



AUSTRALIAN RAIL TRACK CORPORATION LTD

16 April 2014

Committee Secretary
Senate Foreign Affairs, Defence and Trade Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Forwarded by Email: fadt.sen@aph.gov.au

Dear Sir/Madam

RE: INQUIRY INTO DEFENCE LEGISLATION AMENDMENT (WOOMERA PROHIBITED AREA) BILL 2013

The Australian Rail Track Corporation Ltd (ARTC) provides the following submission in response to the Foreign Affairs, Defence and Trade Committee inquiry into the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013.

Between Tarcoola and Alice Springs, ARTC is the owner of the rail corridor land in fee simple and has provided a lease to the Australasia Rail Corporation who in turn sub-lease to Genesee & Wyoming Australia Pty Ltd (GWA) as the Concession Holder. GWA has provided an outline of the freight and passenger traffic on the Darwin line and ARTC supports the submissions already put forward by GWA.

ARTC also has a further commercial interest as the northbound and southbound freight and passenger movements on this line commence or complete their journeys on the ARTC track below Tarcoola, where the line joins the Trans-Australia Railway (TAR). The TAR is a key east-west link in the national transport and logistics network. Interruption or disruption of operations on the Adelaide Darwin line has a flow-on effect on ARTC's business.

ARTC shares the same goals as GWA in relation to maintaining and growing the rail business on the Adelaide Darwin railway. We do at the same time applaud the opening up of the WPA to allow access to the mineral resources.

ARTC requests that the following be considered by the Senate Committee:

In our last submission dated 31 January 2014 we requested that Rail, and the Adelaide Darwin railway, needed to be explicitly recognised in the legislation as an existing user. The owner and operator of the Tarcoola to Darwin railway are now specifically included in the proposed new section 72TB of Defence Act 1903. By virtue of the proposed new section 72TB(2), this means that the entire new proposed Part VIB of the Defence Act 1903 (the rules and permit scheme etc) will not apply to ARTC or the Australasia Railway Corporation (ARC). Both are now excluded from the proposed Part VIB in the same way that indigenous users and pastoral lease-holders were excluded in the previous Bill.



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The exclusion of ARTC and ARC goes quite some way towards addressing our previous concerns; however we believe the exclusion needs to be broadened to ensure that it covers the actual train operators (i.e. freight rollingstock operators such as GWA). By our reading of the proposed legislation the exclusion in the Bill applies to "the owner or operator" of the railway. ARTC owns the railway and is clearly within the exclusion definition. ARC would also be excluded as it is clearly the "operator" of the railway as it manages the line under its long term lease granted by ARTC. It is unclear whether GWA (or any other rail company offering rail services) also gains the exemption by being the next level of *operator of the railway* by virtue of running train services on the line.

ARTC therefore requests that the Commonwealth expand the exclusion to include owner, operator, concession holder, rail service provider and in fact the users of those rail services. This could be easily achieved by amending the proposed section 72TB(1)(m).

On a second matter, no draft Rules have been released yet and in any event, the Rules would not be relevant to ARTC given the new exclusion. Notwithstanding this the Bill effectively provides that Part VII of the Defence Force Regulations 1952 (Regulations) *will* apply to ARTC in respect of the Woomera area.

We therefore believe, for the sake of all parties going forward and to cement the existing working relationship for testing that the Rules should make a reference to the proposed Interface Agreement between ARTC, GWA and Defence.

ARTC recommends that the above proposed Legislation changes be adopted as amendments, so that those who rely on the Adelaide Darwin Railway Line can continue to grow their business and contribute to the economic growth of the Nation. ARTC support GWA in their submission and will continue to be involved in any joint arrangements with GWA and we request to be heard at any further hearings.

For completeness, you will find attached ARTC's previous submissions and letters to the Woomera Prohibited Area Coordination Office (WPACO), all of which provide context and all of which we believe should be given due attention by the Senate Committee.

We thank you in anticipation.

Yours Sincerely

Tim Ryan

Executive General Manager Interstate Division



AUSTRALIAN RAIL TRACK CORPORATION LTD

31 January 2014

Committee Secretary
Senate Foreign Affairs, Defence and Trade Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Forwarded by Email: fadt.sen@aph.gov.au

Dear Sir/Madam

RE: INQUIRY INTO DEFENCE LEGISLATION AMENDMENT (WOOMERA PROHIBITED AREA) BILL 2013

The Australian Rail Track Corporation Ltd (ARTC) provides the following submission in response to the Foreign Affairs, Defence and Trade Committee inquiry into the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013.

