

# Chapter 2

## Introduction

2.1 The key issue of concern raised in relation to the bill was the removal of the statutory requirement for Indigenous representation on the Authority. Other aspects of the Bill were broadly supported, although some issues were raised in relation to the proposed zoning plan amendment processes and the peer review process for the Outlook Report. This chapter discusses these issues in more detail, and in particular the issue of Indigenous representation.

## Key issues

### *Revised governance arrangements: Indigenous representation*

2.2 The committee received a considerable amount of correspondence in regards to Indigenous representation on the Authority, with the proposed replacement of the Great Barrier Reef Consultative Committee with a non-statutory advisory board also raised as an area of concern.

### *Indigenous representation on the Authority*

2.3 As outlined in Chapter 1, the bill proposes to remove the requirement in paragraph 10(1)(b) of the Act for one member to be appointed to the Authority to represent the interests of the Aboriginal communities adjacent to the Marine Park.<sup>1</sup> This proposal implements recommendation 6(a) of the GBRMPA Review, which recommended that members of the Authority be appointed 'for their relevant expertise and independence' and that 'members should not be representational'.<sup>2</sup>

2.4 The vast majority of the correspondence received by the committee objected to this proposal, with many under the false belief that it would exclude Aboriginal representation completely from the Authority.<sup>3</sup> Most argued that it is vital that there be Indigenous engagement in decisions regarding the management of the park. For example, the World Wide Fund for Nature commented that:

The Australian Government's future work to protect the Marine Park will depend to a large degree on effective engagement with traditional owners.<sup>4</sup>

---

1 Item 14 of Schedule 1.

2 GBRMPA Review, p. 169; see also Department of the Environment and Water Resources, answers to questions on notice, 5 June 2007, p. 1.

3 See, for example, Giringun Aboriginal Corporation, *Submission 34*, p. 2; Mr Simon Towle, *Submission 8*, p. 1; Australian Conservation Foundation, *Submission 3*, p. 2.

4 *Submission 2*, p. 1.

2.5 The committee asked the Department of the Environment and Water Resources (the Department) to respond to concerns about the removal of the statutory requirement for Indigenous representation on the Authority, in accord with recommendation 6(a) of the GBRMPA Review. In response to the concerns raised, the Department explained that the recommendation that removed the statutory requirement was based on two key considerations:

- the value of management of the Great Barrier Reef by a group of statutory officeholders with relevant knowledge, experience and ability for critical thought, objectivity and judgement. (The Department explained that the Review found that this is of particular importance given the Great Barrier Reef's complexity, size, environmental, social and economic values and the difficult task of managing for multiple use objectives);<sup>5</sup> and
- the *2003 Review of Corporate Governance of Statutory Authorities and Officeholders* (the Uhrig Review), which found that governing boards are most effective when members are appointed based on relevant skills and expertise, rather than on the basis of representing a particular interest.<sup>6</sup>

2.6 In relation to this second consideration, the GBRMPA Review stated:

The Uhrig review notes that representational appointments do not provide for good governance, as appointees may be more concerned with those they represent than the success of the entity they are responsible for governing. For this reason, the Review Panel recommends that members of the Authority continue to be appointed based on qualifications and experience that are relevant to the functions of the Authority. Representation and input from specific sectors, businesses and bodies should instead be provided for through advisory and consultative committees, such as the Advisory Board, Reef Advisory Committees and Local Marine Advisory Committees.<sup>7</sup>

2.7 Similarly, the Explanatory Memorandum, states that the bill:

...removes a requirement for one appointment [to the Authority] to be done on a representational basis. Such appointments are contrary to best practice, as the appointee may be more concerned with the interests they represent, than those of the Authority.<sup>8</sup>

2.8 While the statutory requirement for Indigenous representation on the Authority is being removed, the Department pointed out that, 'there continues to be a capacity to appoint members with expertise in Indigenous issues' provided they have met the relevant criteria – that is:

---

5 Department of the Environment and Water Resources, answers to questions on notice, 5 June 2007, p. 1; see also GBRMPA Review, p. 149.

