

12. The management framework

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This chapter discusses the institutional and organisational framework for management of the Great Barrier Reef by the Authority, in particular, the legal nature, corporate structure and financial management framework of the Authority.

These factors provide the basis for governance of the Authority. In other words, they establish the framework through which strategy, direction and expectations of performance are set and communicated; roles, responsibilities and power are allocated; and performance is subject to oversight and accountability.

Good governance provides an essential foundation for the success of any organisation by ensuring:

- the purpose of the organisation and expectations of performance are clear and appropriate and are understood by those responsible for management
- roles, responsibilities and power are appropriately allocated and clearly understood
- powers and responsibility are linked to performance and review through transparency and accountability.

The following sections consider the legal nature, corporate structure and financial framework of the Authority with a view to ensuring good governance arrangements. Another key objective is ensuring the effective engagement of the Queensland Government in governance and management. This is presently facilitated, among other means, through the nomination by Queensland of members of the Authority and the Consultative Committee, by the Ministerial Council and by joint day-to-day management arrangements. Chapter 9 provides further details of collaborative arrangements with Queensland in the management of the Great Barrier Reef.

The first section of this chapter discusses the legal nature of the Authority. It considers the issue of what type of entity is most appropriate to deliver the government's policies and objectives in relation to the Great Barrier Reef, in particular whether a statutory authority is appropriate and, if so, whether that authority should also be a body corporate.

The second section considers the corporate structure of the Authority in light of the templates for good governance of statutory authorities recommended by the Uhrig review and endorsed by the Australian Government. In light of these considerations, some changes to governance arrangements are proposed and discussed.

The final section considers arrangements for financial management and accountability. As an organisation using primarily public resources, it is important that the Authority's financial framework ensures the efficient, effective and ethical use of those resources. In light of this, the section considers whether the Authority should be subject to the *Financial Management and Accountability Act 1997* or the *Commonwealth Authorities and Companies Act 1997*.

12.1 The legal nature of the Authority

Is a statutory authority appropriate?

The Authority is currently a 'statutory authority', that is, a public sector entity created by legislation, namely the *Great Barrier Reef Marine Park Act 1975* (s. 6).

Statutory authorities differ from departments and executive agencies in the following key ways:

- They are created by statute, whereas departments and executive agencies are created by administrative orders of the Executive arm of government (specifically the Governor-General in Council).

- They are created to undertake a specific function(s), as set out in legislation.
- The involvement of government, through the Minister, in the operations of a statutory authority is limited by the powers set out in the enabling legislation.

Statutory authorities undertake functions of government or provide services to the community on behalf of government. They are generally established where it is desirable for particular activities to operate outside departmental structures so as to promote efficiency and/or objectivity. More specifically:

- Separating specialised activities from the broader and more complex requirements of a portfolio department and providing an authority with a narrow and clearly defined range of functions (with separate funding for those functions) allows management of the authority to specialise and focus on its role.
- Codifying the role of the authority and defining the powers of the Minister in relation to the authority provides a degree of independence.

In the case of the Great Barrier Reef Marine Park, the following considerations indicate that management by a specialised statutory authority is appropriate.

Firstly, the size, complexity and unique nature of the Great Barrier Reef and the task of managing for multiple-use objectives indicate a need for an intensive and specialised approach to management. A unique and separate regulatory regime has been established for this reason. Given these factors, continued use of a specialised statutory authority is likely to provide efficiencies and confidence in management and regulation.

Secondly, as discussed in Chapter 9, effective management of the Great Barrier Reef requires cooperative and collaborative participation by the Queensland Government. Use of a statutory authority facilitates this in a way that is difficult to achieve through a departmental or executive agency structure.

Thirdly, as noted by a number of submissions to the Review, the significant natural and cultural value of the Great Barrier Reef and the Australian Government's commitment to long-term protection indicate that a degree of independence in management and regulation is appropriate.

On the other hand, a number of submissions to the Review considered that the Authority currently possesses too much independence and power and is not properly accountable. Some submissions suggested that this should be addressed by disbanding the Authority and moving responsibility for the Authority's functions to the Department. These views were largely expressed in the context of the development of the 2003 Zoning Plan (Chapters 6 and 10) and have been addressed by recommendations on the zoning plan process (Chapters 10 and 13).

On balance, the Review Panel **recommends** that continued management by a separate statutory authority is appropriate, noting that the full suite of reforms recommended by this report are directed at improving the transparency, accountability and performance of the Authority.