Firstly, ARTC fully supports the submission that Genesee & Wyoming Australia Pty Ltd (GWA) have prepared for the Senate Committee.

Between Tarcoola and Alice Springs ARTC is the owner of the rail corridor land in fee simple and has provided a lease to the Australasia Rail Corporation who in turn sub-lease to GWA as the Concession Holder. GWA has provided an outline of the freight and passenger traffic on the Darwin line. ARTC also has a commercial interest as the northbound and southbound freight and passenger movements on this line, by necessity, commence or complete their journeys on the ARTC track below Tarcoola, where the line joins the Trans-Australia Railway (TAR). The TAR is a key east-west link in the national transport and logistics network. Interruption or disruption of operations on the Adelaide Darwin line has a flow-on effect on the TAR.

In support of the points raised in the GWA submission, which we have seen, we share the same goals in relation to maintaining and growing the rail business on the Adelaide Darwin railway. Furthermore, ARTC confirms our involvement in the meetings and correspondence as stated in the GWA submission.

The key points to ARTC's submission continue to be;

- Rail, and the Adelaide Darwin railway, needs to be explicitly recognised in the legislation as an existing user. We would prefer that the legislation be amended to reflect this, however, as a minimum, we would request the omission be addressed in the second reading speech.

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- That the rail corridor needs to be adequately defined in the legislation or in the associated Rules, to be inclusive of all railway land (including all rail infrastructure such as track and sidings and associated equipment and structures), and that railway operations are defined to include all activities such as maintenance, as well as the operation of train services.
- A proper reference to 'agreed operating protocols' be made to provide comfort to both ARTC and GWA as well as provide a platform for Rail and Defence to arrive at a workable situation on the ground. We ask that this be addressed in the second reading speech.

Following our meetings with Defence, ARTC understood that certain amendments were being drafted in line with the above key points; however these points are yet to appear in either the Bill or the Rules. ARTC recommends that *if* the proposed Legislation passes without the above matters being adopted as amendments, then changes to the exposure draft of the Rules will need to be made, so that those who rely on the Adelaide Darwin Railway Line can continue to grow their business and contribute to the economic growth of the Nation. ARTC support GWA in their submission, will continue to be involved in any joint arrangements with GWA and request to be heard at any further hearings.

For completeness, you will find attached ARTC's original submission as well as two recent letters to the Woomera Prohibited Area Coordination Office (WPACO), all of which provide context and all of which we believe should be given due attention by the Senate Committee.

We thank you in anticipation.

Yours Sincerely

/ Tim Ryan

Executive General Manager Interstate Division



AUSTRALIAN RAIL TRACK CORPORATION LTD

21 November 2013

Samantha Higgins
Executive Director
Woomera Prohibited Area Coordination Office
Australian Government Dept. of Defence
R2-1-C059
Russell Offices
CANBERRA ACT 2610

Via E-mail wpaco@defence.gov.au

Dear Samantha,

Thank you for the invitation to make a submission regarding our experiences in relation to the Woomera Prohibited Area in advance of the WPA Advisory Board meeting in December and the preparation of their Annual Report.

You have advised that the Advisory Board has had regular briefings in regard to the issues raised by existing users. I itemise our interaction since late June 2013;

- Issues raised by ARTC and other rail participants at the Adelaide workshop
- Written submissions from ARTC regarding critical continuity of our business
- A meeting between Defence and rail representatives to discuss respective needs
- Subsequent and current correspondence on the outcomes of that meeting

It would be true to say that ARTC feels the level of consultation and the timing did not reflect the importance of rail as a current user. ARTC took exception to the proposed legislation in regard to the intent and the wording of the Bill and the complete omission of rail as a named existing user.

At this point consultation has certainly improved, however we cannot say that the Government's mandated desire for 'co-existence of defence activities and economic interests of non-defence users' is fully progressed until firm arrangements are agreed and captured in the revised legislation.

We look forward to meeting the Advisory Board on 3 December 2013.

Yours sincerely,

Tim Ryan
Executive General Manager Interstate Division.