6 Department of the Environment and Water Resources, answers to questions on notice, 5 June 2007, p. 1; see also Uhrig Review, p. 50.

7 p. 150; see also Uhrig Review, pp 98–99.

8 Explanatory Memorandum, p. 5.

- 
- relevant experience and expertise;<sup>9</sup> and
  - a capacity to contribute to achievement of the Authority's responsibilities in providing for the long-term protection, ecologically sustainable use, understanding and enjoyment of the Great Barrier Reef.<sup>10</sup>

2.9 Several contributors to the inquiry argued that Indigenous representatives in protected areas such as the Great Barrier Reef should be treated as a special case. For example, the Australian Conservation Foundation argued that:

Clearly Indigenous Traditional Owners are more than another group of 'stakeholders' in relation to the Great Barrier Reef Marine Park with a range of native title rights and interests.<sup>11</sup>

2.10 Indeed, the committee notes that there are more than 70 Traditional Owner Groups along the coast adjacent to the Great Barrier Reef Marine Park.<sup>12</sup> In addition to a number of successful native title determinations in areas adjacent to the Great Barrier Reef Marine Park, there are a number of native title claims over areas within the Great Barrier Reef Marine Park, as well as adjacent areas of land and water, which are yet to be determined.<sup>13</sup>

2.11 Although many of those who wrote in regards to the proposition were concerned about the special requirements and benefits relating to engaging with indigenous stakeholders, the Department noted that the review which proposed the changes:

...considered in depth the mechanisms in place to engage stakeholders, including Indigenous persons (see Chapter 10 of the Review Report). It found that a number of important and effective mechanisms have been introduced since 1999 that provide for the comprehensive engagement and partnership with Indigenous persons and communities and their active participation in the protection and management of the Great Barrier Reef.

These mechanisms have a broad coverage of communities in and adjacent to the Marine Park as well as the catchment areas.<sup>14</sup>

---

9 As required by subsection 10(6) of the Act.

10 Department of the Environment and Water Resources, answers to questions on notice, 5 June 2007, p. 1.

11 *Submission 3*, p. 2.

12 GBRMPA Review, p. 25.

13 See for example, GBRMPA Review, p. 26 (map 7); also the National Native Title Tribunal, [http://www.nntt.gov.au/publications/QLD\\_RATSIB.html](http://www.nntt.gov.au/publications/QLD_RATSIB.html) and [http://www.nntt.gov.au/publications/data/files/Determinations\\_A4.pdf](http://www.nntt.gov.au/publications/data/files/Determinations_A4.pdf) (accessed 29 May 2007). It appears that to date there have been no successful native title determinations over any areas within the Great Barrier Reef Marine Park. Note also that there are other forms of Indigenous land tenure, as well as Indigenous Land Use Agreements in the region.

14 Department of the Environment and Water Resources, answers to questions on notice, 5 June 2007, p. 2.

2.12 Those mechanisms comprise:

- **Local Marine Advisory Committees (LMACs):** 11 of which have been established for engagement with local communities and provision of advice on a local area basis to the Authority. Their terms of reference identify Indigenous persons as a key group from which membership should be drawn.
- **Reef Advisory Committees (RACs):** 4 of which have been established, providing advice to the Authority in relation to issues of Conservation, Heritage and Indigenous Partnerships; Water Quality and Coastal Development; Fisheries; and Tourism and Recreation. The terms of reference for the RACs specifically require Indigenous representation on each of the Committees with the appointment process made publicly available.
- **Traditional Use of Marine Resource Agreements (TUMRAs):** These agreements form the basis for a partnership approach with Traditional Owner groups to the management of Indigenous “sea country” in the Great Barrier Reef Marine Park. The first agreement, with the Giringun, was established in 2006. Further agreements are under development.<sup>15</sup>

2.13 The committee further noted that while the bill proposes to remove the statutory requirement for Indigenous representation, the Act will continue to require one member of the Authority to be nominated by the Queensland Government.<sup>16</sup> This is consistent with the GBRMPA Review, which recommended that one member of the Authority should continue to be nominated by the Queensland Government.<sup>17</sup> The committee asked the Department to explain this apparent inconsistency between Indigenous representation and Queensland Government representation, as well as how this is consistent with the Uhrig review.

