

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Defence

Defence Act 1903

Woomera Prohibited Area Rule 2014

*Determination of Exclusion Periods for Amber Zone 1 and Amber Zone 2 for
Financial Year 2021-2022*

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 Amber Zone 1 and Amber Zone 2 in the Woomera Prohibited Area (WPA) for a financial year.

The Minister has delegated the power to determine exclusion periods for a financial year pursuant to subsection 63(2) of the *Woomera Prohibited Area Rule 2014*.

***Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for
Amber Zone 1 and Amber Zone 2 for Financial Year 2021 - 2022***

Details of the Determination are set out in Attachment 1.

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

Consultation

Defence consulted on the general principles of exclusions periods in the WPA as part of the introduction of the *Woomera Prohibited Area Rule 2014*. Through this process, the persons who are directly affected by the exclusion periods were given the opportunity to comment on the Minister's power to determine exclusion periods, including detailing the direct or indirect impact an exclusion period would have on them or their business.

The *Woomera Prohibited Area Rule 2014* contains a number of mechanisms to limit the potential impacts that exclusion periods have on affected persons, including the notification requirements provided by section 9 and limitations on the number of days that persons may be excluded from the WPA.

As a result of these requirements, determination of exclusion periods for a financial year is based on prospective Defence testing requirements and the actual duration and extent of exclusions determined by this instrument may be subject to change. This may result in an exclusion period progressing as initially determined in this instrument, or its duration being reduced, or it being revoked.

When an exclusion period approaches and when the extent of any testing is known, Defence contacts those people who will be directly affected by these exclusion periods including pastoralists, traditional owners and mines.

In the above context, additional consultation was not undertaken in relation to the making of this particular instrument.

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.

Details of the Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for Amber Zone 1 and Amber Zone 2 for Financial Year 2021 - 2022

This Determination sets out the Exclusion Periods that apply to Amber Zone 1 and Amber Zone 2 in the Woomera Prohibited Area for Financial Year 2021 - 2022 in accordance with subsection 8(1) of the *Woomera Prohibited Area Rule 2014*.

The Exclusion Periods in the Schedule are the dates in which holders of a permit issued under the *Woomera Prohibited Area Rule 2014* are excluded from entering Amber Zone 1 and Amber Zone 2.

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 Amber Zone 1 and Amber Zone 2 for Financial Year 2021 - 2022

The Determination of Exclusion Periods for Amber Zone 1 and Amber Zone 2 for Financial Year 2021- 2022, made under subsection 8(1) of the *Woomera Prohibited Area Rule 2014*, (the Determination) 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

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 ability to prescribe zones within the WPA and make provision for exclusion periods within those zones. Under section 6 of the *Woomera Prohibited Area Rule 2014*, red, amber (zone 1 and 2) and green zones have been prescribed.

Subsection 8(1) of the *Woomera Prohibited Area Rule 2014* provides that the Minister for Defence may, by legislative instrument, determine exclusion periods for Amber Zone 1 and Amber Zone 2 in the WPA for a financial year. In accordance with section 10 of the *Woomera Prohibited Area Rule 2014*, a permit does not provide permission for a person to be in a zone during an exclusion period.

This Determination, made under subsection 8(1) of the *Woomera Prohibited Area Rule 2014*, exercises the power of the Minister for Defence by her delegate to determine the exclusion periods for Amber Zone 1 and Amber Zone 2 in the WPA for the Financial Year 2021 - 2022.

During these exclusion periods, the holders of a permit issued under the *Woomera Prohibited Area Rule 2014* are excluded from entering Amber Zone 1 and Amber Zone 2 during the periods specified in the Determination.

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 Determination specifies exclusion periods for Amber Zone 1 and Amber Zone 2 within the WPA, 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.

The exclusion periods are for a finite period of time. In accordance with section 9(2)(a)(i) of the *Woomera Prohibited Area Rule 2014* permit holders must be given at least three months' notice before the beginning of the financial year in which the exclusion period begins. This instrument will take effect and be available on the Federal Register at least three months before the beginning of the 2021-2022 financial year. The Woomera Prohibited Area Coordination Office informs stakeholders of the exclusion periods on its website before they come into effect. Defence also communicates regularly with affected permit holders who are contacted in the lead up to upcoming exclusion periods.

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 Determination, 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. The limitations 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 from places 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 instrument 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 Determination of exclusion periods 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 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 Determination 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