

Australian Democrats and Australian Greens - Dissenting report

2.1 The Australian Democrats and Australian Greens are gravely concerned at the implications of the bill for Indigenous involvement in the Great Barrier Reef Marine Park. The paramount concern is the bill's proposed removal of the statutory requirement for Indigenous representation on the Great Barrier Reef Marine Park Authority. This concern risks being compounded by the proposed abolition of the Great Barrier Reef Consultative Committee.

Indigenous consultation during the GBRMPA Review

2.2 The Australian Democrats and Australian Greens realise that the bill proposes to amend the *Great Barrier Reef Marine Park Act 1975* (the Act) to implement key recommendations of the GBRMPA Review.¹ However, we are concerned that consultation with Indigenous people during the GBRMPA Review appears to have been less than adequate. We acknowledge that the GBRMPA Review Panel made efforts to consult with Indigenous stakeholders, including writing to 21 Indigenous organisations inviting submissions and offering for the panel to meet with them. The Department advised that the review panel did not receive any requests for a consultation meeting or any submissions from Indigenous organisations.²

2.3 While this was a disappointing response, given the significance of the review's recommendations for Indigenous representation, the Australian Democrats and Australian Greens believe that further efforts should have been made to engage Indigenous stakeholders during the GBRMPA review process. It is hard to believe that the sending of a single letter could have been seen to be sufficient, particularly if the correspondence did not specifically indicate that Indigenous representation on the Authority could be affected. Despite the very short time frame involved in this Committee's inquiry, several Indigenous organisations (such as Cape York Land Council, Giringun Aboriginal Corporation and NAILSMA) contacted this committee and were highly critical of the proposed reforms.

Indigenous representation on the Authority

2.4 In particular, the inquiry received a considerable amount of correspondence protesting against the proposed removal of the statutory requirement for Indigenous representation on the Board of the Authority.³

1 Review of the *Great Barrier Reef Marine Park Act 1975*, Commonwealth of Australia, 2006.

2 Correspondence from the Department of the Environment and Water Resources, received 8 June 2007, p. 1.

3 Item 14 of Schedule 1: proposed removal of paragraph 10(1)(b) of the *Great Barrier Reef Marine Park Act 1975*.

2.5 The Australian Democrats and Australian Greens agree with evidence received by the committee which described the removal of the statutory requirement for Indigenous representation on the Board of the Authority as a 'retrograde' or 'backward' step'.⁴

2.6 As the committee has acknowledged, there are more than 70 Traditional Owner Groups along the coast adjacent to the Great Barrier Reef Marine Park.⁵

2.7 The Australian Democrats and Australian Greens believe that it is vital that there be Indigenous engagement in decisions regarding the management of the park. As the World Wide Fund for Nature commented:

The Australian Government's future work to protect the Marine Park will depend to a large degree on effective engagement with traditional owners. Having indigenous representation at the board level will be a very important component in achieving this.⁶

2.8 Similarly, Mr Simon Towle told the inquiry that:

Doing away with Indigenous representation on the Authority will send a strong negative message to Indigenous people all along the GBR that the Australian Government no longer considers their role in the management of the Great Barrier Reef Marine Park to be important. It will make it much harder for the GBRMPA [Authority] to engage effectively with Indigenous people, especially at a senior policy level.⁷

2.9 The Girringun Aboriginal Corporation, which facilitated the first Traditional Use of Marine Resource Agreements,⁸ also expressed its concern about the amendments proposed by the bill:

...we query the Australian Government's commitment to the spirit of this Agreement [the Girringun Traditional Use of Marine Resources Agreement] and its intention of building sustainable partnerships between Traditional Owners of the Great Barrier Reef region and the Great Barrier Reef Marine Park Authority, given its intention to now remove Indigenous representation from the GBRMPA Board...⁹

4 See, for example, correspondence from Girringun Aboriginal Corporation, 6 June 2007, p. 2; correspondence from Mr Simon Towle, 31 May 2007, p. 1; Australian Conservation Foundation, *Submission 3*, p. 2.

5 GBRMPA Review, p. 25.

6 WWF, *Submission 2*, p. 1.

7 Correspondence from Mr Simon Towle, 31 May 2007, p. 1.

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

9 Correspondence from Girringun Aboriginal Corporation, 6 June 2007, p. 1; see also correspondence from Australian Conservation Foundation, 4 June 2007, p. 1.

