

***SUBMISSION ON THE GREAT BARRIER REEF  
MARINE PARK AND OTHER LEGISLATION  
AMENDMENT BILL 2008***



Submission to:

**The Secretary**

**The Senate Standing Committee on Environment, Communications and the Arts  
PO Box 6100, Parliament House  
Canberra ACT 2600**

by

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## EXECUTIVE SUMMARY

The following aspects of the Great Barrier Reef Marine Park and other Legislation Amendment Bill 2008 are strongly opposed by the Marine Industry. In particular, the following elements are opposed:

1. Adoption of the Precautionary Principle. A risk based approach is advocated instead by industry;
2. Mandatory criminal convictions for breaches of the Act;
3. Expanding the definition of “fishing” to include “looking for fish and intending to look for fish”. In addition, the proposal will create safety and legislative conflicts in respect to its application to the use of sonar equipment on vessels and aircraft;
4. The need to introduce “balance” in respect to “sustainability” by including reference to social and economic factors in conjunction with environment;
5. Expanding enforcement powers to such an extent that they will be in breach of the fundamental tenets of law and society.

The industry has had the opportunity to review the proposed amendments advanced by Senator Boswell. The industry strongly supports the proposed amendments.

The industry is a significant contributor to the State and national economies. It is equivalent in size to the telecommunications industry and the air transport industry (freight and passenger). The Marine industry generated \$4,678 million in spending attributable to Queensland operations in 2006. This includes industry turnover and net additional tourism spending. The industry employs 12,000 employees directly and up to 31,000 directly and indirectly.

Marine Queensland is the peak State industry organisation in Queensland is affiliated with the Australian Marine Industries Federation (AMIF) nationally. AMIF is the peak national industry organisation for the Marine Industry.

The industry strongly supports the environmental preservation and protection of the Great Barrier Reef. The future of the industry depends on it.

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## INTRODUCTION

The Senate Standing Committee on Environment, Communications and the Arts has called for submissions on the proposed Great Barrier Reef Marine Park and Other legislation Amendment Bill 2008. This submission has been prepared for and on behalf of Marine Queensland members.

Marine Queensland is the peak industry organisation for the leisure marine industry and represents the recreational boating industry in Queensland. Established in 1973, membership is drawn from a diverse range of marine interests such as:

- Boat and Engine Manufacturing;
- Marine Accessories Manufacturing and Retailing;
- Boat and Marine Engine Repairs;
- Marine Product Distributing and Wholesaling;
- Boating Holidays and Tourism;
- Retailers and Brokers;
- Boat Share operators;
- Marina Operators and Developers;
- Marine Surveyors;
- Boatclub members;
- Recreational Fishing Groups; and
- The Queensland Small Craft Council.

Membership is open to any business engaged principally in the marine industry, subject to satisfying entrance qualifications. Marine Queensland exists to represent and promote the interests of Queensland's recreational and light commercial boating industry.

Marine Queensland is in the business of promoting public access to water resources and enhancing the prosperity, enjoyment and safety of everyone involved in recreational and light commercial boating.

As the peak marine industry body, Marine Queensland:

1. Provides the industry with a single voice.
2. Provides direct access to Governments through membership of advisory bodies such as Queensland Transport, Marine Board of Queensland and through an exhaustive list of Government contacts.
3. Provides constant up to date information on international recreational boating through membership of the American Boat and Yacht Council (ABYC) and direct contact with other international organisations such as the International Council of Marine Industry Associations (ICOMIA), the British Marine Industries Federation (BMIF), the National Marine Manufacturers Association (NMMA) and the Boating Industry Association of New Zealand (BIANZ).
4. Provides a full secretariat and office facility which produces up to date information for members.
5. Owns and operates the recreational boating industry's largest annual showcase being the Brisbane International Boat Show and Fishing Expo, together with other boating exhibitions and promotions in regional centres of the State.

6. Provides the public with consumer boating advice service and direct enquiries to members. This is further enhanced with the Marine Queensland accreditation program which aims to enhance consumer confidence in accredited operators in the Industry and promoted to consumers through the Association's "Buy With Confidence" program.

