

## Chapter 2

### Issues raised in the inquiry

2.1 This bill is the product of a major review of the governance of the Great Barrier Reef Marine Park, and has been brought to parliament through the efforts of both the current opposition, which was in government at the time of the review, and the current government. The committee heard evidence in support of the bill from a range of stakeholders. These included the Australian Institute of Marine Science,<sup>1</sup> the Great Barrier Reef Foundation,<sup>2</sup> the Association of Marine Park Tourism Operators,<sup>3</sup> and the Environmental Defenders Offices.<sup>4</sup>

2.2 The committee notes a number of specific issues, not all of them related to the current bill, have been raised in submissions. Some of these are also addressed in proposed amendments to the bill that have been put forward during debate in the Senate. These issues are discussed below.

#### Past criminal convictions

2.3 Under the Act, it is an offence to breach the Park's Zoning Plan. The Zoning Plan is a statutory instrument that prohibits fishing in parts of the Park, including in what are known as 'green zones'. Following a major review of planning for the Great Barrier Reef Marine Park, the green zones were expanded to cover approximately a third of the Park. This new zoning – the Great Barrier Reef Marine Park Zoning Plan 2003 – was introduced by then Minister David Kemp in December 2003 and took effect from 1 July 2004.

2.4 The Department has indicated that, associated with the implementation of the new Zoning Plan, education and awareness raising activities were undertaken. The Department described some of these activities:

These stages included developing education material of primary communication importance (ie zoning maps) and ensuring that information was available for free from a range of distribution points. This included boat and fishing shows and rural and provincial shows, working closely with reef related businesses to encourage and assist them to participate as distribution points, and maintaining close contact with key community stakeholders.

In addition to this on-ground education and networks, the campaign was executed across television, radio and press across the entire Great Barrier

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1 *Submission 76.*

2 *Submission 53.*

3 *Submission 59.*

4 *Submission 57.*

Reef catchment. It was substantially supported by a comprehensive publicity campaign to highlight the new arrangements and there was a proactive approach to using media interviews as a means to highlight the new zoning.<sup>5</sup>

2.5 Despite these awareness raising activities, and a graduated approach to the enforcement of the new Zoning Plan, the increased restrictions on fishing in the Park resulted in an increase in the number of contraventions of the Zoning Plan and, as a result, an increase in the number of convictions of people committing offences under the Act.

2.6 In the period from 1 July 2004 to December 2006, 116 individuals were convicted for recreational fishing-related offences from 403 detected contraventions. 280 of the 403 received only a warning from the Authority. During the same period there were 23 convictions for commercial fishing-related offences.<sup>6</sup> The 116 convictions between 2004 and 2006 contrasts with a lower level of convictions prior to this, when 'between June 2001 and 1 July 2004, around 40 recreational fishers were convicted of illegal fishing'.<sup>7</sup>

2.7 From December 2006, new regulations took effect, allowing enforcement agencies to issue infringement notices as an alternative to pursuing convictions, and the number of convictions dropped dramatically. Concerns about the enforcement regime appear to have been allayed by this change, and the committee also notes that the current bill provides for an increased range of enforcement options, with criminal prosecution being only the most serious. The Department described the proposals in the bill currently before the committee:

The GBRMPOLA Bill proposes changes that will provide further enforcement options for the future. This includes expanded availability of infringement notices, administrative enforcement approaches such as enforceable directions and undertakings, remediation orders, civil penalties, and differing categories of criminal offences carrying differing potential penalties. The approach taken to enforcement of the GBRMP Act (in terms of which enforcement mechanisms are used for particular types of offences) may again change in light of this expanded range of enforcement options. For example, contraventions which are currently dealt with by way of prosecution or a warning may instead be addressed through a civil penalty, administrative enforcement option or an infringement notice, depending on the circumstances.<sup>8</sup>

2.8 On 28 August 2008, Senators Macdonald and Boswell moved two amendments to the bill seeking to have criminal convictions overturned for those who

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5 DEWHA, *Submission 75*, Attachment B.

