



Great Barrier Reef Marine Park Amendment Bill 2007

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Law and Bills Digest Section

Contents

Purpose.....	2
Background.....	2
Accountability Mechanisms currently in the Act.....	3
Great Barrier Reef Consultative Committee.....	3
Zoning Plans - consultation requirements.....	3
Parliamentary scrutiny.....	4
Requirements of the <i>Commonwealth Authorities and Companies Act 1997</i>	4
Basis of policy commitment.....	5
ALP/Australian Democrat/Greens/Family First policy position/commitments.....	7
Financial implications.....	7
Main provisions.....	7
Schedule 1 – Amendments to the Great Barrier Reef Marine Park Act 1975.....	7
Schedule 2 - Application and Transitional Provisions.....	10
Concluding comments.....	10
Endnotes.....	11

Great Barrier Reef Marine Park Amendment Bill 2007

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House: House of Representatives

Portfolio: Environment and Water Resources

Commencement: 1 July 2007

Purpose

To amend the *Great Barrier Reef Marine Park Act 1975* (GBRMPA) to implement some of the recommendations of the [2006 Review of the GBRMPA](#).

Background¹

The Marine Park Authority was set up by the GBRMPA. One of the primary functions of the Authority is to recommend areas for declaration as parts of the Great Barrier Reef Marine Park. Zoning plans are then prepared and appropriate regulations promulgated and implemented. Part of the Authority's function is also to carry out research. It also aims to promote Commonwealth-State involvement and co-operative arrangements in environmental management in the Great Barrier Reef region.²

The Marine Park Authority has been a statutory authority for approximately thirty years. During that time there have been variously named Commonwealth Departments of the Environment whose functions have expanded and contracted, but the Marine Park Authority has continued as a relatively stable entity from the time it was set up under the GBRMPA.

The Authority has been set up with quite specific responsibilities to protect the Marine Park while balancing competing interests in the way that the Park is utilised.

The reason for having a statutory authority to carry out these functions can perhaps best be encapsulated by a statement of John Uhrig in his recent report, *Review of the Corporate Governance of Statutory Authorities and Office Holders* (the Uhrig Review):

The existence of statutory authorities reflects decisions by government over time, and legislated for by Parliament, where it has been deemed desirable for particular activities to operate outside a traditional departmental structure. Statutory authorities generally have a single or primary role (albeit comprising many parts) that they are established to carry out, subject to varying degrees of ministerial control specified in legislation.³

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Accountability Mechanisms currently in the Act

Great Barrier Reef Consultative Committee

The role of the Consultative Committee is to advise by its own motion or at the request of the Minister for the Environment in matters relating to the *GBRMPA* or related Acts,⁴ and to advise the Authority on matters relating to the Marine Park.

There are to be not less than 13 members of the Committee. One member of the Authority is on the Committee. Subsection 22(2) provides that not less than one third of the members of the Committee shall be nominated by the Queensland Government. Members are appointed for three years and are eligible for further re-appointment (subsection 23(1)). However, this does not include the member who is a member of the Authority, whose tenure is 'during the pleasure of the Authority'.⁵

Zoning Plans - consultation requirements

The Zoning Plan is the primary instrument for the conservation and management of the Marine Park. Zones range from 'preservation zones', which are limits to the public and commercial operators, right through to general use zones. More information, including zoning maps can be obtained from the [relevant part of the Authority website](#)

Zoning plans are the major instrument through which diverse and competing interests are balanced and managed in the Park.⁶ The Act provides a number of opportunities for consultation with interested persons or groups in relation to the preparation of and proposed changes to the Zoning Plan. These include:

- subsections 32(2)-(3) provides that a public notice must be made to indicate that a zoning plan is to be prepared and to invite interested persons to make representations, to which the Authority is to give 'due consideration' in drafting a plan
- subsections 32(8)-(9) provides that a public notice must be made after the draft plan has been prepared and invite interested persons to make representations, to which the Authority is to give 'due consideration', and if it thinks fit, alter the draft plan accordingly
- subsection 32(10) provides that the draft plan and any representations, along with the Authority's comments on those representations, are submitted to the Minister
- subsection 32 (14) provides that the Minister can make alterations to the draft plan but that he or she must make a report specifying the alterations and setting out any views expressed by the Authority. This report accompanies the final plan when it is laid before Parliament under section 33.

