

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Defence

Defence Act 1903

Woomera Prohibited Area Rule 2014

Purpose

Subsection 72TP(1) of the *Defence Act 1903* provides that the Minister for Defence may, by legislative instrument and with the agreement of the Minister for Industry, make the Woomera Prohibited Area Rule prescribing matters:

- (a) required or permitted by Part VIB of the *Defence Act 1903* to be prescribed by the Rule; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to Part VIB.

Woomera Prohibited Area Rule 2014

Details of the Rule are set out in Attachment 1.

The Rule is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

Consultation has occurred across Commonwealth agencies and the Government of South Australia with all key stakeholders reviewing and commenting on the *Woomera Prohibited Area Rule 2014*.

A public consultation process was conducted with the Rule being made available to interested parties along with the opportunity to make submissions. A number of submissions were received by Defence and reviewed.

Commencement

The Rule commences on the day after which it is registered on the Federal Register of Legislative Instruments.

Statement of Compatibility with Human Rights -Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

A statement of compatibility with Human Rights is set out at Attachment 2.

Details of the Woomera Prohibited Area Rule 2014

Part 1 – Preliminary

Section 1 – Name of Rule

Section 1 provides that the title of the Rule is the Woomera Prohibited Area Rule 2014.

Section 2 – Commencement

Section 2 provides for the Rule to commence on the day after registration.

Section 3 – Authority

Section 3 provides that the Rule is made under subsection 72TP(1) of the *Defence Act 1903*.

Section 4 – Definitions

Section 4 sets out the definitions of key terms used in the Rule.

Part 2 – The Woomera Prohibited Area

Section 5 – The Woomera Prohibited Area

Section 5 provides that the Woomera Prohibited Area is the area on the plan numbered GP 249/1989 deposited in the General Registry Office at Adelaide.

Section 6 – Zones within the Woomera Prohibited Area

Section 6 sets out the zones within the Woomera Prohibited Area and provides a description for each zone. The zones are the red zone, amber zone 1, amber zone 2 and the green zone as these zones are delineated on DMITRE Plan Number 204192-001, which can be accessed via the website of the South Australian Department of State Development.

These zones have been established according to frequency of Defence use. The zones allow Defence and non-Defence users to share the land in the amber and green zones where Defence use is periodic.

Section 7 – No permits for Red Zone

Section 7 provides that the Minister must not issue a permit that allows access to the red zone. The red zone encompasses the high frequency Defence use area and new non-Defence users will not be able to access the red zone.

Section 8 – Exclusion periods

Section 8 provides that the Minister may determine by legislative instrument certain exclusion periods for each zone in a financial year. The exclusion periods are periods during which non-Defence users must evacuate the amber and green zones.

Each zone has an allocated number of exclusion periods of seven days each and these periods may be used consecutively or sporadically. If an exclusion period does not commence immediately after the end of a prior exclusion period, there must be a certain period of time (six weeks in the amber zones and three months in the green zone) before another exclusion period may be set.

An exclusion period may apply to part of a zone only. If an exclusion period is for part of a zone only, the period is considered to be an exclusion period for the whole zone for the purposes of the number of exclusion periods Defence may use in a financial year.

Reference in this section to an exclusion period for a zone is to be considered a reference to an exclusion period for part of a zone.

Section 9 – Notice of exclusion periods

Section 9 requires the Minister to provide a permit holder with written notice of when an exclusion period will come into force, if the permit holder will be affected. The section sets out the required notice periods.

If a permit is issued after the notice period has commenced for an exclusion period, then the Minister must notify the permit holder of the exclusion period at the time the permit is issued.

Section 10 – Permits do not provide permission during exclusion periods

Section 10 provides that a permit issued under this Rule does not give permission to be within a zone during an exclusion period that applies to that zone.

