



Genesee & Wyoming Australia Pty Ltd

31 January 2014

Committee Secretary
Senate Foreign Affairs, Defence and Trade Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600
Email: fadt.sen@aph.gov.au

Dear Sir/Madam

**RE: INQUIRY INTO DEFENCE LEGISLATION AMENDMENT
(WOOMERA PROHIBITED AREA) BILL 2013**

Genesee & Wyoming Australia Pty Ltd (GWA) provides this written submission in response to the Foreign Affairs, Defence and Trade Committee inquiry into the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013.

We note that Senator the Hon Mitch Fifield has indicated that the government is in the process of preparing an amended version of the Bill for the autumn 2014 sitting. We provide the following commentary to assist the Committee in its deliberations.

GWA manages and operates the railway between Tarcoola and Darwin; GWA is the holder of a Concession to do so until 2054. Our interest in the Bill relates to the operation of the railway through the Woomera Prohibited Area (WPA). The exclusion powers granted to the Department of Defence, under the proposed Woomera Prohibited Area Rules (the Rules) has the potential to close the railway.

GWA notes the potential for increased rail activity with the introduction of mining within the WPA. We believe that subsequent zone closures would inhibit the economic viability of mineral extraction and we urge the Committee to take this into consideration when considering the Bill as well as any amendments that maybe proposed.

We believe regulatory certainty is required for the rail industry and those customers who supply essential goods to the communities in the Northern Territory and South Australia, to ensure minimal disruption to freight. To highlight the economic importance of this line, the volume of intermodal freight between Adelaide and Darwin now averages over 600 containers per week, on six return trains each 1.8 kilometres long.

GWA provided a submission to the 43rd Parliament in relation to this Bill; a copy is attached for the information and consideration of the Committee at **Attachment A**.

The key points outlined in this submission included the following:

- GWA is the Concession Holder authorised to manage and operate the railway between Tarcoola and Darwin until 2054.
- The railway is of considerable economic value to business and consumers in South Australia, the Northern Territory and elsewhere.
- GWA notes that it is not subject to the Legislation for the Woomera Prohibited Area. GWA is aware that the Rules, as they are currently written, have the capacity to stop trains running on the railway line. The Minister for Defence has the right to stop trains in the interests of safety or security.
- A rail closure of two hours could cause a train to be cancelled. A Zone closure which affects the loading of a minerals train would probably cause a train cancellation.
- We strongly suggest that if the Legislation passes that the Rules be amended to protect the movement of freight on the Tarcoola to Darwin Railway line.
- While we note that there is standing permission to travel on the Darwin to Adelaide North-South Rail Link, however there is no definition in the Rules of what constitutes the railway line.
- A definition of the Darwin-Adelaide North-South Rail Link is also required.

We note the legislation as proposed by the former government lapsed at the end of the 43rd Parliament. GWA subsequently provided a submission to the Woomera Protected Area Coordination Office (WPACO) in relation to the drafting of the proposed Rules, to have our concerns raised with the former Senate Inquiry taken into account. We are committed to working with the appropriate authorities in developing the Rules and the application of them, as outlined below:-

1) Presentation to the Woomera Protected Area Coordination Office

In August 2013 following the receipt of submissions from GWA, the Australian Rail Track Corporation (ARTC) and the Australasian Railway Corporation (AARC) respectively, a meeting was facilitated by the WPACO to allow the concerns to be jointly discussed. In each of the submissions made by the rail companies, concerns were raised about the potential impact the legislative changes would have on both rail infrastructure and operations in the WPA.

From that meeting it was agreed that three key issues relating to the Rules would be followed up; they were:-

1. Rail and the Adelaide-Darwin railway needs to be recognised in the legislation as an existing user. There are only three major existing users (Indigenous Communities; pastoralists and rail); rail is the only one not mentioned in the legislation. If the legislation proceeds we would prefer it was amended but as a minimum we request the omission be addressed in the second reading speech.
2. The "Permissions" currently inadequately define our activities because it is limited to use of the railway line and fails to mention:-

- a. The use of rail facilities such as crossing loops and sidings.
- b. Maintenance requirements such as inspection vehicles using the railway or its associated access roads and maintenance activities. No-one is able to legally access the corridor without our permission; we know at all times who is undertaking activities on our network.