6 DEWHA, *Submission 75*, p. 11.

7 DEWHA, *Submission 75*, p. 10.

8 DEWHA, *Submission 75*, p. 10.

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incurred a commercial or recreational conviction for fishing-related offences between the period 1 July 2004 and 16 December 2006 under section 38CA of the Act. The first amendment allowed for a conviction for an offence to be treated as a spent conviction;<sup>9</sup> the alternative amendment purports to treat people with convictions as having been pardoned.<sup>10</sup>

2.9 The Committee received numerous submissions expressing concern about the criminal convictions incurred by recreational fishing people, particularly in the period from July 2004 to December 2006. The arguments ranged from suggesting that these convictions were unnecessarily draconian compared to the offences involved,<sup>11</sup> to insisting on a principle that no one should ever be convicted for recreational fishing, regardless of the circumstances.<sup>12</sup>

2.10 Two people who had incurred a criminal conviction wrote to, and gave evidence before, the Committee, describing their experiences. They expressed embarrassment at the conviction, and were worried about the effects it could have on job prospects and on applying for insurance and visas.<sup>13</sup> Mr Garlick stated:

I went on a one-off fishing trip. I did not catch a fish or harm the environment. I made a mistake and I have paid a fine for it. I have learnt from what I did, and I have fixed as much as I can. When Australians make mistakes we fix them because it is the right thing to do. I now hold a criminal conviction. The law has been corrected but there is still a mistake in it. This will severely affect my life, my fiancée's life and, most of all, my children's lives. I love the environment. I would never intentionally break the law to harm it.<sup>14</sup>

2.11 Mr Aston wrote:

I now find that I am unlikely to be able to obtain insurance for my boat, which is my home, and may be unable to obtain visas for other countries to continue my writing and travelling career. My lifestyle has been cruelly curtailed through a very minor transgression. I am an honest person endeavouring to do the right thing and have never received a conviction of any sort in all my 67 years. At this stage of my life to be carrying a criminal record is a shame I find difficult to bear.<sup>15</sup>

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9 *Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008*, amendment 5550.

10 *Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008*, amendment 5550 (version 2).

11 Eg. Queensland Game Fishing Association, *Submission 12*.

12 Mr Gary Fooks, Eco Friendly Fishing Association, *Proof Committee Hansard*, 12 September 2008, p. 21.

13 See Mr Barry Garlick, *Submission 14*; Mr Peter Aston, *Submission 15*.

14 *Proof Committee Hansard*, 12 September 2008, p. 28.

15 *Submission 15*.

2.12 These convictions for illegal fishing, unfortunate though they may appear, have to be kept in perspective. The Department drew the committee's attention to the fact that warning notices have always been (and remain) 'the primary means through which recreational fishing contraventions are dealt with'.<sup>16</sup> Prosecutions have been used only in the more serious of cases. The Department stated that:

The decision to prosecute was made only in cases where there was evidence that the person knew, or reasonably ought to have known, that they were breaching the zoning plan, and/or there were other circumstances suggesting prosecution was appropriate.<sup>17</sup>

2.13 There are also other laws under which it is not uncommon for people to receive convictions – for example for failing to lodge a tax return.<sup>18</sup>

2.14 The committee also notes that effective law enforcement is important to ensuring that the zoning of the Great Barrier Reef is respected and its values are maintained for future generations. Mr Millar from the Environmental Defenders Office (North Queensland), argued:

Part of the reason I suggested transitional arrangements, coupled with an education campaign, is that I think people are more open to appreciate, and indeed do appreciate, the values that the Great Barrier Reef has, not just for the local environment and the local economies but for those state based economies, our national environment and the international obligation that we have to look after the Great Barrier Reef. On balance I do not think that, with proper transitional provisions in place and a good and thorough education campaign to explain what the new laws are, any inconvenience suffered by the local community would outweigh the obligation that we have to protect the reef.<sup>19</sup>

2.15 There is also a further safety net, in that the Commonwealth Director of Public Prosecutions independently reviews the evidence to form a view about whether a prosecution would be likely to succeed and would be in the public interest.<sup>20</sup> As evidence of this review being independent, there were in fact a small number of cases where that review resulted in the issue of a warning instead of the pursuit of a prosecution.

2.16 The committee also understands that magistrates and recreational fishing people facing charges under the Act have been provided by the Commonwealth

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16 DEWHA, *Submission 75*, p. 9.

17 DEWHA, *Submission 75*, p. 11.

18 DEWHA, *Submission 75*, p. 13.

19 *Proof Committee Hansard*, 12 September 2008, p. 6.

20 Mr Mick Bishop, Director, Operations, Great Barrier Reef Marine Park Authority, *Proof Committee Hansard*, 12 September 2008, p. 42.