2.14 The Department responded that:

The Great Barrier Reef encompasses different jurisdictional boundaries and areas of constitutional responsibility...The capacity of the Queensland government to nominate a member reflects the inter-jurisdictional nature of the Authority...This provision adds significantly to the capacity of the Authority and of the Australian and Queensland governments to work together collaboratively to achieve the long-term protection of the Great Barrier Reef. As such it is consistent with the Uhrig principles of governance.<sup>18</sup>

2.15 The GBRMPA Review noted that:

---

15 Department of the Environment and Water Resources, answers to questions on notice, 5 June 2007, p. 2.

16 GBRMPA Act, s. 10.

17 GBRMPA Review, p. 150 and recommendation 6(c).

18 Department of the Environment and Water Resources, answers to questions on notice, 5 June 2007, pp 3–4.

---

...as a matter of practice, the Queensland Government nominee is the Director-General of the Queensland Department of [the] Premier and Cabinet. This facilitates whole-of-government involvement by Queensland in setting the strategic direction and priorities of the Authority...<sup>19</sup>

2.16 By being drawn from the Department of Premier and Cabinet, the nominee's whole-of-government character will also assist in facilitating cooperative management with Queensland and local governments, communities, Indigenous people, business and industry as set out in the second part of recommendation 18(a) of the GBRMPA Review.<sup>20</sup>

*Indigenous representation on the Great Barrier Reef Consultative Committee*

2.17 In responding to concerns about the removal of the statutory requirement for Indigenous representation on the Board of the Authority, the Department pointed out that the arrangements for the proposed new Great Barrier Reef Marine Park Advisory Board are currently being finalised, and that Indigenous interests will be represented on this board.<sup>21</sup>

2.18 However, the proposed replacement of the Great Barrier Reef Consultative Committee with a non-statutory advisory board was a concern for several contributors to the committee's inquiry. Giringun Aboriginal Corporation, for example, was concerned that:

This will mean that the only likely Indigenous input to the management of the marine park will be through a non-statutory advisory committee to the federal Environment Minister. Further, we understand that as a non-statutory committee, there will be no reference to such a committee, or its representations, with the Act, and thus, that there will be no legislative guarantee for any form of statutory committee whatsoever.<sup>22</sup>

2.19 As the proposed Advisory Board is non-statutory, the committee notes that there are no guarantees that it will be created or maintained. When this point was put to the Department, it indicated that the Advisory Board will be established in mid-2007. The Department also indicated the existence of many such boards throughout the Australian Government and cited the Board of Taxation as a longstanding example.<sup>23</sup>

2.20 The Department also noted that:

---

19 GBRMPA Review, p. 119.

20 GBRMPA Review, pp 157 and 172.

21 Department of the Environment and Water Resources, answers to questions on notice, 5 June 2007, pp 2–3.

22 Giringun Aboriginal Corporation, *Submission 34*, p. 2.

23 Department of the Environment and Water Resources, answers to questions on notice, 5 June 2007, p. 5.

The non-statutory nature of such boards is consistent with good governance practices, as it avoids the potential for conflicts to arise from the existence of two statutory entities responsible for advising the Minister on particular issues.<sup>24</sup>

2.21 As there are also no guarantees of Indigenous representation on this board, the committee asked the Department for its response to concerns that this measure could remove altogether the opportunity for representation of Aboriginal and Torres Strait Islander people.

2.22 The Department responded that the Great Barrier Reef Marine Park Advisory Board will be established in mid-2007 and that the terms of reference and appointments to the Advisory Board are being finalised and that its membership will encompass Indigenous representation.<sup>25</sup>

2.23 The Department again noted in its response that the terms of reference for the Reef Advisory Committees and Local Marine Advisory Committees specifically provide for Indigenous members. It also further reiterated the opportunity to make 'Traditional Use of Marine Resource Agreements', which 'provide a formal mechanism for direct partnerships with traditional owners in management of marine resources of the Great Barrier Reef'.<sup>26</sup>

### ***Committee view***

2.24 The committee acknowledges the concerns about Indigenous representation on the Great Barrier Reef Marine Park Authority and proposed Advisory Board. The committee notes that most of the submissions and correspondence received argued that it is important that there be Indigenous engagement in decisions regarding the management of the park.

