

Submission to the Inquiry into the Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008

Date: 4th September 2008

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Dear Senator McEwen,

Please accept this submission to the inquiry into the Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008.

I am 60 years of age, have been a recreational fisherman all my life as well as a professional fisherman for 7 years plus a SCUBA diver. I am an ex member of the Victorian Police Force and during my time in the Police Force had several dealings in relation to the Victorian Fisheries Act and at all times believe that discretion was necessary when dealing with members of the public. I was not, on most occasions, dealing with criminals, so therefore my attitude was to treat people as I expected to be treated myself and therefore a "softly," approach was used. As a result I feel that I was able to inform people of their rights and abide by, not enforce, the laws as my job required.

My attitude towards fishing has always been that it was a sport but I was mainly there to catch a feed and as a "Hunter & Gatherer" it is my inherited right as a human being to supply myself and my family with fresh food.

The following recommendations are foul in the extreme. How can searching for fish be classed as "fishing"? This is obscene. That means that if I "Google" earth on my computer in an attempt to find an area that may be conducive to fishing, or are sitting at the boat ramp, checking my GPS for likely places to fish, and even if I put my boat in the water with intention of catching a fish, or pick up a fishing rod, then I am guilty of an offence that not only will cost me financially, but will prevent me from gaining a Passport and sustaining life in other ways due to the fact that this is classed as a CRIMINAL offence.

My question to all this is "How do you prove intent?" Unless we can now read minds direct proof is the only way I know to prove intent.

I am sorry, but there are shades of grey in this world. Black & White do not fit the life scenario. If somebody is caught with one fish over a legal limit, then yes he commits an offence but by what means does the severity of the law make it necessary to convict this person and fine him to the extent of the person who continually flaunts the laws and catches fish in huge amounts by illegal means. If that was the case we would not have minimum and maximum fines and sentences for offences

9 Subsection 3(1) 23

Insert: 24

fishing means any of the following: 25

- (a) searching for, or taking, fish; 26
- (be) attempting to search for, or take, fish; 27
- (co) engaging in any other activities that can reasonably be expected to result in the locating of, or taking of, fish; 29
- (do) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons; 31
- (em) any operations at sea directly in support of, or in preparation for, any activity described in this definition; 33
- (if) 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 launch, vessel or floating craft of any description.

The memorandum:

67. The proposed new offence provisions includes strict liability elements, such that a prosecutor will not have to show (where relevant to the offence in question) that the accused knew or was reckless as to the fact that an action is taken in the Marine Park or that an action is taken outside of the Marine Park but in the Australian jurisdiction. The use of strict liability in this way is proposed having considered the Senate Scrutiny of Bills Committee *Sixth Report of 2002: Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, as well as the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, issued by authority of the Minister for Justice and Customs. Having regard to these documents, strict liability is established as it:

- ensures the integrity of the regulatory regime applying to the Great Barrier Reef;
- overcomes problems of proof that would otherwise make the regulatory regime particularly difficult to enforce;
- overcomes a “knowledge of the law” problem; and
- goes, in part, to a jurisdictional element of the relevant offences.

As a member of the Police Force, I was never allowed to walk up to a person in the street and search them without a lawful reason. At all times, I was required to prove that the person committed the offence. I only know of one law that placed the burden of truth on the offender and that was unlawful possession of property. It required the person to produce evidence of their lawful ownership of property and that was easily done by receipt or other means.

To do what this memorandum states is going back to the Dark Ages where people were wrongly accused, convicted and sentenced without hard evidence. Why do we have the need for Forensic Science at law, if a person is now going to be convicted because another believes he was doing wrong.

Humans are humans and by nature we can be a vindictive race and as a result, if this memorandum is allowed, we as members of society will be mistreated just because we can be. DO NOT DO THIS. The burden of proof is and should always be the responsibility of the Prosecution.

I was recently fishing at my favourite haunt in Victoria. Swan Bay is now almost completely a sanctuary with an access channel which can be fished. The marking of this area as a sanctuary is minimal and hard to discern without spending some time checking maps and the actual layout of the park. On this particular occasion, I approached the channel and saw a boat fishing within the boundaries of the sanctuary. I decided, much against my better judgement to approach the boat and inform the fishermen that they were fishing "illegally". My expectation was to be abused and told to go away, but as soon as I told the two men, they thanked me profusely and asked me for guidance as to the extent of the Sanctuary.

No sooner had the boat moved than a Marine Parks vessel approached and I decided to ask them about their approach to this situation. I was informed that they were on patrol to inform people of their rights and their first priority was to ensure that the rules were abided by, not that they were to charge offenders and generally make what is supposed to be a pleasant day into a nightmare. I came away from the whole incident with a good feeling, believing that this approach was fantastic and the way life was meant to be.

Please, do not even consider the above recommendations as they encroach on our inherent rights as human beings and are not necessary as a part of life.

Terry Hayden