



Australian Government

Dr Kathleen Dermody
Committee Secretary
Senate Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Dr Dermody

Private Members Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013

We are pleased to provide a submission to the Senate Standing Committee's Inquiry into the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013 (the bill). This submission provides an update on activities since a previous submission was made on 20 July 2013 in relation to a substantially similar bill. A copy of the previous submission has been included and we request that both of these be considered by the Committee together.

The Department of Defence and the Department of Industry are the primary stakeholders in implementing the Review recommendations, and the Royal Australian Air Force as primary user manages the day-to-day operations and testing of war materiel within the Woomera Prohibited Area.

Accordingly, the attached submission is provided jointly by the Department of Defence and the Department of Industry.

Should the Committee require further information or discussion with officials, please contact:

Mr Angus Kirkwood
Assistant Secretary Arms Control
Department of Defence

Yours sincerely

Gavin Davies, AO, CSC
Air Vice Marshal
Acting Chief of Air Force

Peter Baxter
Deputy Secretary Strategy
Department of Defence

Martin Hoffman
Deputy Secretary - Resources
Department of Industry

10 February 2014

10 February 2014

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**Joint Submission by the Department of Defence
and the Department of Industry**

**Senate Standing Committee on Foreign Affairs, Defence and Trade Inquiry into
the Defence Legislation (Woomera Prohibited Area) Amendment Bill 2013**

Introduction

On 19 July 2013, the Department of Defence and the then Department of Resources, Energy and Tourism (now Department of Industry) provided a joint submission to the Senate Standing Committee on Foreign Affairs, Defence and Trade (the Committee) on a substantially similar Bill. That previous submission remains relevant for the current Bill; it has been attached and should be considered in conjunction with this submission.

This submission seeks to update the Committee on key activities that have occurred since July 2013.

Administration of access to WPA

The Woomera Prohibited Area Coordination Office in Defence has continued to process applications for people to enter the Woomera Prohibited Area. The total permissions in place, at 31 December 2013, include: 32 mineral exploration, 4 mineral lease, 4 extractive mineral, 1 petroleum and 1 infrastructure Deeds of Access.

1807 approved personnel currently have access to the WPA, of which 1488 have been processed since the moratorium was lifted on 5 October 2012. Since the moratorium was lifted, over 513 road access permits (covering about 999 passengers in over 518 vehicles, mostly tourists) and 69 opal mining/prospecting permits have been issued.

Additionally, WPACO has been negotiating a Deed of Access for Mining with a company seeking to commence operations in 2015.

Consultation

Since July 2013, Defence has been continuing consultation with different stakeholders of the WPA.

Indigenous groups

Defence has continued consultations with Indigenous groups around the proposed new arrangements. Indigenous groups sought formal written confirmation of their existing access permissions under the Defence Force Regulations, including confirmation that any entitlement to compensation would be on 'just terms'. This has been provided by Defence.

Some Indigenous groups have also sought agreements to formalise working level consultation and communication as part of range administration. Defence is working with them on the shape and detail of these arrangements.

Railway owners and operators

On 6 August 2013, Defence and South Australian representatives met in Adelaide with the owners and operators of the Tarcoola-Darwin rail link that bisects the WPA: Australian Rail Track Corporation, Genesee & Wyoming Australia and Austral Asia Railway Corporation. Parties agreed:

- that the owners and operators of the railway are existing users;
- to ensure the permissions for the railway include all associated infrastructure;
- to develop a working level agreement setting out the framework for consultation and notification arrangements between Defence and railway operators.

The Australian Rail Track Corporation has since written to Defence confirming that they can work with Defence to identify windows that minimise disruption to the rail operator's business.

Northern Territory Government

The Northern Territory Government has raised concerns about the potential for long disruptions to the railway, and the impact of that for tourism and freight delivery to the Northern Territory.

Current arrangements (under the *Defence Force Regulations 1952*) allow the Minister to suspend permission to access the railway and Stuart Highway for safety or security for the testing of war materiel - with no time limit specified.

Rail and road closures occur only for as long as is required to conduct the test and ensure safety or security. This will continue to be the case under the proposed new arrangements.

A recent long range missile test, for example, required the suspension of rail traffic through the WPA for a period of three hours on three occasions over a 21 day period. This was done in close consultation with the rail operator and did not impact their schedule.

By defining set exclusion periods, the proposed measures in the Bill will provide greater certainty to non-Defence users for the periods in which closures may need to occur.

Continuing positive engagement with the rail owners and operators, including the development of a working level agreement, will minimise the effect that any testing activity may have on rail operations and schedules.