AUSTRALIAN RAIL TRACK CORPORATION LTD

Ref:- TR/JK0130080404

26th August 2013

Samantha Higgins
Executive Director
Woomera Prohibited Area Coordination Office
Australian Government Dept. of Defence
R2-1-C059
Russell Offices
CANBERRA ACT 2610

Dear Samantha

This letter is to confirm the discussions we had between GWA; ARTC & representatives of the Australasia Railway Corporation (AARC) which was originally scheduled the day before a Senate Committee hearing (which was subsequently cancelled because of the caretaker period after the election was called).

Whilst we appreciated that opportunity we believe that we have a clear need to co-exist and that consultation of how we work together should be regular or ongoing & not precipitated on events or changes.

It is critical that this very important link in the national logistics chain remains available and that Defence understands the economic and commercial impacts of any interruption to the service on the railway.

The three key issues that we believe need to be followed up from the meeting are as follows: -

1. Rail and the Adelaide Darwin railway needs to be explicitly recognised in the legislation as an existing user. There are only three major existing users (Indigenous Communities; pastoralists and rail) and rail is the only one not mentioned in the legislation. If the legislation proceeds we would prefer it was amended but as a minimum we would request the omission be addressed in the second reading speech.
2. The "Permissions" currently inadequately define our activities because it is limited to use of the railway line and fails to mention: -
 - a. The use of rail facilities such as crossing loops and sidings
 - b. The maintenance requirements such as inspection vehicles using the rail or its associated access road and maintenance activities. No-one is able to legally access without our permission so we know at all times who is undertaking activities on our network.

Therefore we request that our use be more accurately defined.

3. As we explained apart from the overall economic impact we have obligations in commercial contracts and in our undertakings we have lodged with economic regulators to provide adequate notice of any disruption.

We feel confident that we can create windows that will allow you to undertake your activities without disrupting our business.

To that end we propose that we enter into an interface agreement which will define the protocols to allow both the planning and execution of an activity period.

To that end GWA will take the lead in drafting a joint interface agreement between Defence; ARTC & GWA.

We look forward to working together to allow a happy co-existence.

Yours sincerely

Tim Ryan
Executive General Manager Interstate Division

Cc:

- *Reg Carruthers, Director Woomera Test Range, RAAF*
- *Bert Easthope, Director Strategic Development, GWA*



AUSTRALIAN RAIL TRACK CORPORATION LTD

11 July 2013

To: Department of Defence Woomera Prohibited Area Coordination Office
[SENT BY EMAIL to WPACO@defence.gov.au]

To: Committee Secretary
Senate Foreign Affairs, Defence and Trade References Committee
PO Box 6100 Parliament House Canberra ACT 2600
[SENT BY EMAIL to fadt.sen@aph.gov.au]

Re: **Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013 – effect on the Tarcoola to Darwin rail corridor**

Please accept this submission in relation to ARTC's freehold ownership of the rail corridor and the business activities of both ourselves and our long-term lessee (Australasia Railway Corporation) and their current rail operator Genesee Wyoming Australia Pty Ltd (GWA).

Background...

As the Tarcoola to Darwin rail corridor passes through the Woomera Prohibited Area (WPA) ARTC and Freight Link were contacted by the Review Team in July 2010 and invited to provide a submission regarding their interests. A copy of the ARTC submission is attached.

A Final Report was released in February 2011 containing 65 recommendations. There is no record that ARTC was notified of the Final Report.

ARTC also attended a workshop on 1 July 2013 which primarily dealt with the permit process for new access arrangements.

The review has led to the introduction of the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013 and the draft Woomera Prohibited Area Rules, to which we now make comment.

The current amendment to the legislation seeks to open up more of the WPA area to mining interests which is commendable, however it does introduce 'zones' and 'exclusion periods' that we believe could have a detrimental effect on existing rail operations and on future growth including the provision of more train services.

Our reading of the draft rules indicates...

The rail corridor is an existing occupier and has 'Standing Permission' however, the rules allow for the Defence Minister to suspend the use of the railway line when Defence believes that there is a risk to security or safety.

Exclusion Periods apply to new permit holders and for the zone that the rail corridor falls within (amber zone 2) allows for exclusions of up to 10 periods of 7 days each, and the green zone at 8 periods of 7 days each per year.

Our concerns...

Whilst the exclusion periods do not apply to the rail corridor it is logical to expect that if there is a safety issue for new permit holders, there will be a safety issue for Standing Permission occupiers. Hence the Minister may suspend a permission on safety issues.