2.10 The Australian Democrats and Australian Greens also agree with the observations of both Dr Dermot Smyth and the Australian Conservation Foundation that the bill is out of step with initiatives to increase the involvement of Indigenous peoples in protected area governance and management, both internationally and domestically. For example, the Australian Conservation Foundation told the committee that:

At both the domestic and international level efforts to improve the involvement of Indigenous people in both terrestrial and marine park management is increasing, not decreasing. Australian national parks such as Kakadu and Uluru Kata Tjuta already have boards with an Indigenous majority allowing for genuine joint decision making and participation in management. Internationally the World Conservation Union (IUCN) is also committed to increasing Indigenous people's involvement in protected areas management...Maintaining an Indigenous Board member is in line with the direction being set at both the domestic and international level.¹⁰

2.11 Dr Smyth also pointed out that the Resource Assessment Commission's *Coastal Zone Inquiry Final Report* in 1993¹¹ specifically recommended that the Act be amended to include Indigenous representation on the Authority. Dr Smyth concluded:

For the Australian Parliament to remove Indigenous representation on the Great Barrier Reef Marine Park Authority Board would be an extremely retrograde step and flies in the face of progress made in this field over the last 20 years here and overseas. Rather, the Committee should be exploring how Indigenous involvement in the governance of the GBRMP could be strengthened in line with the co-management arrangements in place for terrestrial protected areas.¹²

2.12 The Australian Democrats recognise that Indigenous members could still be appointed to the Authority provided they meet the relevant criteria.¹³ However, as the Australian Conservation Foundation pointed out:

...Indigenous knowledge and the ability to communicate effectively with Indigenous people are unique skills and qualifications that are only possessed by Indigenous people and are essential criteria for the selection of Board members.¹⁴

10 Australian Conservation Foundation, *Submission 3*, p. 2; 10 see also correspondence from Dr Dermot Smyth, 2 June 2007, p. 2.

11 Resource Assessment Commission, *Coastal Zone Inquiry - Final Report*, November 1993.

12 Correspondence from Dr Dermot Smyth, 2 June 2007, p. 2.

13 Department of the Environment and Water Resources, answers to questions on notice, 5 June 2007, p. 1; see also GBRMPA Review, p. 149 and Uhrig Review, p. 50.

14 Australian Conservation Foundation, *Submission 3*, p. 2.

2.13 The Australian Democrats and Australian Greens acknowledge the evidence from the Department of the Environment and Water Resources (the Department) that the removal of Indigenous representation on the Authority was based on the recommendations of the GBRMPA Review and the Uhrig Review.¹⁵ However, we agree with several contributors to the inquiry, who argued that Indigenous representatives in protected areas such as the Great Barrier Reef should be treated as a special case outside the ambit of the Uhrig Review. 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. In recognition of these rights and interests, the Authority must maintain Indigenous representation on the Board.¹⁶

2.14 Dr Dermot Smyth also pleaded that we should:

...appreciate and understand that the governance of a protected area on land or sea is very different than the governance of many other government institutions. Boards of protected areas make decisions about the management of natural and cultural values that are part of the inherited "countries" (tribal areas and clan estates) of Indigenous peoples - whose interest in these areas are not comparable to the interests of other "stakeholders". It is because of these complexities that comprehensive, well-resourced inquiries in Australia (such as the Coastal Zone Inquiry) and overseas have concluded that special arrangements need to be made for representation of Indigenous people in protected area governance.¹⁷

2.15 The North Australian Indigenous Land and Sea Management Alliance (NAILSMA) made a similar point:

I would like the Committee to appreciate and understand that the governance of a protected area on land or sea is very different than the governance of many other government institutions. Boards of protected areas make decisions about the management of natural and cultural values that are part of the inherited "countries" of Indigenous peoples - whose interests and subsequent history in these areas are not comparable to the interests of other "stakeholders".¹⁸

2.16 The Australian Democrats and Australian Greens also consider that the treatment of Indigenous people is inconsistent with the bill's retention of the requirement of one member of the Authority to be nominated by the Queensland

15 Department of the Environment and Water Resources, answers to questions on notice, 5 June 2007, p. 1; see also GBRMPA Review, p. 149 and Uhrig Review, p. 50.

