

Chapter 4

Conclusion

Committee view

4.1 The Woomera Prohibited Area is an important security, economic, resources, pastoral, tourism and environmental asset for Australia. The co-existence scheme for access to the WPA outlined by the Hawke Review, which maintains Defence as the primary user, has provided a valuable framework for balancing the competing interests associated with the WPA. The committee considers that, with the exception of the creation of the WPA as a 'defence premise', the bill largely reflects the vision of the co-existence scheme outlined in the Hawke Review's final report.

4.2 The access framework established by the bill will clearly provide increased certainty for non-Defence users of the WPA regarding their access arrangements and the conditions on that access. The access arrangements appear to be functioning well. The updated information from the Department of Defence and the Department of Industry indicates that the WPA Coordination Office is effectively monitoring and processing applications for new non-Defence people to access the WPA:

The total permissions in place, at 31 March 2014, include: 33 mineral exploration, 5 mineral lease, 4 extractive mineral, 1 petroleum and 1 infrastructure Deeds of Access.

The number of approved personnel that currently have access to the WPA is 2099, of which 1780 have been processed since the moratorium on new access to the WPA was lifted on 5 October 2012. Since the moratorium was lifted, over 632 road access permits (covering about 2262 passengers in over 637 vehicles, mostly tourists) and 69 opal mining/prospecting permits have been issued.¹

4.3 The bill incorporates a number of amendments from previously considered versions of the bill which respond to concerns raised by non-Defence users of the WPA. Importantly, the co-existence scheme established by the bill will only apply to new users of the WPA. It is clear that existing non-Defence users of the WPA will continue to access the WPA under their current arrangements.

4.4 The committee notes concerns expressed in submissions regarding consultation with interested stakeholders regarding the new access arrangements to the WPA and the development of the bill. Consultative implementation of the legislation will be important to ensure that the co-existence scheme for access to the WPA operates effectively. In particular, Defence will need to make sure that communication with non-Defence users of the WPA is clear and consistent. Nonetheless, the committee notes that considerable efforts have been made recently by Defence to engage those with an interest in the WPA.

1 *Submission 12*, p. [2].

4.5 The committee also recognises the important cultural and ownership interests that Indigenous groups have within the WPA. It is important that Defence and the Government of South Australia continue to consult and take into account the interests of these Indigenous groups to ensure that any activities which may impact on culturally sensitive areas are minimised. The committee also notes the efforts that Defence and the South Australian Government have taken to engage with and consult the native title holders of land in the WPA. The committee hopes that these efforts will continue and Defence will be able to resolve any outstanding issues prior to the commencement of the legislation.

4.6 The committee recognises the co-existence scheme for the WPA established by the bill will continue to be a work in progress. In particular, the committee supports recommendation 65 of the Hawke Review which provides that in '2018, the WPA Advisory Board should review all aspects of the coexistence model to determine its efficacy and make recommendations on amendments to policy and procedures to maximise the national value of the WPA'.² The committee sees significant benefit in a future review of the permit system and in regard to the operation of the WPA as a 'defence premise'.

Draft Rules

4.7 The committee acknowledges the concerns expressed by many submitters in relation to the updated draft Rules. While the bill provides the framework for the legislative scheme, the detail of the proposed regime will be contained in the Woomera Rules, agreed by the Minister for Defence and Minister of Industry. In the view of the committee, it is unfortunate that an exposure draft of the Woomera Rules is not available for consideration together with the bill. The committee urges Defence to take into account the interests of key stakeholders in developing the Woomera Rules.

4.8 In particular, the Government of South Australia should be closely consulted before the release of an exposure draft of the Rules or before any significant amendment of the Rules. Any lack of clarity in relation to access to the WPA by South Australian law enforcement, emergency response, health and social services should be swiftly addressed. The committee expects that Defence will prioritise the resolution of all outstanding issues before proceeding with further implementation.

Compensation

4.9 The committee notes the concerns expressed by the Government of South Australia in relation to the repeal of regulation 36 by the bill which deals with compensation. While the EM states the amendment will 'modernise' regulation 36, there is insufficient detail provided regarding how this will improve on the existing regulation. The EM states the amendment will provide for 'reasonable compensation where the operation of regulations 34 and 35 would result in an acquisition of property other than on just terms'. This appears limited compared to the existing regulation 36

2 Hawke Review, p. 42.

which provides a broader scope for compensation to those persons who 'suffer loss or damage' as result of the use of regulation 34 and 35.

4.10 An amendment which appears to limit the scope of compensation for non-Defence users of the WPA appears to be at odds with the recommendations of the Hawke Review report. It recommended that 'Defence should introduce a compensation system to cover any cases where Defence breaches its duty of care and causes loss to the non-Defence user'.³

4.11 The effect of the proposed amendment also appears to potentially have implications beyond the use of the WPA. For example, regulation 34 relates to the ability of the Minister to authorise 'entry upon, and the use on behalf of the Commonwealth of, any area of land or water, being an area in which it is necessary or expedient in the interests of the safety or defence of Australia to carry out operations for the testing of war material, for the purpose of carrying out such operations' [emphasis added].

4.12 To avoid further delaying the passage of the bill, in the view of the committee, Item 5 of Part 2 should be removed or amended to maintain existing rights to claim compensation under regulation 36 before the bill is passed.

Explanatory Memorandum

4.13 The committee notes that there appear to be typographic errors in the EM to the bill. In particular, the EM refers to subclauses 72TB(5) and (6) which do not exist in the bill. These references appear to refer to subclauses 72TB(3) and (4). A corrected version of the EM for the bill should be issued.

Recommendation 1

4.14 The committee recommends that the explanatory memorandum for the bill be revised and reissued.

Recommendation 2

4.15 The committee recommends that Schedule 1, Part 2, Item 5 of the bill be removed from the bill or amended to maintain existing rights to compensation under regulation 36 of the Defence Force Regulations 1952.

Recommendation 3

4.16 Subject to recommendations 1 and 2, the committee recommends that the bill be passed.

Senator Alan Eggleston
Chair

3 Hawke Review, p. 25.

