

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Defence

Defence Act 1903

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 2023-2024 Amendment Determination No.2

Authority

The *Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for Amber Zone 1 and Amber Zone 2 for Financial Year 2023-2024 Amendment Determination No.2* (the Amendment Determination) is made under subsection 8(1) of the *Woomera Prohibited Area Rule 2014*.

Subsection 8(1) of the *Woomera Prohibited Area Rule 2014* provides that the Minister for Defence (the Minister) may, by legislative instrument, determine the exclusion periods for Amber Zone 1, Amber Zone 2 and the Green Zone in the Woomera Prohibited Area (WPA) for a financial year.

Under subsection 63(2) of the *Woomera Prohibited Area Rule 2014* the Minister can delegate the power to determine exclusion periods for a financial year to a range of officials, including to an APS employee who holds or performs the duties of an Executive Level 1 position, or an equivalent or higher position, within the Department of Defence. The Minister has delegated this power to the Assistant Director of the Woomera Prohibited Area Coordination Office.

In accordance with paragraph 13(1)(a) of the *Legislation Act 2003* and subsection 33(3) of the *Acts Interpretation Act 1901* 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.

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

Purpose and Operation

The *Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for Amber Zone 1 and Amber Zone 2 for Financial Year 2023-2024* (the Determination) set out the exclusion periods that apply to Amber Zone 1 and Amber Zone 2 in the Woomera Prohibited Area for Financial Year 2023-2024.

The exclusion periods specified in the Determination 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.

The purpose of this Amendment Determination is to amend the Determination to omit certain exclusion period dates for Amber Zone 1.

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

Details of this Amendment Determination are set out in **Attachment A**.

Impact Analysis

The Office of Impact Analysis has previously advised that no impact analysis is required for exclusion period determinations (OIA23-05946).

Consultation

Defence consulted on the general principles of exclusion 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.

Additionally, Defence contacts those people who will be directly affected by changes to exclusion periods, including pastoralists, traditional owners and miners, when the exclusion period approaches.

As a result of the above, and on the basis that the amendment reduces the potential impact that exclusion periods have on affected persons by reducing the number of days that persons may be excluded from the WPA, specific consultation was not undertaken at the time of making this Amendment Determination.

Commencement

This Amendment Determination commences on the day after registration.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights, prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, is set out at **Attachment B**.

Details of the *Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for Amber Zone 1 and Amber Zone 2 for Financial Year 2023-2024 Amendment Determination No.2*

Section 1 - Name

Section 1 provides that the name of the legislative instrument is the *Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for Amber Zone 1 and Amber Zone 2 for Financial Year 2023-2024 Amendment Determination No.2* (the Amendment Determination).

Section 2 - Commencement

Section 2 provides that the Amendment Determination commences on the day after it is registered on the Federal Register of Legislation.

Section 3 - Authority

Section 3 provides that the legislative authority for making the Amendment Determination is subsection 8(1) of the *Woomera Prohibited Area Rule 2014*.

Section 4 - Zones

Section 4 provides that the area described as *Amber Zone 1* is set out in section 6 of the *Woomera Prohibited Area Rule 2014*.

Section 5 - Schedule

Section 5 provides for a Schedule to the Amendment Determination, to include amendments to the Determination.

Schedule 1 - Amendments

Schedule 1 specifies the amendments to the Determination. In particular, it outlines that certain dates should be omitted from the exclusion period for Amber Zone 1.

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 2023-2024 Amendment Determination No.2

The *Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for Amber Zone 1 and Amber Zone 2 for Financial Year 2023-2024 Amendment Determination No.2* (Amendment Determination) 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 Amendment Determination

On 27 March 2023, the delegate, exercising the power of the Minister for Defence, made the *Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for Amber Zone 1 and Amber Zone 2 for Financial Year 2023-2024* (the Determination), pursuant to subsection 8(1) of the *Woomera Prohibited Area Rule 2014*. The Determination set out the dates in which holders of a permit issued under the *Woomera Prohibited Area Rule 2014* would be excluded from entering Amber Zone 1 and Amber Zone 2 during financial year 2023-2024.

The *Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for Amber Zone 1 and Amber Zone 2 for Financial Year 2023-2024 Amendment No.2* amends the Determination by omitting certain exclusion periods for Amber Zone 1.

Human Rights Implications

The Amendment Determination is likely to engage the following human rights:

- the freedom of movement in Article 12 of the International Covenant on Civil and Political Rights (ICCPR);
- the right to work under Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the right to the enjoyment of just and favourable conditions of work under Article 7 of ICESCR;
- the right to enjoy and benefit from culture in Article 27 ICCPR; and
- the right to take part in cultural life under Article 15 ICESCR.

The Statement of Compatibility with Human Rights for the *Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for Amber Zone 1 and Amber Zone 2 for Financial Year 2023-2024* described how that Determination would likely impact the human rights listed above. In particular it noted that, certain limitations on freedom of movement, the right to work and the right to enjoy and benefit from

culture in the WPA were reasonable, necessary and proportionate to achieving legitimate objectives.

The Amendment Determination will remove some of the existing limitations on permit holders' access rights to the Woomera Prohibited Area. In particular, people with a permit to access Amber Zone 1 within the Woomera Prohibited Area will no longer be subject to exclusions and restrictions during the periods specified in the Amendment Determination. Accordingly, from a human rights perspective, the Amendment Determination will reduce the existing impact of the Determination.

Conclusion

The Determination was previously assessed to be compatible with international human rights, as, to the extent that it limited human rights, those limitations were reasonable, necessary and proportionate. The current Amendment Determination is also compatible with international human rights, as it reduces the existing impact of the Determination upon individual rights and freedoms.