Is a body corporate appropriate?

The Authority is established by the *Great Barrier Reef Marine Park Act 1975* as a body corporate, that is, it is legally recognised as an entity having its own rights, privileges and liabilities separate from those of the Australian Government.

Statutory authorities are generally established as a body corporate where the authority requires the capacity to sue and be sued in its own name and to hold assets in its own right. Another circumstance in which incorporation may be required is when a group of officeholders need to exercise collective decision making under a single organisational name in the performance of statutory functions.

Under the *Great Barrier Reef Marine Park Act 1975*, members of the Authority are collectively responsible for the performance of regulatory and planning functions. It is therefore appropriate for decision making to be done collectively under a common seal, rather than in the name of the members individually. For this reason, the Review Panel **recommends** that the Authority continue as a body corporate.

12.2 Corporate structure of the Authority

The Uhrig templates

The Uhrig review (Uhrig 2003) describes two structures designed to provide for good governance of statutory authorities—a governing board and executive management.

Under the governing board structure, governance is primarily provided by a board of individuals selected for their relevant business and commercial experience. The board determines strategy and direction for delivering on the authority's legislative functions and financial goals, and supervises and holds management accountable for implementation.

Under an executive management structure, an executive management group is responsible for efficient and effective performance of the legislative functions of the authority and is overseen by and accountable to the Minister.

In determining the appropriate governance model the key factor is the extent to which the authority is delegated power to act, that is, the power to determine and oversee the implementation of strategy and direction by management. This in turn depends on the functions of the authority.

Some statutory authorities are established to undertake commercial activities. It is generally appropriate to delegate full power to act to such authorities, as their operations, policies and strategies are commercial in nature and are driven by the imperatives of the market. In this circumstance a governing board structure may be appropriate, as the board can be provided with the power and independence necessary to function with 'entrepreneurial' freedom in response to market imperatives and thereby to add value.

Most statutory authorities, however, are not commercial in nature. Instead, they are directed at providing outcomes that the market would not ordinarily deliver, which inevitably affects the allocation of resources between competing interests. This is a uniquely government role. Governments are elected on the basis of the policies, objectives and priorities that guide performance of this role and are held accountable for the outcomes achieved.

Because of this role and accountability of government, it is generally inappropriate to grant this latter form of authority full power to act. Instead, government should be involved in the governance of the authority. An executive management structure is designed to provide for this. It provides government with a role in setting the overarching objectives and priorities of the organisation, while also preserving an appropriate level of independence for the authority. Executive management is then overseen by and accountable to government for performing the functions of the authority consistently with the identified objectives and priorities.

In the case of the Great Barrier Reef Marine Park Authority, the Authority's functions are to provide advisory, regulatory, management and service delivery functions on behalf of the government. These activities are not commercial and carry implications for the community, the allocation of resources and the expenditure of public money. They involve the exercise of public power and the use of the coercive power of the Commonwealth. This suggests that the oversight by and accountability to government provided by the executive management structure is appropriate and that the *Financial Management and Accountability Act 1997*, which is designed to ensure the efficient, effective and ethical use of public money, is the appropriate financial management framework for the Authority.

A number of submissions to the Review expressed concerns about the application of an executive management structure to the Authority. One such concern is that an executive management approach would not allow the Authority to develop policy, and that it is important the Authority is able to carry out such a role.

The Uhrig review notes that it is the role of statutory authorities to implement policy, not develop policy. This applies regardless of whether a governing board or executive management structure is used. The basis for this view is that portfolio departments are best placed to provide whole-of-government advice on policy issues, as they possess the necessary infrastructure, practices, resources and culture.

This is not to say that statutory authorities cannot play a key role in policy development. Indeed, in the case of the Great Barrier Reef Marine Park Authority, its specialised knowledge, on-ground presence and close working relationships with stakeholders and communities suggest that it should remain a key source of advice. However, as discussed in Chapter 9, in the case where matters transcend Marine Park boundaries, have cross-jurisdictional implications and/or raise significant budgetary implications, a whole of portfolio or whole-of-government process involving the Department would generally be appropriate.

The notion that statutory authorities should not develop policy also does not mean that they should not develop operational policy, that is, policies related to the administration of an established government policy, regulatory regime and/or programme. In the case of the Authority, such activities would include development of policies and practices related to regulation and administration of the Act, the development of detailed plans of management, the establishment and allocation of infrastructure and the administration of government programmes, including, for example, decisions as to the allocation of funding.

