

Great Barrier Reef Marine Park Amendment Bill 2007

Questions for the Department

Changed governance arrangements

- 1. The bill proposes to remove the requirement for one member to be appointed to the Authority to represent the interests of the Aboriginal communities adjacent to the Marine Park (item 14 of Schedule 1). What is the Department's response to concerns about the removal of such Indigenous representation on the Authority?**

Answer

The 2006 Review of the *Great Barrier Reef Marine Park Act 1975* (the Review) recommended (Recommendation 6(a)) that members of the Great Barrier Reef Marine Park Authority (the Authority) “*be appointed for their relevant expertise and independence ... [and that] members should not be representational*”.

This recommendation is 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 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)); 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.

The amendment to remove the specific requirement for an Indigenous representative on the Authority allows all members to be appointed based on:

- relevant experience and expertise (see subsection 10(6) of the *Great Barrier Reef Marine Park Act 1975* (the Act)); and
- their 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.

There continues to be a capacity to appoint members with expertise in Indigenous issues based on these criteria.

The Review 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. They comprise:

Local Marine Advisory Committees (LMACs)

- Eleven Local Marine Advisory Committees (LMACs) have been established for engagement with communities and provision of advice on a local area basis to the Authority. Ten LMACs were established in 1999 (Cape York, Port Douglas, Cairns, Mission Beach, Hinchinbrook, Townsville, Whitsunday, Mackay, Capricorn Coast, Gladstone) and one in 2005 (Burnett).

The Review emphasised the value of these Committees and following Review Recommendation 16, they are now formally constituted by the agreement of all Authority members and report to the Authority. The terms of reference for the LMACs are publicly available on the Authority's website and identify Indigenous persons as a key group from which membership should be drawn.

Reef Advisory Committees (RACs)

- The Authority established four Reef Advisory Committees (RACs) in 2001. The RACs provide advice to the Authority in relation to the issues of Conservation, Heritage and Indigenous Partnerships; Water Quality and Coastal Development; Fisheries; and Tourism and Recreation.

The Review emphasised the value of the RACs, as with the LMACs, and following Review Recommendation 16, they are now formally constituted by the agreement of all Authority members and report to the Authority. The terms of reference for the RACs specifically require Indigenous representation on each of the Committees. Appointments must be approved by the Authority members and terms of reference and appointment processes must be made publicly available.

Traditional Use of Marine Resource Agreements (TUMRAs)

- Amendments to the *Great Barrier Reef Marine Park Regulations 1983* and provisions of the *Great Barrier Reef Marine Park Zoning Plan 2003* took effect in 2004, allowing for the creation of 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.

Finally, as discussed in detail below in relation to Question 3, the Review recommended (Recommendation 15) that an advisory board be established as a source of advice to the Minister from key stakeholders, including Indigenous communities (p131). Arrangements for

the Great Barrier Reef Marine Park Advisory Board are being finalised for commencement in mid-2007, and Indigenous interests will be represented.

2. Section 10 of the *Great Barrier Reef Marine Park Act 1975* (GBRMP Act) provides for one member of the Authority to be nominated by the Queensland Government. It appears that this provision will be retained. Is this correct? If so:

(a) why is Queensland government representation being retained while Indigenous representation is being removed?

(b) how is this consistent with the Uhrig review?

Answer

Subsection 10(3) of the Act provides for one member of the Authority to be appointed on the nomination of Queensland. This provision is unaffected by the proposed amendments.

The Review recognised the longstanding importance of a collaborative approach to the management of the Great Barrier Reef by the Australian and Queensland governments and the need to maintain an effective working relationship with the Queensland Government (see pp 118-123). The Great Barrier Reef encompasses different jurisdictional boundaries and areas of constitutional responsibility. For example, the Marine Park lies within both Commonwealth and Queensland waters, and the fisheries within the Marine Park are managed by Queensland (see Map 8 on p 48 and Figure 4 on p 49 of the Review Report). The management of the Marine Park takes place within a complex regulatory and policy environment as there are many points of intersection between State and Commonwealth jurisdiction.

The capacity of the Queensland Government to nominate a member reflects the inter-jurisdictional nature of the Authority. This capacity is one of a number of institutional and operational arrangements in place for achieving collaborative management of the Great Barrier Reef by the Australian and Queensland governments.

The Review considered (pp 118-123) these arrangements and recommended that they be maintained and enhanced. The arrangements include:

- an intergovernmental agreement, which the Review recommended be updated (see Recommendation 4(a));
- a Ministerial Council, which provides for collaboration at a policy level which the Review recommended be enhanced (see Recommendation 4(b));
- a joint programme of field management of Commonwealth and Queensland marine and island national parks within the Great Barrier Reef World Heritage Area, funded jointly by both governments, approved by the Authority and delivered by Queensland instrumentalities. This programme is subject to the intergovernmental agreement.
- a capacity for Queensland to nominate a member of the Authority, which the Review recommended be maintained (see Recommendation 6(c))

- the Review concluded that “*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...*” (p119)

The provision in Section 10 of the Act for one member of the Authority to be appointed on the nomination of the Queensland Government addresses key inter jurisdictional responsibilities, as outlined above. 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.