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Currently 80% of the land transport freight to Western Australia is by rail. A similar percentage applies to freight to Darwin. Exclusion periods measured in days and several times a year are not acceptable.

GWA is concerned that as the legislation and rules currently apply there is a threat that train running will be affected and this will have a flow on affect to ARTC's network, thereby affecting ARTC's revenue as well.

Notwithstanding the railway having status as a Standing Permission occupier, the wording of the legislation and draft rules does not give sufficient comfort that ARTC and its invitees can continue to operate their business unimpeded, given the increased requirements of Defence activities.

ARTC requests you give due consideration as follows...

That there is no undue restriction on the use of the ARTC rail corridor land for legitimate business purposes.

That Defence times its activities to avoid any interference with train operations. (It is usual for rail operators to allow external party activities only at mutually agreed times). Delays of a few hours are tolerable.

and that the legislation (via the draft Rules) recognises and reflects the above by more specific and additional clauses in relation to ARTC and other rail participants as Standing Permission occupiers.

We thank you for the opportunity to respond at this time and to have further discussions. Further correspondence may be addressed to myself or to Mr John Fullerton ARTC CEO.

Yours sincerely,

Angelo Demertzis
General Manager East - West
Australian Rail Track Corporation

[ATTACHMENT]



AUSTRALIAN RAIL TRACK CORPORATION LTD

5 August 2010

COPY

Government Review of the Woomera Prohibited Area
Secretariat
R7-1-045
Russell Offices
Department of Defence
CANBERRA ACT 2600

SENDER TO KEEP
CS5803018

Dear Sir/ Madam

Re: Government Review of the Woomera Prohibited Area

About ARTC

Australian Rail Track Corporation Ltd (ARTC) is a company under the Corporations Act whose shares are owned by the Commonwealth and overseen by the Minister for Transport and Regional Services and Minister for Finance and Administration on behalf of the Commonwealth. Responsible for negotiating new access to the interstate national track between Brisbane and Perth, ARTC commenced operations in July 1998 with the following charter:

- Improve performance and efficiency of interstate rail infrastructure
- Increase capacity utilisation
- Listen, understand and respond to the market
- Operate on sound commercial principles
- Provide our shareholders with a sustainable return on capital invested

Railtrack Ownership in the Woomera Prohibited Area (WPA) subject area

ARTC owns and operates the rail corridor from Port Augusta to Kalgoorlie and has a boundary with or is in proximity to the boundary of the Woomera Prohibited Area between Pimba and Maralinga (Ooldea Siding)

Between Tarcoola and Alice Springs, ARTC is the landowner, however the land and railtrack which dissects the WPA is leased for a period of 60 years to the AustralAsia Railway Corporation, who in turn sub-lease to Asia Pacific Transport Pty Ltd. Freightlink is the current operating arm of APT. ARTC understands that Genesee & Wyoming Aust. will take over the operations of the line from 1 October 2010.



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ARTC Interests

Freightlink has provided ARTC with a copy of its submission to you and ARTC concurs with contents of that submission as it relates to current and future traffics carried by Freightlink on its train services.

ARTC receives track access fees for those train services on the ARTC Network south of Tarcoola, and therefore our commercial interests will mirror those of Freightlink.

Future best use of the Woomera Prohibited Area.

ARTC is very keen to see rail attract new business and development within the Woomera Prohibited Area.

It is a highly prospective area with new mines built and planned. The rail corridor is well placed geographically to these mines and in the benefits it offers for bulk haulage. We anticipated high use of rail transport for transporting this type of product. ARTC is involved in downstream projects for track work and linking of rail to new port facilities for such traffics (e.g. Port Adelaide 29 Berth and Point Lowly near Whyalla).

Summation

The notes provided regarding the Government Review indicate a desire for an optimal outcome and the ability for mining interest and defence needs to co-exist.

ARTC does not expect that any changes will adversely affect the running of trains over this strategic interstate rail corridor. The notes state that Defence may require additional areas for core activities (thereby reducing the availability for mining tenements). By the same token, areas not required by Defence may in the future become available. The impact of such changes is undefined by ARTC.

We trust that the review will take into account the rail industry's views and we thank you for the opportunity to present these to you.

Yours Sincerely,

Bob Sampson - Corporate Property Manager

Note: please refer to this as the ARTC company submission. The above name and details are not to be publicly associated with this submission.