16 Australian Conservation Foundation, *Submission 3*, p. 2.

17 Correspondence from Dr Dermot Smyth, 2 June 2007, p. 2.

18 NAILSMA, *Submission 6*, p. 2.

Government.¹⁹ While we note the intention to move away from a representative board to a board based on relevant knowledge and expertise (in line with the Uhrig report), this is contradicted by the retention of a distinct representative position for the Queensland Government. If the board is truly to be strictly non-representative and based solely on skills and expertise, then there is no pressing reason to retain state government representation. We do not believe that the argument of the inter-jurisdictional nature of the Great Barrier Reef Marine Park is compelling to the extent that it acknowledges the relevance of state jurisdiction but denies the relevance of native title rights and interests.

2.17 The government's reforms are supposed to move toward a skills-based board where knowledge and experience in dealing with issues of central importance to the effective running of the authority are particularly required. These skills might include knowledge and experience of dealing with state government and Indigenous management issues, of which neither need be held by a nominated Indigenous representative or by a nominee of the state government. If a skills-based approach to board membership is intended, then there should be criteria set out in the Act that specify what knowledge, skills and experience are relevant. This is currently not the case.

2.18 We take issue with the observation of the GBRMP Review, repeated by the Department, arguing for the current reforms because of:

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 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. (see Review of the Great Barrier Reef Marine Park Act 1975 Review Panel Report (the Review Report) p.149)).²⁰

2.19 These statements, which were given by the Department as the basis for reasoning why Indigenous representatives should be excluded but State government representatives included, have disturbing implications. They imply that Indigenous representatives are not likely to possess relevant experience and the ability for critical thought, objectivity and judgement, while at the same time implying that it is possible or even likely that a state government representative will necessarily possess relevant skills and expertise and be able to be fully objective in their judgements, given the potential obligations to their state employer. We have not seen evidence to substantiate this assessment, and cannot accept it.

2.20 The Australian Democrats and Australian Greens acknowledge the claim made by the Department of Environment and Water Resources that there are

19 GBRMPA Act, s. 10.

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

numerous other 'important and effective mechanisms' 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'.²¹ However, neither the GBRMPA Review nor this inquiry tested this claim in any substantial way. We are very concerned that no serious effort appears to specifically inform Indigenous communities of this change, let alone ascertain their views on the proposal.

2.21 The Australian Democrats and Australian Greens consider that the removal of a statutory requirement for Indigenous representation on the board of the Great Barrier Reef Marine Park Authority sends a very negative message to Indigenous people about their role and their importance in the management of the Great Barrier Reef Marine Park, and risks compromising the effectiveness in managing the Park. We believe that the statutory requirement for an Indigenous representative on the Great Barrier Reef Marine Park Authority should be retained.

Recommendation 1

2.22 The Australian Democrats and Australian Greens recommend that the statutory requirement in the Great Barrier Reef Marine Park Act 1975 for an Indigenous representative on the Great Barrier Reef Marine Park Authority be retained.

2.23 The Australian Democrats and Australian Greens also note that the proposed removal of the statutory requirement for Indigenous representation on the Authority appears incongruous when compared with recommendation 18(a) of the GBRMPA Review, which recommended that:

...a more comprehensive objects section be included in the Act. This section should recognise the protection of the Great Barrier Reef as an overarching objective. Subsidiary objectives should include providing for a range of uses consistent with the principles of ecologically sustainable development, fulfilling Australia's obligations under the World Heritage Convention and other international conventions as they relate to the Great Barrier Reef and *facilitating cooperative management with Queensland and local governments, communities, Indigenous people, business and industry.* [emphasis added]²²

2.24 This bill does not implement this recommendation.

Recommendation 2

2.25 The committee recommends that the objects of the Great Barrier Reef Marine Park Act 1975 be amended to implement recommendation 18(a) of the

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

22 GBRMPA Review, p. 157 and also recommendation 18(b), p. 172.

GBRMPA Review, in particular to recognise the importance of facilitating cooperative management with Indigenous people.

Indigenous representation on the Great Barrier Reef Consultative Committee

2.26 The Australian Democrats and Australian Greens' concerns about the removal of the statutory requirement for Indigenous representation on the Board of the Authority are compounded by the proposed abolition of the Great Barrier Reef Consultative Committee with a non-statutory advisory board.