South Australian Government

In October 2013, the South Australian Government raised concerns about potential unintended consequences of the legislation for their land management and economic objectives regarding pastoral leases in the WPA.

They have requested that Defence consider whether existing pastoral leases could be maintained under current arrangements, including in cases where a pastoral lease is acquired or extended.

The WPA Advisory Board

A WPA Advisory Board meeting was held in Woomera on 3 December 2013. This meeting focussed on discussions with the main stakeholders of the WPA.

Representatives of Indigenous groups, environmental groups and opal miners were invited but were unable to make the meeting. The Board was able to hear from and ask questions of: pastoralists living in the WPA; the railway owners and operators; minerals exploration companies; and an operating mine.

Pastoralists and resources companies indicated that coexistence with Defence in the WPA is working well. The rail companies still expressed some concerns about potential future disruption, but have a better understanding of how they can work with Defence, and Defence is continuing to work with them to develop communication and working protocols.

In conjunction with the WPA Advisory Board meeting, the RAAF hosted a 'non-Defence users day' also at Woomera on 3 December 2013. This gave Advisory Board members a further opportunity to meet members of the different stakeholder groups, including the Woomera community, in an informal setting.

Future activities

As part of Defence's engagement with Indigenous and environmental groups, following the pastoralists, rail and resource company discussions with the Advisory Board, these groups have been invited to present to the next Board meeting in Adelaide on 18 February 2014. The South Australian Chamber of Mines and Energy has also been invited to present at that meeting.

As advised in the Senate by Senator the Hon Mitch Fifield on 12 December 2013, the Government has indicated that it is in the process of preparing an amended version of the legislation for the autumn 2014 sitting, including the preparation of a Regulation Impact Statement. Senator Fifield stated that the amended version will include a number of points of particular concern to the South Australian and Northern Territory Governments, including a clarification of existing users, including pastoralists, railways and local Indigenous groups.



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Dr Kathleen Dermody
Committee Secretary
Senate Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6100
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CANBERRA ACT 2600

Dear Dr Dermody

Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013

Thank you for your letter of 1 July 2013 to the Minister for Defence inviting him or the Department of Defence to make a submission to the Senate Standing Committee's Inquiry into the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013 (the bill).

The bill implements the recommendations of the *Review into the Woomera Prohibited Area* that require a legislative basis. The Review recommendations were accepted by the Government in May 2011.

The Department of Defence and the Department of Resources, Energy and Tourism are the primary stakeholders in implementing the Review recommendations, and the Royal Australian Air Force as primary user manages the day-to-day operations and testing of war materiel within the Woomera Prohibited Area.

Accordingly, the attached submission is provided jointly by the Department of Defence and the Department of Resources, Energy and Tourism.

Should the Committee require further information or discussion with officials, please contact:

Mr Angus Kirkwood
Assistant Secretary Arms Control
Department of Defence

Yours sincerely

Geoff Brown AO
Air Marshal
Chief of Air Force

Brendan Sargeant
Deputy Secretary Strategy
Department of Defence

Martin Hoffman
Deputy Secretary
Department of Resources,
Energy and Tourism

12 July 2013

18 July 2013

19 July 2013

**Joint Submission by the Department of Defence
and the Department of Resources, Energy and Tourism**

**Senate Standing Committee on Foreign Affairs, Defence and Trade Inquiry into the
Defence Legislation (Woomera Prohibited Area) Amendment Bill 2013**

1. Overview

The *Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013* (the Bill) gives effect to the agreed recommendations of the *Review of the Woomera Prohibited Area Final Report* (the Review) released on 3 May 2011.

The Bill implements the co-existence scheme for the Woomera Prohibited Area (WPA) recommended by the Review. This will allow Defence to maintain its war materiel testing capability for the benefit of the nation, while allowing new non-Defence users access to the WPA within agreed periods for economic, cultural, environmental and heritage reasons.

The Bill ensures that the Minister for Defence, with the agreement of the Minister for Resources and Energy, can establish the details of the co-existence scheme in the *Woomera Prohibited Area Rules 2013* (the Rules). This legislative instrument will enable the establishment and future refinement of the scheme in a manner that reflects the importance of economic development in an area of critical importance to the development of Australia's defence capabilities.

The Bill also provides for Indigenous landholders and native title holders and claimants, pastoralists with an existing pastoral lease and existing mining operations to continue to access and operate in the WPA under their current arrangements.