Another issue with the executive management approach expressed in some submissions to the Review is that it provides less independence relative to a governing board approach. Under an executive management structure, government provides oversight of management in the performance of the authority's functions against the established strategic direction, priorities and policies. Under the governing board structure this role is performed by the board, which is accountable to the Minister. However, in both cases, the capacity of government to directly intervene in the functions of the authority is limited by the powers provided in the enabling legislation. Recommendations as to government powers in relation to the Authority are discussed below.

One final consideration is the value of management by a group of statutory officeholders with relevant knowledge, experience and ability for critical thought, objectivity and judgement. This is of particular importance in management of the Great Barrier Reef given its complexity, size, environmental, social and economic values and the difficult task of managing for multiple use objectives. The use of a group of statutory officeholders is also particularly important as it facilitates Queensland Government involvement in governance and management of the Marine Park through nomination of a statutory officeholder.

In light of these considerations, the Review Panel believes that the Authority should continue to comprise a group of statutory officeholders selected for their relevant expertise and independence. However, consistent with an executive management structure, the role of government in governance of the Authority should also be better formalised. The following section details these proposed governance arrangements.

Future governance arrangements for the Authority

The Review Panel **recommends** that the Authority continue to comprise a group of statutory officeholders (members) collectively responsible for the functions and governance of the Authority.

In performing their role, the members of the Authority should be subject to government direction and oversight. More specifically, it should be the role of government to establish expectations of the Authority in relation to overarching performance, objectives, values and broader government policies. The Authority

members would then be responsible for developing and implementing strategies, measures and initiatives to efficiently and effectively perform the legislative functions of the Authority consistently with government expectations.

The following sections provide further details of the recommended composition of the Authority, role of Authority members and role of government.

The composition of the Authority

The Authority currently comprises four members—a full-time Chairperson and three part-time members. One part-time member is appointed on the nomination of the Queensland Government and another to represent the interests of Indigenous communities adjacent to the Marine Park. All appointees must possess qualifications or experience relevant to the functions of the Authority.

A number of submissions to the Review suggested that membership of the Authority be expanded to include representatives of particular industries operating in the Marine Park or persons with expertise in those industries.

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. These committees are considered in more detail in Chapter 10, including the reconstitution of the Consultative Committee as an Advisory Board.

The Review Panel also considers that, given the functions of the Authority and the role of government in governance under an executive management structure, a small number of officeholders would work most effectively. The Review Panel therefore **recommends** that the Authority comprise a Chairperson and a minimum of two and a maximum of four other members. The Chairperson should be appointed on a full time basis, with all other appointments part-time.

To provide for Queensland participation in management, the Review Panel **recommends** that one member, not being the Chairperson, should continue to be nominated by the Queensland Government in consultation with the Australian Government. Other appointments should be the responsibility of the Australian Government, in consultation with the Queensland Government.

The Review Panel **recommends** that the current arrangement for the appointment of members by the Governor-General on the advice of the Minister should continue. Members should be appointed for a period of up to three years, with the opportunity for reappointment. Remuneration and resignation provisions should remain as currently provided for in the *Great Barrier Reef Marine Park Act 1975*.

The role and powers of Authority members

The role of the Authority members is to ensure the efficient and effective performance of the legislative functions of the Authority, consistent with the government's expectations in regard to performance, objectives, values and broader government policies.

Under the proposed model, these expectations would primarily be communicated by the Minister through formal Statements of Expectations, but also through the power to issue general directions, as currently provided for in the *Great Barrier Reef Marine Park Act 1975* (s. 7(2)). Authority members would be required to perform the functions of the Authority in accordance with any such directions. The specific nature of the Minister's powers to direct the Authority is discussed below.

In response to Statements of Expectations and other directions, the Authority members would be responsible for developing strategies and initiatives for performing the functions of the Authority consistently with the government's expectations. These strategies and the initiatives and activities proposed should be outlined in a Statement of Intent provided to the Minister and made publicly available.

The Authority would have the power to do all things necessary or convenient in connection with the performance of the functions of the Authority. This would include the capacity to acquire, hold and dispose of assets and to enter into contracts.

The powers of the Authority would be performed collectively. Any exercise of power would require the support of a majority of members, with the Chairperson having a casting vote where required.