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Director of Public Prosecutions with a schedule listing convictions under the legislation, to help ensure consistency in the administration of the law.

2.17 It is the responsibility of the Commonwealth Director of Public Prosecutions to make a decision to prosecute. Where a matter has been prosecuted and the charge has been proved, the *Crimes Act 1914* allows a court to dismiss the charge or charges or discharge the person, without proceeding to conviction<sup>21</sup> should it be deemed appropriate.

2.18 The committee notes that the previous government responsible for the Zoning Plan and the law at that time made changes in late 2006 that have resulted in a dramatic drop in criminal prosecutions, in favour of the use of infringement notices (similar in nature to speeding fines). During the current inquiry there was some acknowledgement that the operation of the law during the period 2004 to 2006 was less than ideal:

I think in a way it is a shame that the amendments in 2006 did not happen sooner. I certainly admit that... Since then there has been less of an issue in that people have behaved responsibly on the investigatory side as well. We are mainly hearing now about events in that 2004 to 2006 period when it seemed like the only legal avenue was a club not a warning. There was a problem that was identified and rectified through that infringement.<sup>22</sup>

2.19 However, using parliament to offer wholesale exoneration of over a hundred individuals convicted of offences under one piece of legislation appears fraught with difficulty. The committee explored this at length with witnesses and found no desirable way to address the matter.

2.20 The committee notes that individuals who have received convictions may apply for a pardon from the Governor-General, if other avenues for appeal have been exhausted. The Department outlined current policy in relation to pardons:

The current test applied to pardon applications requires an applicant to demonstrate that he or she:

- is morally and technically innocent of the offence, and
- has exhausted all avenues of appeal or there are exceptional circumstances as to why the person has not exhausted all avenues of appeal.

This would usually require an applicant to provide fresh evidence, not available to the court at first instance or on appeal, demonstrating his or her innocence of the offence.<sup>23</sup>

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21 *Crimes Act 1914*, s 19B.

22 Dr Russell Reichelt, Chairman, Great Barrier Reef Marine Park Authority, *Proof Committee Hansard*, 12 September 2008, p. 40.

23 DEWHA, *Submission 75*, p. 15.

2.21 The Attorney-General's Department processes pardon applications, but these are extremely unusual. The Attorney General's department was aware of only three pardons being granted in the last eighteen years,<sup>24</sup> and these were related to the bringing to light of new information after appeal options had been exhausted.<sup>25</sup> The committee also notes that this appears an inappropriate way to deal with any of these cases, as there is no suggestion that these people were 'technically innocent of the offence'. The issue is one of the seriousness of the penalty; the committee has not been confronted with cases where guilt or innocence was seriously in question.

2.22 The committee is extremely concerned at the precedents that the amendments proposed by opposition senators would be setting. The committee made some inquiries, and to its knowledge there is no other Commonwealth legislation of any sort applying to convictions such as these that grants pardons or requires them to be treated as spent. Indeed, a representative from the Attorney General's Department commented that he was 'not aware of any case in Australian law' where such an action had been taken.<sup>26</sup> The parliament would be making a spectacularly bold foray into the operations of the courts and criminal law were it to countenance any of the amendments proposed by opposition Senators.

2.23 The process for considering the pardoning of a conviction is also one that ends with a minister, not with the parliament:

The reason why a very restrictive approach has been taken to pardons historically is that a pardon is executive interference in the due process of the judiciary. The preference is No. 1, the court decision should stand; No. 2, if there is a legal appeal route, that should always be pursued before it comes to the executive; and No. 3, consideration given by the executive to a pardon.<sup>27</sup>

2.24 As Dr Alderson points out, when an action like a pardon is taken, it essentially represents executive interference with a judicial process. It cuts at the heart of the separation of powers, a cornerstone of the Australian constitution and nation. It should be undertaken only in the most extreme of circumstances. However unfortunate some of the convictions between 2004 and 2006 may appear, they may not warrant such a drastic response.

2.25 The committee also fears that, once the process is begun, no doubt others will then start lobbying for their convictions to be reconsidered:

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24 DEWHA, *Submission 75*, p. 15.

25 Dr Karl Alderson, Assistant Secretary, Criminal Law Branch, Attorney-General's Department, *Proof Committee Hansard*, 12 September 2008, p. 38.

26 Dr Karl Alderson, Assistant Secretary, Criminal Law Branch, Attorney-General's Department, *Proof Committee Hansard*, 12 September 2008, p. 36.