Significance of the Woomera Prohibited Area

The WPA is Australia's most important military testing range. It is used for the testing of war materiel under the management of the Royal Australian Air Force and covers nearly 124,000 square kilometres¹ in South Australia, approximately 450 kilometres north-north-west of Adelaide. It is the largest land-based test range in the world, comparable in size to England, with a centre line of over 600 kilometres.

The WPA remains an important Defence capability that plays a significant role in Australia's national security. As a declared prohibited area, access to the WPA for non-Defence use requires permission from the Minister for Defence. The Minister for Defence has delegated his authority to give access permission to officials in the Department of Defence, including key positions located in Woomera. This allows access decisions to be made in a timely manner.

The WPA overlaps a major part of South Australia's potential for significant minerals and energy resources, including 30 per cent of the Gawler Craton, one of the world's major mineral domains, and the Arckaringa, Officer and Eromanga Basins for hydrocarbons and coal. Olympic Dam is adjacent to the WPA and is part of the Gawler Craton.

There are currently four operating mines in the WPA: the Challenger gold mine, operating since 2002, currently produces over 85,000 ounces of gold a year; the Prominent Hill copper-

¹ This is a recently revised calculation by the South Australian Government using advanced geospatial technology. Based on the same boundary information, the size of the WPA has historically been reported as 127,000 square kilometres.

gold mine, operating since 2010, is a medium-sized, high quality copper-gold mine producing around 100,000 ounces of copper a year and around 140,000 ounces of gold; the Cairn Hill magnetite (iron ore) mine, operating since 2010, is one of Australia's few magnetite mines, producing around 1.7 million tonnes of premium quality magnetite-copper direct shipping ore a year at full capacity; and the Peculiar Knob iron ore mine, operating since October 2012, is a medium-sized iron ore producer that plans to increase production to around 12 million tonnes per annum from an export facility in Whyalla.

The South Australian Government has assessed that over the next decade about \$35 billion worth of iron ore, gold and other mineral resources are potentially exploitable from within the WPA.

Most of the WPA is South Australian Crown land and is covered by pastoral leases and exploration and mining tenements granted by the South Australian Government. The WPA contains Indigenous freehold title, recognised traditional owners and claimants and significant Indigenous sites. There are native title rights, interests and claims over most of the WPA.

Review into the Woomera Prohibited Area

On 17 May 2010 the Government commissioned the Review to make recommendations about the best use of the WPA in the national interest, with a view to maximising its value to the nation for Defence and economic development over the next 20 to 30 years.

The Review was established because of the growing interest in non-Defence users undertaking a range of activities that could be incompatible with Defence's testing of war materiel. The Review was undertaken by Dr Allan Hawke AC and staffed by a team comprising representatives from the Departments of Defence, Prime Minister and Cabinet, and Resources, Energy and Tourism.

Consultation during the review

The Review process included extensive stakeholder consultation to obtain the views of individuals or groups that may have an interest in future use of the WPA. The Review team also met with representatives from the South Australian Government and its agencies, the Australian Government and its agencies (including Defence and its international partners), the resources industry, pastoralists, South Australian Native Title Services and the Woomera village community.

To give an example of the range of stakeholder engagement, in the week 31 May to 4 June 2010, Dr Hawke and the Review team met with:

- The South Australian Deputy Premier and Resources Minister;
- The South Australian Opposition Leader;
- The Chairman of the South Australian Chamber of Mines and Energy;
- The Chief Executive Officer of the South Australian Native Title Service;
- A senior representative from (the then) Primary Industry and Resources South Australia;
- Pastoralists;
- Woomera residents;
- A director of South Australian Coal;
- The Executive Chairman of Western Plains Resources;

- Key staff at the Prominent Hill Mine; and
- Defence personnel.

Interested parties were also invited to make submissions to the review, including:

- the Maralinga Tjarutja Council;
- Yankunytjatjara Native Title Aboriginal Corporation;
- Anangu Pitjantjatjara Yankunytjatjara Executive Board;
- Gawler Ranges Native Title Claim Group;
- Antakirinja Matu-Yankunytjatjara Aboriginal Corporation;
- Arabunna Native Title Claim Group;
- Barngarla Native Title Claim Group;
- Kokatha Uwankara Native Title Claim Group; and
- Kokatha Mula Nation's Land Council Inc. Association.

