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Submission Re: National Parks and Wildlife Amendment Bill 2009

I am President of the RNP Coastal Cabins Protection League, which is the organization representing shack owners at Little Garie, Era and Burning Palms communities in the Royal National Park south of Sydney. There are 143 heritage shacks at these locations with up to five generations of family members in each shack. I consider that the changes to the Act may have consequences for our members, yet our organization whose representatives regularly attend Cabins Consultative Group meetings with the NPWS was not informed of these impending changes.

I am writing in a personal capacity as I have not had time to consult my Committee regarding this amendment bill. I therefore would seek an extension of time in order to properly consult my members.

However the following must be said.

1. NPW Act to come under Administrative Decisions Tribunal jurisdiction

Our organization has attempted to negotiate with Department of Environment and Climate Change over licences for the cabin sites which our shacks/cabins occupy. From 2002 until now we have spent over \$250,000 in legal fees and commence Court action in order to have DECC come to a Mediation Process that resulted in a Mediation Agreement and licences being issues for the cabin sites for the majority of our members.

Secondly we had to return to Court over a matter of interpretation of the Agreement. Further costs were incurred in this process in the order of tens of thousands of dollars.

We believe that it is imperative that the National Parks and Wildlife Act be added to those acts for which the Administrative Decisions Tribunal (ADT) has jurisdiction. We believe that had we had access to the Tribunal as an independent arbiter, then we would have not had to incur such excessive and unnecessary legal costs.

As the National Parks and Wildlife Act covers over 8% of the land of this state, over 38 million visitors per year, and there is growing commercial tourism with leasing and licensing issues arising from activities within National Parks and reserves, there must be an independent arbiter, other than the Courts for persons, businesses, licensees, leasees to turn to when there is a dispute with the administrators of these lands.

We request that as part of this Amendment Bill that the Act be included in the list of Acts for which the ADT has jurisdiction.

2. Onus of proof overturns principles of natural justice.

Under the heading “other miscellaneous minor amendments”, there is a clause:

- “clarifying that in any proceedings under the NPW Act, the onus of proving that a person had a reasonable excuse or lawful excuse (as referred to in any provision of the Act or the regulations) lies with the defendant”

This appears to be a serious and certainly not minor amendment, in that it appears to make the onus of proof lie with the defendant proving their innocence rather than the prosecutor proving guilt. The regulations cover all manner of activities, traffic, camping, vessels, cultural heritage matters, littering causing damage, conduct, sporting and recreational activities to name a few. It could certainly occur that there is a difference of opinion regarding the alleged offence, and this clause removes the onus on the Park or reserve authorities from providing proof that an offence or breach of the regulations occurred.

I have not had time to obtain legal advice on this, however it appears that the lands under the control of DECC would come under a different law to any other jurisdiction, in that within these lands the legal principle of innocent until proven guilty is overturned, and one’s guilt is assumed unless the defendant can prove innocence.

I strongly suggest that this clause must be deleted from this Amendment Bill and that further time is allowed so that members of my Organization which is affected by the NPW Act and Regulations can properly consult regarding other changes contained herein.

3. Recognition of Non-indigenous Cultural Heritage

The Protection League is currently involved in an application for State Heritage Register listing of our communities, and we see the need for the DECC and the Act to fully recognize the intangible, living cultural heritage of non-indigenous people who have longstanding and special associations with land within Parks and Reserves.

Yours sincerely,

Dr Helen Voysey