

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Defence

Defence Act 1903

Woomera Prohibited Area Amendment Rule (No.1) 2021

Authority

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

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

Section 72T of the *Defence Act 1903* defines the term ‘Industry Minister’ to mean the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

The *Woomera Prohibited Area Rule 2014* (the Rule) was originally made by the Minister for Defence on 25 August 2014 pursuant to subsection 72TP(1) of the *Defence Act 1903*.

Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, 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. This instrument is made in accordance with that provision.

Purpose and operation of the Amending Instrument

The purpose of the *Woomera Prohibited Area Amendment Rule (No.1) 2021* (the Amending Instrument) is to permit the Secretary of the Department of Defence to be a person to whom the Minister for Defence may delegate all the Minister’s powers under the Rule other than the power in section 62 to review a decision made under sections 38 or 41.

Currently, the Minister for Defence is unable to delegate the Minister’s powers or functions outlined in section 63 of the Rule to the Secretary, notwithstanding that the Minister is able to delegate these to prescribed APS employees in the Department or members of the Australian Defence Force. The Amending Instrument would correct this anomaly, improving Defence’s efficiency in administering the Woomera

Prohibited Area, but would not have any substantive effect on any person's ability to apply for, or be granted, access to the Woomera Prohibited Area.

Legislative Instrument

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

Commencement

The Amending Instrument commences on the day after which it is registered on the Federal Register of Legislation.

Regulatory Impact Statement

The Office of Best Practice Regulation have advised that no regulatory impact statement was required (OBPR ID 44686).

Consultation

The Industry Minister was consulted in the development of the Amending Instrument and provided agreement in accordance with the requirement in section 72TP(1) of the *Defence Act 1903*.

Details of Amending Instrument

Details of the Amending Instrument are set out at Attachment 1.

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 Amendment Rule (No.1) 2021*

Section 1 – Name

This section provides that the name of the Amending Instrument is the *Woomera Prohibited Area Amendment Rule (No.1) 2021*.

Section 2 – Commencement

This section provides that the whole of the Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the legislative authority for making the Amending Instrument is subsection 72TP(1) of the *Defence Act 1903*.

Section 4 Schedules

Section 4 provides that each instrument that is specified in a Schedule to the Amending Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments

Schedule 1 amends the Rule

Item 1 – Subsection 63(1)

Item 1 repeals subsection 63(1) of the Rule and substitutes it with a new subsection which includes the Secretary of the Department of Defence, in addition to previously prescribed APS employees in the Department of Defence, as a person to whom the Minister for Defence may delegate all the Minister's powers or functions under section 62 of the Rule to review decisions other than a decision made under sections 38 or 41.

Item 2 – Subsection 63(2)

Item 2 repeals subsection 63(2) of the Rule and substitutes it with a new subsection which includes the Secretary of the Department of Defence, in addition to previously prescribed APS employees in the Department of Defence and members of the Australian Defence Force, as a person to whom the Minister for Defence may delegate all the Minister's powers or functions under the Rule other than the Minister's powers or functions under section 62 to review decisions.

Statement of Compatibility with Human Rights

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

Woomera Prohibited Area Amendment Rule (No.1) 2021

The Amending Instrument 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 Amending Instrument

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

Section 63 of the Rule provides that the Minister may delegate prescribed powers or functions under the Rule to prescribed APS employees of the Department of Defence or members of the Australian Defence Force. Currently, the Minister is unable to delegate the Minister's powers or functions under the Rule to the Secretary of the Department of Defence.

The Amending Instrument will merely amend the Rule to include the Secretary to be a person to whom the Minister for Defence may delegate all the Minister's powers or functions other than the power in section 62 to review a decision made under sections 38 or 41. This would correct an anomaly, improving Defence's efficiency in administering the Woomera Prohibited Area, but would not have any substantive effect on any person's ability to apply for or be granted access to the Woomera Prohibited Area.

Human rights implications

This amendment does not engage any of the applicable rights or freedoms.

Conclusion

This amendment is compatible with human rights as it does not raise any human rights issues.

Peter Dutton, Minister for Defence