EXPLANATORY STATEMENT

Issued by authority of the Minister for Defence

Defence Act 1903

Woomera Prohibited Area (Exclusion Periods for Amber Zone 1 and Amber Zone 2 for 1 July 2026 to 31 December 2026) Amendment Determination 2026

Authority

The *Woomera Prohibited Area (Exclusion Periods for Amber Zone 1 and Amber Zone 2 for 1 July 2026 to 31 December 2026) Amendment Determination 2026* (the Determination) is made under subsection 8(1) of the *Woomera Prohibited Area Rule 2014* (Rule).

Subsection 8(1) of the Rule provides that the Minister may, by legislative instrument, determine exclusion periods for a financial year for amber zone 1 and amber zone 2 in the Woomera Prohibited Area (WPA). Relevantly, subsection 8(4) of the Rule also provides that an exclusion period may apply to a part of a zone within the WPA.

Under subsection 63(2) of the Rule, the Minister may delegate the power to determine exclusion periods, including to an APS employee who holds or performs the duties of an Executive Level 1 position, or an equivalent or higher position, within the Department of Defence (Defence). On 12 September 2022, the Minister delegated this power by written instrument, to the Director of the Woomera Prohibited Area Coordination Office.

Purpose and Operation

The Determination amends the *Woomera Prohibited Area (Exclusion Periods for Amber Zone 1 and Amber Zone 2 for 1 July 2026 to 31 December 2026) Determination 2026* to update exclusion period dates for Amber Zone 2 determined in that instrument. The Determination operates to "cancel" the previously determined exclusion periods of 12 October 2026 to 18 October 2026 and 19 October 2026 to 25 October 2026. Users of the WPA will no longer be excluded from the Amber Zone 2 during that period.

Background

In 2014, the *Defence Legislation Amendment (Woomera Prohibited Area) Act 2014* amended the *Defence Act 1903*. These amendments gave effect to the recommendations made in the Final Report of the Review of the Woomera Prohibited Area, released on 3 May 2011.

The amendments empower the Minister to make, by legislative instrument, rules in relation to the WPA. Accordingly, on 25 August 2014, the Minister exercised this power and made the Rule. Relevantly, the Rule allows for the issuing of permits for non-Defence members to access the WPA. Under the Rule, the Minister may prescribe zones within the WPA, and make provision for exclusion periods within those prescribed zones.

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The legislative framework governing the WPA is predicated upon a coexistence model. It provides non-Defence users with greater certainty over Defence activity taking place within the WPA. It allows users to make commercial decisions with some assurance as to when they will be requested to leave the area due to scheduled Defence activity.

Details of the instrument

Details of the instrument are set out in Attachment A.

Consultation

Defence consulted on the general principles of exclusion periods in the WPA as part of the drafting of the Rule. Through this process, the persons who are directly affected by the exclusion periods were consulted, and given the opportunity to comment on the Minister's power to determine exclusion periods, including detailing the direct or indirect impact an exclusion period would have on them or their business.

The Rule contains a number of mechanisms to limit the potential impacts that exclusion periods have on affected persons, including the notification requirements provided under section 9 and limitations on the number of days that persons may be excluded from the WPA under section 8.

Additional consultation was not undertaken in relation to the making of the Determination as the cancelled exclusion periods will confer a benefit on WPA users. Defence will notify users of the changes to Amber Zone 2 exclusion periods for October 2026 prior to 12 October 2026.

Commencement

The instrument commences on the day after it is registered on the Federal Register of Legislation.

Parliamentary scrutiny

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

The Determination is subject to disallowance under section 42 of the *Legislation Act 2003*.

A Statement of Compatibility with Human Rights has been prepared in accordance with subsection 9(2) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement provides that the instrument is compatible with human rights because it promotes the protection of human rights, and to the extent that it may limit human rights, those limitations are necessary, reasonable and proportionate. The Statement of Compatibility with Human Rights is set out at **Attachment B**.

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Attachment A

Details of the Woomera Prohibited Area (Exclusion Periods for Amber Zone 1 and Amber Zone 2 for 1 July 2026 to 31 December 2026) Determination 2026

Section 1 – Name

Section 1 provides that the name of the instrument is the *Woomera Prohibited Area (Exclusion Periods for Amber Zone 1 and Amber Zone 2 for 1 July 2026 to 31 December 2026) Determination 2026* (the Determination).

Section 2 – Commencement

Section 2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the Determination is made under subsection 8(1) of the *Woomera Prohibited Area Rule 2014* (the Rule).

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to the Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Determination has effect according to its terms.

Schedule

The Schedule amends Schedule 2 to the *Woomera Prohibited Area (Exclusion Periods for Amber Zone 1 and Amber Zone 2 for 1 July 2026 to 31 December 2026) Determination 2026*. Item 1 omits items 1 and 2 of the table in Schedule 2 to that instrument. The effect of this is that for the period 12 October 2026 to 18 October 2026 and 19 October 2026 to 25 October 2026, WPA users will no longer be excluded from Amber Zone 2.

