

Chapter 1

Introduction

Referral of the inquiry

1.1 On 27 March 2014, Assistant Minister for Social Services, the Hon Senator Mitch Fifield, at the request of the Minister for Defence, Senator the Hon David Johnston, introduced the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2014.¹ On the same day, the Senate referred the bill to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 13 May 2014.²

1.2 The committee has previously conducted inquiries into two similar bills. The first bill, the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013 was introduced by the previous Labor government in the 43rd Parliament. Following the prorogation of the 43rd Parliament, the committee decided not to continue its inquiry into the bill.

1.3 On 12 December 2013, a private senators' bill (also titled the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013) was introduced by Senator the Hon Don Farrell.³ On 13 February 2014, the bill was debated in the Senate.⁴ The committee made a short report on Senator Farrell's bill noting that concerns with the bill were best addressed 'through the amended version of the bill currently being prepared by the government, informed by Defence's ongoing consultations with [Woomera Prohibited Area] stakeholders'. The committee recommended the bill not be passed.

The bill

1.4 The bill gives effect to the recommendations of the Hawke Review of the Woomera Prohibited Area (WPA).⁵ This review was established in response to increasing demand for access to the WPA by the resources sector and the challenges this posed to Defence activity. In particular, the bill:

- authorises the Minister for Defence, with the agreement of the Minister for Industry, to make the Rules prescribe certain matters, including defining the WPA, and the zones to be demarcated within the WPA;
- creates a permit system for access and use by future non-defence users of the WPA;

1 *Journals of the Senate*, 27 March 2014, p. 745.

2 *Journals of the Senate*, 27 March 2014, p. 741.

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 (Hawke Review).

- 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 acquisition of property from a person otherwise than on just terms, although the Rules may limit the amounts of compensation payable by the Commonwealth;
- provides that any declaration or action taken under regulation 35 of the Defence Force Regulations 1952 in relation to the WPA is taken to have always been valid;
- provides that the Rules may limit the amounts of compensation payable by the Commonwealth for loss or damage in the WPA arising from a breach of common law or statutory duty of care in relation to the use of the area for the testing of war materiel.⁶

1.5 Many of the provisions of the bill relate or refer to the Rules. An exposure draft of the 'Woomera Prohibited Area Rules 2013' was released by the previous Minister for Defence, the Hon Stephen Smith MP, in May 2013.⁷ The Department of Defence also released a paper titled 'Legislative framework to implement the co-existence model for the Woomera Prohibited Area' (legislation framework paper). The exposure draft Rules and the legislative framework paper provided further detail on the 'proposed policy framework and key elements to underpin the legislative package'. However, if the current bill passes, the decision as to whether to make new Rules, and what the Rules will contain, will be a matter for the current Government.

Background

The Woomera Prohibited Area (WPA)

1.6 The WPA was established as the Department of Defence's long-range weapons testing facility in 1947. The WPA's size (124,000 km²), remote location and quiet electromagnetic environment made it a suitable war materiel test and evaluation site for Australia and its defence partners. 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 is also subject to Indigenous land use and native title claims.

The Hawke Review

1.7 On 17 May 2010, the then Minister of Defence, the Hon Senator John Faulkner, announced a review into the WPA, 'to make recommendations about the best use of the WPA in the national interest'. The review, which was led by Dr Allan Hawke, made 65 recommendations which were accepted by the government in May 2011.⁸

6 Second Reading Speech, *Senate Hansard*, 27 March 2014, p. 2259.

7 Minister of Defence and Minister for Resources and Energy, 'Introduction of Woomera Prohibited Area Legislation', *Joint Media Release*, 30 May 2013.

8 Explanatory Memorandum (EM), p. 1.

1.8 In particular, the Hawke Review report proposed a 'co-existence model' where Defence remained the primary user of the WPA, but other non-Defence users would have enhanced clarity regarding their access to the WPA. In particular, the report recommended a zonal time arrangement for access to the WPA with red, amber and green zones:

While no new non-Defence users should be admitted to the Red Zone, new non-Defence users should be granted access to the Amber and Green Zones on a time-share basis with Defence. The uncertainty inherent in Defence's test and evaluation program means Defence must have flexibility when setting evacuation requirements. To support this, Defence should be allocated a fixed number of exclusion windows of seven days duration during which non-Defence users will be required to evacuate the Amber and Green Zones.⁹

1.9 In relation to mining and resources, the Hawke Review noted that '[t]he 'WPA has significant resources potential'. It concluded:

Exploiting this potential is likely to bring significant economic benefit to South Australia and the nation more broadly. This means the WPA should be opened up to resources exploration to the maximum extent possible given the requirement for governments at all levels to understand the nation's resource wealth.¹⁰

1.10 Regarding existing users of the WPA, the Hawke Review recommended that 'mining operations, environmental organisations, indigenous groups and pastoralists with an extant presence on the WPA should continue to operate under their current access arrangements unless they choose to be administered under the proposed coexistence model'.¹¹

Recent events

1.11 The Hawke Review report 'identified transition arrangements to support the introduction of the coexistence model' and '[a]dopting a phased approach to admitting new non-Defence users'.¹² These transitional arrangements have included:

- establishing a joint Commonwealth-South Australian Government WPA Coordination Office to implement the recommendation of the Hawke Review and support the administration of non-Defence access to the WPA;
- establishing a WPA Advisory Board 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; and

9 Hawke Review, p. 17.

10 Hawke Review, p. i.

11 Hawke Review, p. 13.

12 Hawke Review, p. ii.

- a three phased approach that incorporated a moratorium period, a transition phase and final steady phase.