27 Dr Karl Alderson, Assistant Secretary, Criminal Law Branch, Attorney-General's Department, *Proof Committee Hansard*, 12 September 2008, p. 38.

Applying this precedent to drug offences, for example, many states have introduced the option of infringement notices for certain classes of marijuana possession. Is the opposition suggesting that governments pardon the many thousands of people convicted for drug possession prior to these changes? I note also that, over time, decriminalisation of drug offences has applied to a progressively smaller range of offences. Applying the precedent that the opposition is looking to set, governments would be expected to reinstate some of the convictions that it had previously pardoned. These are the sorts of consequences that flow from the opposition's proposed amendments, which demonstrate quite clearly that the proposed amendments are poor policy at best and dangerous at worst.<sup>28</sup>

2.26 Senator Macdonald, one of the movers of an amendment that would treat all of the convictions between 2004 and 2006 as spent convictions, himself acknowledged some of the problems that face any attempt to pardon or treat convictions as spent, when he recognised that 'there will obviously be areas where pardons should not be given'.<sup>29</sup>

2.27 The committee was given no credible proposal to create a meaningful threshold or test to isolate those cases that are deserving of reconsideration from other cases that are not. There was some discussion of using a dollar value of the fine imposed, with those fined less than a certain amount taken to be deserving of forgiveness. Yet Mr Aston, whose case caused committee members concern, received one of the highest fines of a recreational fisher: \$2000. Senators who think a dollar value could be used to set a test should carefully examine the information provided to the committee by the Department about the approximately 120 recreational fishing convictions since July 2004.<sup>30</sup> If a threshold above \$2500 were set, then all recreational fishing convictions would be set aside. This would include:

- A Bowen Magistrates Court case heard 15 July 2005 in which the offenders appeared to know they were fishing illegally, because when they were spotted by a coastwatch plane, they tried to hide their vessel's registration number;
- A Cairns Magistrates Court case heard 23 January 2006 in which one of the defendants admitted to knowing at the time they were fishing in an area that was 'out of bounds';
- A Townsville Magistrates Court case heard 10 April 2006 in which the skipper of a game fishing charter vessel took a friend and six co-contractors fishing over two kilometres inside a prohibited zone; and

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28 Senator the Hon Ursula Stephens, Parliamentary Secretary for Social Inclusion and the Voluntary Sector, *Senate Hansard*, 1 September 2008, p. 9.

29 *Proof Committee Hansard*, 12 September 2008, p. 13.

30 DEWHA, *Submission 75A*.

- Numerous cases where defendants owned both a global position system (GPS) and current charts, and were aware of the prohibited zones, yet still fished illegally.

The committee cannot accept the proposition that these cases are all worthy of extraordinary parliamentary intervention in the operation of the law, to prevent the offenders from having convictions recorded against them.

### *Committee View*

2.28 Given the fact that each person who has been convicted for illegal fishing in the Marine Park has been prosecuted in accordance with the requirements of law, and their offence proven in that court, the Committee is of the view that it would be irresponsible to accept the proposed amendments on this subject.

2.29 The committee recognises, however, that some fishing people convicted under the legislation between July 2004 and December 2006 have concerns about the severity of their punishment under the Act. The committee is also unsure of the extent and soundness of legal advice some of them may have sought and received at the time they were charged.

2.30 While the committee acknowledges that some individuals may feel aggrieved by the outcome, the committee sees no appropriate mechanism to address their concerns that does not fall foul of the many objections and problems that would face attempts to grant pardons (or treat convictions as spent) on a broad scale. If anyone is able to develop a proposal that meets these challenges, it should be put to the government for consideration. However, amendment of the Great Barrier Reef Marine Park Act is not an appropriate approach.

### **Recommendation 1**

**2.31 The committee recommends that, while there may be concerns with some convictions recorded during the period 1 July 2004 to 16 December 2006, it is the committee's view that it is not appropriate for parliament to address these concerns through amendments to the Act.**

### **Definition of 'fishing'**

2.32 A large number of submitters to this inquiry, as well as some Senators, have expressed concern about the definition of 'fishing' in the bill. Currently, fishing is defined in two locations in the laws that underpin Commonwealth management of the Marine Park. There is a definition of fishing in the Zoning Plan. This defines 'fishing or collecting' as:

taking a plant, animal or marine product in accordance with any limitations prescribed in the Regulations.



