of the permit accrues a prescribed number of demerit points.

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4

1 **Part 2—Amendments relating to the operation of**
2 **Part VII of the Defence Force**
3 **Regulations 1952**

4 ***Defence Act 1903***

5 **4 After section 121**

6 Insert:

7 **121A Validation of declaration and past acts in relation to the**
8 **Woomera Prohibited Area**

9 (1) This section applies in relation to:

- 10 (a) the declaration of the Woomera Prohibited Area under
11 regulation 35 of the *Defence Force Regulations 1952* by
12 notice published in the Gazette on 12 July 1989; and
13 (b) things done (the *past acts*) by the Commonwealth under
14 regulation 35 of the *Defence Force Regulations 1952* as a
15 result of the declaration.

16 (2) The declaration and past acts are taken always to have been valid.

17 (3) To the extent that, apart from subsection (2) and this subsection,
18 the declaration and past acts would be invalid because they would
19 result in an acquisition of property (within the meaning of
20 paragraph 51(xxxi) of the Constitution) from a person otherwise
21 than on just terms (within the meaning of that paragraph), the
22 Commonwealth is liable to pay a reasonable amount of
23 compensation to the person.

24 (4) If the Commonwealth and the person do not agree on the amount
25 of the compensation, the person may institute proceedings in the
26 Federal Court of Australia or another court of competent
27 jurisdiction for the recovery from the Commonwealth of such
28 reasonable amount of compensation as the court determines.

29 (5) In this section:

30 ***valid*** includes having full force and effect.

1 ***Defence Force Regulations 1952***

2 **5 Regulation 36**

3 Repeal the regulation, substitute:

4 **36 Compensation for acquisition of property**

- 5 (1) If the operation of regulation 34 or 35 would result in an
6 acquisition of property (within the meaning of paragraph 51(xxxi)
7 of the Constitution) from a person otherwise than on just terms
8 (within the meaning of that paragraph), the Commonwealth is
9 liable to pay a reasonable amount of compensation to the person.
- 10 (2) If the Commonwealth and the person do not agree on the amount
11 of the compensation, the person may institute proceedings in the
12 Federal Court of Australia or another court of competent
13 jurisdiction for the recovery from the Commonwealth of such
14 reasonable amount of compensation as the court determines.