Twenty eight submissions were made, including 20 which were made publicly available, from:

- Ahava Energy Pty Ltd;
- Association of Mining and Exploration Companies;
- Antakarinja Matu-Yankunytjatjara Aboriginal Corporation;
- Australian Rail Track Corporation;
- AustralAsia Railway;
- Billa Kalina Pastoral Company;
- Bruce Menzel B.Sc;
- Bush Heritage Australia;
- Flinders Exploration Ltd;
- FreightLink;
- IMX Resources Ltd;
- Kokatha Uwankara Native Title Claim Group;
- Opal Alliance of South Australia;
- Parakylia Station;
- South Australian Chamber of Mines & Energy;
- South Australian Coal Ltd;
- Straits Resources Ltd;
- Tasman Resources Ltd;

- Teck Australia Pty Ltd; and
- The Woomera Board

These can be accessed at: www.defence.gov.au/woomera/review.htm.

An Interim Report was released in November 2010 with public comment being sought. The following three organisations responded to the Interim Report:

- Ahava Energy Pty Ltd;
- Association of Mining and Exploration Companies; and
- ERO Mining.

The co-existence model

The Review concluded that the WPA is an important asset in the national interest, but that its full potential is not being realised. It was evident that introducing a comprehensive range management framework would improve the co-existence of national security and economic interests in the WPA.

Accordingly, the Review proposed that the WPA be opened up for resources exploration to the maximum extent possible, while ensuring Defence primacy for the testing of war materiel. This would allow Australians to take advantage of the resources potential in the WPA while ensuring its future viability as the most important test and evaluation range that supports the Australian Defence Force.

To implement the co-existence approach, the Review recommended that access be regulated by a model of zones and exclusion periods that recognises the frequency and location of Defence testing, its safety and security requirements, and that some areas within the WPA are used more often than others. These provisions would give non-Defence users greater certainty by granting guaranteed access to parts of the WPA for set periods of time.

Zones

The zones that were determined according to Defence use of the WPA are:

- *Red Zone*: encompassing the area of high frequency Defence use;
- *Amber Zone*: encompassing the area of periodic Defence use and, together with the Red Zone, comprises the previously defined Core Area of Operations as described in the Defence Minister's statement of 17 May 2010; and
- *Green Zone*: encompassing the area of infrequent Defence use.

A map of the WPA showing the zones is at Attachment A; this model has been in place since 31 March 2012 for non-Defence users of the WPA.

Exclusion periods

The number of exclusion periods available for Defence depends on the zone within the WPA. The exclusion periods are each of seven days' duration during which non-Defence users are required to evacuate the designated areas:

- *Red Zone* (continuous Defence use): a total exclusion of new non-Defence users.

- *Amber Zone* (periodic Defence use): Defence can exclude new non-Defence users for 20 windows each of seven days in the Amber Zone (Zone 1), and 10 windows each of seven days in the Amber Zone (Zone 2) every year. Defence will give at least three months notice before the beginning of the financial year in which the exclusion period begins. There will be a break of at least six weeks between the exclusion periods.
- *Green Zone* (infrequent Defence use): Defence can exclude new non-Defence users up to 56 days. The exclusions will be for up to eight windows of seven days each year after giving permit holders with permanent facilities a minimum of six months' notice, and other permit holders 14 days' notice. There will be a break of at least three months between the exclusion periods.

Exclusion period notices have been exercised since 1 July 2012 for new non-Defence users of the WPA (see later section).

Government endorsement

The Australian Government endorsed the final report of the Review in May 2011, noting that its recommendations would improve the use of the WPA in Australia's national interest by better balancing national security and economic interests.

The Government also agreed that a framework be developed to support better co-existence between Defence, as the primary user, and non-Defence users of the WPA. This framework was to include legislation to govern access for new non-Defence users.

2. Woomera Prohibited Area Advisory Board

A key Review recommendation was for the establishment of the Woomera Prohibited Area Advisory Board (the Advisory Board) with an independent Chair to monitor and report on the balance of national security and economic interests in the WPA, oversee the implementation of the co-existence policy arrangements, and foster strategic relationships between Defence and non-Defence users of the WPA.

The roles and functions of the Advisory Board are also to monitor and recommend amendments to co-existence policies and procedures; develop high-level relationships between Defence and the resources sector; resolve disputes between Defence and non-Defence users; report annually on the balance of interests in the WPA and conduct a review every seven years of the balance of interests in the WPA.

The Advisory Board was established in October 2012, with Mr Stephen Loosley as Chair and the Hon Paul Holloway as Deputy Chair. The Review recommended that other Board members be senior managers from the Department of Defence; Department of Resources, Energy and Tourism; Department of Finance and Deregulation; South Australian Department for Manufacturing, Innovation, Trade, Resources and Energy; and Defence SA. Further details on the Advisory Board can be accessed at: www.defence.gov.au/woomera/board/index.htm

To date the Advisory Board has met on three occasions: the inaugural meeting in December 2012 in Canberra; in April 2013 at Woomera; and in June 2013 in Canberra. At the meeting in Woomera, Board members visited an operating mine and witnessed displays of Defence activities. The next meeting is scheduled for September 2013 in Adelaide.