In performing their functions, Authority members should be required to act in the best interests of the Authority. Members should also not be permitted to engage in employment that conflicts or could conflict with the proper performance of the member's duties without approval from the Minister. This reinforces the intention that the role of Authority members is to work collaboratively, rather than acting in a representational manner.

As with current arrangements, the Authority should be supported by staff employed under the *Public Service Act 1999*. These staff, along with the Chairperson of the Authority, should constitute a statutory agency for the purposes of that Act.

The role and powers of the Minister

The role of the Minister in relation to the Authority is to establish the overarching expectations of government for the operations of the Authority and to oversee performance.

In performing this role, the Minister should preserve a level of independence for the Authority commensurate with the desire to promote objective, scientific and expertise-based management of the Great Barrier Reef. Accordingly, the Review Panel considers it appropriate, as with current arrangements, that the Authority act independently, subject to any general directions of the Minister that are consistent with the *Great Barrier Reef Marine Park Act 1975*.²² Such general directions could include, for example:

- the outcomes and outputs the Authority is expected to deliver
- challenges and priority issues the Authority is expected to progress
- the broad objectives that should guide the work of the Authority
- general government policies that the Authority should apply in its operations, for example, policies relating to the management of public monies
- government policies the Authority is expected to work to implement, for example, Australia's Oceans Policy.

The Review Panel **recommends** that clarity on such issues be primarily achieved through Statements of Expectations, made by the Minister to the Authority. These statements are recommended by the Uhrig review as a means of providing greater structure, formality and transparency in the setting of government expectations of the authority and the oversight of performance. Statements of Expectations would outline policies and objectives relevant to the Authority and the expectations of the government as to how the Authority will conduct its operations. The Authority would respond with a 'Statement of Intent' identifying actions and key performance indicators agreed with the Minister. These statements should be public documents.

²² The GBRMP Act (s. 7) currently provides the Minister with the capacity to make such directions.

The Minister should also retain power to make other general directions. Any such directions should be reported in the Annual Report, as is currently required by the *Great Barrier Reef Marine Park Act 1975* (s. 7 (2)).

In issuing Statements of Expectations and making general directions, the Minister should not have the power to issue directions in relation to specific issues, such as decisions to issue permits and to specify the conditions attached. The Minister also should not have the capacity to issue directions in relation to areas in which the Authority is explicitly given legislative independence. For example, the Minister should not be able to provide direction to the Authority on which areas should be declared as part of the Marine Park, but would continue to be responsible for advising the Governor-General on this issue.

To enable the Minister to effectively oversee the performance of the Authority, the Minister should be informed of the Authority's operations through regular communication, particularly in relation to any significant issues. The Minister should also have the power to obtain such reports, documents and information in relation to the operations of the Authority as required.

Measurable and verifiable key performance indicators should be developed by the Authority members as part of the Statement of Intent made in response to the Statement of Expectations. The Minister and the Authority members should meet at least annually to discuss progress against the key performance indicators, targets and other relevant matters.

In holding the Authority accountable for performance, the Minister would first discuss performance directly with the Chairperson, may include the other Authority members, and may seek a submission detailing proposed remedial action.

The Department would support and advise the Minister in performing the above roles. Accordingly, the Department should be kept aware of all relevant issues concerning the Authority. The issue of linkages between the Authority and the Department is discussed in Chapter 9.

The chief executive officer

The *Great Barrier Reef Marine Park Act 1975* does not currently provide for appointment of a chief executive officer. This role is instead performed by the Chairperson of the Authority as the only full-time member. Furthermore, for the purposes of the *Public Service Act 1999*, the Chairperson and employees together constitute a statutory agency, of which the Chairperson is the head.

A number of submissions to the Review suggested that the roles of chief executive officer and Chairperson of the Authority be separate to enhance the role of the Authority as a source of accountability.

Under an executive management approach, there is limited demarcation between those establishing strategy and those implementing it. Strategy and management are instead the responsibility of the members collectively, with the chief executive officer performing a hands-on role and assuming legislative responsibilities on behalf of the other members.

Importantly also, separating the roles of chief executive officer and Chairperson can lead to a situation where the chief executive officer has unclear and potentially conflicting responsibilities and accountability to Authority members on the one hand and the Minister on the other.

Also the *Financial Management and Accountability Act 1997* and the *Public Service Act 1999* vest the chief executive officer with the financial and resource management powers necessary to run the agency. These powers should also be vested in the Authority through the chief executive officer also being a member (Chairperson).