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Attachment B

Statement of Compatibility with Human Rights

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

Woomera Prohibited Area (Exclusion Periods for Amber Zone 1 and Amber Zone 2 for 1 July 2026 to 31 December 2026) Amendment Determination 2026

The *Woomera Prohibited Area (Exclusion Periods for Amber Zone 1 and Amber Zone 2 for 1 July 2026 to 31 December 2026) Amendment Determination 2026* (Disallowable Legislative Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

Under subsection 8(1) of the *Woomera Prohibited Area Rule 2014* (Rule) the Minister may, by legislative instrument, determine exclusion periods for amber zone 1 and amber zone 2. Subsection 8(4) of the Rule allows for an exclusion period to apply to part of a zone within the Woomera Prohibited Area (WPA). In accordance with section 10 of the Rule, a permit will not provide permission for a person (referred to as 'permit holders') to be at a place in the WPA during an exclusion period determined by legislative instrument.

The Disallowable Legislative Instrument is made under subsection 8(1) of the Rule and exercises the Minister's power, conferred to his delegate, to amend previously determined exclusion periods for amber zone 2 in the WPA. This is done by amending the *Woomera Prohibited Area (Exclusion Periods for Amber Zone 1 and Amber Zone 2 for 1 July 2026 to 31 December 2026) Determination 2026*. Under an exclusion period persons who are otherwise allowed in amber zone 1 and amber zone 2 are excluded from entering the parts of those zones that an exclusion period applies to. The Disallowable Legislative Instrument operates to "cancel" the previously determined exclusion periods of 12 October 2026 to 18 October 2026 and 19 October 2026 to 25 October 2026. Permit holders will no longer be excluded from amber zone 2 during that period.

Human rights implications

The Disallowable Legislative Instrument engages the following human rights:

- the freedom of movement in Article 12 of the International Covenant on Civil and Political Rights (ICCPR);
- the right to work under Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the right to the enjoyment of just and favourable conditions of work under Article 7 of ICESCR;
- the right to enjoy and benefit from culture in Article 27 ICCPR; and
- the right to take part in cultural life under Article 15 ICESCR.

Freedom of movement

Article 12 of the ICCPR ensures the right to freedom of movement which includes the right for those who are lawfully within a country to move freely within that country.

In general, during exclusion periods the WPA is used by Defence for testing activities relating to the defence of Australia. Accordingly, being physically in a part of the WPA where these test are occurring could endanger human life. Therefore, any limitations on freedom of movement imposed by subsection 8(1) determinations are considered reasonable, proportionate and necessary in these

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circumstances to maintain the security of Defence activities and protect personal safety. Exclusion periods meet this objective as they prevent the movement of people through an area when Defence is undertaking its testing activities. To ensure exclusion periods are reasonable and proportionate in the circumstances, exclusion periods declared are for finite periods of time.

However, as the Disallowable Legislative Instrument cancels previously determined exclusion periods for amber zone 2 in the WPA, during which time permit holders and other authorised persons would have been prohibited from entering, they will be able to move within the area as per normal.

The right to work and the right to just and favourable working conditions

The right to work is protected under Article 6 of ICESCR, and Article 7 recognises the right to the enjoyment of just and favourable conditions of work, including a right to safe and healthy working conditions.

As raised above, exclusion periods determined by the Minister under section 8 of the Rule remove the right of persons to access parts of the WPA for the duration of the exclusion periods due to Defence testing activities. This may prevent individuals from being able to work and prevent body corporates from conducting business activities in the WPA during the period. In these circumstances, the right to work is limited to the duration of the exclusion period and is intended to ensure personal safety and the security of permit holders. Any limitations on the right to work and the right to just and favourable working conditions are considered reasonable, proportionate and necessary to ensure the security of Defence activities and to protect personal safety. As the Disallowable Legislative Instrument cancels exclusion periods, persons will be able to access the WPA and work there under just and favourable conditions during the previously determined periods.

The right to enjoy and benefit from culture and the right to take part in cultural life

Article 27 of the ICCPR protects the rights of all people to enjoy and benefit from culture. Article 15 of the ICESCR protects the right to take part in cultural life.

For First Nations people, enjoying and benefiting from culture and taking part in cultural life may include traditional, social and economic activities such as fishing or hunting and the right to live on traditional lands. Exclusion periods in the WPA may limit First Nations people's cultural rights, including the traditional use of land in the relevant zones for hunting, food gathering and ceremonial or religious purposes. As above, limiting access is for the purpose of Defence testing activities, the conduct of which could endanger human life should people be in the zone while those activities take place.

Any limitation on these rights is reasonable, proportionate and necessary to maintain the security of Defence activities and ensure the safety of people who have access to this area. As the Disallowable Legislative Instrument cancels exclusion periods, First Nations people will be able to access the WPA and enjoy and take part in cultural life as recognised in the ICCPR and ICESCR during the previously determined periods.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because, to the extent that it limits any rights, they are permissible limitations that serve the legitimate purpose of protecting human life and safeguarding Australia’s security, defence, and international relations. By cancelling exclusion periods, the Disallowable Legislative Instrument ensures these rights will no longer be limited for the period 12 October 2026 to 18 October 2026 and 19 October 2026 to 25 October 2026.

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