

Viduka, Andrew

From: [REDACTED]
Sent: Tuesday, 11 August 2009 6:01 PM
To: Historic Shipwrecks Act Review
Cc: [REDACTED]
Subject: Comment re Discussion Paper

At a recent Historic Shipwrecks training day conducted by DEWHA for our Fisheries officer staff, parts of the review were discussed.

I am aware that the closing date for submissions has passed but I thought these comments worthy of submission.

1 The proposed wording in the legislation, "*upon conviction the court may order forfeiture...*" (or to that effect) may cause concerns in court proceedings within the Magistrates' Court of Victoria. Findings of guilt in environmental type prosecutions commonly receive penalty without conviction. The proposed wording may have the effect that although a finding of guilt is made, there is no ability for the court to make a forfeiture order if the finding is without conviction. This may also have the effect forcing the Magistrate into a conviction finding in order to be able to order forfeiture. I suggest this will not be received well in the courts to the extent that a Magistrate may consider dismissing a matter rather than a finding with conviction. This would also see a result of no forfeiture.
Suggest wording should be "*upon finding of the charge proven.....*"

2 In respect to holding a seized item for no longer than 60 days, this time is too short. Experiences in Victoria show that in order to follow correct process, and to allow for proper investigation, a longer time frame is required. Most of our prosecuted matters involved seized equipment, including vehicles and vessels. The Fisheries Act 1995 (No 92/95) allows 120 days for action to be taken after seizures are made.

Thank you for your consideration

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