

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Defence

Defence Act 1903

Woomera Prohibited Area Rule 2014

Determination of Exclusion Periods for the Green Zone for 1 September 2019 – 5 October 2019 Amendment No. 3

Purpose

Subsection 8(1) of the *Woomera Prohibited Area Rule 2014* provides that the Minister for Defence may, by legislative instrument, determine the exclusion periods for the Green Zone in the Woomera Prohibited Area (WPA). The Minister has delegated the power to determine these exclusion periods.

During a financial year, exclusion periods determined by legislative instrument may be amended to vary access to zones within the Woomera Prohibited Area 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

Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for the Green Zone for 1 September 2019 – 5 October 2019 Amendment No.3

Details of the Amendment are set out in Attachment 1.

Consultation

Exclusion periods in the WPA are determined in the basis of prospective Defence testing requirements and to meet the notification requirements provided by sections 9(1) and 9(2) of the *Woomera Prohibited Area Rule 2014*.

This amendment further varies those exclusion periods that Defence intends to use for testing during the periods specified. Notification of these exclusion periods is provided by post and email to all relevant stakeholders who have permission to access that part of the WPA.

Consultation was not undertaken at the time of this amendment due to the nature of Defence testing activities in the WPA where the actual duration and extent of specified in this amendment may be subject to change. This may result in an exclusion period progressing as promulgated, or being varied via a reduction in the extent and duration or being revoked in its entirety.

When an exclusion period approaches and when the extent of any testing is known, Defence will contact those people who will be directly affected by these exclusion periods including

pastoralists, traditional owners and mine operators. Defence will provide notice of the duration of testing, as well as limitations and restrictions on access to the areas that are subject to an exclusion period, and will advise people when it is safe to access these areas upon completion of the activity.

Notice of upcoming exclusion periods is also made available through Defence's website and signage which is placed along public access routes to the WPA when they are subject to closure.

Commencement

This amendment 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.

Details of the *Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for the Green Zone for 1 September 2019 – 5 October 2019 Amendment No.3*

The *Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for the Green Zone for 1 September 2019 – 5 October 2019* set out the exclusion periods that apply to the Woomera Prohibited Area for the Green Zone between 1 September 2019 and 5 October 2019 in accordance with subsection 8(1) of the *Woomera Prohibited Area Rule 2014*.

Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for the Green Zone for 1 September 2019 – 5 October 2019 Amendment No.1 varied the determination to specify an additional area to which exclusion periods will apply in the Green Zone.

Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for the Green Zone for 1 September 2019 – 5 October 2019 Amendment No.2 further varied the determination to specify an additional area to which exclusion periods will apply in the Green Zone

Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for the Green Zone for 1 September 2019 – 5 October 2019 Amendment No.3 will vary the determination to vary the exclusion period and the exclusion area specified in the original instrument.

The exclusion periods specified in the Schedule are the dates in which holders of a permit issued under the *Woomera Prohibited Area Rule 2014* are excluded from entering part of the Green Zone.

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 Determination of Exclusion Periods for the Green Zone for 1 September 2019 – 5 October 2019 Amendment No.3

The *Determination of Exclusion Periods for the Green Zone between 1 September 2019 and 5 October 2019 Amendment No.3* (the third amendment), made under subsection 8(1) of 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 Determination

The third amendment provides for an additional part of the Green Zone that will be subject to Exclusion Periods. During these exclusion periods, the holders of a permit issued under the *Woomera Prohibited Area Rule 2014* are excluded from entering parts of the Green Zone specified in the instrument.

Human rights implications

The Determination 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 original Determination and the subsequent amendments specify exclusion periods for parts of the Green Zone between 1 September 2019 and 5 October 2019, during which time permit holders are unable to enter those zones. During these exclusion periods, 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 exclusion 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 Determination of exclusion periods in the WPA achieves this objective as the exclusion periods 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 exclusion period, a person may safely resume accessing those areas in the WPA in accordance with their permit. Further to this, the exclusion periods are for a finite period of time and, under the *Woomera Prohibited Area Rule 2014*, permit holders must be given at least 21 days notice (where the permit is not for resource production). In addition to this written notice, the Woomera Prohibited Area Coordination

Office informs stakeholders of the exclusion periods on its website before they come into effect.

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.

Exclusion periods determined under section 8 of the *Woomera Prohibited Area Rule 2014* by the Minister will remove the right to access parts of the WPA for the duration of the exclusion periods. 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.

As noted above, during the exclusion periods specified in the original Determination and the subsequent amendments, 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 an exclusion period. In these circumstances, the right to work will be limited for the duration of the exclusion period to ensure personal safety and the security of permit holders.

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 evacuating people if their working conditions become dangerous or unfavourable; where there is a potential hazard caused by the testing of war materiel.

Further to this, exclusion from the area is only for the periods specified in the amendment with affected stakeholders given advance notice of the duration of the exclusion periods, 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 exclusion periods specified in the original determination and the subsequent amendments 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 access to the relevant zones 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 exclusion periods have 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 third amendment 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