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Dear Mr Leaman,

Submission re Draft National Parks & Wildlife (Park & Reserve Categories and Other Matters) Amendments Bill 2012

Thankyou for the opportunity to comment on this draft bill.

1. s21, New s28-Objects

1.1 It is difficult to understand how a National Parks and Wildlife Act can have an **object "to provide for mining rights…and for parks and reserves to be used for pastoralism and hunting"** (s28(b)). While such activities may occur within certain parks and reserves, the objects of parks and reserves legislation are to do the things listed in 28(a) and (c). **Mining, hunting and pastoralism may form part of the management of the parks and reserves, but should not be included amongst the objects of the legislation.** They are the object of other legislation such as the *Mining Act* and *Pastoral Land Management and Conservation Act.* Imagine the industry resentment if the latter Acts were to contain an object to create parks and reserves within industry areas. Further, there is a whole Division of the National Parks and Wildlife Act devoted to the management of mining rights within parks and reserves, and it is quite inappropriate to include mining in the objects of the Act.

This inclusion of mining in the objects reflects an unacceptable bias towards the mining industry throughout the existing and proposed legislation, and it is obvious that mining industry views have played a seminal and unhealthy role in the preparation of the terms of the Bill. This will be discussed further eleswhere in this submission.

1.2 A second problem with s28(b) is in the wording **to provide "where appropriate in the public interest, for other activities"**. Exactly what other activities? More importantly what is "in the public interest"? The latter must be clearly defined, since under the *Heritage Places Act 1993* the Minister has recently deemed it in the "public interest" to remove a building in Twin St Adelaide from the State Heritage Register to allow for ground level parking of cars behind a proposed new hotel next door. This is clearly a decision in the private interest, and any public interest is highly tenuous at best.

The current wording "where appropriate in the public interest, for other activities" should be removed as it could be used to justify regulations under the Act which provide for inappropriate or debatable activities in parks and reserves. At the very least "other activities" and the "public interest" must be defined in terms of promotion of the conservation objects of the Act.

2. s21, New s29-Categories of Parks

While this attempt to identify the reasons for creating different categories of parks and reserves is commendable, it contains (or continues) a number of serious anomalies and inconsistencies and attempts to apply the provisions in practice will inevitably be unsatisfactory.

2.1 For example, **why is the Recreation park category continued** when other categories of park include "opportunities for public recreation and enjoyment". Belair National Park includes ovals, tennis courts, a caravan park/campground and other recreation facilities. The proposed Parra Wirra Conservation Park will include ovals and tennis courts. Flinders Ranges and other National Parks include a caravan park/campground. Conservation parks include caravan park/campground facilities (e.g. Deep Creek Conservation Park). Horse riding trails are included in National (e.g. Belair) Conservation (e.g. Kellidie Bay) as well as Recreation (e.g. Brownhill Creek) parks as well as Regional reserves (e.g. Innamincka). Cabin accommodation also occurs in most categories – National (e.g. Flinders Chase) Conservation (e.g. Brookfield) as well as Recreation (e.g. Brownhill Creek).
The retention of Recreation parks appears to be largely on the basis of proximity to urban areas, but this discounts the importance of such parks in the urban context, for restoration, and for their capacity to act as education sites and garner urban support for the whole parks system.

The Recreation park category is inconsistent and inappropriate and should be discontinued.

In any event **Brownhill Creek Recreation Park should be converted into a National Park, as is contains aspects of national significance** (e.g. the largest Stone Pines in Australia which are also of international significance - see attached report, it was campsite of leading author and electoral reformer CH Spence when she first arrived in Australia[1], and contains Price Avenue, an avenue of plane trees partly planted by and named in honour of the first Labor premier of South Australia Hon.Tom Price [2]). It is also part of the National Parks movement of the late 19th and early 20th century, and was named a *National* Pleasure Resort in 1915, well after federation[3]. Most importantly, it is one of the oldest public parks in the world, being set aside as a public reserve by the governor as early as 1841 and appearing on survey maps as a public reserve from 1858[4]. The park contains an active Friends group which has been making major headway in restoration of biodiversity, which includes the nationally endangered grey box grassy woodland.