Part 3 – Standing permission

Section 11 – Standing permission to use certain roads and railways

Section 11 provides a standing permission for a person to travel on the specified ‘access routes’ listed at paragraph 11(1) that pass through the Woomera Prohibited Area, provided the person does not deviate from that route.

The Minister may suspend the permission to use the specified access routes. If the Minister suspends this permission, the Minister must set up control points to prevent the use of the access routes and take reasonable steps to inform people who may use the routes.

Section 12 – Standing permission to be in the Woomera Village Standing Permission Area

Section 12 provides permission for anyone to be in the Woomera Village area, which is located within the prohibited area, described at Part 1 of Schedule 1 and in the map at Part 2 of Schedule 1.

The Minister may suspend the standing permission for the Woomera Village when necessary for the security of defence activities or the safety of persons in the Woomera Prohibited Area. If the Minister suspends the standing permission, paragraph 3 sets out the steps that must be taken to prevent entry into the village and inform persons of the suspension.

Part 4 - Permits

Section 13 – Application for Permit

Section 13 provides that a person may apply to the Minister for a permit to allow a person or class of persons to access the Woomera Prohibited Area for a specified purpose.

This section sets out the permit application requirements.

Section 14 – If application does not comply

Section 14 provides that the Minister may not consider a permit application if it does not meet the application requirements set out in section 13. If the Minister considers that a permit application does not comply with the application requirements, the Minister must notify the applicant in writing within 10 business days of receiving the application that the application does not meet the requirements and what further information needs to be provided to meet the requirements.

If the applicant does not provide the additional information within 30 business days (or longer if specified in the notice or approved by the Minister upon written request by the applicant) after the notice is given, the application is taken to be withdrawn.

Section 15 – Withdrawal of application.

Section 15 provides that an applicant may withdraw in writing their application for a permit at any time.

Section 16 – Request for additional information or documents

Section 16 provides that the Minister may request in writing further information or documents for the purposes of deciding an application. In deciding an application for permission, the Minister may request the applicant to provide further information that the Minister considers necessary for determining the application.

The applicant must provide the Minister with the requested information or documents within 20 business days from the request being sent (or longer if specified in the request) otherwise the application is taken to be withdrawn.

Section 17 - Deciding the application

Section 17 provides that the Minister must issue a permit unless the Minister is satisfied that doing so would prejudice the security of defence activities or that the applicant is unlikely to comply with the conditions of the permit.

Section 18 – Time for deciding the application

Section 18 sets out the timeframes the Minister has for deciding an application for a permit. The timeframes are dependent on the type of permit being sought. If the Minister requests further information or documents from the applicant in order to determine the application, then the period is extended by the time it takes the applicant to provide the information or documents.

Section 19 – Form of permit

Section 19 sets out the information that must be specified in a permit.

Section 20 – Term of permit

Section 20 provides the maximum period for which a permit may be in force. If a permit is suspended the period for which it remains in force continues to run.

If a permit is issued on the basis of the permit holder having an authority granted by the South Australian government and the authority:

- expires or is cancelled – the permit is no longer in force to the extent it was issued on the basis of the authority; or
- is suspended – the permit is suspended for the same period that the authority is suspended to the extent it was issued on the basis of that authority.

A permit may be surrendered by returning it to the Minister or giving the Minister written notice of the surrender.

Section 21 – Variation of permit

Section 21 provides that, if a permit holder is issued with an ‘authority’ from the South Australian government that is applicable to their permit, they may apply for a variation to their permit to take account of the authority in accordance with the approved form.

The Minister may decide to vary the permit if it would not prejudice the security of defence activities and the permit holder is likely to comply with any conditions. The Minister must notify the permit holder in writing of any variation to their permit.

A variation comes into force from the day specified in the notice or the day on which notice of the variation is given to the permit holder.

A written notice given under this Rule is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Division 2 – Renewal of permits

Section 22 – Application for renewal

Section 22 provides that a permit holder may apply to the Minister for renewal of the permit. The application for renewal must comply with the conditions set out in this section, known as the permit application requirements, and must be submitted within the timeframes specified.

