

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

Date: 7 Sept 2008

Adam Young

Dear Committee member,

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

My name is Adam Young, I am a recreational fisherperson and I am concerned about some of the proposed amendments to the Great Barrier Reef Marine Park Act 1975.

Of particular concern is amendment 9 subsection 3(1) which endeavours to move the definition of fishing into the offences and civil penalties section of the Act. From what I have read in the explanatory memorandum, this removes the burden of proof from officers and places it on the "offender". This means that people are declared guilty until proven innocent. This is not fair and may even be a violation of basic human rights. I have heard the Greens Senator argue that there are no significant changes to the wording but just the position of the wording in the Act.

So I ask, if the changes aren't significant, why make them? I submit that the wording should be left where it is or altered to reflect the activity of taking fish – not the intention to take fish – which an officer could not prove unless he/she is a mind reader. As it stands if the amendment goes through, a person could be heading through a green zone on their way to another place to go fishing and they could be pulled over and fined – not for actually fishing but the "intent" to fish and all the officer has to do to "prove" intent is to show that the offender had fishing equipment on board – which could prove intent. The options for officers to catch offenders who haven't actually committed any acts are endless.

I also support the amendment 5550 (version 1) proposed by *Senator Macdonald and Senator Boswell* where they ask that people who were convicted under Section 38CA have their convictions treated as spent convictions. It does not seem fair that because the court had no choice other than to issue a criminal conviction that a grandfather taking his grandkids out in the tinny for a days fishing with no GPS and no way of knowing they had drifted into a green zone could end up with a criminal conviction and now struggling to get visa or insurance.

I have heard many of these types of stories, from real victims of what seems like an unintended consequence of the wording from the previous version of the Act. I suspect that mandatory criminal convictions were placed as a deterrent for serious serial offenders and those that intend to flout the law, not "innocent" once a year fishers or holiday makers from interstate who didn't know or fully

understand the rules. I also understand that some of those who were convicted didn't comprehend the seriousness of the crime in that they didn't realise that they were pleading guilty to a criminal conviction. The people I have had contact with thought that they would receive a hefty fine and thought that by pleading guilty they could somehow mitigate the size of the fine. Instead they have received criminal convictions which have stopped many from obtaining employment, international visas etc.

These amendments also seek to destroy any defensible position offered by an alleged offender, they remove the burden of proof from those that prosecute the law – to those that are being prosecuted – guilty till proven innocent – and under the wording of the Act – and proposed amendment, it is virtually impossible to produce any evidence of mitigating circumstance, or innocence.

I note that the judgements handed down previously, place the burden of responsibility for knowing whether you are in a green zone or not on both the master of the vessel AND any passenger(s) – except minors. The fact that an individual is on the water implies a knowledge of marine charting and navigation – that an individual inherently knows exactly what latitude and longitude they are – and that relationship with any green or no go zones.

Yes it is the responsibility of individuals to familiarise themselves the locations of no go zones and all maritime regulations – as it is for those who would drive on our roads to have an understanding of the road rules.

However, the ocean is very much unlike the road, there are no white lines on the ocean telling you where you are and where to go and which line not to cross. There are no cross streets on the ocean to help you get your bearings and often very little in the way of landmarks to help establish your exact location. Distance is also difficult to tell on the ocean – it is very hard to tell without the aid of a GPS (and skill enough to read one) which direction you are drifting and how fast. The road is stationary – the ocean is not – one day there can be very little current and the next you can be ripping along at a speed of knots – even though the motor may be off.

Therefore I submit that it may be difficult for an inexperienced master of a vessel to accurately establish their position – even with the aid of a map. On the road if you pull over – you can recognise a landmark – side street etc – look at the map – find where you are – in relation to where you want to be and adjust your course. If you try to do the same thing on the ocean – you have to adjust for the fact that where you start is not the same place as where you stopped. If you look over the side – it all looks the same – it's all water.

I submit that in these circumstances it is inherently unfair to assume that an individual knows his exact location and to issue a criminal conviction on that basis is also inherently unfair and may have been an unintended consequence of the penalty provisions of the Act.

I don't know what can legally be done about previous convictions – but if it is within the law, I submit that at the very least all those who have recreational – rather than commercial licences - who have been convicted under the law have their conviction quashed.

The three strikes and you have a lifetime ban also seems very harsh. Are the penalties that harsh for speeding through a school zone? Even if a speeding driver accidentally kills an individual through his/her own recklessness – we don't hand out penalties that harsh. What we are saying by implementing these types of punishments is that the life of a fish is more important than the life of a child. Is that the kind of message we want to send? What sort of society are we becoming?

I submit that before any implementation of any amendments to this Bill that we examine what the impact of implementation may be – assess the unintended consequences of any actions and ask ourselves – does this reflect a just society? Does this provide access and sustainable enjoyment for all? Does this benefit some sectors of the community whilst discriminating against others? Is the life of a fish worth more than that of an individual?

I understand that the marine environment – particular the Great Barrier Reef needs protection, the main threats arise from urban runoff, pollution and possibly global warming. I understand that in some parts of the world, some fisheries are under pressure from over-fishing. However there has been no evidence that this is occurring in the Great Barrier Reef.

We have sufficient protection in place – more than sufficient green zones. We need to be able to protect these places – whilst retaining our humanity. The penalties for transgressing the law should reflect the potential harm done. In this case a fine is probably sufficient – but for the sake of justice any offender should have the right to defend himself. The prosecutor should have the burden of proof, innocent until proven guilty. We can tighten up the law without restricting this one basic human right.

On a side note – I also note that the Greens (who I notice are on this committee) are very strident about Human Rights – what about these most basic human rights? Or don't human rights count when the lives of a few fish hang in the balance. These are the types of people who strain at a gnat – but swallow a camel (Jesus approx 31AD). Evidence of this is in a recent Greens press release (<http://greens.org.au/node/2319>) where Bob Brown calls for no more wind turbine generators at Woolnorth due to the death of two wedge tail eagles. Whilst I feel for the eagles – it appears Senator Bob is in a quandary – he is too busy saving the environment... to save the environment.

To those Labor members on this committee; I ask you to abide by your election commitments announced in the Townsville Bulletin (Oct 19, 2007) wherein the previous senate spokesperson Senator O'Brien was reported as saying: "An elected Labor Government would also be sympathetic to the overturning of the criminal records of the 324 fishermen convicted of this offence. This is about correcting the initial mistakes and we would take a bipartisan position on that". Or was that a "non-core promise"?

Thank you,
Adam Young