

Dear Senator McEwen,

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

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

I am a current serving member of the ADF. I am trained to guard Australia from external threats but it seems that the internal threats are becoming just as dangerous. The second world war was fought and won to keep totalitarian dictatorships out of the free world. Now it seems we are breeding a home grown dictatorship. Of real concern is this-

**9 Subsection 3(1)** <sup>23</sup>

*fishing* means any of the following: <sup>25</sup>

- (a) searching for, or taking, fish; <sup>26</sup>
- (b) attempting to search for, or take, fish; <sup>27</sup>
- (c) engaging in any other activities that can reasonably be <sup>28</sup>  
expected to result in the locating of, or taking of, fish; <sup>29</sup>
- (d) placing, searching for or recovering fish aggregating devices <sup>30</sup>  
or associated electronic equipment such as radio beacons; <sup>31</sup>
- (e) any operations at sea directly in support of, or in preparation <sup>32</sup>  
for, any activity described in this definition; <sup>33</sup>
- (f) aircraft use relating to any activity described in this definition <sup>1</sup>  
except flights in emergencies involving the health or safety of <sup>2</sup>  
crew members or the safety of a launch, vessel or floating <sup>3</sup>  
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.

The amendment 9 subsection 3(1) 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. 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.

Also the GBRMPA has shown itself to be incompetent with public monies. They have squandered \$250 Million on marine park boundaries. This is criminal. Australia could be better served if this useless bueraucratic body was abolished. The G.B.Reef belongs to all Australians not them. They seem to be acting on urban myths such as the reef being over fished which is totally false. Or that species are threatened with extinction which is also without foundation.

Thank you,

*Mike Forfar*