

Senator McEwen, Chair  
Senate Standing Committee on Environment, Communications and the Arts  
By email to [eca.sen@aph.gov.au](mailto:eca.sen@aph.gov.au)

Dear Senator,

With respect to the review of the amended Great Barrier Reef Marine Park Act I submit the following for your consideration.

It will focus on a number of areas of concern in respect of the legislation and suggested amendments.

1. The issue of criminality for breaches of the act pertaining to recreational fishing infringements.
2. The issue of the changes to the principle role of the GBRMPA and the act from one which managed the park while allowing reasonable and sustainable use to one which describes the principle role of the authority and the act to be one of protection and preservation.
3. The use of the “precautionary principle” as an open-ended mechanism to be used at the whim of the management and regardless of any evidence or science.
4. The shift of focus in terms of prosecution of any breaches of the act and the onus of proof resting with the person prosecuted, not the authority. In essence anyone charged will be guilty until proven innocent. Presumption of innocence is the absolute cornerstone of our current legal system.

### **Issue 1. Criminality**

The historic and far reaching rezoning of the Great Barrier Reef Marine Park, in 2004 was not without controversy and not without very vocal reactions from both sides of the ideological “fence”.

Both from those in the “South” who took a view that all and any protection was positive and those who actually lived “up here” who thought the measures heavy handed and “overkill”.

Regardless of which side of this ideological “fence” one stood an outcome of the initial legislation was that ultimately any breach of the “law” was in fact a breach of a “Commonwealth” law and with the ultimate prosecutions being heard in a QLD State Magistrates court, the court had little or no alternative but to impose a criminal conviction in respect of often simple fishing infringements.

This ultimately resulted in some 324 people, many ordinary, average “Joe’s” having criminal records and this has had a devastating effect on those involved.

In so many instances involving dealings with Government agencies, insurance companies, financial institutions and the like, forms often have a section, which asks, “do you have a criminal record”. The very stigma alone is difficult to reconcile and the practical result of having to say “yes” has far reaching consequences.

I have personally had a gentleman, a man of 66 years old, a father, a grandfather and a retiree, sobbing his heart out down the phone to me describing the shame he bears having a criminal record for the simple act of taking his grandson fishing and not having a GPS unit in his “tinny” and not realising he was in the wrong place.

This is not just.

This is at a time when courts often choose NOT to record criminal conviction for many offences which society in general considers ARE worthy of criminal convictions. These include burglary, car theft, and drug offences with the “no criminal convictions” issue for drug offences actually supported by the Greens.

To the Howard Governments credit they saw the problems they were causing and fixed the anomaly but they did not go far enough and quash the convictions.

You, now have a chance to do something about it.

## **Issue 2. The fundamental role of the GBRMPA**

Given your governing acts, Great Barrier Reef Marine Park Act 1975 which includes the phrase “allowing reasonable use” and the Environment Protection and Biodiversity Conservation Act 1999 . Clause b “sustainable use of natural resources”, there appears to be a significant shift in terms of the amended act, which determines the principle role of the authority.

The significant shift has become the overriding “main objective”, to whit...

*The main object of this Act is to provide for the long-term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef Region.*

While laudable in principle it is a fundamental shift away from management of the park as a “park” towards locking Australian citizens out of “our park” under the guise of protection and conservation.

## **Issue 3. The precautionary principle**

This links in part to issue 2 I that potential impacts, regardless of any evidence, can result in the banning or restrictions of any activity in the park based on the assumed or imagined impacts, as determined by the authority.

Given the bias of the authority and its new overriding principle it is perceivable that almost every “activity” in the park, be that recreational and commercial fishing OR tourism impacts could be stopped with the stroke of a pen, at the behest of the authority IF they perceived there to be an negative impact and WITHOUT any actual evidence to support such a position. Science must underpin the management of all our national parks and the science must in turn be peer reviewed, not the junk science used to justify massive green zones in the first place.

## **Issue 5. Burden of proof.**

This issue appears to be grounded in a case heard before magistrate Black in the Cairns magistrate’s court in respect of a prosecution for illegal fishing activity in a green zone.

The DPP relied on evidence supplied by the GBRMPA in respect of fixing the position of a fisherman using GPS technology.

A clear case was presented, as supported by the Australian Maritime Safety Authority and existing precedent that GPS data can not be used as the sole means of fixing a position and that GPS data must be confirmed by other navigational means (such as compass bearings or radar fixes).

This is not (as has been reported) a decision that GPS data as flawed. GPS data can and is used in court to determine positions but in respect of maritime law it is abundantly clear that GPS fixes MUST

be confirmed by other navigational means AT THE TIME the fix is made. In the case of marine park breaches this was NEVER done.

In essence the GBRMPA had **at all times** been relying on flawed evidence when it prosecuted recreational fishers and, through the court system, intimidated people into pleading guilty.

That the burden of proof is now to rest with the person prosecuted is against every principle of our justice system and sets a very dangerous precedent.

Guilt, in the case of a breach of marine park laws, will be assumed and the person charged will have to prove innocence. Surely this is an aberration and a rule designed to lessen the requirement for evidence gathering by the authority and cover for their own incompetence in terms of gathering admissible evidence to present in court.

By way of example it is illegal to “fish” in a green zone.

The definition of “fishing” as determined by the act is

*fish* includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.

*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.

If, therefore, an officer of the GBRMPA charged an individual with fishing, on the basis that he believes that individual is “searching for a fish”.....that person will be assumed to be guilty and will have to prove he is not.

How would one do that.

If you transit a Green zone with a depth sounder operating (as one should for safety purposes) how does the person prove it was for safety and they were not “searching” for fish.

**You cannot allow such a far reaching and fundamental shift in our system of justice to occur.**

Australians in every walk of life are entitled to the presumption of innocence and it remains the burden of the prosecution to prove persons guilt beyond reasonable doubt.

Yours Faithfully  
Kevin Collins