This submission has been prepared with the direct assistance of Mr. Wayne Bayne, proprietor of Mitchells Marine based in Cairns, Far North Queensland. He has significant direct experience in the impact on the leisure marine industry of rezoning of the Great Barrier Reef Marine Park and the day-to-day impact of the governing legislation on Marine businesses and local communities generally.

This submission focuses on key "strategic" issues associated with the Bill and the processes that underpin the day-to-day operation of the legislation now and into the future.

The submission is co-sponsored by the Australian Marine Industries Federation being the National Industry Peak organisation.

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## STAKEHOLDER CONSULTATION

Marine Queensland has undertaken extensive member consultation as well as broadly based consultation with club members, community groups and special communities of interest in forming the views expressed in this submission. This consultation has occurred both via the Regional structure and other Divisions of the Association.

## INDUSTRY PROFILE

### RECREATIONAL BOATING

In August 2007 research results were released by Grow Boating Australia on the economic value of the Australian Recreational Boat industry.<sup>1</sup> The recreational boating industry plays a significant role in the Queensland economy. In tourism terms, recreational boaters account for 11.2% of Queensland's overnight stays. The trend data indicates strong year on year growth since 2001. At present, there are in excess of 220,000 registered recreational vessels in Queensland.

Most domestic overnight visitors are from Queensland, they have average to higher incomes and are in the family life stages. They also have a strong association with caravan parks in terms of where they stay when on holidays with their boat. Fishing is a significant activity undertaken on boats with 45% of all fishing trips using a boat.

The recreational boating industry has a 4.6% share of Queensland's share of total day trip market.

In both the overnight and day trip markets, recreational boating is one of the top 10 activities people undertake when on holiday or day trip. This is higher than comparable tourism activities such as going to festivals or fairs.

In total, the recreational boating industry generated \$2,066M (05/06) in expenditure on holidays and day trips in Queensland, therefore making it a significant contributor to the tourism market.

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<sup>1</sup> Grow Boating Australia The Economic Value of the Australian Recreational Boat Industry 30 August 2007 - EMDA.

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## SIZE AND ECONOMIC CONTRIBUTION

The industry generates \$4,678M in spending attributable to Queensland operations in 2006. This includes industry turnover and also net additional tourism spending.

The recreational boating industry in total generates direct industry revenue of \$2,612M, including \$400M in export sales.

The industry contributes \$1,575M to the Queensland economy and supports just over 31,000 jobs both directly and indirectly. Twelve thousand people are directly employed in the sector.

In Queensland, the industry's direct employment contribution is about the same as air transport (commercial and passenger) and the telecommunications industries. In that sense, it not only is economically significant but also socially significant.

In addition it is also worth noting that 80% of marine manufacturing undertaken in Australia is located in Queensland. It is important therefore from an economic and social sense that consideration is given to minimisation of impact on this important sector of the marine industry to this State.

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## INDUSTRY DEVELOPMENT IMPACT

Increasing consumer participation in the industry will have a significant economic and social benefit to Queensland.

If the industry increases in size by 5%, this will add \$103M in tourism spending, \$110M to industry revenues and provide \$78M in economic contribution to Queensland. It would also be an additional 1,558 full-time jobs. Conversely, a downturn in economic growth of the industry will result in reduced economic contribution to the State, including job losses.

There is strong evidence to suggest that economic loss, including job loss was a direct outcome of the Great Barrier Reef Marine Park (GBRMP) zoning review. It is the strong submission of Marine Queensland that lessons can be learnt and applied from the previous GMRMP review process. This is further discussed later in this submission.

The social benefits are also well recognised by Government. For example, in the South East Queensland Regional Outdoor Recreation Strategy<sup>2</sup> the then Deputy Premier, The Honourable Anna Bligh MP, sought public comment on a strategy relating to outdoor recreation activities. In that draft strategy power boating, sailing, canoeing, water activities such as skiing, diving and fishing were identified as important outdoor recreation activities.

That draft strategy also highlighted the need for and importance of balance. For example, recognition of undertaking outdoor recreation activities need to have due regard for nature conservation and protection of cultural heritage (amongst other factors).