Therefore we requested that use of the railway be more accurately defined in the codifying "Permissions".

3. Apart from the overall economic impact, all parties have obligations in commercial contracts. In our undertakings we have lodged with economic regulators to provide adequate notice of any disruption.

We feel confident that we can create windows of time that will allow Defence personnel to undertake their proposed activities without disrupting our business or commercial operations.

To that end we proposed that we enter into a Joint Interface Agreement which will define the protocols to allow both the planning and execution of an activity period. GWA has agreed to take the lead in drafting this Joint Interface Agreement between the Department of Defence, ARTC and GWA.

The status on the three items above raised is:

1. This will be progressed following the review of the corridor definition by WPACO
2. A definition has been developed and provided to WPACO, a copy is attached to this submission at **Attachment B**. Discussions are ongoing in relation to the provision of maps.
3. A draft protocol has been developed and is subject to review by ARTC and AARC prior to submission to WPACO.

2) Presentation to the Woomera Protected Area Board

GWA, ARTC and AARC were invited to appear before the Woomera Prohibited Area Board on 3 December 2013 to further clarify the importance of the rail infrastructure. In our joint presentation we provided a briefing on the associated operation and discussed the potential impact this legislative change may have on servicing the northern areas of South Australia and the Northern Territory.

The Woomera Prohibited Area Board were also made aware of the importance of having an agreed protocol between all of the relevant parties to ensure minimal impact on the rail operations during test periods. These matters raised with both the WPACO and the Woomera Prohibited Area Board remain unresolved.

In providing this submission to the Inquiry, GWA seeks to ensure that the:

- Rail and the Adelaide-Darwin railway be recognised in the legislation as an existing user. We would prefer that the legislation be amended to reflect this, however as a

minimum we request the omission be addressed in the second reading speech.

- The rail corridor is adequately defined in legislation or in the associated Rules.
- The reference to agreed operating protocols be addressed in the second reading speech.

GWA recommends that if the proposed Legislation passes without the above matters being adopted as amendments, then changes to the exposure draft of the Rules be made, so those who rely on the Tarcoola to Darwin Railway Line can continue to grow their businesses.

GWA would be pleased to appear before the Committee at a future public hearing to further explain our position.

Yours sincerely

Greg Pauline
Managing Director

ATTACHMENT A – GWA SUBMISSION 2013



Genesee & Wyoming Australia Pty Ltd

19th July, 2013

Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Canberra ACT 2600

Australia

Email: fadt.sen@aph.gov.au

Dear Sir/Madam,

RE: DEFENCE LEGISLATION AMENDMENT (WOOMERA PROHIBITED AREA) BILL 2013

This letter concerns the Exposure Draft for the Defence Legislation (Woomera Prohibited Area) Bill 2013.

Genesee & Wyoming Australia Pty Ltd (GWA) is the Concession Holder that manages and operates on the railway line between Tarcoola and Darwin until 2054. GWA hauls containerised freight mainly for domestic consumption in Darwin, fuel mainly to Darwin and Alice Springs, and minerals from mines in the Northern Territory and northern South Australia to Darwin and ports in South Australia for export. The iconic Ghan passenger service also uses the line up to two times per week. The value of product hauled on the Tarcoola to Darwin Railway Line is estimated to be in the order of \$100m per week at current commodity prices. The railway line is of considerable economic value to business and consumers in South Australia, the Northern Territory and elsewhere.

GWA purchased the right to manage the Tarcoola to Darwin railway line in December 2010 and has since purchased nineteen new locomotives at a cost of \$83m to improve the performance and capacity of services to Darwin and to haul product from new mines mainly in the Wirrida area of South Australia, which is in the Woomera Prohibited Area. GWA has also made commitments to invest money in track to improve performance and capacity. We note with disappointment that the proposed Rules governing the Woomera Prohibited Area, associated with the Legislation, have the capacity to hamper expansion of rail use with knock on effects on the economies of the Northern Territory and South Australia as well as making it more difficult for GWA to maximize its recent investments in this railway line.