Section 23 – If application does not comply

Section 23 provides that the Minister is not required to consider an application for renewal where it does not meet the permit renewal application requirements and may seek further information.

The Minister must notify an applicant within 10 business days once the Minister decides not to consider the application because further information or documents are required. The notice must be written and state that the application does not meet the requirements, setting out the matter that must be dealt with before the application will be considered. The applicant must deal with the matters in the notice within 30 business days of the notice being given (or longer if specified in the notice or approved by the Minister upon written request by the applicant), or the application is taken to be withdrawn.

Section 24 – Withdrawal of application

Section 24 provides that an applicant may withdraw an application for renewal of a permit at any time by writing to the Minister.

Section 25 – Request for additional information or documents

Section 25 provides that the Minister may request in writing further information or documents from an applicant in order to consider an application for renewal of a permit. The applicant must provide the Minister with the information set out in the request within 20 business days (or longer if specified in the notice or approved by the Minister upon written request by the applicant), or the time stated in the request, otherwise the application is taken to have been withdrawn.

Section 26 – Deciding the application.

Section 26 provides that the Minister must renew a permit unless the Minister is satisfied that doing so would prejudice the security of defence activities or that the applicant is unlikely to comply with the conditions of the permit.

The Minister must consult with the applicant before refusing to renew a permit.

Section 27– Time for deciding the application

Section 27 provides that if the application for renewal complies with the requirements at least 30 days before the existing permit expires, then the Minister must give the applicant notice of the Minister's decision before the existing permit expires. If further information or documents are requested by the Minister, the period for deciding the application is extended by the time the applicant takes to comply with the request.

Section 28 – Form of renewal

Section 28 provides that if the Minister renews a permit, the Minister must give the applicant a notice which sets out the information in Rule 28(2).

Division 3 – Conditions of permits

Section 29 – Conditions applying to all permits

Section 29 sets out the conditions which apply to all permits.

Section 30 – Secretary may approve form

Section 30 provides that the Secretary may approve a form for the purposes of paragraph 29(2)(a) relating to entering the Woomera Prohibited Area under a permit.

Section 31 – Conditions applying to permits for resource production purposes or resource exploration purposes

Section 31 sets out the additional conditions which apply to resource production and resource exploration permits.

Section 32 – Approved persons

Section 32 provides for the Secretary to consent to a person as an 'approved person' if the permit holder applies in writing to the Secretary in accordance with the criteria set out at 32(1)(a)(i) to (iv) and the Secretary is satisfied that approving the person would not prejudice the security of defence activities and the person is likely to comply with permit conditions and any conditions attached to being an approved person.

In deciding an application for approved person status, the Secretary may request in writing additional information or documents from the permit holder. The permit holder must provide the information or documents to the Secretary within 20 business days after the request (or longer if specified in the notice or approved by the Secretary upon written request by the applicant) the application is taken to have been withdrawn.

Section 33 – Deciding the application

Section 33 provides that the Secretary must decide an application for approved person status within 20 days after the application is received. If the Secretary requires further information or documents, the decision time is extended by the time it takes the holder to comply with the Secretary's request.

The Secretary must inform the permit holder of the Secretary's decision on an application for approved person status as soon as practicable after the decision has been made. If the person is approved as an approved person, this status remains in force for the period specified in the approval (which must not be longer than 2 years) and is subject to any conditions included in the approval.

Section 34 – Secretary may suspend or cancel an approval

Section 34 provides that the Secretary may suspend or cancel the status of a person as an approved person where necessary for the security of defence activities, including a failure to comply with conditions of the approval.

Section 35 – Escorted persons

Section 35 provides that a person is an escorted person only if a permit holder has given the Secretary written notification that meets the requirements set out in section 35(2) before the person first enters the Woomera Prohibited Area. A person's status as an escorted person remains in force for two years from the date of notification.