2.2 It is understood that the **Heritage park category** may have been created to accommodate holdings such as Dingley Dell, Martindale Hall and Fort Glanville, but again this appears inconsistent. Dingley Dell contains significant coastal woodland and Fort Glanville significant coastal sand dunes. On the other hand Belair National Park contains historic Old Government House, Brownhill Creek Recreation Park contains the earliest environment protection measures in SA (the State Heritage listed manure pits) while other parks and reserves also contain a mix of heritage buildings and natural heritage. Why is the internationally understood category III of Natural Monument not chosen for these sites instead? This IUCN – World conservation Union Category III covers outstanding natural/cultural features, which the three sites most certainly are**. It may be appropriate to adopt the IUCN Category III for Monuments instead of Heritage parks.**

2.3 The latter comment begs the question as to why the categories in the Bill do not specifically relate to the widely understood **Categories of protected areas at the international level**. These include: Ia Strict nature reserve, Ib Wilderness area, II National Park, III Natural monument or feature, IV Habitat/species management area, V Protected landscape/seascape, VI Protected area with sustainable use of natural resources. **Why are the 7 IUCN categories not adopted or at least specifically referred to in the legislation where appropriate, to bring SA at least partly into line with international standards and practice?**

It is noted that the IUCN World Parks Congress is to be held in Sydney in 2014, and this would be an appropriate opportunity to report on moves to bring SA park and reserve management into line with the global model.

2.4 While the proposed new **Nature reserves category** is understood as an attempt to separate areas subject to mining rights from areas that qualify as National or Conservation parks and are not subject to mining rights, **this exercise seems pointless when eleven National and Conservation parks will still be subject to mining rights**.

Furthermore, the nomenclature is misleading when they are really at least partly future mining reserves. The management cost of the areas will be borne by the (under-funded) parks service over an unknown period of time and if mining subsequently occurs within them that expenditure will potentially be wasted. It seems inappropriate to so lock up areas for mining at public cost, on an indefinite basis and beyond a single generation.

Finally, the new Nature reserve category expressly removes the need for park-specific mining proclamations (s39 of the Bill). This means there will be an **undesirable automatic presumption of both existing and future mining rights**, where previously these had to be specifically enumerated by proclamation. Surely a weak pro-conservation, strongly pro-mining position (and hardly reflecting good conservation legislation).

If areas subject to mining rights are to be called Nature reserves, there could at least be provision in the Act for:

- **Restriction on the percentage of the area which may be alienated for mining activities;**
- **Only underground mining allowed;**
- **Certain areas of scenic or other natural importance exempted from any mining activities;**
- **Flagging of an environmental levy on any revenue from future mining activities specifically to mitigate their impacts on the reserve;**
- **The cost to the parks service of interim management of relevant areas should be chargeable to any future mining industry through an environmental levy on revenue;**
- **A time limit (such as 33 years) on how long the Nature reserve may be subject to existing or acquisition of future mining rights.**

If these conditions are not acceptable, surely **it would be more appropriate to adopt the IUCN category VI of "Protected areas with sustainable use of natural resources"** instead of rather fancifully calling them Nature reserves**.**

2.5 The **Game reserve** category is equally inconsistent and misleading in the opposite way. These areas are to conserve freshwater wetland biodiversity while allowing for hunting (i.e. waterbird shooting). **If hunting is simply a management tool they should be called Conservation or National parks (where certain indigenous fauna are culled from time to time). If the reserves are designed to protect human exploitation/hunting of game they would be better described as IUCN category VI "Protected areas with sustainable use of natural resources"**

2.6 The **plethora of park and reserve categories**, in each of which mining can occur in some cases, most of which contain some non-Aboriginal cultural heritage attributes, and in all of which certain indigenous fauna may be culled under ss52&60J (and only in some cases are they called game reserves), **is likely to be confusing to the public**. The new categories proposed which allow division of existing National and Conservation parks into part park part Nature reserve does little to assist. **The proposals refect the failure to adhere to the widely understood primary purpose of parks which is to reserve such areas from commercial mining or grazing and hunting. The proposals also continue the promotion of false public impressions as to the scale and effectiveness of protected areas in SA under the Act.**

3. **s21 New s30(1) Management objectives and principles**

3.1 The new object **"(e) to protect life and property from bushfires" contains a completely different emphasis to the old object "s37(g) the prevention and suppression of bushfires and other hazards" (such as flooding).** Not only is there now to be priority to protect property, creating a potential legal onus to clear major firebreaks in parks and reserves, but other hazards such as flooding have been deleted. In Brownhill Creek Recreation Park there is a campground along the creek, surely a disaster waiting to happen, but there is no longer any objective to address this through a flood plan. **This object should be reconsidered and legal advice taken.**