In light of these considerations, the Review Panel **recommends** that the Chairperson of the Authority perform the role of chief executive officer. This role would encompass the position of chief executive officer for the purposes of the *Financial Management and Accountability Act 1997* and agency head for the

purposes of the *Public Service Act 1999*. The Chairperson would also administer the day-to-day affairs of the Authority, arrange support for the Authority and perform functions of the Authority delegated to the Chairperson by the members.

In performing the role of chief executive officer for the purposes of the *Financial Management and Accountability Act 1997* and agency head for the purposes of the *Public Service Act 1999*, the Chairperson is responsible, under those Acts, to the Minister. To avoid conflicts between these responsibilities and the Chairperson's responsibilities to the other Authority members, the Chairperson should not be subject to direction by the other members in performing functions under those Acts.

12.3 Financial management and accountability

Commonwealth statutory authorities are subject to one of two legislative frameworks for financial management and accountability—the *Financial Management and Accountability Act 1997* or the *Commonwealth Authorities and Companies Act 1997*.

The *Financial Management and Accountability Act 1997* provides a framework for the management of public money and assets. It specifies required financial management practices and provides for accountability to the Minister for Finance and Administration and the Minister responsible for the authority in much the same way that management of a private company is accountable to the board.

The *Commonwealth Authorities and Companies Act 1997* provides a framework similar to that imposed on private companies under the *Corporations Act 2001*. Under this framework, directors and managers are responsible for managing the authority's money and resources in the best interests of the authority. Management is generally free to determine the financial management practices it employs and is accountable to the Minister in much the same way a private company is accountable to its shareholders.

The Uhrig review considers the application of these financial management frameworks to statutory authorities. A key recommendation of the Review, endorsed by the Australian Government, is that financial frameworks should be applied based on the characteristics of the authority.

Where an authority is predominantly commercial in nature, the *Commonwealth Authorities and Companies Act 1997* may be appropriate, as it provides greater flexibility for the authority to manage its money and assets in a manner responsive to the demands of the market.

Where an authority is using public money to carry out functions on behalf of government, the *Financial Management and Accountability Act 1997* is appropriate, as it provides a framework for the efficient, effective and ethical expenditure of public money. The *Financial Management and Accountability Act 1997* is also more appropriate where the authority is using the government's coercive powers to collect public money (for example, a levy) as the Act provides a framework for the collection and administration of such funds.

The Authority is currently subject to the *Commonwealth Authorities and Companies Act 1997*. However, its role is to undertake functions on behalf of the government. Only a small portion of these functions are done on a commercial basis, specifically the operation of the Reef HQ aquarium and education facility. The revenue raised from these activities is less than the cost of providing the service.

The Authority is primarily funded through government appropriation. In its budget for the 2005–06 financial year, \$22.8 million of the Authority's \$38.1 million budget was derived through appropriation from the Australian Government. Of the \$22.8 million, \$7.4 million represents money collected by the Authority on behalf of the Australian Government through the Environmental Management Charge. Of the remaining funding, \$4.8 million will be derived through a Queensland Government appropriation for its share of day-to-day management costs and \$8 million through grants provided under the Australian Government's Natural Heritage Trust programme. Only \$2.6 million is expected to be raised through the commercial operation of Reef HQ.

In light of these factors, it would seem appropriate that the Authority be subject to the *Financial Management and Accountability Act 1997*, rather than the *Commonwealth Authorities and Companies Act 1997*.

One consideration in making this recommendation is the arrangements with Queensland for joint day-to-day field management of the Marine Park. Under these arrangements, which have their basis in a series of intergovernmental agreements, day-to-day management is funded equally by the Australian and Queensland governments. These funds are managed in accordance with a financial framework designed to meet the needs of both governments. There are a number of mechanisms available under the *Financial Management and Accountability Act 1997* that would allow these joint financial management arrangements to be continued.

A further consideration with moving to the *Financial Management and Accountability Act 1997*, raised in submissions to the Review, is whether it would affect the independence of the Authority.

Authorities under the *Financial Management and Accountability Act 1997* are required to employ specified financial management practices, whereas under the *Commonwealth Authorities and Companies Act 1997*, authorities have greater scope to determine the practices put in place. However, this will not affect the independent operation and objectivity of the Authority in the performance of its statutory functions. Indeed, the Authority already employs most of the financial management practices required under the *Financial Management and Accountability Act 1997*. For example, it has an internal audit committee, a fraud control plan that complies with the Finance Minister's guidelines and employs the Commonwealth Procurement Guidelines.

