

Secretary
Senate Foreign Affairs Defence and Trade Legislation Committee
The Senate
Parliament House
CANBERRA ACT 2600

Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013 (the Bill) - Submission by
Mark A Zanker, Private Citizen

2. I wish to suggest to the Committee that it recommend that the Bill not be passed.

3. The Bill contains proposals for implementing recommendations made by the Government Review of the Woomera Prohibited Area conducted by Dr Allan Hawke, the final report of which was presented on 3 May 2011. The review followed on a ministerial announcement by the then Defence Minister that ways of improving “coexistence” between the Department of Defence (Defence) and other users of the Woomera Prohibited Area would be examined, having particular regard to creating greater certainty for mining interests to carry out exploration and ultimately extraction activities in relation to minerals that might be in the WPA. The extent of exploitable mineral resources in the WPA is not precisely known but in its submission to this inquiry Geoscience Australia says that the WPA “is one of the more prospective areas for mineral and energy resources in Australia and will continue to attract exploration activity.

4. Chapter 4 of the Review’s interim report (which can be accessed here: <http://www.defence.gov.au/woomera/review/papers/WoomeraInterimReport.pdf>) outlines a number of the tensions that arise between Defence and other users of the WPA and claims that an improved management framework embodied in appropriate statutory regime would alleviate these tensions.

5. It is very doubtful that the difficulties outlined in Chapter 4 of the interim report can be managed away as proposed. This is because the objectives of Defence and those of miners in particular are irreconcilable. The WPA was established as a weapons test range in 1947 precisely because there was an absence of large scale commercial activity in the area and weapons testing could be conducted securely and without risk of potentially significant damage to life or property. There is no getting away from the fact that weapons testing almost invariably carries with it the risk that property will be damaged - that is the whole point of weaponry.

6. Since 1947 there have been a number of developments in and around the WPA that have detracted from its suitability as a weapons testing area. Amongst those developments are an enormous increase in tourism, the construction of a new sealed Stuart Highway, the relocation of the Central Australia Railway (CAR) to commence at Tarcoola instead of Stirling North, the extension of the CAR to Darwin, and the transfer from the Commonwealth to private operators of the Tarcoola to Alice Springs section of the CAR. The ability of the Minister for Defence to close the railway and the Stuart Highway, even for short periods, which appears to be contemplated by the legislation could have significant adverse effects on the commercial operators of the CAR, as well as adverse effects, however short term, on the people and the economy of the Northern Territory, which are now reliant on regular freight movements along the CAR, as evidenced in the submissions of those commercial operators to the earlier committee inquiry. None of this would have mattered when the Commonwealth owned and operated the CAR, but now that the operation is privatised, disruptions could give rise to expensive and inconvenient claims for compensation under section 51(xxxi) of the Constitution. Similar issues might also arise with respect to commercial users of the Stuart Highway.

7. The facilitation of mining is really the principal purpose of this Bill. However, mining interests should not be facilitated no matter what cost to Defence’s ability to carry out its weapons development role. It is contemplated that Defence should be resourced to meet claims for compensation caused by its weapons testing activities whether they arise pursuant to a contract,

as a result of alleged tortious activity, or under the just terms provision of the Constitution. Apart from inhibiting Defence activities, the legislation would seem to impose a large potential liability for compensation on the Commonwealth and hence the taxpayer that could completely be avoided if the original idea of prohibiting non Defence activities in the area were adhered to.

8. In its submission to the Hawke Review, the Antakirinja Matu-Yankunytjatara Aboriginal Council (AMYAC) stated the following:

11. In theory, Defence have wide sweeping powers in the WPA for the testing of war materiel and the control of people in this regard. In practice, the fact that part of the WPA... is bisected by a national highway and a transcontinental railway corridor, and is adjacent to a major international tourist region in Coober Pedy, the Breakaways, the Oodnadatta Track and the Lake Eyre Basin, means that the control of people, including all sorts of international visitors is extremely difficult. The task is not made easier given the huge expanse and the considerable number of station tracks and roads which criss cross the area..which is predominantly pastoral station country.

12. Consideration should be given to shifting the WPA further west, beyond the pastoral country. Public access to the area further west is much more difficult and less frequent and because of its remoteness less attractive to the mining industry.

The full text of the submission can be accessed using this link: <http://www.defence.gov.au/woomera/review/submissions/AMYAC.pdf>

9. The Hawke Review recommended that the boundaries of the WPA remain the same. However, if they do, it is likely to be difficult and expensive for Defence and the Commonwealth to implement the coexistence plan for the reasons outlined in this submission and that of the AMYAC to the Hawke Review.

10. It is submitted that it would be preferable for the WPA to be moved to an area that is west of the Central Australia Railway and north of the Trans Australia Railway (TAR). Most of the existing mining operations would then be outside the WPA and complicated management arrangements would be unnecessary. The facilities at Woomera could be moved to Tarcoola, which may be advantageous to Defence because of the proximity of that location to the TAR, the CAR and the Stuart Highway, and it is not that much further from Adelaide than Woomera itself. There is an airstrip at Tarcoola that would need to be upgraded to suit Defence aerial operations. Obviously to make such a move would require some significant startup capital costs, but likely costs of compensation for damage caused by Defence activities to commercial operations would be avoided.