

4 September 2008

Senator McEwen, Chair
Senate Standing Committee on Environment, Communications and the Arts

Dear Senator McEwan,

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

I am one of 324 Australians who seek the help of your Committee to clear our names of a criminal conviction resulting from an unfair Federal legislation anomaly.

It had been a beautiful Queensland day on October 9, 2005 when I was sailing the Great Barrier Reef about a mile offshore from Hinchinbrook Island. Then, Queensland Parks officers approached me to advise they had determined by GPS that I had entered a Green Zone and that they were obliged to charge me as I was trailing a fishing line. I had caught no fish and was mortified when they proceeded with the charge as I am a committed environmentalist and have done much to develop and support measures to protect the Reef.

On my retirement, my wife and I sold our house, dispersed our belongings, built a yacht and sailed overseas from Townsville in 1997. I have written magazine articles and a book about our adventures and our sustainable, seagoing lifestyle. Sadly, my wife contracted leukaemia and we were obliged to cut short our travels and return home in late 2003. This was our first coastal cruise since our return to Australia and my 1997 GRBMPA charts did not show that particular Green Zone. (We have temporarily moved to Sydney for medical reasons but hope one day to be back aboard to continue our seagoing lifestyle.)

I subsequently received an order to appear in court and after making enquiries, my solicitor wrote to the Commonwealth Director of Public Prosecutions and on their verbal advice he advised me not to attend Court adding that I would receive an infringement notice for around \$500.

I followed his advice and was shocked to hear that in my absence on 13 February 2006 I had been fined \$2065 (or spend 33 days in gaol). I had also received a criminal conviction although neither I nor my solicitor realised this at the time. With this understanding, he recommended that I not consider an appeal due to the cost.

It was not until the plight of similarly affected people in tropical Queensland was published in the local press and discussed on radio that the impact of my conviction with its potential difficulties in applying for visas and obtaining new insurance became apparent. It also transpired that despite the 3 intended levels of offence published on the GBRMPA website, the minor infringement level was initially removed from the legislation in order to facilitate public awareness. GBRMPA staff were embarrassed when many formally supportive, considerate Reef users were unfairly fined and responding to the outcry, a new recommendation was forwarded to the Minister.

In November 2006, Minister Ian Campbell approved amended legislation to introduce the originally intended minor offence category. If I had been "negligently fishing" after that date, I would have been issued with an on-the-spot-fine of \$1100 and handed a non-criminal infringement notice.

On 27 January 2007 Peter Lindsay MP made representations on my behalf to Malcolm Turnbull, then Minister for the Environment and Water Resources. He advised that the amended regulations could not be used retrospectively and that as I had not appealed the verdict or the penalty, the magistrate's decision must stand. However, as noted above I had been advised not to appeal as the GRMPA legislation pointed to this only as a case of infringement. Mr Turnbull later advised that the offence was regulatory rather than criminal, saying "parties found guilty are convicted of a regulatory offence, not a crime or even a misdemeanour".

Despite his viewpoint, as a result of this legislative backflip and poor legal advice, I did not have the opportunity to present my case or evidence of good character to the Court. 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. I believe it would be extremely difficult to find a misdemeanour for any other offence in this great country that received such a harsh penalty.

The Barrier Reef Zoning Plan defines the number, size and type of fish that may be caught in each zone. Green Zones stipulate that no fish may be caught, which is what I did. Neither did I "intentionally fish" there. My only intention was to sail the 25 mile passage to Zoe Bay on Hinchinbrook Island and I mistakenly had an empty line trailing in water as I did so. Perhaps I was negligent in not owning an up-to-date Zoning Chart but fishing was not my purpose. I have sailed over 100,00 miles around the world, most of the time with a line over the stern. The offence was a simple lack of awareness, surely not one warranting a criminal record.

Just prior to the last election, the Townsville Bulletin published the happy news that the then Justice Minister, Senator David Johnston had determined a way of overturning this anomaly and that all political parties would support such action. However, nothing eventuated and I and 323 others caught in the same brief period of legal ambiguity are still criminals. My hefty fine is humiliating but the criminal record is patently unfair and I respectfully seek your help to ensure our criminal records are expunged.

In the name of an Australian "fair go" I sincerely ask that you accept the proposed amendments to the Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008.

Yours sincerely

Peter Aston