

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 [The Department of Defence](#).
- 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 the [Department of Defence](#) website.

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 the [Department of Defense](#) website.

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.