3.2 The new object **"(f) to minimise the impact on the environment of activities in the exercise of mining rights, hunting and pastoralism" is weaker than the old s37(j) "in relation to management of Regional reserves, to permit the utilisation of natural resources while conserving wildlife and the natural and historic features of the land"** The priority is no longer conservation, but has become exploitation, again inappropriate in conservation legislation. **The new object should be rewritten to reflect conservation as the overriding consideration in all parks and reserves.**

4. **s21 New s34A-Alteration of category**
   This clause in the bill (specifically the new s34A(1)(a),(b)&(c)) represents a significant weakening of the government's power to change the status of a Regional reserve and provides for a serious restriction on the government power to change the status of a Nature reserve. In both cases there must now be "no mining rights" held in respect of the land, and in the Regional reserve case "no rights to use the land for pastoral purposes". **Mining and pastoral rights are thus for the first time irrevocably entrenched in the land in question and will prevent the upgrading of the reserve to a National or Conservation park, even if such a course has become desirable for State, National or International reasons (e.g. endangering of a wildlife species). Government rights of resumption previously held under the National Parks & Wildlife Act 1972 (s34A) and the Pastoral Land Management & Conservation Act 1989 (s32) are surrendered to industry.**

5. **s21 New s34B-Alternation of boundaries**

   5.1 Alteration of boundaries of a Recreation park should not be allowed without resolution of both houses of Parliament under s34B(3)(a)**.** There can be no justification of such an executive right to alienate such public land without democratic approval.

   5.2 However the second provision (s34B(3)(b)) to allow alterations without parliamentary resolution which do not result in land ceasing to be included in a park or reserve is supported.

   5.3 The proviso that parliamentary resolution is not required where park or reserve boundaries are altered for the purpose of minor alterations or additions to a public road (s34B(5) is only supported provided that "minor" is defined to exclude work beyond a two lane road and alteration of a limited access road to a through road. The construction of a multi-lane freeway through or adjacent to a park is likely to change the nature of the park or reserve irrevocably in terms of noise levels and access and should be considered by Parliament. Significant enlargement of the road width or its transformation into a through route in a corridor style park such as Brownhill Creek Recreation Park (as has in the past been contemplated) would also create major impacts which Parliament should consider.

6. **s21 New Part 3 division 2 subdivision 3 Aboriginal owned land parks and reserves, new ss34D-L**

The principle of Aboriginal owned and co-managed parks and reserves is strongly supported. It is understood that there has already been successful Aboriginal co-management of Witjira National Park under a lease agreement. However the proposed provisions allow downgrading of National or Conservation parks under co-management to Nature reserves which allow mining where it was previously not allowed. The provisions also allow the vesting of National or Conservation parks into Aboriginal ownership, whereupon such parks may be downgraded to Nature Reserves which allow mining where it was not previously allowed. **The details of the proposed provisions confuse Aboriginal co-management and ownership with downgrading for mining, and create the potential for division between different parts of Aboriginal communities and between Aboriginal and non-Aboriginal communities, and are thus highly undesirable.**

7. **s21 New s34G-Alteration of category (Aboriginal owned land parks and reserves)**
   This provision allows the downgrading of a National or Conservation park to a Nature reserve in which mining may occur (*but the reverse is not allowed where mining rights are held)* and should be deleted*.*
   This again reflects a bias towards mining which is inappropriate in such conservation legislation.
   Why is protection of the public rights to conservation of the environment not guaranteed if mining rights are guaranteed?
   This provision is of particular concern in view of recent revelations that Fortescue Metals Group has apparently deliberately cultivated or created an Aboriginal group prepared to allow mining on Aboriginal land, actively supporting this group through payment of travel expenses and attendance fees, where other sectors of the Aboriginal community oppose the mining but are unable to afford to attend public meetings to discuss the mining proposals. Such apparent manipulation and division of Aboriginal communities is not new, previously understood to have occurred between Arabana and Diyari Aboriginal groups in relation to use of fossil artesian waters by the Roxby uranium mine in SA.