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Parliamentary scrutiny

Relevant provisions include:

- Under subsection 33(1), the final zoning Plan is laid before Parliament not later than 15 sitting days after the day it was accepted by the Minister. This is an opportunity for Parliament to scrutinise the plan and gives an opportunity to Members and Senators to raise any issues that they may have with the plan. Once the zoning plan is tabled, there is a 15 sitting day period in which a disallowance motion may be put and any debate concerning the plan will happen at this point.
- If the Plan is disallowed, the Minister shall direct that a fresh plan be prepared: subsection 33(4).
- After the 15 sitting period has expired, and if the plan has not been disallowed, the Minister by public notice states that the plan has come into operation; subsection 33(5).

Requirements of the *Commonwealth Authorities and Companies Act 1997*

In addition to the enabling legislation, the Authority is subject to the provisions of the *Commonwealth Authorities and Companies Act 1997* (CAC Act), which provides ‘an accountability framework for statutory agencies to manage their resources and remain responsive to ministers.’⁷ The purpose of the CAC Act is summarised from the second reading speech by John Fahey, Minister for Finance on 12 December 1996:

The underlying purpose of the proposed Commonwealth Authorities and Companies Act is to replace all of these diverse accountability requirements with a single set of core requirements. The approach proposed will enable the accountability requirements of Commonwealth controlled bodies to be viewed as a whole and should significantly streamline the focus of the government's and the parliament's interest in this area. Many of the bill's requirements relating to Commonwealth authorities are modelled on comparable areas of the Corporations Law as well as best practice currently applying to individual authorities.

Another important feature of the bill is that it extends the mandate of the Auditor-General to be the sole external auditor of all Commonwealth authorities and companies, and their subsidiaries. At the same time it will modernise the requirements for the Auditor-General's reports on the financial statements of authorities and make them consistent with those required by the Corporations Law.

‘The CAC Act applies to authorities that are corporate entities managed by a board. It requires the CEO of the board to report to the responsible Minister (sections 15-16) and to ensure the authority's activities comply with government policies (section 28).’⁸

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Basis of policy commitment

The [2006 Review](#) was released on 3 October 2006. The GBRMPA Review was headed by Environment Department secretary David Borthwick and made 28 recommendations. The Minister stated in his second reading speech:

The Australian Government endorsed the review's findings and recommendations and the review outcomes were widely welcomed by stakeholders.⁹

In his description of the purposes of this Bill the Minister also went on to say

This Bill delivers the first tranche of changes that will strengthen governance arrangements and improve transparency and accountability, particularly in relation to the zoning plan process.¹⁰

The Review commenced in August 2005 and encompassed the outcomes of the 2003 Uhrig Review of corporate governance of statutory authorities.

The amendments proposed in the Bill ensure that the current zoning plan for the Great Barrier Reef Marine Park cannot be amended for at least seven years¹¹ and a means of assessing the protection of the reef will be provided through an 'Outlook Report' that is to be tabled every five years. In respect to the zoning plans, the Review concluded:

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 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.¹²

The existing section 37 allowing amendments to a zoning plan is to be repealed. 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.

For example, there are significant impacts of climate change on the Great Barrier Reef predicted this century. The recent Summary for Policy Makers of the Working Group II of the 4th IPCC Assessment Report released in April 2007 made the following comments in relation to on Climate Change Impacts on Australia and New Zealand.

Significant loss of biodiversity is projected to occur by 2020 in some ecologically-rich sites including the Great Barrier Reef and Queensland Wet Tropics...

Ongoing coastal development and population growth in areas such as Cairns and Southeast Queensland (Australia) and Northland to Bay of Plenty (New Zealand), are projected to exacerbate risks from sea-level rise and increases in the severity and frequency of storms and coastal flooding by 2050.¹³

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Some of the potential changes affecting the Great Barrier Reef include:

- coral bleaching events similar to those in 1998 occurring in 50% of the years by 2020¹⁴
- coral reef communities being widely replaced by algal communities by 2030¹⁵
- over 95% of the Great Barrier Reef suffering bleaching events annually by 2050¹⁶
- a 95% decrease in the geographical distribution of Great Barrier Reef species by 2080.¹⁷

There is currently a dispute in relation to Green Zone boundaries and the rights of fishermen and the matter is to be [appealed](#) by the Commonwealth Director of Public Prosecutions.

The Minister will be responsible for any future decision to amend the zoning plan, not the Authority, but this decision will be based on the Report and advice from the Authority (recommendation 17(b) of the Review). Recommendation 17 recommends that the current arrangements for Ministerial approval of the final zoning plan should remain, and in particular the Minister should initially only have the power to suggest changes to the Authority for consideration. If the Minister's suggested changes are not incorporated in the final plan that is delivered to the Minister, the Minister may amend the plan, but must report any such changes to Parliament at the time the plan is tabled. Further scrutiny and details of the actual clauses in the Bill are to found below 'main provisions' part of this Digest.