A permit has the condition that the permit holder must ensure that an escorted person not be in the Woomera Prohibited Area for more than 5 days in total, unless the escorted person has applied for approved person status under section 32 of the Rule. If a person applies for approved person status before the 5 day escorted person limit is expended, the person may remain an escorted person until the approved person application is decided.

A person's escorted status will cease:

- two years after the permit holder has notified the Secretary of the person as an escorted person; or
- when the Secretary revokes the person's status under section 35(6); or
- when the person becomes an approved person.

If a person's escorted status ends because the two year period is up, the permit holder may again notify the Secretary in accordance with section 35(1) to re-establish the person's escorted status.

The Secretary may give the permit holder written notice revoking a person's escorted status if the holder does not comply with section 35(3) or the Secretary considers it necessary for the security of defence activities.

Section 36 – Conditions applying to permits issued to bodies corporate

Section 36 provides that the body corporate must notify the Minister in writing within 15 business days if a person (either alone or with a group) acquires a controlling interest in the body corporate. 'Acquires a controlling interest' is defined in section 36(3).

Section 37 – Minister may include other conditions in permits or impose later conditions

Section 37 provides that the Minister may impose on a permit any other conditions considered necessary for the purposes of the security of defence activities or ensuring a permit holder complies with conditions. The conditions must be included on the permit or in the instrument of renewal.

At any time after the issue of a permit, the Minister may impose further conditions on the permit by written instrument provided to the permit holder.

A written notice under section 37(3) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Division 4 –Cancelling a Permit

Section 38 – Cancelling a permit

Section 38 provides that the Minister may cancel a permit if necessary for the purposes of the defence of Australia.

The Minister must notify the holder in writing of the intention to cancel the permit 30 days before the permit is cancelled, and give the holder an opportunity to submit matters to the Minister to be taken into account in the decision on whether to cancel the permit. The Minister must take into account all matters submitted by the holder and any action taken by the holder to address any concerns or prevent any reoccurrences of similar circumstances.

Section 38 does not limit the provisions in Part 7 of this Rule.

Part 5 – Minister’s permission

Section 39 – Requests for Minister’s permission

Section 39 provides that a person may request permission from the Minister to be in the Woomera Prohibited Area for a particular purpose. The request must be made in writing unless the Minister agrees otherwise.

For example, a Minister’s permission might be sought by a permit holder to provide care and maintenance to its mining operation in circumstances where its mining production permit is suspended.

If the Minister delegates the powers and functions under section 72TF of the *Defence Act 1903*, the request must be made to the Minister’s delegate. Contact details for the Minister’s delegate must be accessible on the Department of Defence’s website.

Section 40 - Giving Minister’s permission

Section 40 sets out the criteria that must be satisfied before the Minister may give permission under section 39 to be at places in the Woomera Prohibited Area. The

Minister must notify the person either in writing or orally of the Minister's decision. If the decision is provided orally, the Minister must provide to the person the written permission as soon as practicable.

A permission is conditional – it provides permission only for those activities for which the permission was given. A permission, whether oral or written, must specify the matters at section 40(5)(a) through (e), and any other conditions to which the permission is subject.

A written record of all permissions granted under this section must be kept by the Minister.

Section 41 – Cancelling a Minister's permission

Section 41 provides that a Minister may cancel permission when necessary for the purposes of the defence of Australia. Section 41(2) sets out the steps the Minister must take before cancelling permission.

This section is not intended to limit Part 7 of this Rule.

Part 6 – Infringement notices

The Rule establishes an infringement notice regime. Such a regime provides an efficient means of penalising behaviour which, while relatively minor in criminality, can have significant repercussions. The issuing of a notice would not replace the current penalties existing within the Act, but would serve as an alternative to prosecution.

An infringement notice may be issued for the offence at section 72TG of the *Defence Act 1903*, which is an offence of strict liability.