The application of a particular financial management framework also has no effect on the operational independence from the Minister of an authority. This independence is instead contingent upon the powers of the Minister to intervene in the operations of the authority, as set out in the enabling legislation.

Specifically in relation to financial management, the *Great Barrier Reef Marine Park Act 1975* (s. 56) currently requires the Authority to obtain the approval of the Minister prior to entering into a contract exceeding \$150 000 in value or a lease of greater than 10 years in duration. Should the Authority move to the *Financial Management and Accountability Act 1997* framework, this provision would no longer be required, as the Act provides a more robust and comprehensive framework for the efficient, effective and ethical use of public money. Therefore, moving to the *Financial Management and Accountability Act 1997* would in fact increase the independence of the Authority.

For the above reasons, the Review Panel **recommends** that the Authority move from the *Commonwealth Authorities and Companies Act 1997* to the *Financial Management and Accountability Act 1997* as a 'prescribed agency'.

13. The regulatory framework

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This chapter considers the regulatory powers and processes that provide the basis for protection and management of the Great Barrier Reef by the Authority and others.

A review of the regulatory framework is timely. The *Great Barrier Reef Marine Park Act 1975*, which provides the primary basis for the regulatory framework, is now 30 years old. While the Act has aged well, pressures on the Great Barrier Reef and management priorities have changed over time and it is important for the Act to provide the management and regulatory tools necessary for the efficient and effective management of the Great Barrier Reef into the future.

A review of the regulatory framework is also timely given the introduction of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). This Act is the Australian Government's primary legislation for environmental regulation. Among other things, it requires that activities having significant impacts on 'matters of national environmental significance', such as world heritage, migratory species and the Commonwealth marine environment, be subject to environmental impact assessment and approval. It also regulates activities affecting threatened species and provides for the creation and management of Commonwealth Reserves.

The *Great Barrier Reef Marine Park Act 1975* covers a similar range of issues to the EPBC Act, but specifically in relation to the Great Barrier Reef Region. Among other things, it provides for the establishment of the Marine Park and the regulation of activities within the Park through zoning plans and plans of management, regulations, a permit system and management of environmental impacts.

A key difference between the two Acts is their coverage within the Great Barrier Reef Region. The *Great Barrier Reef Marine Park Act 1975* applies uniformly to both Queensland coastal waters and Commonwealth waters within the entire Great Barrier Reef Region and to the management of environmental impacts within the Region.

The EPBC Act, on the other hand, applies predominantly to Commonwealth land and waters, although some provisions These are provisions that regulate issues having a significant impact on 'matters of national environmental significance' (which include the world heritage values of World Heritage Areas). Another key difference is that the *Great Barrier Reef Marine Park Act 1975* reflects and implements a cooperative approach to management between the Australian and Queensland governments that is underpinned by an intergovernmental agreement (the Emerald Agreement).

For these reasons, the Review Panel considers it is appropriate to maintain a separate Act in relation to the Great Barrier Reef. However, it is important to ensure that this Act and the EPBC Act do not unnecessarily duplicate each other and operate in a cohesive and integrated manner. It is also important to ensure that the *Great Barrier Reef Marine Park Act 1975* is consistent with current Australian Government policies and approaches to environment protection, as reflected in the EPBC Act. At present, the two Acts are generally equivalent at a framework level, but differ at a more detailed level.

The following chapter provides recommendations directed at achieving the above outcomes. It is also noted that the Minister for the Environment and Heritage has announced that he is considering amendments to the EPBC Act to be introduced into the Parliament during 2006. While the Minister has indicated the same basic framework and approach of the EPBC Act will be maintained, some of the processes will be streamlined to make them more efficient and effective. In some cases, as noted in this chapter, the proposed changes will assist in removing potential duplication between the EPBC Act and the *Great Barrier Reef Marine Park Act 1975*.

Beyond this, there are a number of other more general considerations and objectives in reviewing the regulatory framework.

Firstly, it is important to identify and address regulatory 'red tape', overlap and duplication, notably that arising from the operation of the *Great Barrier Reef Marine Park Act 1975* and other Commonwealth and Queensland legislation. A number of cooperative measures with the Queensland Government and relevant Australian Government agencies are already in place to address this issue. These arrangements are generally working effectively and should be maintained and where necessary, enhanced.