A major aspect of the recommendations of the 2006 Review is that the Authority should become subject to the *Financial Management and Accountability Act 1997* (FMA Act) rather than the CAC Act. The report states:

The Authority should remain as a body corporate so as to provide for collective decision making. However as regulatory and advisory entity that is a non-commercial government body, it is not appropriate for the Authority to be subject to the *Commonwealth Authorities and Companies Act 1997*. The Review Panel therefore proposes that the Authority be subject to the *Financial Management and Accountability Act 1997* as a 'prescribed agency'. The Chairperson of the Authority would then have the role of chief executive for the purposes of the *Financial Management and Accountability Act 1997*. The Chairperson would also perform the role of agency head under the *Public Service Act 1999*, with the agency comprising staff employed under that Act.¹⁸

This change is a major focus of the Bill.

The 2006 Review also paid note to concerns in regard to the Zoning Plan process arising from disagreement with the scientific underpinning and criticisms of lack of transparency. The 2006 Review noted:

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that an effective relationship with recreational and commercial fishing stakeholders is lacking. To an extent, such tensions between the Authority and affected stakeholders were inevitable in view of the substantial change to zoning arrangements proposed.¹⁹

Part of the remedy proposed is that future zoning arrangements be undertaken following approval of the process and operational principles by the Minister, with extensive consultation based on fully public and informed information.

ALP/Australian Democrat/Greens/Family First policy position/commitments

Response to the 2006 GBRMPA Review from the Australian Labor Party²⁰ and the Australian Democrats²¹ has been to welcome the preservation of the Authority operating out of Townsville, and the protection of the existing zonings based on independent and scientific management.

Financial implications

The Explanatory Memorandum states that the Bill will have no financial impact.

Main provisions

Schedule 1 – Amendments to the Great Barrier Reef Marine Park Act 1975

Item 1 repeals the definition of the Great Barrier Reef Consultative Committee as the Committee is being abolished by this Bill and will be replaced by a non-statutory advisory board. Recommendation 15 of the 2006 Review recommended that the Board should be non-statutory based on terms of reference issued by the Minister. Part of the rationale for the Board to be non-statutory was that the existing Committee was ‘not operating effectively and has conflicting accountabilities to the Authority and the Minister,’²² and submissions made to the review considered that the role of the Committee has been superseded by the Reef Advisory Committees and the Local marine Advisory Committees.²³ The purpose of the proposed new Board will be to provide the Minister with specific advice relating to Marine Park protection and use, and be comprised of members from business, community, Indigenous, environmental and other relevant bodies (that is, representational, unlike the Authority, whose members are to be appointed for the relevant expertise and independence).²⁴ Appointments to the Board are to be the responsibility of the Minister.

Item 2 inserts a definition of the ‘Great Barrier Reef World Heritage Area’ into the definition section of the GBRMPA. This area is the same area as the ‘Great Barrier Reef’ already defined in the Act and is the area set out in Schedule 1 of the GBRMPA. This

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amendment is necessary because of the amendments relating to the financial and reporting requirements in **proposed Part VII** of the GBRMPA whereby a Great Barrier Reef Field Management Special Account is established for the purposes of the management, protection or maintenance of the Great Barrier Reef World Heritage Area.

Existing section 7 of the GBRMPA sets out the functions of the Authority, which includes receiving and disbursing money appropriated by Parliament for the Authority to provide financial assistance to Queensland. The Explanatory Memorandum explains that the deletion of the words ‘for payment to the Authority’ in **item 3** is a necessary consequence of the FMA Act applying to the Authority as the Authority will only receive and hold money for and on behalf of the Commonwealth.

Items 5-11 make amendments as a consequence of the FMA Act applying to the Authority. All contracts and other agreements entered into and property and money held by the Authority are entered into or held on behalf of the Commonwealth. The Authority cannot hold real or personal property or money on trust (**proposed subsection 8(7)**). Similarly, **proposed section 8A** makes all financial liabilities of the Authority to be liabilities of the Commonwealth. As the Explanatory Memorandum explains ‘the effect of [the FMA applying to the Authority] is that the Authority will act on behalf of the Commonwealth in relation to financial matters, rather than in its own right’.²⁵

The 2006 Review recommended²⁶ that to avoid ‘conflicts’ the Chairperson, who is the Chief Executive Officer, should not be subject to direction by the members of the Authority in relation to the performance of functions and the exercise of powers under the FMA Act and the *Public Service Act 1999*. This recommendation will be implemented by **item 12, proposed subsection 8B**.