2.25 The committee agrees that Indigenous involvement in park management is desirable. In its recent report *Conserving Australia: Australia's national parks, conservation reserves and marine protected areas*, the committee argued for greater involvement of Indigenous Australians in park management, and increased support for the Indigenous Protected Areas program.<sup>27</sup>

---

24 Department of the Environment and Water Resources, answers to questions on notice, 5 June 2007, p. 5.

25 Department of the Environment and Water Resources, answers to questions on notice, received 5 June 2007, p. 5.

26 Department of the Environment and Water Resources, answers to questions on notice, received 5 June 2007, pp 4–5.

27 Senate Environment, Communications, Information Technology and the Arts Standing Committee, *Conserving Australia: Australia's national parks, conservation reserves and marine protected areas*, April 2007, Chapter 9.

2.26 The committee acknowledges the required balance between the need for an improved governance arrangements and the need for Indigenous engagement in decision making and sees advancement towards this in the Review's recommendation and the development of new mechanisms for Indigenous engagement in the management and protection of the Great Barrier Reef.

2.27 The committee however also supports the principle, set out in the Uhrig Review, that board membership is not the appropriate way to ensure representation of interests. The committee further acknowledges the Department's evidence that, although it will not be a statutory requirement, it will still be possible to appoint Indigenous members to the Authority, if they meet the relevant criteria.

2.28 The committee notes that Uhrig supported alternative forms of interaction with stakeholders. The government is facilitating this interaction through its establishment of a non-statutory advisory board. The committee acknowledges the Department's assurances that there will be Indigenous representation on this advisory board. The committee also recognises that there are other mechanisms for significant Indigenous involvement in management of the Great Barrier Reef Marine Park, including representation on the various Reef Advisory Committees and Local Marine Advisory Committees.

### **Other issues**

2.29 Other issues raised during the committee's inquiry included:

- zoning plan amendment processes; and
- peer review of the Outlook Report.

### ***Zoning plan amendment processes***

#### *Zoning plan freeze*

2.30 The bill provides that an existing zoning plan for the Great Barrier Reef Marine Park cannot be amended for at least seven years.<sup>28</sup>

2.31 The Australian Institute of Marine Science suggested that a maximum period of five years might be more appropriate. It argued that the seven-year timeframe:

...does not allow for an adaptive management approach that will be required as climate change impacts, and possible other impacts, cause increased stress on the ecosystem.<sup>29</sup>

2.32 The Bills Digest prepared by the Parliamentary Library also commented that:

---

28 Item 18 of Schedule 1.

29 *Submission 1*, p. [1].

The prohibition on amending zoning plans within the seven year period will presumably mean that a particularly precautionary approach will need to be taken in deciding what the appropriate zoning classification should be for relevant areas.<sup>30</sup>

2.33 The committee asked the Department for its response to these concerns. In its comprehensive response, the Department told the committee that the seven year minimum period before a zoning plan:

- reflects the response times of both biological and human systems
- recognises the scale and complexity of the Marine Park ecosystem and the adjacent coast and catchment area and the timeframes necessary for monitoring, assessment and development of management responses
- provides enhanced certainty for business
- ensures that there is sufficient time for the effects of zoning to accrue and be monitored, evaluated and understood and trends and risks assessed.<sup>31</sup>

2.34 The Department further observed that other existing provisions of the Act:

...provide the capacity to deal with matters at a local, regional, or site specific level in the 7 year interregnum. These provisions include Plans of Management, Special Management Areas and Emergency Special Management Areas. An example is afforded by the Dugong Protection Areas introduced in 1997.<sup>32</sup>

2.35 Finally, the Department concluded that:

Action can be considered and taken at any time on matters at local, regional or site-specific level, and on pressures and risks that are external to the Marine Park. These actions include but are not limited to zoning plans.