3. The bill proposes to replace the Great Barrier Reef Consultative Committee with a non-statutory advisory board reporting directly to the Minister. As this board is non-statutory, it appears there are no guarantees that it will be created or maintained. Concerns have been raised that this could remove altogether the opportunity for representation of Aboriginal and Torres Strait Islander people. What is the Department's response to these concerns?

Answer

The Review recommended (Recommendation 15) that the current statutory Consultative Committee be replaced by a non-statutory advisory board, “...with members being drawn from business, community, Indigenous, environmental and other relevant bodies.”

The current Consultative Committee comprises a member of the Authority and at least 12 other members. There is no statutory requirement for Indigenous representatives to be appointed to this Committee.

The Review made its recommendation having concluded that the Consultative Committee:

- is no longer effective
- has conflicting accountabilities to the Authority and the Minister
- has been superseded by consultative committees established by the Authority to provide issue-specific and local area-based advice, namely:
 - four issue-specific Reef Advisory Committees (RACs)
 - eleven area-specific Local Marine Advisory Committees (LMACs).

Opportunities for representation of Aboriginal and Torres Strait islander people

The terms of reference for the RACs and LMACs specifically provide for Indigenous members. These committees are formally constituted by the Authority and provide advice to

the Authority. The Review emphasised their importance and recommended (Recommendation 16) that they be more formally constituted. Further detail can be found under the response to Question 1.

In 2004, provisions of the Regulations and Great Barrier Reef Marine Park Zoning Plan 2003 took effect, allowing for the making of Traditional Use of Marine Resource Agreements (TUMRAs). This provides a formal mechanism for direct partnerships with Traditional Owners in management of the marine resources of the Great Barrier Reef. Further detail can be found under the response to Question 1.

These arrangements provide comprehensive, ongoing and effective mechanisms for Indigenous engagement in the management and protection of the Great Barrier Reef.

Advisory Board

The above arrangements will be complemented by the establishment of the Great Barrier Reef Marine Park Advisory Board in mid-2007. The Advisory Board will fulfil the specific role of providing a source of advice to the Minister from key stakeholders and relevant experts. Terms of reference and appointments to the Advisory Board are being finalised and its membership will encompass Indigenous representation.

The Uhrig Review (p 93) discusses the role of advisory boards as a source of advice to government. 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. Many such boards exist throughout the Australian Government, the Board of Taxation being a longstanding example.

Revised consultation processes for new zoning plans

4. The bill proposes that the Minister, rather than the Authority, will be responsible for any future decision to amend a 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'. Which specific provisions of the Bill or GBRMP Act set out the requirement for the decision to be based on the Outlook Report and advice from the Authority?

Answer

The current Act provides for the Authority to be responsible for initiating and undertaking any process for developing amendments to an existing zoning plan, or creation of a new zoning plan, including public consultation. These provisions remain (Sections 32 and 37) and have been strengthened to ensure that there is an extended period of public consultation, and comprehensive information is in the public domain to inform such consultation (proposed amendments to Sections 32, 35 and 37).

The bill provides an additional preliminary step, that the Minister must now approve any proposal by the Authority to commence a process to review and amend a zoning plan after a minimum 7-year period (proposed subsection 37(2)). The change proposed reflects Review

Recommendation 17(b) – “*The Minister should be required to approve the commencement of a process to review and amend the zoning plan...*”

Provision of an approval role for the Minister at the start of the process does not affect the responsibilities of the Authority in the decision to review and amend zoning, the process of developing zoning and the outcome of the zoning process.

The provisions under the existing Act which give the Minister responsibility for accepting the zoning plan prepared by the Authority (s32), and the tabling of a new or amended zoning plan in Parliament (s33) remain. The zoning plan remains subject to disallowance (s33).

The additional approval step at the commencement of the zoning plan process is a reflection of the fact that, with the introduction of the *Great Barrier Reef Marine Park Zoning Plan 2003*, the entire Marine Park of 344 400 sq km is now covered by a single zoning plan. As such, it will be a major decision on whether or not to commence a review, potentially raising significant policy, budgetary, social and economic issues, and these may encompass matters outside the Marine Park. Therefore the decision appropriately rests with the Minister.

The existing Act (ss7(1)), in conjunction with the new provisions on accountability and transparency of the zoning plan process (proposed Sections 32, 33, 34, 35 and 37) and the Outlook Report (proposed Section 54), provide for the Minister, in making a decision on whether or not to open a zoning plan for amendment, to be informed by the Outlook Report, and expert advice from the Authority. This reflects the existing roles and responsibilities of the Authority and the Minister under the Act (ss7(1)), and the nature of the proposed Outlook Report as follows:

- The Authority remains responsible for initiating the process of preparing a zoning plan (s32) subject to the approval of the Minister, and, as above, provides advice to the Minister in this context (proposed Section 37)
 - The existing provisions of the Act specify the role of the Authority in providing advice and making recommendations to the Minister (ss7(1)). This includes making recommendations on the care and development of the Marine Park, preparation of zoning plans and furnishing information and advice to the Minister on matters relating to the Marine Park
 - The Authority must publish the rationale for any decision to open the zoning plan for change at the time of public gazettal of the intention to prepare or amend a zoning plan (proposed Section 37).
- The Outlook Report, which will be prepared by the Authority and tabled in Parliament by the Minister, will be an integral and fundamental consideration in any decision to open zoning to review and amendment, as it will:
 - provide information on any need to review or change a zoning plan, that can be utilised by the Authority, Minister and Parliament in the context of their respective roles relating to zoning plan development;
 - work to ensure that any decision to open zoning, and the resulting changes, present a measured response to scientific and socio-economic understanding of the condition of the Great Barrier Reef and pressures and risks it faces; and

- ensure there is robust, scientific and socio-economic information in the public domain against which any decision to review and change (or not change) the zoning can be evaluated.

The Minister will thus be informed by the Great Barrier Reef Outlook Report and expert advice from the Authority in making a decision on whether or not to open a zoning plan for amendment.

Outlook Report

5. The Bill proposed to introduce a requirement for a Great Barrier Reef Outlook Report. Under proposed subsection 54(4) this Outlook Report will be peer reviewed. Will there be any public scrutiny of this peer review process? Why or why not?

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 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).

Seven year freeze on zoning plans

6. The bill will provide that the current zoning plan for the Great Barrier Reef Marine Park cannot be amended for at least seven years. The Bills Digest prepared by the Parliamentary Library comments that:

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.¹

What is your response to this comment?

Answer

Changes proposed by the Review and in the bill will ensure there is robust and comprehensive environmental and socio-economic information in the public domain to inform any review of zoning. Other proposed changes strengthen accountability, transparency and opportunities for public engagement around zoning development and management more generally.

These measures will ensure that in any future consideration of changes to zoning, rather than needing a “particularly precautionary approach”, there will instead be the opportunity for a measured response to the condition of the Great Barrier Reef, the pressures and risks facing it, and the effectiveness of existing measures as described in Outlook Reports. Further, a

1 Parliamentary Library, "Great Barrier Reef Marine Park Amendment Bill 2007", *Bills Digest No. 134 2006-07*, 7 May 2007, p. 5: see: <http://www.aph.gov.au/Library/pubs/BD/2006-07/07bd134.pdf>

variety of management tools other than zoning will provide appropriate mechanisms for responding to the kind of management needs that may arise in intervening periods.

The bill proposes that review and amendment of all or part of a zoning plan cannot be commenced for seven years from the date the zoning plan came into effect. This reflects an adaptive approach to management, whereby management measures are put in place, monitored, reviewed and if appropriate, amended or replaced.

The proposed Outlook Report will play a key role in this adaptive management approach. As noted above (Question 4), it will provide a periodic, robust and comprehensive source of information on the condition of the Great Barrier Reef, the effectiveness of management measures and the risks and pressures on the ecosystem.

The Outlook Report will inform any evaluation of the zoning plan and any need for changes. Should the zoning plan be opened to amendment, the Outlook Report would inform the development of amendments, and its public availability would operate to ensure that any changes to zoning present a measured response to the condition of, and pressures and risks on, the biological and socio-economic systems of the Great Barrier Reef.

This will be reinforced by proposed Section 35, which requires environmental, economic and social assessments to be undertaken and made publicly available during the development of zoning plans.

The seven year minimum period before a zoning plan can be reviewed

- 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.

These approaches are complemented by existing provisions of the Act that 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.

The Review also recognised (pp 92 to 104 of the Review Report) that many of the pressures on the Marine Park were external to or transcended the boundaries of the Park. Such pressures include water quality, coastal development and climate change. The Review recognised the importance of having strong mechanisms to address these matters, as they could not be dealt with through zoning plans. The Review considered the example of the approach taken to address the decline in water quality entering the Great Barrier Reef arising from land-use practices in the catchment area. An agreement between the Australian and Queensland governments, the Reef Water Quality Protection Plan, was entered into in 2003

with the objective of halting and reversing the decline in water quality entering the Reef over a ten-year period.

The Review recommended a number of mechanisms for strengthening the consideration of these broader matters in collaboration with the Queensland Government (Recommendation 4) See also the response to Question 2. These mechanisms included

- the development of a more comprehensive intergovernmental agreement with Queensland that “...has as its clear objective facilitating the integrated and collaborative management of the marine and land environments so as to provide for the long-term protection, and wise use of the Great Barrier Reef...”; and
- strengthening the Ministerial Council on the Marine Park and World Heritage Area with “...a clear charter for joint policy development and policy co-ordination in relation to both onshore and offshore issues affecting the protection and use of the Marine Park and World Heritage Area...”

There will therefore be a greatly strengthened capacity to make measured and transparent decisions on the protection of the Great Barrier Reef that are soundly based on robust scientific and socio-economic information, and include comprehensive public consultation. 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, which militates against the need for "a particularly precautionary approach" to zoning classification for the Great Barrier Reef Marine Park as referred to in the Bills Digest prepared by the Parliamentary Library.