



14 April 2014

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

**Re: Inquiry into Defence Legislation Amendment (Woomera Prohibited Area)
Bill 2014**

I write on behalf of the AustralAsia Railway Corporation (AARC) in response to the notice of inquiry into Defence Legislation Amendment (Woomera Prohibited Area) Bill 2014 introduced by Senator the Hon David Johnston on 27 March 2014. As you will be aware the Corporation has provided submissions for consideration of the Senate Foreign Affairs, Defence and Trade Legislation Committee into previous bills relating to proposed amendments to the Defence Legislation Amendment (Woomera Prohibited Area) Bill.

The Corporation's primary concern relates to any disruption to scheduled freight services upon which businesses in the NT and SA rely for the provision of essential supplies. Under the *Defence Force Regulations 1952* access to the area is currently restricted and it appears that the intent of the amended legislation is that, people who have existing permissions to enter the WPA including the Darwin-Tarcoola railway owner and operators under these Regulations, will not need permission for access under this legislation.

As a result of earlier submissions from the concession holder Genesee and Wyoming Australia, the Australian Rail Track Corporation and representatives from the SA government to the Department of Defence, there is currently a protocol being developed for consultation between the railway operator and the Department of Defence in the lead up to testing that may impact railway operations. The development and adoption of this protocol would enable the required access window for deployment of weapons within the WPA to be coordinated so as not to adversely impact scheduled train services and maintenance activities along the corridor.

It is the Corporation's position that provisions of existing legislation be maintained in relation to the operation and maintenance of the Tarcoola to Darwin railway and be excluded (as an existing use) from the proposed legislation. The Corporation understands that the preferred option of the Department of Defence involves legislative changes and statutory rules but notes that existing non-Defence users of the WPA would be exempt from the application of the proposed legislation. However,

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we note that the last paragraph on the page of the Regulation Impact Statement numbered 26 states:

"Minor amendments to the DFRs are proposed to include a change in control provision to require Ministerial consent for any transfer of ownership or change in the ownership of the shares of the company. This would apply where the change in ownership would result in a controlling interest in the company being held by a person other than the present holder of such an interest."

Our review of the Bill reveals that the only change proposed to the Defence Force Regulations (DFRs) is the amendment to Regulation 36 of the DFRs set out on page 15 of the Bill, and that there is, in fact, no proposed amendment to the DFRs to include the change in control provision mentioned in the Regulation Impact Statement. It is therefore our understanding that, if the Bill is passed as law in its present form, "a person who is: (i) the owner or operator of the Tarcoola to Darwin railway; and (ii) in the Woomera Prohibited Area for purposes related to the operation of the railway" will continue to enjoy the benefit of any existing permissions granted under Part VII of the Defence Force Regulations even if there is a change of ownership or control of that person".

As it is unclear whether minor amendments to the DFRs that would impose change of control provisions may be proposed through the introduction of some other legislation, we note this may be at odds with the current provisions of the Concession Deed. For the avoidance of doubt, the Corporation submits that the existing authorisation provided under the *Defence Force Regulations 1952* for the operation of the railway should be transferable (whether by way of assignment of the authorisation or change of control) without requiring the consent of the Federal Minister.

In summary, the operation of the railway should not be subject to the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2014. Any consent requirement should be confined to the proposed new regime and not current users. The development and adoption of the protocol currently under development between the Department of Defence and the railway operator should be pursued as a pragmatic measure to enable greater use of the WPA whilst preserving the integrity of operations to ensure this essential piece of infrastructure can continue to deliver the transportation needs of the State and Territory.

Yours sincerely,
Peter Caldwell

Chairman