GWA notes that it is not subject to the Legislation for the Woomera Prohibited Area, but is well aware that the Rules as they are currently written have the capacity to stop trains running on the railway line through the rights of the Minister for Defence to stop trains in the interests of safety or security. If defence related tests are taking place in the area GWA would have to consider whether it stops trains to protect the interests of its employees or to comply with its own rail safety codes. While we are aware the Minister for Defence already has the capacity to close the railway line the Rules enshrine the capacity of the Minister to close lines for a significant number of days in any year, which is most concerning.

The railway line runs through the Green Zone and Amber Zone 2, where the Minister for Defence has the capacity to close the area for up to 70 days per year, or 19% of available train running time. In February 2013 GWA was informed that there would be two, four hour closures of zones in the Woomera Prohibited Area in May this year. The time for the closures would have caused disruption to railway working and created situations where trains would have had to have been cancelled. To its credit Aerospace Operational Support was prepared to negotiate when they were made aware of the consequences of their closure times. Closure zones were better defined and a series of track windows were negotiated for a period of two hours which would not affect train running or train loading. Three closures occurred in May, 2013. GWA was only affected during one closure when a train was running ahead of time, which will always be a risk to GWA when closure periods are negotiated.

While negotiations to avoid stopping trains were difficult at times and time consuming the results in this case were good for both GWA and the Minister for Defence. While we hope that this spirit of cooperation will continue GWA strongly believes that as use of the railway line increases and windows where tests can be carried out reduce, there will be times where rail closures will be forced, especially if testing requirements increase.

A rail closure of two hours in certain circumstances could cause a train to be cancelled. A Zone closure which affects the loading of a minerals train would probably cause a train cancellation.

Train paths on the Tarcoola to Darwin line are at a premium. The ARTC East West Railway Line which the Tarcoola to Darwin Line connects to, providing Darwin traffic access to all major Australian Capital cities is also busy. Disruptions on the Tarcoola to Darwin Line will have an effect on traffic on the ARTC East West Line, making recovery of trains difficult.

Train cancellations will have a knock on effect. Cancellation of mineral trains could disrupt shipping timetables for minerals exporters and the abilities of supermarkets in Darwin to supply produce. A switch to road transport will create congestion on road routes and increase costs of product in Darwin.

There are significant immediate and identifiable costs to disrupting traffic on the Darwin to Adelaide North South Rail Link. There are also long term effects on the economies of South Australia and the Northern Territory. GWA notes that opening up of the Woomera

Prohibited Zone for additional mineral development could be beneficial in terms of additional rail traffic on the railway line. We believe however that the disruptions created by the zone closures could reduce the opportunity for windows to run additional trains or increase the cost of such movements and make extraction of minerals uncompetitive.

For the reasons stated GWA has no choice but to oppose the Legislation. GWA strongly suggest that if the Legislation passes that the Rules be amended to protect movements on the Tarcoola to Darwin Railway line.

While we note that there is standing permission to travel on the Darwin to Adelaide North-South Rail Link, there is no definition in the Rules of what constitutes the railway line. Are crossing loops and loading loops part of the "Railway Link" or are they subject to the Rules? Does the access road running adjacent to the railway line which is vital to its operation have the same standing permission to use or is it subject to the Rules?

If the Legislation is passed, a definition of the Darwin to Adelaide North-South Rail Link is also required to make the Rules workable.

Yours sincerely

Greg Pauline
Managing Director

ATTACHMENT B – Proposed Definition

Proposed Definition of Rail Corridor

Woomera Prohibited Area Rail Corridor means that portion of land within the boundaries of the Woomera Prohibited Area on which the rail line, and associated railway infrastructure, known as the “Tarcoola to Darwin Railway Line” is sited and operated, and being described as:

- (a) the whole of the land comprised in certificate of title register book volume 5817 folio 682 and being sections 1300, 1316-1319 (inclusive), 1249-1253 (inclusive) and 1462, 1423, 1459-1462 (inclusive), 1243-1245 (inclusive) and 1247, Sections 1310, 1311 and 1426 out of Hundreds Diagram as described in the certificate of title, Allotment 3 in Deposited Plan 24363, Allotment 1 in Deposited Plan 55381, Allotments 50-53 (inclusive) in Filed Plan 217277 and Allotments 35 and 36 in Filed Plan 217922; and
- (b) the whole of the land on which the track work known as the “Arrium Ballon Loop” at Wirrida is located and being on Hundred Plan, Plan Number 832800 Block 1269.

ENDS.