3. Implementation of Review Recommendations

In accordance with the Review, the recommendations are being implemented in three phases:

- a *moratorium* on the granting of new non-Defence user access to the WPA (now concluded);
- a *transition* phase involving the development and implementation of enabling legislation (underway); and
- a *steady-state* phase where transitional arrangements are implemented and where permanent arrangements are put in place.

The moratorium phase

In May 2011 a moratorium was declared on applications for access to the WPA, other than those applications identified by the South Australian Government as being at an advanced stage, to enable the development of protocols necessary to implement the review.

Woomera Prohibited Area Coordination Office

The Woomera Prohibited Area Coordination Office (WPACO) was established as a joint Australian Government-South Australian Government undertaking located within the Department of Defence. It was staffed by members of the Department of Defence and the Department of Resources, Energy and Tourism. The Department of Finance and Deregulation; South Australian Department of Manufacturing, Industry, Trade, Resources and Energy; and DefenceSA had nominal and/or temporary representation within WPACO.

After completing the initial administrative arrangements, WPACO staff conducted a significant amount of work internally to establish the protocols and governance arrangements necessary to implement the co-existence model. This included developing procedures for assessing applications for access to the WPA, and defining responsibilities between WPACO and Royal Australian Air Force staff managing the Woomera Test Range to ensure the safe and effective operation of the co-existence model.

WPACO manages non-Defence access to the WPA within the principles of co-existence put forward in the review and endorsed by the Government. It maintains an informative website and free-call telephone line, and can be contacted by all stakeholders, non-Defence users and interested parties.

WPACO maintains a growing contact list of around 280 non-Defence users and stakeholders that it uses to keep interested parties informed of developments in the WPA. Interested parties can request to be added to the contact list.

Deeds of Access

A draft Deed of Access for minerals exploration was developed and released for public consultation in April 2012. The deed proposed an access regime for exploration companies during the transition phase to full implementation of the Review's recommendations.

Public consultation was undertaken on the draft deed in Adelaide in May 2012 and a well-attended workshop confined to legal drafting issues followed in Canberra in June 2012.

The draft deed was amended to reflect stakeholder feedback and achieve an outcome acceptable to all parties. Deed provisions amended in light of these consultations include

notification periods for access and exclusions, safety and security provisions, general definitions, notifiable equipment and change of company control including joint ventures.

WPACO officials also visited the Coober Pedy opal fields in October 2012 to consult on draft Deeds for Extractive Minerals and Opal Mining permits.

These consultations and draft deeds subsequently formed the basis for Deeds of Access, permits and procedures for access to the WPA during the transition phase and the Bill and draft Rules.

The transition phase

The Minister for Defence and Minister for Resources and Energy lifted the moratorium on 5 October 2012, signifying the conclusion of the first phase of Review implementation and the start of the transition phase. Since then, over 30 Deeds of Access have been issued for resources exploration. WPACO has also processed applications by Deed of Access holders for over 760 approved personnel to have access to the WPA. Additionally, over 360 road access permits (covering about 760 passengers in over 370 vehicles, mostly tourists) and 46 opal mining/prospecting permits have been issued.

The development of the Bill

WPACO developed the draft legislation to implement the legislative framework put forward by the Review.

The Bill, which was introduced on 30 May 2013, establishes a co-existence scheme that provides all non-Defence users a greater level of certainty over Defence activity in the WPA and gives new non-Defence users greater certainty over access arrangements. The co-existence scheme established by the Bill will apply to new users of the WPA.

The Bill has been developed to enable the inclusion of most of the details of the proposed co-existence scheme in the Rules. This design was reflected in the initial consultation period applying to the Bill, which ensured that there was a lengthier consultation period on the draft Rules.

Application to Existing Users of the WPA

In accordance with the Review, the Bill has been drafted to ensure that existing users such as Indigenous landholders and native title holders and claimants, pastoralists with an already established lease, and existing mining operations in the WPA have the option to continue to access and operate under their current arrangements. Existing users operate under the provisions of Section VII of the *Defence Force Regulations 1952*, and in some cases have individual deeds which define their operating and access arrangements.