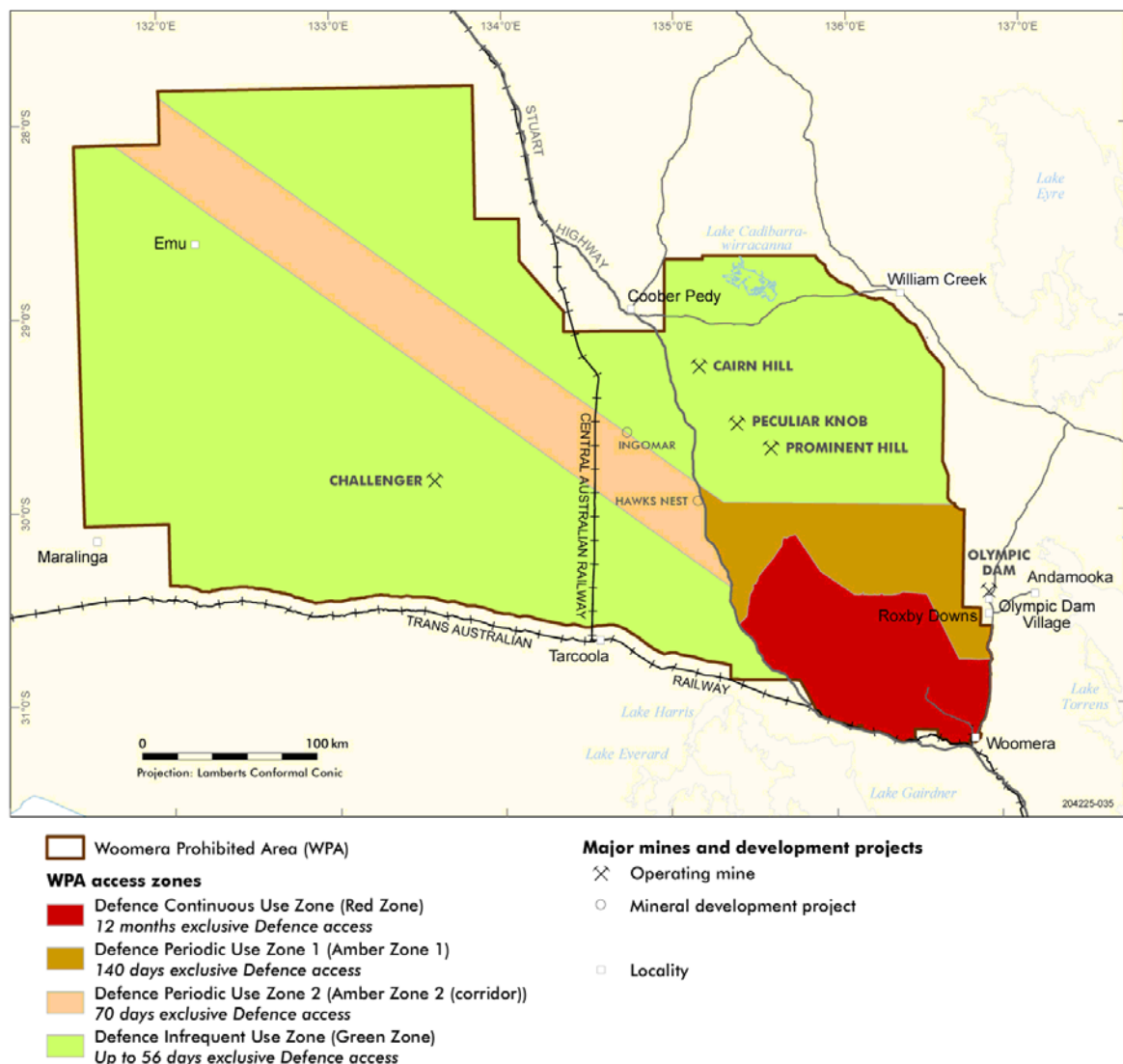
1.12 A moratorium on new users accessing the WPA was put in place from 3 May 2011 through to 5 October 2012. Since the end of the moratorium phase, a framework of exclusion zones has been applied to new non-Defence users of the WPA:

Red Zone (frequent Defence use): no new non-Defence users will be admitted;

Amber Zone (periodic Defence use): new non-Defence users could be excluded for up to 140 days a year in one part (Zone 1), and 70 days in the other (Zone 2); and

Green Zone (infrequent Defence use): new non-Defence users will have a presumption of access; however, they can be excluded for up to 56 days a year.

Figure 1 – Woomera Prohibited Area access zones¹³



Conduct of the Inquiry

1.13 The committee advertised the inquiry on its website and in *The Australian* newspaper, calling for submissions to be lodged by 17 April 2014. It wrote to relevant ministers and departments calling for written submissions, and contacted a number of other organisations and individuals inviting them to make submissions to the inquiry.

1.14 The committee received 16 submissions to the inquiry. These submissions are listed at [Appendix 1](#) and are available via the committee's website: www.aph.gov.au/senate/fact.

1.15 The committee thanks all those who assisted with the inquiry and the committee's previous inquiries into similar bills.

13 Extracted from 'Woomera Prohibited Area access zones', available at <http://www.defence.gov.au/woomera/zones.htm> (access 1 May 2014).