2.27 We note the concerns expressed by the Cape York Land Council that:

It is possible that the replacement of the Consultative Committee with a Ministerial Advisory Board will lead to a decrease in indigenous representation on issues relating to the Great Barrier Reef Marine Park. The absence of guaranteed representation is particularly troubling in light of the proposed removal of an Indigenous representative on the Authority.²³

2.28 Indeed, the Cape York Land Council suggested, among other matters, that the committee seek 'a guarantee or assurance that the Ministerial Advisory Board will include indigenous representation'.²⁴

2.29 In the same vein, Girringun Aboriginal Corporation 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.²⁵

2.30 The Australian Democrats and Australian Greens note that this proposal would implement the recommendations of the GBRMPA Review, which concluded that the existing Consultative Committee 'is no longer effective and has conflicting accountability to the Authority and the Minister'. The GBRMPA Review further noted that some submissions made to the review considered that the role of the Consultative Committee has been superseded by the Reef Advisory Committees and Local Marine Advisory Committees.²⁶

2.31 The Australian Democrats and Australian Greens consider the fact that a committee is not functioning effectively is not in itself a reason to abolish and replace it with a non-statutory board. We share concerns that, as the proposed Advisory Board

23 Cape York Land Council, *Submission 5*, p. 2.

24 Cape York Land Council, *Submission 5*, p. 2.

25 Correspondence from Girringun Aboriginal Corporation, 6 June 2007, p. 2.

26 GBRMPA Review, p. 130; see also Bills Digest, p. 7; and Department of the Environment and Water Resources, answers to questions on notice, 5 June 2007, p. 4.

is non-statutory, there are no guarantees that it will be created or maintained. There are also no guarantees of Indigenous representation on this board. As a result, this measure could remove altogether the opportunity for representation of Aboriginal and Torres Strait Islander people.

2.32 The Department's evidence that the arrangements for the proposed new Great Barrier Reef Marine Park Advisory Board are currently being finalised is acknowledged. We further acknowledge the Department's assurances that there will be Indigenous representation on this advisory board.²⁷ We also recognise 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.

2.33 However, once again the Australian Democrats and Australian Greens are concerned that this proposal sends yet another negative message to Indigenous Australians, particularly in conjunction with the removal of Indigenous representation from the Authority and the fact that it has also been done without adequate consultation with Indigenous people.

Strengthening Indigenous involvement in the Great Barrier Reef Marine Park

2.34 The Australian Democrats and Australian Greens further consider that engagement with Indigenous interests in the management could be further strengthened by amending the Act in other ways. Indeed, we note that this committee, in its report *Conserving Australia: Australia's national parks, conservation reserves and marine protected areas*, recently argued for greater involvement of Indigenous Australians in park management, and increased support for the Indigenous Protected Areas program.²⁸ The proposed removal of the Indigenous representative from the Authority goes against this recommendation of the Committee. In such circumstances, it is all the more important that other mechanisms to strengthen Indigenous involvement are considered.

2.35 The very limited time available to the Committee means that there has been little opportunity to consult with Indigenous people and communities about such mechanisms. However, the Australian Democrats and Australian Greens believe there are several options to this end which could be considered:

- Amend section 32 of the Act to make explicit the responsibility of the Authority to consult Indigenous people during zoning plan preparation;
- Amend proposed new section 34 of the Act, regarding Operational principles, to require the Authority to take account of any Indigenous interests in the park

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

28 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.

when determining principles relating to the preparation of a zoning plan; and / or

- Amend proposed new section 35 to require the Authority to conduct consultations with Indigenous people with an interest in the park when preparing the statement of the environmental, economic and social values of the area and the statement of the environmental, economic and social effects of a zoning plan.

Recommendation 3

2.36 The Australian Democrats and Australian Greens recommend that sections 32, 34 and 35 of the Great Barrier Reef Marine Park Act 1975 be amended as outlined above with the purpose of increasing consultation and engagement with Indigenous interests in the management of the Great Barrier Reef Marine Park.

**Senator Andrew Bartlett
Deputy Chair, Australian Democrats**

**Senator Rachel Siewert
Australian Greens**