Accordingly, as detailed in section 72TB, the Bill explicitly excludes existing users from the new access arrangements (although they are included in the amendments made to bring the WPA within the 'defence premises' regime to ensure the safety of all users and the security of the WPA).

The Bill also provides for existing users of the WPA to have the option of voluntarily joining the co-existence scheme established by the legislative measures if they so choose.

Defence has in place, and is continuing to work on, consultation and co-operation measures to ensure existing users' access requirements are taken into consideration in the planning of

Defence's testing schedule that may require existing users to leave the WPA to ensure safety and security.

Defence continues to consult with existing users to explain and clarify the application of the Bill.

Framework

The framework established in the Bill maintains the primacy of the WPA as a national security and defence asset, and sets up a co-existence scheme that allows access by non-Defence users subject to conditions that protect the safety of all users in the WPA while ensuring the appropriate national security protections for an area used to test war materiel.

The Bill creates a framework that should improve the ability for new non-Defence users to make commercial decisions with transparency as to when they will be required to leave the WPA because of Defence activity. The key features of the Bill:

- Authorise the Minister for Defence to make, by legislative instrument and with the agreement of the Minister for Resources and Energy, the Woomera Prohibited Area 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.
- 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 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 Bill will insert a new Part VIB into the *Defence Act 1903*, and amends the definition of 'defence premises' in Part VIA of the Defence Act to include the WPA. This will allow appropriately trained and qualified defence security officials to apply the security powers provided for by Part VIA to ensure the safety of all users and the security of the WPA. Part VIA will apply to both existing and new users of the WPA.

Consultation on the Bill

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 and South Australian Government stakeholder agencies for review and comment, with proposed amendments being incorporated where appropriate. The principal agencies consulted were:

- The Department of the Prime Minister and Cabinet;
- The Department of Resources, Energy and Tourism;

- The Attorney-General's Department;
- The Treasury;
- The Department of Finance and Deregulation;
- The Department of Families, Housing, Community Services, and Indigenous Affairs;
- South Australian Department of Mining, Innovation, Trade, Resources and Energy;
- DefenceSA;
- South Australian Crown Solicitor's Office; and
- South Australian Department of the Premier and Cabinet.

The Bill (and associated Rules) built upon the consultation activities that occurred during the conduct of the review in 2010-2011, together with the public consultation regarding the Minerals Exploration Deed of Access developed during the moratorium period in 2012.

The 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 (see Attachment B).

Consultation with Indigenous groups

Defence acknowledges the importance of Indigenous groups' ties to the land in the WPA. The access scheme set up under the Bill recognises these ties, with permit holders required to protect Indigenous sites and comply with all relevant native title and Aboriginal laws.

Indigenous groups with statutory and access rights expressly retain these rights. They are considered 'existing users' of the WPA and will not need to apply for permission under this legislation, which does not disturb existing rights.

To ensure that the Bill is clear on this point, Defence consulted with Indigenous stakeholders and relevant government agencies to amend section 72TB(3) of the Bill. This expanded section now includes a more precise description of the various existing users who will remain under their authority under Part VII of the Defence Force Regulations 1952 and includes:

- Indigenous groups
- SA Government representatives, and
- existing pastoralists.

On 24 May 2013, the South Australian Government hosted a discussion between Defence officials and the relevant bodies corporate, traditional owners and legal representatives of the Maralinga Tjarutja (MT) and Anangu Pitjantjatjara Yankunytjatjara (APY) lands about the legislation. A number of teleconferences have also been held with Indigenous groups, along with the exchange of written correspondence and informal telephone calls.

Many of the concerns raised by Indigenous stakeholders relate to their existing arrangements; these are not directly related to provisions in (and hence are not caused by) the Bill and require other forms of resolution. Defence is working to resolve these concerns concurrently with the legislative process for the Bill. Defence has already responded to clarify the existing permission for certain groups to access their lands within the WPA, and has committed to establishing working-level agreements with MT and APY bodies corporate on the continuing use of the WPA. Additionally, the Government agreed, as a matter of policy, with the MT's request that no 'wet canteens' under the current Defence Force Regulations for the WPA will be created in the lands held by the MT or APY traditional owners. Although this relates to their existing use, this was reflected in the Minister's Second Reading Speech on the Bill.

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. Open communication, mutual respect and trust will be key elements of the successful management of the WPA.

Woomera Prohibited Area Rules 2013

Section 72TP to the Bill provides for the Minister for Defence to make Woomera Prohibited Area Rules, with the agreement of the Minister for Resources and Energy. This provision ensures that the Rules, which contain much of the detail of the co-existence scheme, will be designed and maintained in a manner that ensures Defence primacy while providing transparency and supporting the long term investment decisions required for resources and energy development.