Section 42 – Prescribed conditions in relation to infringement notices

Section 42 prescribes the conditions for infringement notices.

Section 43 – Secretary may appoint authorised officers

Section 43 provides that the Secretary may appoint authorised officers for the purpose of Part 6 relating to the issuing of infringement notices.

Section 44 – When an infringement notice may be given

Section 44 provides that an authorised officer may issue an infringement notice. Before issuing a notice the authorised officer must have reasonable grounds to believe that a person has contravened section 72TG of the *Defence Act 1903*. The issuing of an infringement notice is at the authorising officer's discretion and the option to prosecute an offender remains available if the circumstances are appropriate to pursue that course of action.

The authorising officer may issue an infringement notice within 12 months after the day on which the alleged offence was committed. Section 15B of the *Crimes Act 1914* concerns the time limit for prosecuting an offence and provides that prosecution should not take place in excess of one year after the date of the alleged offence. It would not be practical for the infringement notice regime to operate under a timeframe that is less than that imposed under the *Crimes Act 1914*.

An infringement notice must only relate to one contravention of section 72TG of the *Defence Act 1903*, unless section 44(4) applies.

Section 45 – Matters to be included in an infringement notice

Section 45 provides the requirement for information, which must be included on the infringement notice that is served on the recipient. The mandatory content ensures that the recipient has sufficient information to understand the nature of the notice and the provision within the Act that has been allegedly breached. The infringement notice will include particulars relating to:

- the amount of the penalty,
- the due date, and
- methods of payment.

The recipient will have a 28 day period to pay the infringement notice. The time allowed for payment is appropriate, as it balances the need for a fair amount of time to pay the penalty with the requirement for prompt enforcement.

The infringement notice will advise the recipient that if they pay the penalty within the time period, any liability for the offence is discharged. The recipient may choose not to pay the penalty and instead have the matter heard before a court. The potentially higher penalties imposed by a court must also be disclosed on the form so that the recipient is fully aware of the consequences of any alternative action.

The infringement notice will include information advising the recipient that they may choose to apply to the Secretary to have the notice withdrawn. This internal review mechanism has been included within the regime to ensure that a recipient of a notice has an effective means of contesting the grounds on which the notice is issued.

Section 46 – Extension of time to pay amount

Section 46 provides that a recipient of an infringement notice may apply for an extension of time in which to pay the penalty. The process of receiving an application for an extension of time to pay and making a decision to grant or refuse a withdrawal is governed by timeframes so that each of the parties is aware of their obligations and the matter is dealt with promptly.

Section 47 – Withdrawal of an infringement notice

Section 47 provides for the recipient of an infringement notice to apply to the Secretary to have it withdrawn. The Secretary must give consideration to several elements before

withdrawing or refusing to withdraw a notice, as part of the decision-making process. The matters the Secretary must take into account include:

- any previous penalties imposed on the recipient under section 72TC, 72TG or 72TJ of the Act;
- the circumstances of the alleged offence,
- whether a notice had previously been issued and paid for the same alleged contravention, and
- any other relevant matter.

If the Secretary decides to withdraw an infringement notice, a notice of withdrawal must be given to the recipient.

The infringement notice provisions require that a person must be refunded if an infringement notice is withdrawn and the person who received the infringement notice has already paid.

Section 48 – Effect of payment of amount

Section 48 provides that payment of an infringement notice discharges any liability of a person and that person cannot be prosecuted for the same offence. Additionally, payment of the infringement notice cannot be considered as an admission of guilt. Payment of an infringement notice concludes the matter and, apart from any demerit points that may be incurred in accordance with Part 7 of this Rule, no further consequences will arise as a result of the identified breach.

Section 49 – Effect of this part

Section 49 provides that the infringement notice regime is discretionary and does not require that a notice must be issued where there is an identified breach.

A person's liability for an alleged contravention of section 72TG of the *Defence Act 1903* is not affected if an infringement notice is not complied with, not given to the person for the alleged contravention or is subsequently withdrawn.