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Under the *Criminal Code 1995* Part 2.4, this includes having 'attempted to take a plant, animal or product in a zone where fishing is not allowed'.<sup>31</sup>

2.33 The Department explained that it is this definition which is used to determine an offence has been committed by someone breaching the Zoning Plan. All the convictions of recreational fisher people under the Act for fishing in zones closed to fishing have been tested using this definition.

2.34 There is a second definition of fishing currently in the Act, in section 38CA, which defines fishing thus:

fishing means any of the following:

- (a) searching for, or taking, fish;
- (b) attempting to search for, or take, fish;
- (c) engaging in any other activities that can reasonably be expected to result in the locating, or taking, of fish;
- (d) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
- (e) any operations at sea directly in support of, or in preparation for, any activity described in this definition;
- (f) aircraft use relating to any activity described in this definition except flights in emergencies involving the health or safety of crew members or the safety of a boat;
- (g) the processing, carrying or transshipping of fish that have been taken.

2.35 The Department explained to the committee that this definition is *not* used to determine whether an offence has been committed. Its use is confined to particular circumstances related to the classification of an offence that has already been proven. The Department sought to explain this:

It is only once a breach of the Zoning Plan has been established, that the definition of fishing in the Act and Bill, as proposed, is used in the classification of offences for the purposes of determining potential penalties. That is, the prosecution can seek to classify the conduct constituting the offence as “fishing” using a “commercial fishing vessel”. Here, the definitions of “fishing” and “commercial fishing vessel” in the Bill are applied. If these additional elements are proven beyond reasonable doubt, a person can be convicted of an “aggravated offence” (Bill Schedule 6, Item 24, 38GA).<sup>32</sup>

2.36 The committee wishes to emphasise to everyone involved in this debate that the current bill leaves all these definitions of fishing largely unchanged.<sup>33</sup> The only

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31 DEWHA, *Submission 75*, p. 6. See also DEWHA, *Submission 75A*.

32 DEWHA, *Submission 75A*.

33 See DEWHA, *Submission 75*, p. 6.

minor change is in fact to remove one element of the second definition of fishing. The current bill, if passed, will omit 'the processing, carrying or transshipping of fish that have been taken' from that second definition.<sup>34</sup>

2.37 The longstanding and seemingly uncontroversial nature of the definition is consistent with the fact that, at least until now, it has not been an issue amongst stakeholders. Marine Queensland were asked about the history of their concerns:

CHAIR—But you did not raise that in 2007 when there was legislation before the parliament?

Mr Bayne—No, we did not raise it at that specific time.

CHAIR—Did you raise it at all with the previous government?

Mr Bayne—I do not think we raised the actual descriptions at that time, no.

The Department confirmed that these concerns were not raised by anyone during stakeholder consultations in 2006.<sup>35</sup>

2.38 Nevertheless, these varying definitions appear to be creating some confusion. Many submissions drew attention to the definition in the bill (and current Act) and claimed problems could arise from it. The committee received submissions suggesting that the definition may allow for a person to be guilty of an offence if they:

- traverse a forbidden fishing zone with fishing equipment on board;<sup>36</sup>
- are anchored in a forbidden fishing zone with fishing equipment on board;<sup>37</sup>
- enjoying fish spotting or looking at marine bird activity while in a forbidden fishing zone;<sup>38</sup>
- having baitfish on the boat that were caught in a fishing area while traversing a restricted zone;<sup>39</sup> or
- using an echo sounder when traversing a forbidden fishing zone.<sup>40</sup>

2.39 This final point has particularly concerned submitters, as they worried that the mere use of a depth sounder in a forbidden area could be interpreted as being a

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34 *Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008*, Schedule 6 Part 1 Item 9 Subsection 3(1), pp 118-119.

35 Mr Gerard Early, Deputy Secretary, DEWHA, *Proof Committee Hansard*, 12 September 2008, p. 32.

36 See for example, Sunfish Queensland Inc., *Submission 1*, p. 1.

37 Sunfish Queensland Inc., *Submission 1*, p. 1.

38 Queensland Game Fishing Association, *Submission 12*, p. 2.

39 Queensland Game Fishing Association, *Submission 12*, p. 2.

40 See for example Mr Tony van Dalen, *Submission 10*, p. 2.

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criminal offence. While sounders can be used to locate underwater objects, including schools of fish:

This function is a basic safety requirement to avoid running aground for the safety of the vessel and the crew and passengers. To enact any legislation that would possibly preclude the vessel's skipper from using a basic safety and navigation device will undoubtedly endanger lives as well as potentially put pristine environments in danger.<sup>41</sup>

2.40 Marine Queensland / AMIF also claimed that failing to use a depth sounder 'contravenes either the requirements or intent of the legislation contained in the following regulations:

- USL code;
- Transport Operations (Marine Safety Act) 1994;
- The Convention on the International Regulations for preventing collisions at sea, 1972 (COLREGS) and others'.<sup>42</sup>

2.41 There were some suggestions that the definition of fishing, and other provisions of the Act and the bill, were part of an 'anti-fishing' stance being taken by the Authority.<sup>43</sup> The head of the Authority, Dr Reichelt, responded saying:

the Great Barrier Reef Marine Park Authority sees fishing in the marine park as a legitimate and welcome use in a multiple use marine park—within the regulations, of course. But there is no suggestion that fishing by recreational, by commercial and by Indigenous people is anything other than a legitimate use of a multiple use marine park. I would like to put that on the public record.<sup>44</sup>

2.42 The existing approach to defining 'fishing' did also receive support. The Association of Marine Park Tourism Operators, which represents industry groups such as snorkelling and dive operators, tourism organisations, cruise operators, boat charters and resorts, claimed that 'we consider that the current definition is adequate and feel confident that the law will be administered sensibly'.<sup>45</sup>

2.43 The committee also notes information provided by DEWHA, compiled by the Commonwealth Director of Public Prosecutions, on convictions of recreational fisher people that have occurred since 1 July 2004. None of these appear to have involved the kinds of activities outlined at paragraph 2.38 above. This is consistent with

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41 Marine Queensland / AMIF, *Submission 47*, p. 8.

42 Marine Queensland / AMIF, *Submission 47*, p. 9.

43 See, eg, Digfish Services, *Submission 43*; Honda Australia Motorcycle & Power Equipment Pty Ltd, *Submission 45*.

44 Dr Russell Reichelt, Chairman, Great Barrier Reef Marine Park Authority, *Proof Committee Hansard*, 12 September 2008, p. 32.

45 Association of Marine Park Tourism Operators, *Submission 59*, p. 2.

DEWHA's advice that the definition in the Act is not used to determine whether an offence has been committed.

2.44 The committee wishes to emphasise that the definition of fishing in the bill is essentially the same one that is in the current Act. The committee also reiterates its understanding that those who have received convictions for illegal fishing understood that their actions were contrary to the law and the definition of fishing was not an issue in any of these cases.

### ***The committee's view***

2.45 Despite the fact that the current bill does not significantly alter the definition of fishing in the Act, and does not alter the Zoning Plan at all, the committee has significant concerns. The committee believes that the way in which the definition of fishing operates in the legislation is unsatisfactory. Attempts to gain from Commonwealth agencies a clear understanding of why it is necessary for fishing to be defined in the manner proposed met with no success. During hearings one of the officials remarked that the definitions were 'a little bit convoluted'.<sup>46</sup> The committee can only agree.

2.46 The committee was presented with no evidence on why the definition of fishing in the Act should be placed anywhere other than in the section relating to aggravated offences. Even then, it remains unclear whether a definition different to that in the Zoning Plan is in fact necessary at all. It is not clear, for example, why the definition of 'fishing or collecting' currently in the Zoning Plan could not be the definition used in the Act when dealing with the question of aggravated offences.

2.47 Laws should be clear as possible to citizens, particularly laws that might affect a large number of individuals in the course of their everyday activities. Having, in the Interpretation section of an act, a definition of fishing that is not in fact the definition that determines whether an offence has been committed by someone who is fishing appears to foster confusion. Actually moving it to that location, as the present bill proposes to do, when it appears to serve a purpose in only one section of the Act seems potentially misleading. The great difficulty experienced by DEWHA officials who attempted to explain the law, in both submissions and at the hearing, simply underlined the problem.

2.48 The committee accepts the Department's position that the definition in the Zoning Plan is the one that underpins prosecutions. It discourages stakeholders from encouraging a different, and incorrect, view. However, a DEWHA review of the way fishing is defined through the bill should improve clarity and certainty, and address the sentiment that the bill is somehow intended to prevent any recreational fishing in the Park.

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46 Mr Travis Bover, Acting Director, Great Barrier Reef Policy Team, Marine Division, DEWHA, *Proof Committee Hansard*, 12 September 2008, p. 33.