The draft Rules provide for the detailed arrangements to give effect to the Bill that include 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 Review and are based on those developed for the Minerals Exploration Deed of Access, providing ongoing certainty for non-Defence users of the WPA.

The Rules will 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 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.

Consultation on the Rules

The exposure draft of the Rules was released for public consultation on 30 May 2013, with interested stakeholders and parties to consider and provide feedback by 12 July 2013. The draft Rules were also distributed by Defence to its list of identified stakeholders and interested parties, and published on the WPACO website.

A public consultation forum was held in Adelaide on 1 July 2013 with attendees representing mining, petroleum, defence industry and Indigenous groups.

Targeted consultations were also undertaken with Indigenous groups conducted by Department of Defence and South Australian Government officials in Adelaide on 2 July 2013. Parties included representatives of the:

- Maralinga Tjarutja;
- Anangu Pitjantjatjara Yankunytjatjara;
- Kokatha Uwankara claimant group;
- Antakarinja Matu-Yankunytjatjara Aboriginal Corporation; and
- Gawler Ranges People.

A meeting was also held in Coober Pedy on 3 July 2013 for licensed Opal Miners and Extractive Minerals Deed holders. Attendees at the meeting included the President and Deputy President of the Opal Miner's Alliance and a representative of an operating mine. Discussions were also held with the chairman of the Antakarinja Matu-Yankunytjatjara Aboriginal Corporation.

The Government will finalise the Rules taking into account feedback from these consultations.

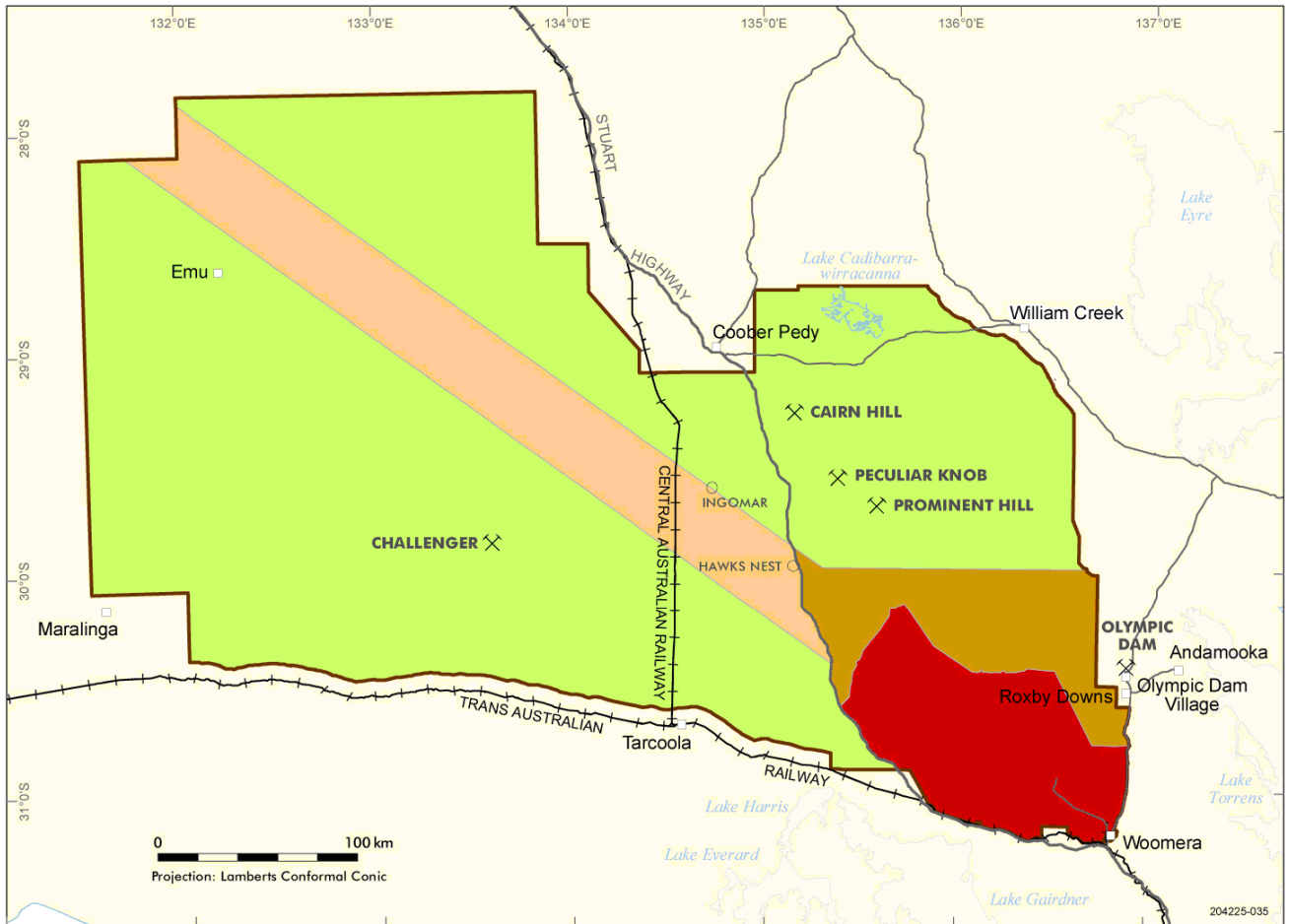
As was the case with the Bill, many of the issues raised during the consultations do not relate to the draft Rules, but more generally about Defence's engagement with existing users and the management of the WPA more broadly. Defence continues to work collaboratively with all stakeholders in this regard and further consultation activities with existing users (including pastoralists and the railway operator) are planned in coming weeks.