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<sup>2</sup> Office of Urban Management in partnership with the Department of Local Government, Planning, Sport and Recreation – 30 March 2007 – Regional Outdoor Recreation Strategy.

## GOVERNMENT PRIORITIES

The Queensland Government has also released important statements outlining its priorities. They represent the areas where the Government is seeking significant improvements as a result of an enhanced focus for the current term. Five key Government priorities that Marine Queensland has identified as impacting decision processes that are relevant to assessing potential impacts of the proposed changes in the Bill before the Senate include:

1. Growing a diverse economy and creating jobs;
2. Managing urban growth and building Queensland's regions;
3. Delivering responsible government;
4. Realising the Smart State through education, skills and innovation; and
5. Protecting the environment for a sustainable future.

## KEY ISSUES

### THE PRECAUTIONARY PRINCIPLE

The marine industry in general and the recreational and light commercial boating sectors specifically are a key industry within the State's industry base. It has enjoyed strong growth including increasing contributions to export earnings through its manufacturing, tourism, recreation and education and training sectors.

There is a significant body of evidence that demonstrates that the negative impact of the previous zoning review process on the industry. Impacts included:

- Reduced business performance resulting from reduced consumer demand;
- Business cessations;
- Job losses;
- Social and community impact as a result of reduced economic activity.

Marine Queensland refers to two key studies undertaken to assess the impact of the GBRMPA review on water and land based businesses. They are:

1. A Report for the Department of Environment and Heritage, Canberra prepared by Colin Hunt of 10 November 2005<sup>3</sup>; and
2. FNQ Land Based RAP Affected Businesses Group prepared by KPMG dated February 2005<sup>4</sup>.

In summary, the Department of Environment and Heritage report identified downturns in business activity ranging from 15% to 37% that could be directly attributed to the GBRMP rezoning. The differences in percentage related to locality (15% Mackay and 37% Cairns).

The key findings of the report prepared by KPMG identified on average, businesses had indicated that they have experienced a reduction in turnover of between 10 % and 60 % as a direct result of the rezoning. The estimated combined turnover loss was:

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<sup>3</sup> Estimating the impact on recreational fishing dependent businesses of the Great Barrier Reef Marine Park Rezoning – Colin Hunt – 2005.

<sup>4</sup> FNQ Land Based Marine Industries RAP Affected Businesses Group – Economic Impact Snapshot – KPMG 2005.

- Between \$60 million and \$360 million on an annual basis (excluding inflation and the multiplier effect); and
- Between \$300 million and \$1,800 million over a cumulative five year period (excluding inflation and the multiplier effect).

The loss of turnover in this regard is likely to impact businesses in the following ways:

- Reduced employment: redundancies, employment deferral and reduction in the use of contractors;
- Loss of skills and skill transfer within the workforce;
- Lack of innovation and creativity;
- Reduced investment in business infrastructure and expansion; and
- Unviable operations leading to business closures.

Copies of these reports are attached as Appendix 1 and 2 to this submission.

It is argued by industry that the adoption of the precautionary principle will further contribute to impeding the growth and development of the industry, particularly in regional centres of the State.

It should be noted however, that the sustainable growth of this industry is contingent on two significant factors:

1. A healthy and vibrant recreational boating (and associated) industry encompassing appropriate community access to waterways; and
2. A healthy and sustainable eco-environment that is sought after by the community and visitors.

This in itself introduces the concept of “balance” and the need for active and effective management practices in a ***holistic*** sense, i.e. an integrated approach to:

- Planning;
- Management;
- Enforcement; and
- Reporting on performance against the objects of the Act.

The adoption of a balanced approach by its very nature requires access to and incorporation of appropriate research data on factors such as economic impacts, social impacts and environmental impacts. This “triple bottom line” approach is well accepted by the community as a sound and sustainable approach to meeting the diverse needs of the community, business and environment.

The precautionary principle by its very nature is a mono-dimensional approach that does not in fact embrace a sustainable approach for community, business and environment.