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## Recommendation 2

**2.49 The committee recommends the government review the manner in which fishing is defined in the Act.**

### Representation on the Authority

2.50 The current bill before the Senate proposes the inclusion of an Indigenous person on the Great Barrier Reef Marine Park Authority 'with knowledge of, or experience concerning, indigenous issues relating to the Marine Park'. This is consistent with current arrangements whereby 'all members of the Authority must have qualifications or extensive experience in a field related to the functions of the Authority'<sup>47</sup>. As noted in the dissenting reports on the 2007 inquiry by the Senate Environment, Communications, Information Technology and the Arts committee into the provisions of the Great Barrier Reef Marine Park Amendment Bill 2007, there is strong evidence for having Indigenous membership of the Authority.<sup>48</sup> This committee believes this position will help ensure appropriate skills are available to the Authority, as well as acknowledging the role of indigenous people in managing country. It does not see this provision as providing 'representation'.

2.51 An amendment proposed by Senator Macdonald, and supported by industry submissions to the inquiry,<sup>49</sup> states that:

At least one member must have knowledge of or experience in the tourism industry or another industry associated with the Marine Park.<sup>50</sup>

2.52 The Committee acknowledges the strong interest of industries in how the Marine Park is managed. The broad range of industries represented in submissions to this inquiry is a testament to the effect of the Marine Park on the livelihoods of thousands of Australian. The Committee, therefore, affirms the necessity for industry to be engaged in the management process.

2.53 However, the Government's commitment to this has been demonstrated through the comprehensive range of consultation mechanisms already in place. The Authority has four reef advisory committees covering: water quality and coastal development; tourism and recreation; fisheries; and conservation and heritage. Each of these committees provides a direct mechanism for working in partnership with key

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47 *Explanatory Memorandum*, p. 7.

48 Senate Committee on Environment, Communications, Information Technology and the Arts, *Report on the Great Barrier Reef Marine Park Amendment Bill 2007*, 15 June 2007.

49 Queensland Game Fishing Association, *Submission 12*, p. 4; Association of Marine Park Tourism Operators, *Submission 59*, p. 2.

50 *Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008*, amendment 5510.

stakeholder groups.<sup>51</sup> The Committee is also aware that 11 Local Marine Advisory Committees have been established to advise the Authority on management issues about the Marine Park at a local level, with a range of industry representation required by their terms of reference.<sup>52</sup>

2.54 In addition, the Government has committed to implement a recommendation of the 2006 review of the GBRMP Act by establishing an advisory body. Minister for the Environment, Heritage and the Arts, the Hon. Mr Peter Garrett MP has confirmed that:

...this body will comprise representatives from key stakeholder peak bodies and industries associated with the Marine Park. It will provide advice directly to the minister on specific matters affecting the Great Barrier Reef.<sup>53</sup>

2.55 The committee also notes the view expressed little more than a year ago by the then Coalition government, that there should not be positions on the authority that represent particular sectors.<sup>54</sup> The committee is not sure why the coalition has reversed its position on this.

### **Committee view**

2.56 In light of the extensive consultation mechanisms already in place which provide numerous opportunities for engagement with industry, the Committee believes that the amendment proposed by Senator Macdonald is not only unnecessary, but risks undermining the thorough consultation process undertaken during the 2006 review of the GBRMP Act.

### **Recommendation 3**

**2.57 That the proposed amendment relating to the membership of the Authority be rejected.**

### **Recommendation 4**

**2.58 The committee recommends that the bill be passed.**

**Senator Anne McEwen  
Chair**

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51 Great Barrier Reef Marine Park Authority, *'About Us'*, [http://www.gbrmpa.gov.au/corp\\_site/about\\_us](http://www.gbrmpa.gov.au/corp_site/about_us) (accessed 12 September 2008).

52 Great Barrier Reef Marine Park Authority, *Local Marine Advisory Committees*, [http://www.gbrmpa.gov.au/corp\\_site/management/who\\_participates/lmac](http://www.gbrmpa.gov.au/corp_site/management/who_participates/lmac) (accessed 12 September 2008).

53 The Hon. Mr Peter Garrett, Minister for the Environment, Heritage and the Arts, *House of Representatives Hansard*, 26 August 2008, p. 39.

54 Senator Eric Abetz, *Senate Debates*, 21 June 2007.