Secondly, it is important to consider mechanisms for enhanced transparency, accountability and public participation in planning, regulatory and management activities. A number of submissions to the Review raised concerns relevant to these issues, notably in relation to the processes for the development of zoning plans.

Thirdly, the regulatory framework needs to be considered in the context of reviewing governance arrangements. To this end, the role of the regulatory framework in providing clarity of responsibilities and expectations of performance, transparency and accountability must be considered.

This chapter recommends a number of changes to the regulatory framework in light of the above considerations. Given the Terms of Reference of the current Review, the recommendations are focused on changes to the general framework for regulation and management. The Review Panel notes that these general recommendations will require more specific consideration and development. Furthermore, there may also be some more detailed and minor legislative changes required that have not been considered by the Review Panel. These issues should be considered in implementing the outcomes of this Review.

13.1 The objectives of regulation

The *Great Barrier Reef Marine Park Act 1975* should clearly and transparently state the objectives the Authority is expected to pursue in performing regulatory functions and in generally administering the Act. The Authority should be accountable for performance against those objectives.

The most common way of achieving this transparency is by including regulatory objectives in the relevant legislation, for example, in an objects section. The *Great Barrier Reef Marine Park Act 1975* currently contains such a section, although it is limited in detail and defines the function of the Act, rather than its objects. It reads:

The object of the Act is to make provision for and in relation to the establishment, control, care and development of a marine park ...

The Review Panel **recommends** 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.

The Review Panel also **recommends** that the Authority be explicitly required to take into account specified objectives when performing regulatory functions. For example, the Authority could be required to take into account the principles of ecologically sustainable development and to apply the precautionary principle, as defined in the *Environment Protection and Biodiversity Conservation Act 1999*, in making certain decisions under the *Great Barrier Reef Marine Park Act 1975*. Recommendations to this effect are provided below, in relation to specific regulatory functions.

13.2 Creating the Marine Park

A key role of the Authority is to make recommendations to the Minister regarding the areas within the Great Barrier Reef Region (as defined in the Act) that should be declared to be part of the Marine Park. The Minister then advises the Governor-General who, under the *Great Barrier Reef Marine Park Act 1975* (s. 31), may proclaim an area to be a part of the Marine Park. The Governor-General may also make a proclamation revoking or amending the Marine Park, but there must first be a supporting motion passed by both Houses of Parliament.

The Review Panel considers that these processes are appropriate and generally consistent with current policy and practice. However, to enhance transparency and public participation, it is suggested that the Authority be required to prepare a report on any proposal to extend or amend the Marine Park and to consult on that proposal. Such changes would also bring the *Great Barrier Reef Marine Park Act 1975* into line with the process for creating, amending and revoking Commonwealth Reserves under the *Environment Protection and Biodiversity Conservation Act 1999*.

A number of submissions to the Review proposed that the area over which the Marine Park may be declared (the Great Barrier Reef Region) be extended to take in areas in the Coral Sea to the east of the Park. While it is recognised that this region contains areas of ecological significance, it is noted that they are separated from the Great Barrier Reef by an area of deep water including the Queensland Trough and form a largely distinct ecosystem. Accordingly, the Review Panel does not consider it appropriate to extend the Great Barrier Reef Region as suggested. Instead, where warranted, protection should be provided through the creation of Commonwealth Reserves under the *Environment Protection and Biodiversity Conservation Act 1999*, as is already the case in relation to two areas within the Coral Sea region (the Coringa–Herald and Lihou Reef National Nature Reserves).

13.3 Zoning plans

Zoning plans are the primary tool for management of the Marine Park. They identify the management objectives of particular areas or ‘zones’ of the Park and specify activities that can be undertaken ‘as of right’ and those that require a permit.

The Authority is responsible for developing zoning plans. A procedure for doing so is set out in the *Great Barrier Reef Marine Park Act 1975*. This procedure specifies the factors the Authority must consider in developing a zoning plan and requires the Authority to consult publicly, firstly on the intention to create a zoning plan and secondly on a draft zoning plan. Once developed, plans are approved by the Minister and tabled in Parliament, where they may be disallowed by a motion of either House.