8. **s21 New s34H-Alteration of boundaries (Aboriginal owned land parks and reserves)**
   This provision allows downgrading of a National or Conservation park to a Nature reserve (in which mining may occur) through boundary changes *without requiring resolution of both Houses of Parliament,* and should be deleted. Again this reflects a bias to mining that is inappropriate in conservation legislation and again there is particular concern in view of reports regarding Fortescue Metals Group practices.

9. **s21 New s34J-Minister may vest certain co-managed parks and reserves.**
   This provision gives the Minister the power to vest (in fee simple i.e. freehold) previously publicly owned land from a Conservation or National park in an Aboriginal co-management body, and the latter could then use the powers under ss34G&H to downgrade the land to a Nature reserve in which mining can occur.

This extraordinary loophole sets up the opportunity for mining companies to gain access to mine in National or Conservation parks where they previously had no access, by manipulation and division of Aboriginal communities. **The clause must be changed to prevent this.** Again this reflects a bias to mining that is inappropriate in conservation legislation and again there is particular concern in view of reports regarding Fortescue Metals Group practices.

10. **s21 New s34L-Governor may acquire certain land vested under s34J**
This allows the government to take land back from Aboriginal communities if co-management is terminated. It will potentially have become a Nature Reserve in which mining can occur, and any caveats created over it preventing disposal, lease, mortgage or other interests in it are automatically removed.

Again this allows an extraordinary loophole for the creation of mining and other exploitative interests in what was previously a National or Conservation park, free of such rights. **The clause must be changed to prevent this**.

10. **s25(4)&(5) New s35(3)&(4) Control of parks and reserves**
This provision **inserts the words "despite any other Act or law" prior to the provision for granting leases or licences**. The effect of this appears to be to override other important and relevant legislation such as the *Wilderness Protection Act 1992, Development Act 1993* or *Environment Protection Act 1993.*How is this justified when the parks service will not have appropriate skills in all such areas? **The amendment should be deleted.**

11. **s26 New s37-Preparation, adoption and review of management plans**
s37(1)&(2) still set **no effective timelines for preparation or implementation of a management plan**, using the phrase "as soon as practicable" which in practice has long proven meaningless. This facilitates long periods of neglect in which parks and reserves become degraded. It contrasts very markedly with the proposal to reduce the period for public submission on draft plans from 3 to 2 months (s37(6)). **If timelines are not to be included in the Act there must be a community avenue to call the government to account. This could take the form of an administrative review process backed up by a right to seek judicial review.**

12. **s39 New Part 3 Division 6B**
It is noted that mining rights set out here (and indeed in the schedules to the Act detailed later) in relation to parks and reserves are to become very complicated and difficult to comprehend. Again this arguably reflects the fundamental mismatch between general public expectations of a parks system and what government is proposing. How is this? One can perhaps look at the fact that in 2010-11 the Australian Labor Party received electoral donations from resource companies such as Woodside, Atlas Iron, Heathgate Resources, Santos and the Association of Mining and Exploration Companies, while the Liberal Party received as much as $150,000 from Santos or $100,000 from Beach Petroleum[5].

At the very least it is difficult to comprehend how open ended provisions to acquire *future* mining rights in National or Conservation parks can continue to be provided for in conservation legislation. The sorts of restrictions proposed for Nature reserves (item 2.4 pp3-4 of this submission) would seem appropriate as a minimum approach.

In conclusion, the Bill appears to offer a range of new advantages to the mining industry, but very little to the broader public concerned to see parks, reserves and wildlife better conserved and managed. The proposed new categories and reclassifications create a thoroughly confusing picture, in which major new concessions to potential mining exploitation are hidden.

The provisions for ownership and/or co-management by Aboriginal groups, although in principle supported, have unfortunately been framed in terms that are a Trojan horse for downgrading of existing National and Conservation parks to reserves that include mining (where it would not previously have been allowed), and will potentially create division and manipulation of both Aboriginal communities and the broader community.

Yours faithfully,

Marcus Beresford.

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[1] National Trust of SA *Brownhill Creek Recreation Park Nomination as a State Heritage Place* Feb 2012 p1
[2] At p2
[3] D Whitelock, *Conquest to Conservation* Wakefield Press Adelaide 1985) pp120-4,126
[4] National Trust of SA *Brownhill Creek Recreation Park Nomination as a State Heritage Place* Feb 2012 p1
[5] Australian Electoral Commission website as at 5/12/12