The fact that the precautionary principle should be included in this legislation demonstrates the lack of appropriate scientific data on which decisions are made.

One of the concepts of the precautionary principle as stated in the Rio declaration of 1992 is;

*“Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation”.*

The very wording of this makes two assumptions:



- a. That there is some scientific evidence and while not *FULL* (complete) this would have to be interpreted that significant data was available which justified the conclusion reached.
- b. That there is some certainty that the proposed action would produce the recommended result.

Some onus of responsibility for the results of the proposed decision should be borne by those making the decision.

To apply the precautionary principle with little or no scientific data or certainty of outcome clearly flaunts the basic concept of the principle.

The Great Barrier Reef Marine Park Authority has an estimated budgeted expenditure of forty one million nine hundred and eighty eight thousand dollars for the 2008/09 financial year (\$41,988,000) or in excess of eight hundred and seven thousand dollars a week. Expenses of this magnitude should provide taxpayers with an organisation that bases decisions on scientific evidence and fact not have to resort to hiding behind the precautionary principle in order to implement what amounts to little more than guesswork.

The previous use of the precautionary principle by the GBRMPA and the ramifications of those decisions both on the public and industry highlight the danger of trusting this organisation with such far reaching power.

## MANDATORY CRIMINAL CONVICTIONS

The issue of the rescinding of the mandatory criminal convictions for green zone infringements prior to the legislative change of December 2006 hinges on fair play and equality.

Federal laws administered in State courts make it extremely difficult to bring down a guilty verdict without registering a conviction. Many honest, responsible Australian citizens now carry the burden of a criminal conviction because of the implementation of a flawed piece of legislation.

Recreational fishermen, many in small boats with limited navigational skills and equipment, have had their lives, reputations and in many cases financial well being severely impacted for a genuine mistake that for all intents and purposes is less serious than a parking infringement. The ability to enjoy many of the advantages of Australian citizenship is denied to them because of a genuine mistake.

The legislation allows for all on board to be charged with the offence. Husbands and wives and entire families now live the rest of their lives with criminal convictions for crossing an unmarked line in the ocean, yet a reckless driver can speed through a school zone and endanger children's lives and get nothing more than a fine.

The method used for location of purported offenders has been tested in a court of law and found to be lacking. Magistrate Black ruled in a Cairns court that GPS was not sufficient on its own to conclusively prove a location thus again demonstrating the inadequacy of the legislation. This was a decision that the DPP chose not to appeal.

In December 2006 changes were made to the legislation that allowed for infringement notices to be issued while still retaining the right for criminal convictions in warranted circumstances. Those convicted on the previous unjustifiably harsh process should be given the opportunity to regain their status and be treated in a fair and equitable way as others are today, to do otherwise is unfair.

As demonstrated by Minister Garrett's response to the AMIF request to have the convictions made under an acknowledged flawed system overturned, the current government does not appear to

believe that there is any sound reasons for revisiting the outcomes of enforcement action concluded prior to the expansion to the infringement notice scheme. (Appendices 3 and 4).

## DEFINITION OF “FISHING”

The proposed description of fishing as used in the bill is not accurate or applicable to the act of fishing.

*“Fishing” means any of the following;*

- *Searching for or taking fish*
- *Attempting to search for or take fish*
- *Engaging in any other activities that can reasonably be expected to result in the locating of fish*
- *Placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons*
- *Any operation at sea directly in support of, or in preparation for, any activity described in this definition.*
- *Aircraft use relating to any activity described in this definition except flights in emergencies*

Fishing as described in the Heinemann Australian dictionary (4<sup>th</sup> edition) and in the Macquarie dictionary is: *“The art or practice of catching fish”*.

For the meaning to be extended to include the descriptions above raises many issues of a practical nature and also raises serious safety concerns. For example, depth sounders/fish finders are considered standard equipment on most commercial and recreational vessels used on the ocean.

They perform two significant tasks:

- They are used to locate underwater objects (including schools of fish).
- They provide information as to the depth of water under the vessel.

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 vessels skipper from using a basic safety and navigation device will undoubtedly endanger lives as well as potentially put pristine environments in danger.