Infringement notices may be issued to a person more than once for the same offence if a person continuously fails to comply with their obligations under the Act. The issuing of more than one notice is discretionary and a matter may alternatively be pursued in the Courts if that is deemed to be the most appropriate course of action. Prosecution may be preferred if a person frequently breaches the provisions of the Act and has a history of non-compliance.

Part 7 – Demerit points

Division 1 – Preliminary

Section 50 – When Demerit points are incurred

Section 50 sets out when demerit points will be incurred and the number of demerit points that will be incurred for particular offences.

Section 50(3) provides that if a permit holder has incurred demerit points and the Secretary subsequently withdraws the infringement notice, then the permit holder is taken to have not incurred the demerit points.

Division 2 – Consequences of incurring demerit points

Section 51 – Demerit suspension notice.

Section 51 provides that the Secretary must give the permit holder a demerit suspension notice if the permit holder incurs 10 demerit points in a 12 month period for failing to comply with permit conditions in relation to the same kind of permit and they have not previously had a suspension notice. The permit will be suspended for 90 days from the date specified in the notice and the permit holder cannot be issued a permit of the same kind during the suspension period.

Section 52 – Second-time demerit suspension notice

Section 52 provides that the Secretary must give the permit holder a demerit suspension notice if the permit holder incurs 10 demerit points in a 12 month period for failing to comply with permit conditions in relation to the same kind of permit, and they have had a previous suspension notice within the past 10 years. The permit will be suspended for 120 days from the date specified in the notice and the permit holder cannot be issued a permit of the same kind during the suspension period.

Section 53 – Details in a demerit suspension notice

Section 53 provides that a demerit suspension notice must include the date of the notice, the start date of the suspension period, the length of the suspension period, the permit covered by the notice and other appropriate information.

Section 54 – Demerit cancellation notice

Section 54 provides that the Secretary must give the permit holder a demerit cancellation notice if the permit holder has incurred 5 demerit points in a 12 month period for failing to comply with permit conditions in relation to the same kind of permit and they have previously had two suspension notices in relation to the same kind of permit. The permit will be cancelled from the date specified in the notice and the permit holder cannot be issued a permit of the same kind for 3 years from the date specified.

Section 55 – Details in a demerit cancellation notice.

Section 55 provides that a demerit cancellation notice must include the date of the notice, the start date, the period of disqualification, the permit covered by the notice and other appropriate information.

Section 56 – Expiry of demerit point.

Section 56 provides that if a demerit suspension or cancellation notice is issued, any demerit points that were accumulated under sections 51(1), 52(1) or 54(1) towards that notice, are to be disregarded for the purposes of subsequent calculations of demerit points.

Division 3 – Reinstatement of permit in special circumstances

Section 57 – Secretary may reinstate if satisfied that holder’s livelihood depends on permit

Section 57 provides that a permit holder who has been given a demerit suspension or cancellation notice, may apply to the Secretary to have their permit reinstated. The Secretary may reinstate a permit when satisfied that the suspension or cancellation would cause the holder severe financial hardship due to not being able to earn a substantial portion of the holder’s income. In these circumstances the Secretary may reinstate the permit and impose permit conditions that are appropriate in the circumstances.

Division 4 – Administration of the demerit points scheme

Section 58 – Secretary must maintain a demerit points register

Section 58 requires the Secretary to maintain a register of records that are necessary or relevant to the administration of demerit points. The Secretary must correct any mistake, error or omission on this register.

Section 59– Secretary may maintain other records

Section 59 allows the Secretary to maintain any records of information and actions taken pertaining to the administration of demerit points.

Section 60 – Demerit points incurred to be included in register

Section 60 sets out the information this must be recorded in a register when a person incurs demerit points in relation to an offence against section 72TG of the Act.

