

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for Defence

*Defence Act 1903*

*Woomera Prohibited Area Rule 2014*

*Suspension of Standing Permission in the Woomera Prohibited Area for 1 September 2019 – 5 October 2019 Amendment No.1*

### **Purpose**

Subsection 11(3) of the *Woomera Prohibited Area Rule 2014* provides that the Minister for Defence may, by legislative instrument, suspend standing permission to use certain roads and railways if the Minister is satisfied that it is necessary for:

- (a) the security of defence activities; or
- (b) the safety of persons in the Woomera Prohibited Area.

The Minister has delegated the power to suspend permission for travel on the access routes in subsection 11(1) of the *Woomera Prohibited Area Rule 2014* within the Woomera Prohibited Area.

The suspension of standing permission in the Woomera Prohibited Area may be amended in accordance with subsection 13(1)(a) of the *Legislation Act 2003* and subsection 33(3) of the *Acts Interpretation Act 1901*. This subsection of the *Acts Interpretation Act* provides that, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument

### **Suspension of Standing Permission in the Woomera Prohibited Area for 1 September 2019 – 5 October 2019 Amendment No.1**

Details of the suspension of standing permission are set out in Attachment 1.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

### **Consultation**

This instrument suspends permission to travel on the Stuart Highway during periods of Defence testing activities in the WPA. Given the nature of these activities, the actual duration and extent of any suspension specified in this instrument may be subject to change which may result in the period of suspension progressing as promulgated, or its duration being reduced, or it being revoked.

Defence provides notice of the duration of testing, as well as limitations and restrictions on travel along access routes, and when it is safe to access these areas upon completion of the activity.

Notice of upcoming exclusion periods is provided to those people who hold a permit under the *Woomera Prohibited Area Rule 2014* and communicated publicly via Defence's website and signage which is placed along public access routes to the WPA when they are subject to closure

### **Commencement**

This instrument commences on the day after registration.

**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.

## Attachment 1

### **Details of the Suspension of Standing Permission in the *Woomera Prohibited Area***

Section 11 of the *Woomera Prohibited Area Rule 2014* permits travel along certain access routes in the Woomera Prohibited Area subject to the condition that the person not deviate from the access route.

This permission may be suspended where it is necessary for the security of defence activities or the safety of persons in the Woomera Prohibited Area.

This instrument amends the original instrument suspending the standing permission for travel on the Stuart Highway in accordance with subsection 11(3) of the *Woomera Prohibited Area Rule 2014* by varying the location specified in the instrument.

The Woomera Prohibited Area is the area prescribed in section 5 of the *Woomera Prohibited Area Rule 2014*.

## 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

#### Suspension of Standing Permission in the Woomera Prohibited Area for 1 September 2019 – 5 October 2019 Amendment No.1

This instrument under the *Woomera Prohibited Area Rule 2014* 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 Instrument

In 2014, amendments were made to the *Defence Act 1903* that implemented recommendations of the Government's review of the Woomera Prohibited Area (WPA). The amendments saw the introduction of the *Woomera Prohibited Area Rule 2014*, which provides for the issuing of permits to access the WPA.

The legislation established a coexistence scheme that provides non-Defence users with greater certainty over defence activity in the WPA and access arrangements. A key feature of the 2014 legislation was the introduction of access management zones with defined exclusion periods.

Subsection 11(3) of the *Woomera Prohibited Area Rule 2014* provides that the Minister may, by legislative instrument, suspend permission to travel on specified access routes if the Minister is satisfied that it is necessary for the security of defence activities; or the safety of persons in the Woomera Prohibited Area.

This instrument amends the original instrument made under section 11(3) of the *Woomera Prohibited Area Rule 2014* to suspend permission to travel on the Stuart Highway at the locations specified in the instrument.

#### Human rights implications

The amendment to the suspension of the standing permission is likely to engage the following human rights:

#### Freedom of Movement – Article 12 of the International Covenant on Civil and Political Rights (ICCPR)

The right to freedom of movement includes the right, for those who are lawfully within a country, to move freely within that country.

