

EXPLANATORY STATEMENT

Defence Act 1903

Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for the Green Zone for 06 May 2024 to 09 June 2024

Authority

The *Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for the Green Zone for 06 May 2024 to 09 June 2024* (the Determination) is made under subsections 8(1) and (4) of the *Woomera Prohibited Area Rule 2014* (Woomera Rule).

Subsection 8(1) of the Woomera Rule provides that the Minister for Defence (the Minister) may, by legislative instrument, determine exclusion periods for the Green Zone in the Woomera Prohibited Area (WPA). Subsection 8(4) of the Woomera Rule provides that an exclusion period may apply to a part of a zone within the WPA.

Under subsection 63(2) of the Woomera Rule the Minister can delegate the power to determine exclusion periods 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 (Defence). The Minister has delegated this power to the Director of the Woomera Prohibited Area Coordination Office.

Purpose and Operation

The purpose of this Determination is to set out exclusion periods that apply to parts of the Green Zone in the Woomera Prohibited Area from 06 May 2024 to 09 June 2024.

The exclusion periods specified in column 1 of Schedule 1 to the Determination are the dates in which holders of a permit issued under the *Woomera Prohibited Area Rule 2014* are excluded from entering those parts of the Green Zone that are specified in column 2 of Schedule 1.

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

Details of the 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).

Background

In 2014 amendments were made to the *Defence Act 1903* (Cth) that implemented recommendations of the Australian Government's review of the Woomera Prohibited Area (WPA). The amendments provided for the Woomera Rule, which in turn allow for the issuing of permits to access the WPA. Another key feature of the Woomera Rule is the ability to prescribe zones within the WPA and make provision for exclusion periods within those prescribed zones.

The legislative framework governing the WPA is predicated upon a coexistence model. It provides non-Defence users with greater certainty over Defence activity taking place within the WPA. It allows users to make commercial decisions with some assurance as to when they

will be requested to leave the area due to scheduled Defence activity.

Consultation

Defence consulted on the general principles of exclusion periods in the WPA as part of the introduction of the Woomera Rule. 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 Rule 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 are based on prospective Defence testing requirements. The actual duration and extent of exclusions under this Determination may be subject to change. This may result in an exclusion period progressing as initially outlined in this Determination, or its duration being reduced, or revoked.

When an exclusion period approaches and when the extent of any testing is known, Defence contacts 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 Determination.

Commencement

This Determination commences on the day after registration.

Repeal

This Determination will be repealed on 10 June 2024.

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 B**.

Details of the Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for the Green Zone for 06 May 2024 to 09 June 2024

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 the Green Zone for 06 May 2024 to 09 June 2024* (the Determination).

Section 2 - Commencement

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

Section 3 - Repeal

Section 3 provides that the Determination will be repealed on 10 June 2024. This follows the end of the exclusion periods.

Section 4 - Authority

Section 4 provides that the legislative authority for making the Determination is subsection 8(1) and subsection 8(4) of the *Woomera Prohibited Area Rule 2014* (Cth).

Section 5 – Exclusion Periods

Section 5 provides that the periods specified in column 1 of Schedule 1 are exclusion periods under subsection 8(1) of the *Woomera Prohibited Area Rule 2014*.

Section 6 – Zones and Part of a Zone

Section 6 provides that the area described as the *Green Zone* is set out in section 6 of the *Woomera Prohibited Area Rule 2014*. It also provides that the exclusion periods apply to the part of the Green Zone described in column 2 of Schedule 1, as illustrated on the map at Schedule 2.

Schedule 1

Schedule 1 specifies the exclusion periods for a part of the Green Zone for the period of 06 May 2024 to 09 June 2024.

Schedule 2

Schedule 2 illustrates, in a map, the part of the Green Zone described in column 2 of Schedule 1 to which the exclusion periods applies.

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 06 May 2024 to 09 June 2024

The Woomera Prohibited Area Rule 2014 Determination of Exclusion Periods for the Green Zone for 06 May 2024 to 09 June 2024 (Determination) made under subsections 8(1) and 8(4) of the *Woomera Prohibited Area Rule 2014* (Cth) (Woomera Rule) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the Determination

Under subsection 8(1) of the Woomera Rule the Minister for Defence (the Minister) may, by legislative instrument, determine exclusion periods for the Green Zone. Subsection 8(4) of the Woomera Rule allows for an exclusion period to apply to part of a zone within the Woomera Prohibited Area. In accordance with section 10 of the Woomera Rule, a person who holds a WPA permit must not be at a place in the prescribed zone during an exclusion period.

This Determination, made under subsections 8(1) and 8(4) of the Woomera Rule, exercises the Minister's power, conferred to his delegate, to determine exclusion periods for certain parts of the Green Zone in the WPA. The holders of a permit issued under the Woomera Rule are excluded from entering the part of the Green Zone to which the exclusion period applies, during the periods specified in the Determination.

Human rights implications

The 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.

These human rights are considered in-turn below.

Freedom of movement

Article 12 of the ICCPR ensures the right to freedom of movement which includes the right for those who are lawfully within a country to move freely within that country.

The Determination specifies exclusion periods for a part of the Green Zone in the WPA, during which time permit holders are unable to enter that area. During these exclusion periods, the WPA is used by Defence for testing activities relating to the defence of Australia. Accordingly, being physically in the part of the Green Zone during the exclusion period could endanger human life.

Therefore, any limitation on freedom of movement imposed by the Determination is considered reasonable, proportionate and necessary in these circumstances to maintain the security of Defence activities and protect personal safety. The Determination, achieves this objective as the exclusion periods prevent the movement of people through an area when Defence is undertaking its testing activities.

To ensure the Determination is reasonable and proportionate in the circumstances, the exclusion periods declared are for finite periods of time. Further, and in accordance with section 9(2)(a)(ii) and (iii) of the Woomera Rule, resource production purpose permit holders must be given at least 6 months' notice before an exclusion period begins, and other permit holders must be given at least twenty one days' notice before an exclusion period begins in the Green Zone. The Woomera Prohibited Area Coordination Office complies with these notification requirements. 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 right to work is protected under Article 6 of ICESCR, and Article 7 recognises the right to the enjoyment of just and favourable conditions of work, including a right to safe and healthy working conditions.

As raised above, exclusion periods determined under section 8 of the Woomera Rule by the Minister remove the right of persons to access parts of the WPA for the duration of the exclusion periods due to Defence testing activities. This may prevent permit holders from being able to work, and prevent a body corporate from conducting its business activities in the WPA. 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 while ensuring that people will not be put in danger. This includes evacuating people from places if their working conditions become dangerous or unfavourable (i.e. where there is a potential hazard caused by the testing of war materiel).

Further, the exclusion periods are only for the specified timeframes in the Determination, 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 and the right to take part in cultural life

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

For First Nations people, 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 First Nations 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 ceased, First Nations 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.

Tracee Martin, Director Woomera Prohibited Area Coordination Office