Part 8 – Limits on amounts of compensation

Section 61 – Limits on amounts of compensation

Section 61 provides that for the purposes of section 72TL of the Act, the limit of compensation payable to a person for loss or damage suffered in the Woomera Prohibited Area, not resulting in death or personal injury, is limited to \$2 million.

Part 9 – Review of decisions

Section 62 – Review of decisions

Section 62 provides for an internal review process to allow the Minister to review decisions made under the specified sections of the Rule. A person affected by a decision made under those sections may apply in writing to the Minister seeking to have the decision reviewed. The Minister must review the decision and confirm, vary or revoke the original decision. The Minister must notify the applicant of the reviewed decision within 20 days of receiving the person's application.

AAT review

Section 62(4) provides that a person may apply to the Administrative Appeals Tribunal to review a decision made by the Minister under section 62(2).

Part 10 – Miscellaneous

Section 63 – Delegation by Minister

Section 63 provides that the Minister may delegate specified powers or functions in this Rule to specified members of the Department of Defence or Australian Defence Force.

Section 64 – Delegation by Secretary

Section 64 provides that the Secretary may delegate specified powers or functions in this Rule to specified members of the Department of Defence or Australian Defence Force.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Woomera Prohibited Area Rule 2014

The Rule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Woomera Prohibited Area Rule 2014

Subsection 72TP(1) of the *Defence Act 1903* provides for various matters to be prescribed, or made provision for under the *Woomera Prohibited Area Rule 2014* (the Rule).

The Rule prescribes the Woomera Prohibited Area, which is intended for use for the purposes of the defence of Australia. The Rule prescribes four zones within the Woomera Prohibited Area and exclusion periods associated with Defence use of the zones.

The Rule makes provision for the issue of permits that allow people to be present in the Woomera Prohibited Area. A permit will be issued for a specific purpose, for example:

- Resources purposes
 - Resource production
 - Resource exploration
- Non-opal mining and exploration
- Opal Mining
- Research purposes
- Tourist purposes;
- Environmental purposes
- Other purposes

The process by which a person may apply for a permit and the process for deciding an application are set out in the Rule. This includes the criteria under which the Minister will decide an application and the timeframe, along with conditions that may be attached to a permit.

A permit may be suspended or cancelled if it is considered necessary for the security of defence activities or where a person has failed to comply with the conditions of their permit.

The Rule also provides for an infringement notice scheme and a demerit point scheme in the event of an alleged failure to comply with a permit condition. If a certain number

of demerit points are incurred within a particular period, a permit may be subject to cancellation or suspension.

The Rule also sets out the process for the review of a decision to:

- Issue or refuse to issue a permit;
- Renew or refuse to renew a permit;
- Issue a permit subject to conditions specified in the permit;
- Impose a condition on a permit after a permit is issued;
- Suspend a permit; or
- Cancel a permit.

An application for review may be made in writing to the Minister who may review the decision or refuse to review the decision. It is also open for an application to be made to the Administrative Appeals Tribunal for a review of these decisions.

Human rights implications

The Rule is likely to engage the following human rights:

Freedom of Movement – Article 12 of the International Covenant on Civil and Political Rights

The right to freedom of movement includes the right to move freely within a country for those who are lawfully within the country. The Rule makes provision for exclusion zones along with the various types of required permits that may be subject to conditions, cancelled or suspended.

The establishment of the Woomera Prohibited Area, its exclusions zones and exclusion periods place restrictions on who may enter the Woomera Prohibited Area and in some circumstances may require evacuation of a specific zone for a set period of time. During exclusion windows, those with permission to be within the Woomera Prohibited Area may not be allowed within a zone.

The Rule provides a standing permission for people travelling on major access routes within the Woomera Prohibited Area including road and rail used for the movement of passengers and freight. This permission may be suspended where the Minister considers it necessary for the purposes of the defence of Australia. In these circumstances, the freedom of movement will be limited to ensure personal safety and the security of activities taking place within the Woomera Prohibited Area.

