

## Future resources industry activities in the Woomera Prohibited Area

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The Woomera Prohibited Area comprises 13% of South Australia's land mass and overlies the highly prospective Gawler Craton

There has been significant uncertainty as to the basis upon which exploration and mining activity will be allowed within the WPA in the future.

It is thus to be welcomed that, on 17 May, the Federal Minister for Defence, Senator John Faulkner, issued a statement regarding future resources industry activities in the Woomera Prohibited Area.

### Review announced

The statement announces a review into the future use of the WPA in the context of both its national security and economic significance. The review will include wide consultation with all stakeholders and is scheduled to be completed by the end of 2010. It will be led by Dr Allan Hawke, a former Secretary of Defence. The framework for consultation is yet to be detailed.

### Interim Measures

The statement details interim measures which provide guidelines to the granting of access to the WPA, pending completion of the review.

The interim measures are very detailed and reflect a definitive position of Defence. It is unclear what capacity, if any, the announced review will have to depart from these measures or recommend a different approach.

The measures reflect that Defence has 2 priority concerns regarding access for resources activities within the WPA:

- operational compatibility and safety; and
- national security issues, with particular emphasis on foreign investment in a company wishing to conduct exploration or mining operations in the WPA.

This Alert is intended as an alert only. It does not purport to be a comprehensive advice. Readers should seek professional advice before acting in relation to these matters.

## **Operational Compatibility and Safety**

The statement reiterates the previously declared policy of “co-existence”. It says “the Australian and South Australian Governments are committed to working with all stakeholders to facilitate both industry and defence activities within the WPA, to the maximum extent possible.”.

A distinction is drawn between a core area and non-core area of Defence operations within the WPA. The core area is as previously advised to the industry, and is stated to be an area where exploration and mining activities are “unlikely” to be permitted. We think it is fair to assume that industry activities **will not** be permitted in this area.

Within the non-core area it is emphasised that applications for access will be considered on a case-by-case basis.

The statement contains a (non-exhaustive) list of issues seen by Defence as relevant to its compatibility assessment.

For anyone who has been asked to sign a deed of access for exploration or mining activities within the WPA, this list is a familiar one and “tracks” the very matters invariably covered in access deeds to protect Defence’s legitimate interests. In our view there should thus be no reason why access should not be permitted in the non-core area of the WPA by reference to these criteria. Access deeds afford comprehensive protection to Defence in relation to these matters, thus ensuring that exploration and mining in the WPA is undertaken in a manner compatible with Defence activities.

## **Foreign Investment**

More recent experience has made it clear that Defence has significant concerns about foreign investment in companies exploring or mining in the WPA.

The statement makes the point that the WPA “is a globally unique testing range and is vital to Australia’s defence capability. The range’s remoteness, 127,000 km<sup>2</sup> size, and relative lack of human activity allow Defence to test long-range weapons systems and conduct classified test activities, sometimes with our allies, in safety and within prescribed security protocols. The use of the WPA has increased greatly in recent years and is expected to continue to increase due to emerging defence technologies.”.

Consequently, the Government is concerned “to understand any factors that indicate a capacity on the part of foreign persons or foreign corporations to influence the operations or management of activity in the WPA.”.

The statement contains a long list of “information of use” to Defence in conducting a risk assessment in this regard.

Three points deserve mention:

- reading between the lines, it seems that Defence’s concerns regarding foreign investment will not be confined only to the presence of foreign persons within the WPA or the communication of information to them, but also the capacity of those persons to influence others to provide them with information by reason of their investment in the relevant resources company;
- a number of items on the list would be of significant concern to the industry if they, of themselves, precluded foreign investment. For example “any contracts, agreements, understandings, or arrangements with a foreign person(s) or foreign corporation” are included;
- although not completely clear, it appears that Defence’s assessment of foreign investment will only be required where that investment involves an application under the Foreign Acquisitions and Takeover Act.

## **Other Points**

The statement contains useful guidelines for the industry both as regards procedures for obtaining a deed of access for exploration and mining activity in the WPA and as regards Defence’s assessment of foreign acquisition proposals.

The statement can be accessed at

<http://www.minister.defence.gov.au/faulknertpl.cfm?CurrentId=10300>

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