The Instrument amends the location to which permission to travel on certain access routes in the WPA will be suspended. During this period, the WPA is used by Defence for testing activities relating to the defence of Australia, the conduct of which could endanger human life should people be in the zones while this activity is taking place. In these circumstances, freedom of movement will be limited for the duration

of the period to ensure personal safety and the security of people due to defence activities taking place within the WPA.

Any limitation on freedom of movement is considered reasonable, proportionate and necessary in these circumstances to maintain the security of defence activities and protect personal safety. The suspension of permission to use these access routes in the WPA will prevent the movement of people through an area when Defence is undertaking its testing activities. This will allow the activity to be conducted in a safe and secure manner and at the end of the period, a person may safely resume accessing the WPA along those access routes.

In addition to written notice, the Woomera Prohibited Area Coordination Office informs stakeholders of the suspension of permission on their website before they come into effect, along with notices in newspapers and signage established along these routes.

The above mechanisms ensure the limitation on the right to freedom of movement is reasonable, proportionate and necessary in these circumstances.

### **The right to work and the right to just and favourable working conditions - the International Covenant on Economic, Social and Cultural Rights (ICESCR)**

The right to work is protected in Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) while Article 7 recognises the right to just and favourable conditions of work including a right to safe and healthy working conditions.

The amendment to the suspension of permission to travel on certain access routes under section 11 of the *Woomera Prohibited Area Rule 2014* by the Minister may limit access to parts of the WPA for the duration of the period. This may prevent permit holders under the *Woomera Prohibited Area Rule 2014* from being able to work and prevent a body corporate from conducting its business activities in the WPA in addition to people transiting through the area.

As noted above, during the periods specified in the Instrument, the WPA is used by Defence for testing activities relating to the defence of Australia, the conduct of which could endanger human life should a person be in a zone during the period. In these circumstances, the right to work will be limited for the duration of the suspension to ensure personal safety and the security of defence activities.

Any limitations on the right to work and the right to just and favourable working conditions are considered reasonable, proportionate and necessary to ensure the security of defence activities and protect personal safety. This limitation will achieve this objective by allowing Defence to undertake its testing activities and ensuring that people will not be put in danger as a result of being in the area at the relevant time. This includes preventing people from using certain access routes where there is a potential hazard caused by the testing of war materiel.

Further to this, any limits on travelling through the area is only for the periods specified in the instrument with affected people given advanced notice of the duration

of the suspension, ensuring the limitation on the right to work is reasonable and proportionate.

### **The right to enjoy and benefit from culture - ICCPR and the right to take part in cultural life - ICESCR**

Article 27 of the ICCPR protects the rights of all people to enjoy and benefit from culture, while Article 15 of the ICESCR protects the right to take part in cultural life.

For Indigenous Australians, enjoying and benefiting from culture and taking part in cultural life may include traditional, social and economic activities such as fishing or hunting and the right to live on traditional lands. The suspension of permission to use access routes in the WPA may limit Indigenous people's cultural rights, including the traditional use of land in the relevant zones for hunting, food gathering and ceremonial or religious purposes. Limiting travel along an access route will be for the purpose of Defence testing activities, the conduct of which could endanger human life should people be in the zone while this activity is taking place.

The limitation on these rights is reasonable, proportionate and necessary to maintain the security of defence activities and ensure the safety of people who have access to this area. Once the suspension on the use of the Stuart Highway has ended, Indigenous people are able to access the WPA and enjoy and take part in cultural life as recognised in the ICCPR and ICESCR

### **Conclusion**

The amendment to the suspension of standing permission in the WPA is compatible with the international human rights instruments to which Australia is a signatory. While recognising that freedom of movement, the right to work and the right to enjoy and benefit from culture may be limited for certain periods in the WPA, these limitations are reasonable, necessary and proportionate to achieving legitimate objectives.

**John Anderson**

**Director Woomera Prohibited Area Coordination Office.**