WPA Reference Group

To improve the level of communication and ensure continuing consultation on matters affecting all stakeholders in the WPA, the Minister for Defence has approved the establishment of a WPA Reference Group. Recommended by the Review, this group will include representatives of the various WPA stakeholders and will be a forum for discussion of key issues across the WPA.

WPACO is currently in the process of finalising the administrative arrangements and inviting members to the group. It is expected that the first meeting of the WPA Reference Group will occur before the end of this year.

Map of the Woomera Prohibited Area showing the access zones



Woomera Prohibited Area (WPA)

WPA access zones

- Defence Continuous Use Zone (Red Zone)
12 months exclusive Defence access
- Defence Periodic Use Zone 1 (Amber Zone 1)
140 days exclusive Defence access
- Defence Periodic Use Zone 2 (Amber Zone 2 (corridor))
70 days exclusive Defence access
- Defence Infrequent Use Zone (Green Zone)
Up to 56 days exclusive Defence access

Major mines and development projects

- Operating mine
- Mineral development project
- Locality

Attachment B

Amendments made to the Bill after stakeholder consultation

Stakeholders raised only a small number of issues that required amendment to the Bill. The primary amendments to the Bill as a result of public consultation were as follows:

- **Clause 72TB(3):** amended to clarify, without limiting other existing users, the existing users who will remain under their authority under Part VII of the Defence Force Regulations 1952 and include:
 - Indigenous groups
 - SA Government representatives, and
 - existing pastoralists.

This change was made in response to concerns expressed at the public workshop and by South Australia that it was unclear whether some of the main groups of existing users fall within the new regime.

- **Clause 72TB(5) and (6):** inserted to clarify that existing users can ‘opt-in’ to the new access regime, at their option. This change was made in response to the Department of Resources, Energy and Tourism comment that the ability to ‘opt-in’ was unclear.
- **Clause 72TN:** amended to:
 - allow the Minister to delegate his delegable powers to equivalent ranking ADF officers from Navy and Army. This change was made in response to the Test Range request noting that as a matter of practice other ADF officers may be required to exercise the powers;
 - make the Minister’s power to give directions, where it is necessary for the purposes of the defence of Australia under s72TJ, non-delegable. This change was made in response to concerns expressed at the public workshop, South Australia and the Department of Resources, Energy and Tourism about the uncertainty surrounding the concept of ‘purposes of the defence of Australia’ and the ability for that decision to be delegated to an EL2;
 - raise the delegable level of the Minister’s review powers from SES Band 1 to SES Band 2. This change was made in response to a request from the Department of Resources, Energy and Tourism; and
 - make the review of the Minister’s decisions which are non-delegable only reviewable by the Minister. This change recognises that it is inappropriate for a decision of the Minister to be subject to review by a member of the Department.
- **Clause 72TP:** amended to:
 - require the agreement of the Minister for Resources and Energy to make the Woomera Prohibited Area Rules. This change reflects the joint nature of the co-existence model; and

- allow the Rules to make decisions under the Bill reviewable by the Administrative Appeals Tribunal. This change is in response to a concern expressed at the public workshop and by the Attorney-General's Department that it was unclear whether the Rules could provide for an Administrative Appeals Tribunal review of decisions that were based on powers within the Bill.