The Rule provides for permits and the processes associated with the issuing, renewal, attachment of conditions and cancellation of a permit. In order to obtain a permit, the Minister must be satisfied that doing so would not prejudice the security of defence activities and that the person is likely to comply with any conditions to which the permission is subject. In the event that these requirements are not met, the Minister is not required to give permission to a person to enter the Woomera Prohibited Area and thereby limiting the right to move freely within a country.

Limiting the right to freedom of movement is reasonable and necessary in these circumstances as the intention is to protect national security and personal safety. The Woomera Prohibited Area is used by Defence for activities relating to the defence of Australia, the conduct of which could endanger human life should people be in the Area while a defence-related activity is taking place. Therefore, this right is limited in order to allow the Government to carry out activities necessary for maintaining a modern defence force and protecting national security, while also allowing non-Defence users to safely access the WPA to take full advantage of the economic benefits it contains.

While the right to freedom of movement may be limited where there is a threat to safety or security, people affected by a decision relating to the issue, renewal, conditions suspension or cancellation of a permit may make an application to the Minister for internal review or apply to the Administrative Appeals Tribunal. The right of review ensures that the limitation on the right of freedom of movement is only limited to the extent necessary to allow the conduct of defence activities in a safe and secure manner.

Right to work - the International Covenant on Economic, Social and Cultural Rights (ICESCR)

The right to work is protected by Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The ICESCR affirms the obligation of participating parties to assure individuals their right to freely choose or accept work, including the right not to be deprived of work unfairly. This principle underlines the notion that respect for the individual and his or her dignity is expressed through the freedom of the individual regarding the choice to work, while emphasising the importance of work for personal development as well as for social and economic inclusion.

Under Part 3 of the Rule the Minister may give permission for a person to be at places on the Woomera Prohibited Area and Part 4 provides for permits to be issued to allow a person to be at places within the Woomera Prohibited Area for particular purposes.

This permission is subject to the Minister being satisfied that giving permission would not prejudice the security of defence activities, and that the person is likely to comply with any conditions to which the permit is subject.

Where a person does not meet these requirements to the satisfaction of the Minister, a permission to be at places within the Woomera Prohibited Area may not be granted thereby preventing a person from obtaining employment that requires access to this area.

In addition, the exclusion periods provided for in section 8, and determined by the Minister by legislative instrument will limit access to parts of the Woomera Prohibited Area during specified periods. These exclusion periods will limit the times in which a person may attend work or the periods in which a body corporate may conduct business activities.

Article 4 of ICESCR provides that countries may subject economic social and cultural rights only to such limitations 'as are determined by law only in so far as this may be

compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society'. The UN Committee has stated that such limitations must be proportional, and must be the least restrictive alternative where several types of limitations are available, and that even where such limitations are permitted, they should be of limited duration and subject to review.

The limitations on the right to work set out in the Rule meets the requirements of Article 4 in that the restrictions on access to the Woomera Prohibited Area are only for periods set out in a legislative instrument and are carried out in a manner which will maximise access to the area when it is not being used for the testing of war materiel. Any limitation caused by a person not meeting the requirements for a permission or permit or subject to cancellation or suspension, is subject to internal review or application to the Administrative Appeals Tribunal for review of this decision. The ability to seek review of a decision complies with the requirements of Article 4.

A further element is the right to just and favourable conditions of work included in Article 7 of ICESCR includes a right to safe and healthy working conditions. The restrictions provided for in the Rule through exclusion periods and zones support this right by ensuring that people are evacuated from an area where there is a potential hazard caused by the testing of war materiel.

Conclusion

The Rule is compatible with the international human rights conventions to which Australia belongs. While recognising that freedom of movement and employment opportunities may be limited for a small group of people, the Rule is reasonable and necessary to allow a prohibited area to be used for non-defence purposes while maintaining the security of defence activities and the safety of all users.

David Johnston

Minister for Defence