

EXPLANATORY STATEMENT

Defence Act 1903

Woomera Prohibited Area Rule 2014 Suspension of Standing Permission to travel on the Stuart Highway During the period 06 May to 09 June 2024

Authority

The *Woomera Prohibited Area Rule 2014 Suspension of Standing Permission to travel on the Stuart Highway During the period 06 May to 09 June 2024* (instrument) is made under subsection 11(3) of the *Woomera Prohibited Area Rule 2014* (Woomera Rule).

Subsection 11(3) of the Woomera Rule provides that the Minister for Defence (the Minister) may, by legislative instrument, suspend standing permission to travel on certain access routes within the Woomera Prohibited Area (WPA) if the Minister is satisfied that is necessary for:

- (a) the security of defence activities; or
- (b) the safety of persons in the Woomera Prohibited Area.

Under subsection 63(2) of the Woomera Rule the Minister, by writing, can delegate the power to suspend standing permissions 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, in the Department of Defence (Defence). The Minister has delegated this power to the Director of the Woomera Prohibited Area Coordination Office.

Purpose and Operation

Defence testing activities will take place in the WPA during the period 06 May 2024 to 09 June 2024 inclusive. During this period, the Minister's delegate is satisfied that it is necessary under subsection 11(3) of the *Woomera Prohibited Area Rule 2014* to suspend standing permission to travel between the specified locations on the Stuart Highway in the WPA.

The purpose of the instrument is to suspend standing permission to travel between certain locations on the Stuart Highway during the specified period, while Defence testing activities are occurring in the WPA. Given the nature of these activities, the actual duration and extent of any suspension specified in the instrument may be subject to change which may result in the period of suspension progressing as promulgated, or its duration being reduced, or it being revoked.

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

Details of the suspension of standing permission are set out in **Attachment A**.

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 allows for the issuing of permits to access the WPA. Another key feature of the Woomera Rule is the ability to suspend standing permissions to use certain access routes within the WPA.

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 principle of suspending standing permissions within the WPA as part of the introduction of the Woomera Rule. Through this process, the persons who are directly affected by the temporary suspension of access to key routes were given the opportunity to comment on the Minister's power to suspend standing permissions, including detailing the direct or indirect impact that this would have on them or their business.

The Woomera Rule contains a number of mechanisms to limit the potential impacts that suspended standing permissions have on affected persons, including the notification requirements provided by subsection 11(4)(b) as well as access control points required by subsection (11)(4)(a).

As a result of these requirements, the instrument for suspending standing permissions is based on prospective Defence testing requirements. The actual duration and extent of suspensions under the instrument may be subject to change. This may result in the suspension of standing permission progressing as initially outlined in the instrument, or its duration being reduced, or revoked.

When a suspension period approaches and when the extent of any testing is known, Defence contacts people who will be directly affected by these suspensions, 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

The instrument commences on the day after registration.

Repeal

The instrument 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 Suspension of Standing Permission to travel on the Stuart Highway during the period 06 May to 09 June 2024

Section 1 – Name

Section 1 provides that the name of the legislative instrument is the *Woomera Prohibited Area Rule 2014 Suspension of Standing Permission to travel on the Stuart Highway during the period 06 May to 09 June 2024* (the instrument).

Section 2 Commencement

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

Section 3 - Repeal

Section 3 provides that the instrument will be repealed on 10 June 2024.

Section 4 - Authority

Section 4 provides that the legislative authority for making the instrument is subsection 11(3) of the *Woomera Prohibited Area Rule 2014* (Cth).

Section 5 – Suspension of Standing Permissions

Section 5 provides that the standing permission to travel on the part of the Stuart Highway between the access control points described in Schedule 1 is suspended during the period of 06 May 2024 to 09 June 2024, in accordance with 11(3) of the *Woomera Prohibited Area Rule 2014*.

Section 6 – Access Control Points

Section 6 provides that access control points, as described in Schedule 1 and illustrated on the map in Schedule 2, will be set up on the Stuart Highway during suspension of the standing permission, in accordance with subsection 11(4)(a) of the *Woomera Prohibited Area Rule 2014*.

Schedule 1

Schedule 1 specifies the coordinates for two access control points (northern and southern) that will be active during the period in which standing permission to travel on the Stuart Highway has been suspended.

Schedule 2

Schedule 2 contains a map which illustrates the access control points between which standing permission to travel on the Stuart Highway will be suspended. It identifies the northern and southern access control points.

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 Suspension of Standing Permission to travel on the Stuart Highway during the period 06 May to 09 June 2024

The instrument under the *Woomera Prohibited Area Rule 2014* is compatible with the human rights and freedoms recognised or declared in the international Determinations listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Suspension

Subsection 11(1) of the *Woomera Prohibited Area Rule 2014* provides for standing permissions that permit travel on certain access routes in the Woomera Prohibited Area, subject to the condition that the person not deviate from the access route. Subsection 11(3) of the *Woomera Prohibited Area Rule 2014* provides that the Minister may, by legislative instrument, suspend permission to travel on those specified access routes if the Minister is satisfied that it is necessary for the security of defence activities; or for the safety of persons in the Woomera Prohibited Area.

The instrument, made under section 11(3) of the *Woomera Prohibited Area Rule 2014*, exercises the power of the Minister for Defence, through his delegate, to suspend the standing permission for travel on the Stuart Highway between certain locations, for a specific time period.

To minimise the impact on human rights, the instrument limits the suspension of the standing permission to an area between specified locations on the Stuart Highway. It is further limited to certain times when Defence has access control points established to prevent use of the specified part of the Stuart Highway.

Human rights implications

The instrument 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 instrument specifies the period during which standing permission to travel on certain parts of the Stuart Highway access route in the WPA will be suspended. During this period, 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 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 suspension of standing permission to travel on certain parts of the Stuart Highway in the Woomera Prohibited Area 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 period, a person may safely resume travelling along the Stuart Highway access route through the WPA.

In addition to written notice, the Woomera Prohibited Area Coordination Office informs stakeholders of the suspension of permission on its website before they come into effect, along with notices in newspapers and signage established along these routes.

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 ICESCR while Article 7 recognises the right to just and favourable conditions of work including a right to safe and healthy working conditions.

The suspension of standing permission to travel on certain access routes under section 11 of the *Woomera Prohibited Area Rule 2014* by the Minister may limit access to parts of the WPA during the specified period when access control points are established. 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, or through, the WPA in addition to people and freight transiting through the area.

As noted above, during the period and times specified in the instrument, 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 the period. In these circumstances, the right to work will be limited for the duration of the suspension to ensure personal safety and the security of defence activities.

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 preventing people from using the Stuart Highway where there is a potential safety hazard caused by the testing of war materiel.

Further to this, any limits on travelling is only for the period and between locations specified in the instrument, at the times when access control points are established with affected people given advanced notice of the duration of the suspension, 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, while 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 suspension of permission to use access routes 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 travel along the Stuart Highway is for the purpose of Defence testing activities, the conduct of which could endanger human life should people be travelling along the Stuart Highway 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 suspension on travel on the Stuart Highway has ended, First Nations people are able to again access that part of the WPA and enjoy and take part in cultural life as recognised in the ICCPR and ICESCR.

Conclusion

The instrument 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