This complementary suite of capabilities provides for a comprehensive adaptive management approach over appropriate time and spatial scales...<sup>33</sup>

2.36 The committee also notes that the proposed zoning plan 'freeze' is based on the recommendation of the GBRMPA Review as follows:

There is a need to ensure the benefits of zoning accrue and that there is an appropriate period to establish stability for the ecosystem and business environment. The Review Panel recommends that, given the overall response times of biological and human systems, a review and amendment

---

30 Parliamentary Library, "Great Barrier Reef Marine Park Amendment Bill 2007", *Bills Digest No. 134 2006-07*, 7 May 2007, p. 5.

31 Department of the Environment and Water Resources, answers to questions on notice, received 5 June 2007, p. 8.

32 Department of the Environment and Water Resources, answers to questions on notice, received 5 June 2007, p. 8.

33 Department of the Environment and Water Resources, answers to questions on notice, received 5 June 2007, p. 9.



---

of all or part of a zoning plan should not be commenced until at least seven years from the date the plan came into effect.<sup>34</sup>

2.37 The committee considers that the proposed seven year 'freeze' on the zoning plan is appropriate. In particular, the committee notes the Department's evidence that there are many tools available to address any matters that may arise during the proposed zoning plan freeze.

#### *Requirement to consider Outlook Report*

2.38 The Bill proposes that the Minister, rather than the Authority, be responsible for any future decision to amend the zoning plan. In his second reading speech, the Minister stated that 'any such decision will be based on the Outlook Report and advice from the Authority'.<sup>35</sup>

2.39 Under the existing Act the Great Barrier Marine Park Authority is responsible for providing advice to the Minister (subsection 7(1)) and for the zoning process (section 32). The Amendment Bill will provide for the Authority also to be responsible for the Outlook Report (section 34) and publishing the rationale for opening up a zoning plan for change (section 37). The new step that will be added is that the Minister must approve the decision to opening up a zoning plan for change (not the changes themselves). It is thus unavoidable that the Minister take advice from the Authority on whether or not to open up a zoning plan for change and that this is based on the Outlook Report.<sup>36</sup>

#### *Peer review of the Outlook Report*

2.40 The bill proposes that the Authority will prepare a Great Barrier Reef Outlook Report every five years. This Outlook Report will be peer-reviewed.<sup>37</sup>

2.41 In its submission, the Australian Institute of Marine Science welcomed the proposed Outlook Report as a 'positive step', but noted 'the importance of making the reporting and review process transparent and the need to ensure the report is a public document'.<sup>38</sup> The Parliamentary Library's Bills Digest also pointed out that the bill 'is silent as to whether the peer-review is public or confidential'.<sup>39</sup>

---

34 GBRMPA Review, p. 129.

35 The Hon. Mr Malcolm Turnbull, Minister for the Environment and Water Resources, *House of Representatives Hansard*, 28 March 2007, p. 6.

36 Department of the Environment and Water Resources, answers to questions on notice, received 5 June 2007, pp 6-7.

37 Proposed subsection 54(4).

38 *Submission 1*, p. [1].

39 Bills Digest, p. 10.

2.42 The committee asked the Department whether there would be any public scrutiny of this peer-review process. The Department responded that:

The Government is currently finalising the process to be employed in peer-reviewing the Outlook Report, including public scrutiny of the peer-review process. The [GBRMPA] Review clearly envisaged a transparent and accountable process for the production of the Outlook Report. In establishing peer-review procedural requirements, consideration may be given to prescribing matters through regulation, as provided for by proposed subsection 54(2).<sup>40</sup>

2.43 The committee acknowledges the Department's response on this issue, and suggests that the peer-review process for the Outlook Report be as transparent and accountable as possible and appropriate.

### **Conclusion**

2.44 The committee recognises that, with the exception of the issue of Indigenous representation, there was broad support for the Bill. The committee is satisfied with the bill as a whole.

### **Recommendation 1**

**2.45 The committee recommends that the bill be passed.**

**Senator Alan Eggleston  
Chair**

---

40 Department of the Environment and Water Resources, answers to questions on notice, received 5 June 2007, p. 7.