

# Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013

## Referral and consideration of the bill

1.1 On 12 December 2013, the Senate referred the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013 to the Senate Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 11 February 2014.<sup>1</sup> On 11 February 2014, the Senate granted an extension of time for reporting until 4 March 2014.<sup>2</sup>

1.2 The bill was introduced as a private senators' bill by Senator the Hon Don Farrell. At the time the bill was introduced, Senator the Hon Mitch Fifield indicated that the government was in the process of preparing an amended version of the bill for the autumn 2014 sittings.<sup>3</sup> On 13 February 2014, the bill was debated in the Senate.<sup>4</sup>

1.3 During the 43<sup>rd</sup> Parliament, the committee conducted an inquiry into a substantially similar bill. Following the prorogation of the 43<sup>rd</sup> Parliament, the committee decided not to continue its inquiry into this bill. More information regarding that inquiry, including the submissions received and the committee's report, is available on the committee's website: [www.aph.gov.au/senate\\_fadt](http://www.aph.gov.au/senate_fadt).

## Conduct of the inquiry

1.4 The committee advertised its inquiry on its website, and in *The Australian* newspaper, calling for submissions to be lodged by 31 January 2014. The committee also wrote directly to a range of people and organisations likely to have an interest in the bill, drawing their attention to the inquiry and inviting them to make written submissions.

1.5 The committee received 12 submissions to the inquiry. These submissions are listed at [Appendix 1](#) and are available via the committee's website.

## The bill

1.6 Similar to the previous bill considered by the committee, the bill implements the recommendations of the *Review of the Woomera Prohibited Area* led by Dr Allan Hawke in 2011.<sup>5</sup> The bill amends the *Defence Act 1903* and is intended to

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1 *Journals of the Senate*, 12 December 2013, p. 361.

2 *Journals of the Senate*, 11 February 2014, p. 412.

3 *Journals of the Senate*, 12 December 2013, p. 368.

4 *Journals of the Senate*, 13 February 2014, p. 468.

5 'Review of the Woomera Prohibited Area', Final Report, 4 February 2011, available at <http://www.defence.gov.au/woomera/review/papers/WoomeraFinalReport.pdf> (accessed 24 February 2014).

establish a framework for administrating access to the Woomera Prohibited Area (WPA). The bill:

- enables the minister to make the rules prescribing certain matters, including defining the WPA and the zones to be demarcated within that area;
- creates a permit system for access and use by non-defence users;
- introduces offences and penalties for entering the WPA without permission and for failing to comply with a condition of a permit; provides for compensation for any acquisition of property from a person otherwise than on just terms; and
- provides for a cap on compensation payable to a person for loss or damage incurred in the WPA.

### **Issues raised in submissions**

1.7 A number of issues and concerns raised in the committee's previous inquiry were repeated in submissions to the current inquiry. Submissions focused on:

- the need for a co-existence model of access to the WPA which balances national security and economic interests (particularly in relation to resources exploration and extraction);<sup>6</sup>
- the importance of reliable railway and road access through the WPA;<sup>7</sup>
- the interests of Indigenous and native title claimants in WPA;<sup>8</sup> and
- environmental issues regarding exploitation of the WPA.<sup>9</sup>

1.8 The Department of Defence and the Department of Industry's joint submission provided the committee with an update on key activities which have occurred since July 2013. It noted that applications to access the WPA continue to be processed and that Defence continues to consult with WPA stakeholders including Indigenous groups, railway owners and operators, the Northern Territory government and the South Australian government, as well as through the WPA Advisory Board.<sup>10</sup> The submission also stated:

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

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6 Geoscience Australia, *Submission 1*, p. 1; Association of Mining and Exploration Companies, *Submission 3*, pp 1-3; South Australian Chamber of Mines and Energy, *Submission 10*, p. 1; Department of Defence and Department of Industry, *Submission 11*, p. [9].

7 AustralAsia Railway Corporation, *Submission 2*, pp 1-2; Australian Rail Track Corporation, *Submission 7*, pp 1-2; Genesee and Wyoming Australia, *Submission 6*, pp 1-4, Northern Territory Government, *Submission 12*, pp 1-3.

8 Kokatha Uwankara Native Title Claim Group, *Submission 5*, pp 1-4; Maralinga Tjarutja and Anangu Pitjantjatjara Yankunytjatjara, *Submission 6*, pp 4-8.

9 Conservation Council of South Australia, *Submission 9*, pp 2-3.

10 *Submission 11*, pp 2-3.

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preparing an amended version of the legislation for the autumn 2014 sitting, including 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.<sup>11</sup>

### **Committee view**

1.9 The committee's inquiry has allowed interested stakeholders to raise issues and reiterate their concerns regarding the proposed legislative changes to the regulation of access to the WPA. The committee expects these contributions will be taken into account by the Department of Defence and the Department of Industry as the government's amended bill is prepared.

1.10 The committee is sympathetic to many of the matters Senator Farrell raised when introducing the bill. In particular, the committee recognises the need to clarify future access arrangements to the WPA in order to promote economic growth in South Australia. However, the submissions received by the committee indicate that there remain a significant number of unresolved and outstanding issues in relation to the proposed new WPA access regime. Potential problems with the drafting of the bill were also highlighted during the Senate debate, as well as the importance of further consultation a range of stakeholders interested in clarifying their rights to access to the WPA.<sup>12</sup>

1.11 During the Senate debate on the bill, the Minister for Defence, Senator the Hon David Johnston advised that the 'amended legislation is very close to completion and a number of points of particular concern to the South Australian and Northern Territory government are being resolved'.<sup>13</sup> Further, he noted that 'Defence is continuing to work closely with...existing users and respond to their concerns, which mainly consist of clarifying longstanding and existing working relationships and access arrangements and permission with Defence'.<sup>14</sup>

1.12 In the view of the committee, the concerns and issues raised in submissions are best resolved initially through the amended version of the bill currently being prepared by the government, informed by Defence's ongoing consultations with WPA stakeholders. Should the Senate refer the government's amended bill for inquiry, the committee notes that it will be well-placed to consider the issues connected with the amended bill.

1.13 The committee thanks all those who assisted with the inquiry, particularly those who have made written submissions.

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11 *Submission 11*, p. 3.

12 *Senate Hansard*, 13 February 2014, pp 5-6.

13 *Senate Hansard*, 13 February 2014, p. 3.

14 *Senate Hansard*, 13 February 2014, p. 6.

**Recommendation 1**

**1.14 The committee recommends that the Senate not pass the bill.**

Senator Alan Eggleston  
Chair