The use of a depth sounder in a zoned area can be interpreted as *“Engaging in any other activities that can reasonably be expected to result in the locating of fish”* and as such violates this legislation.

Reef based tourism contributes significantly to the Far North Queensland and Australian economy.

One of the main attractions of a visit to the reef is looking at fish. The tourism industry has tens of millions of dollars invested in semi submersible craft, glass bottom boats and diving apparatus. These vessels are all designed to provide the tourist with the opportunity to look for and at fish.

As *“Engaging in any other activities that can reasonably be expected to result in the locating of fish”* will be illegal under this proposal, every tourist who visits the reef is potentially breaking the law, risks being fined and may end up with a criminal conviction if prosecuted.

To cast the proposed definition so widely will not only result in unforeseen consequences to the operation of vessels in these waterways, it potentially has significant social impacts on unsuspecting members of the community.

Such provisions should be subject to detailed scrutiny by the Parliament and only be adopted in the most extreme of circumstances. It is the view of the industry that there is no justification for the adoption of such a definition and it should be amended.

## SAFETY RELATED ISSUES

Depth sounders are basic pieces of safety equipment that are carried on most boats used in offshore waters. Legislation that seeks to limit their use is a threat to the safety of the vessel and to its occupants.

Any legislation that restricts the use of safety equipment 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.

Below is an excerpt from the Australian Maritime Safety Authority Marine orders part 30 that illustrates one such requirement:

### ***Australian Maritime Safety Authority Marine Orders Part 30***

#### ***Rule 5***

#### ***Look-out***

***Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.***

This wording is also used in COLREG documentation.

Legislation that impacts on the use of a safety device (depth sounders) contravenes this rule.

There are several other instances in maritime safety related regulations that would be contravened by the inclusion of this requirement. This would also be in direct contradiction of the principles and practices currently being promoted by the government funded National Marine Safety Committee, which has a national mandate to increase safety standards for recreational boaters.

Commercial shipping transports cargo through the Great Barrier Reef and in doing so navigates in the proximity of coral reef areas. While the safety record is currently acceptable and the reef pilots are highly skilled in their duties they must be offered every opportunity to ensure that safety practices are of the highest standard.

## PROTECTING THE ENVIRONMENT FOR A SUSTAINABLE FUTURE

The environmental policies of the state include the following priority sub-elements:

- Protect Queensland's unique environmental and heritage assets;
- Promote sustainable development through responsible use of the State's natural resources;
- Encourage the development of environmentally sustainable industries and jobs;

- Protect Queensland’s diverse plants and animals.

Marine Queensland (and the AMIF) strongly supports the principle of environmental sustainability. The future of the marine industry depends on it.

Marine Queensland therefore submits that the proposed Bill embrace these concepts as part of the concept of sustainability. In addition, it is advocated that the following key principles be adopted to develop a more efficient, effective and sustainable system of protection of environmental assets:

1. Develop a holistic strategy – encompassing the economic, social and environmental elements in BALANCE;
2. Develop a better understanding of marine biodiversity and the impact of recreational fishing on that biodiversity. Marine Queensland advocates an evidence based approach to support the environment and the sustainability of the industry in the State;
3. Adoption of a risk based approach to decision making in certain activities (in contrast to a risk avoidance based approach which favours total exclusion). This approach is entirely consistent with contemporary management practices (including environmental management) in many locations across the globe;
4. Development of guidelines and Codes of Practice to assist industry, government and the community to balance competing and evolving needs (for example, population growth pressures, climate change impact, economic pressures, etc.). industry is prepared to apply the significant expertise it has in these issues to work collaboratively with agencies to deliver world class outcome for the Great Barrier Reef;
5. Creation of zones that encompass current needs, expected future needs, investigation areas and potential development areas. This model is being actively promoted within the State – for example, the current Southern Moreton bay Marine Infrastructure master Planning processes;
6. Consideration of protecting biodiversity in popular recreational fishing areas through the use of “special habitat protection zones” as an alternative to “sanctuary zones” in certain circumstances. The industry urges the use of this management tool in contrast to creation of “no-go” zones within the context of the application of the precautionary principle;
7. Further development of governance measures to be applied to the Marine Park and for its ongoing planning, management, review and reporting obligations to the communities that are adjacent to it and for the broader community generally.