The note to section 9 of the GBMPA stating that the *Commonwealth Authorities and Companies Act 1997* (the CAC Act) applies to the Authority is deleted by **item 13** as this will no longer be the case.

Item 14 provides that the Authority will be comprised by, in addition to the Chairperson, at least 2 and not more than 4 other members and removes the requirement that one member represent the interests of Aboriginal communities adjacent to the Park. The 2006 Review recommended that members not be representational.

Items 15 and 16 make provision for disclosure of interests by members of the Authority to the Minister and also to the Authority if there is a material interest in a matter being considered by the Authority.

Item 17 repeals Part IV which establishes the Great Barrier Reef Consultative Committee and which is to be replaced by a non-statutory advisory board.

Items 18 to 25 make amendments to section 32 of the GBRMPA to:

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- increase the minimum public comment period for draft zoning plans from one to three months
- provide that the public notice of the proposed plan issued under section 32 must specify the operational principles prepared under **proposed section 34** and the report on the environmental, economic and social values are available and where these may be located or obtained.

Item 27 inserts **proposed sections 34 and 35**. **Proposed section 34** requires the Authority to determine principles before preparing a zoning plan. The principles must cover the environmental, economic and social objectives of the plan and ‘may cover other matters’ (**proposed subsection 34(2)**). The Minister must either approve the principles as is or suggest amendments which the Authority must consider and may or may not adopt. In the later case, under **proposed subsection 34(7)** the Minister must either approve the resubmitted principles as is or make such alterations as the Minister thinks fit and then approve them. If the Minister alters the principles he or she must prepare a report which is tabled in Parliament specifying any alterations and setting out the views of the Authority in respect to those alterations. This is a similar process currently set out in section 32 in relation to alterations by the Minister to a zoning plan. However, the principles are not a legislative instrument which means that Parliament cannot disallow them (**proposed subsection 33(11)**).

New section 35 requires the Authority to prepare a report on the environmental, economic and social values of an area before preparing a zoning plan. This statement must be made public and the statement is not a legislative instrument. The Bill does not specify that the statement is to be tabled in Parliament.

Item 28 repeals section 37 and inserts **proposed sections 37 and 37A** to make provision for the amendment or revocation of a zoning plan. A zoning plan cannot be amended or revoked unless it has been in operation for 7 years (or if amended, 7 years from the time of that amendment), with the exception of typographical errors. The Authority cannot give notice under section 32 that it intends to amend or revoke a zoning plan unless the Minister approves the publishing of that notice, and the Minister’s approval cannot be sought until the end of the 7 years. As the note to **proposed subsection 37(2)** explains, **proposed subsection 37(8)** provides that sections 32 and 35 apply in relation to actions under this new section in same way as they apply to a zoning plan.

Item 29 repeals and substitutes **section 39I** to reflect the changes as a result of the FMA Act applying to the Authority that all monies paid under the Environment Management Charge and received by the Authority are received by and on behalf of the Commonwealth. The provision provides that the amount received is appropriated out of the Consolidated Revenue Fund for the purpose of the performance of the functions of the Authority. As the Explanatory Memorandum explains,²⁷ the provisions have the same practical effect as under the existing provision.

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Existing Part VA of the GBRMPA deals with the collection of environmental management charges in the management of the Great Barrier Reef and **item 31** inserts **proposed Division 5A ‘Application of the Financial Management and Accountability Act 1997’** and **proposed section 39QA** to clarify the application of the FMA Act to money collected or payable under the scheme.

Item 32 repeals existing Part VII of the GBRMPA to insert new finance and reporting requirements as a consequence of the application of the FMA Act to the Authority. **Proposed section 49** establishes the Great Barrier Reef Field Management Special Account where certain amounts received by the Authority²⁸ are credited. The Explanatory Memorandum²⁹ provides more details on these provisions.

The Authority is required to produce both an annual report and 5 yearly Outlook Report in relation to the Great Barrier Reef Region (**proposed sections 53 and 54**). The Outlook Report must address assessments of the health of the ecosystem, current biodiversity within the region, commercial and non-commercial uses of the regions, risks to the ecosystem, the resilience of the ecosystem measures to protect and manage the ecosystem, factors affecting future environmental, economic and social values and the long term outlook for the ecosystem. The first report must be given to the Minister by 30 June 2009. Before the report is given to the Minister its contents must be peer-reviewed by at least 3 persons who, in the Minister’s opinion, possess the appropriate qualifications to undertake such a peer-review (**new subsection 54(4)**). The Bill is silent as to whether the peer-review is public or confidential.

Schedule 2 - Application and Transitional Provisions

Schedule 2 comprises 6 new Parts to the GBMPA to allow for transitional arrangements to be in place after commencement of the Bill. Thus, assets of the Authority before commencement time will be taken to be assets held by the Authority on behalf of the Commonwealth and liabilities of the Authority come liabilities of the Commonwealth. The Commonwealth is also substituted for the Authority in relation to any proceedings before the courts. The current tenure of members of the Authority are continued until the expiration of their appointments

Concluding comments

Many of the recommendations of the 2006 Review are taken up in this Bill with further amendments to follow in relation to the recommendations dealing with consistency between the GBRMPA and the *Environment Protection and Biodiversity Conservation Act 1999*.

The Bill makes significant changes to the governance arrangements of the Authority with the proposed removal of the consultative committee which is to be replaced by a non-

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statutory Board appointed by the Minister. The seven year freeze on zoning plans is substantive as plans currently can be amended and revoked at any time under existing section 37, under the same conditions as the making of a plan (the giving of notice and parliamentary approval).

Endnotes

1. The author acknowledges the work of Moira Coombs in the Background of this Digest.
2. Great Barrier Reef Marine Park Authority, Annual Report, 1977-78 at p. 2.
3. John Uhrig, Review of the Corporate Governance of Statutory Authorities and Office Holders, p. 16.
4. The related Acts are the *Great Barrier Reef Marine Park (Environmental Management Charge-General) Act 1993* and the *Great Barrier Reef Marine Park (Environmental Management Charge-Excise) Act 1993*.
5. *Great Barrier Reef Marine Park Act 1975*, subsection 23(1A).
6. In some cases, zoning plans are supplemented by plans of management - these are generally prepared for intensively used, or particularly vulnerable groups of islands and reefs, and for the protection of vulnerable species or ecological communities. Plans of management complement zoning by addressing issues specific to an area, species or community in greater detail than can be accomplished by the broader reef-wide zoning plans.
7. Dr Richard Grant, The Uhrig Review and the future of statutory authorities, Parliamentary Library *Research Note no.50 2004-05*.
8. *ibid* at p. 1.
9. Great Barrier Reef Marine Park Amendment Bill 2007, [Second Reading Speech](#), House of Representatives, *Debates*, 28 March 2007, p. 2.
10. *ibid*.
11. Apart from when there is a typographical error **new section 37A**.
12. See: p. 129.
13. <http://www.ipcc.ch/SPM13apr07.pdf>.
14. Berkelmans, R., G. De'ath, S. Kininmonth and W.J. Skirving, A comparison of the 1998 and 2002 coral bleaching events of the Great Barrier Reef: spatial correlation, patterns and predictions. *Coral Reefs*, **23**, 2004, pp. 74–83, and <http://www.greenhouse.gov.au/impacts/publications/pubs/gbr.pdf>.
15. Wooldridge, S., T. Done, R. Berkelmans, R. Jones and P. Marshall, Precursors for resilience in coral communities in a warming climate: A belief network approach. *Marine Ecology Progress Series*, **295**, 2005, pp. 157–169.

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16. Jones, R.J., J. Bowyer, O. Hoegh-Guldberg and L.L. Blackall, Dynamics of a temperature related coral disease outbreak. *Marine Ecology Progress Series*, **281**, 2004, pp. 63–77.
17. *ibid.*
18. Review of the *Great Barrier Reef Marine Park Act 1975*, 2006, p. 11.
19. *ibid.*, p. 10.
20. Mr A Albanese MP and Senator J McLucas, *Joint Media Release*, 2 October 2006.
21. Senator Bartlett, *Media Release*, 2 October 2006.
22. see: p. 165.
23. Review of the *Great Barrier Reef Marine Park Act 1975*, p. 130.
24. *ibid.*, recommendation 6(a), p. 169.
25. *Explanatory Memorandum*, p. 5.
26. Review of the *Great Barrier Reef Marine Park Act 1975*, recommendations 7(a), (b) and 10.
27. *Explanatory Memorandum*, paragraph 42, p. 9.
28. For example, amounts paid by Queensland to the Authority, amounts the Commonwealth has allocated and gifts or bequests made for the purposes of the account (**new section 50**).
29. *Explanatory Memorandum*, paragraphs 48 to 52, pp. 10–11.

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