## ENFORCEMENT POWERS

Enforcement powers of Agencies within Australia have historically been built on a foundation of fundamental principles. These include:

1. The presumption of innocence until proven guilty;
2. The presumption that the determination of a breach requires a standard of evidence far in excess of a suspicion of an enforcement officer;
3. The right not to incriminate oneself;
4. The right to a fair trial; and
5. The preservation of the independence of the judiciary and its ability to determine appropriate penalties for proven offences.

Refer to Appendix 5 for copies of letters that demonstrate the difficulties with this approach in the recent past.

The proposed powers of officers under the Bill seeks to provide wide ranging powers including extensive search and seizure powers and powers to initiate prosecutions on the basis of suspicion.

It is submitted that:

1. The proposed powers of enforcement under the Bill will violate the basic tenets of law and indeed some of the key tenets of human rights which this society holds in the highest of regard;
2. The proposed powers of enforcement are excessive and unnecessary for the proper enforcement of the Act;
3. Mandatory criminal convictions for breaches are excessive and are against the tenet of allowing the judiciary to determine the extent of penalty for offences against the Act.

## CONCLUSIONS AND RECOMMENDATIONS

1. The proposed amendments to the Bill being advanced by Senator Boswell are fully supported by the industry;
2. The goal of protection of key environments within the Great Barrier Reef Marine Park is an important priority for the Marine Industry. However, a more strategic approach to its management should be adopted as a priority. The proposed Bill does not achieve these aims;
3. Marine Queensland and the AMIF strongly supports an evidence based approach to the identification and management of marine environments on the Great Barrier Reef Marine Park;
4. The planning, development, management, enforcement and assessment of the Great Barrier Reef Marine Park should be undertaken on an integrated (whole of Government and aligned with its priorities), balanced approach with strong engagement with Industry and community via formalised processes. Adoption of draconian management and enforcement practices are inconsistent with the rule of law and the basic tenets that Australian society values and treasures;
5. Environmental protection and sustainability should be undertaken in balance with economic and social protection and sustainability. Marine Queensland advocates the adoption of the principles and approaches outlined in this submission;
6. Enforcement powers and evidentiary arrangements under the Act are excessive and override the basic tenets of Law. Accordingly they should not proceed.
7. The proposed definition of “fishing” is opposed as it seeks to include elements that are excessive and too wide ranging and will create conflicts with other legislation and create the potential for safety hazards on the Great Barrier Reef.
8. Remove the criminal convictions for green zone infringements prior to the legislative change of December 14, 2006.

## MARINE QUEENSLAND/AMIF CONTACTS

Further information on this submission can be obtained from:

**Wayne Bayne – Proprietor, Mitchells Marine Cairns**

**Sherry Donaldson – Chief Executive Officer, Australian Marine Industries Federation (AMIF)**

**Don Jones – General Manager, Marine Queensland**

**This submission has been authorised by Mr. Barry Jenkins, President of AMIF and Marine Queensland.**

## APPENDIX 1

Estimating the impact on recreational fishing dependent businesses of the Great Barrier Reef Marine Park Rezoning – Colin Hunt – 2005.

## APPENDIX 2

FNQ Land Based Marine Industries RAP Affected Businesses Group – Economic Impact Snapshot – KPMG 2005.



## APPENDIX 3

Letter from AMIF to The Hon Peter Garrett dated 9 April 2008.

## APPENDIX 4

Letter to AMIF dated 3 June 2008 from The Hon Peter Garrett.

## APPENDIX 5

Letters demonstrating issues with the enforcement powers provisions of the Act:

5a - Letter from Commonwealth Director of Public Prosecutions Townsville Office dated 13 April 2006

5b - Letter from Raymond Critelli regarding criminal conviction.

5c - Letter to Bob Rossi, Chairman Cairns Local Marine Advisory Committee dated 16 August 2008