A large number of submissions to the Review related to the development of the 2003 Zoning Plan. The issues raised in such submissions are discussed in Chapter 10. This chapter also makes a number of **recommendations** on enhancements to the process for the development of zoning plans, which include:

- requiring the Minister to approve the commencement of any process to amend the current zoning plan
- requiring the Authority to prepare a report drawing on relevant scientific and socio-economic research explaining why zoning needs to be reviewed. This report would be publicly released at the first consultation phase along with information on the proposed process
- requiring the Authority to develop ‘Operational Principles’ setting out the general policy parameters and objectives on which the development of the zoning will proceed. These Operational Principles would be public and approved by the Minister. Once approved, the Authority would be required to have regard to the Operational Principles in developing zoning
- extending the minimum permissible period for public consultation from one month to three.

The Review Panel **recommends** that, in addition to the recommendations in Chapter 10, there should be a clear framework of objects and considerations that the Authority is expected to pursue in developing zoning. To this end, the Review Panel **recommends** that current objectives specified in the *Great Barrier Reef Marine Park Act 1975* (s. 32) be enhanced to provide greater specificity and a more contemporary framework. As part of this enhancement, cross-linkages to the *Environment Protection and Biodiversity Conservation Act 1999* should be built in. In particular, each zone type should be assigned an IUCN protected areas category for national and international accounting purposes. Similarly, the Authority should be required to have regard to the Australian IUCN Reserve Management Principles and any relevant recovery, threat abatement and/or wildlife conservation plans made under the *Environment Protection and Biodiversity Conservation Act 1999*.

Amending and reviewing the zoning plan

Under the *Great Barrier Reef Marine Park Act 1975*, amending a zoning plan essentially requires a new zoning plan to be created and therefore the whole of the plan to be reviewed. It has been suggested in submissions to the Review that there is a need for a more flexible amendment process in order to allow for the correction of errors and amendments to parts of the plan.

The Review Panel **recommends** that it be possible to amend the plan for the purpose of correcting errors, provided legal drafting can ensure that only 'errors' of a technical and insubstantial nature can be corrected, for example, incorrectly transcribed geographic coordinates. No consultation requirements should apply to such amendments. Such amendments should be disallowable by Parliament.

In terms of amending parts of the plan, the Review Panel considers that it is important for zoning to remain constant for a reasonable period in order to realise the benefits of zoning and provide stability for the community and business. Additionally, the Review Panel is concerned that, should changes to parts of the plan be permitted, there may be a gradual decline in protection over time. However, it is noted that it may be possible to build in protections against this, for example, by requiring amendments to be done at a bioregional level and with regard to the whole of the zoning plan.

Given the above and matters discussed in Chapter 10, the Review Panel **recommends** (see also Chapter 10) that the Act provide that a review and amendment of all, or part of, the zoning plan must not be commenced until at least seven years from the date the plan came into effect. Should review and amendment be considered appropriate after this time, the process set out in Chapter 10 should apply. This process should also apply to the development of new zoning in relation to any new areas of the Marine Park established in the future.

13.4 Permitting and environmental impact assessment

The *Great Barrier Reef Marine Park Act 1975* and the 2003 Zoning Plan provide that certain activities may only be undertaken within the Marine Park in accordance with a permission granted by the Authority. The Great Barrier Reef Marine Park Regulations (r. 117) provide, among other things, that the Authority must not grant such a permission unless there has been an assessment of the potential impacts on the Marine Park, users of the Park and the Great Barrier Reef.

The *Environment Protection and Biodiversity Conservation Act 1999* also provides a regime for environmental impact assessment and approval applying within the Great Barrier Reef Region. These requirements can be triggered in relation to proposed activities within the Marine Park that are likely to have significant environmental impacts on 'matters of national environmental significance'. This creates a degree of overlap between the two Acts.

The EPBC Act contains a number of provisions designed to address this overlap. In summary, assessment and approval under the EPBC Act is not required for actions that are taken within the Marine Park and are authorised by a zoning plan, plan of management or a permission, authority, approval or permit issued by the Authority. However, the EPBC Act (s. 160) requires the Authority to 'obtain and consider' advice from the Minister before it gives a permission in relation to actions that are likely to have a significant impact on the environment. Hence, a need for separate consideration by the Authority and the Department remains in some circumstances. Parallel requirements also arise where a proposed activity impacts on areas both within and outside the Marine Park.

To address this duplication and provide a more consistent regulatory environment, the Review Panel **recommends**, subject to more detailed consideration, that the *Environment Protection and Biodiversity Conservation Act 1999* should provide the primary basis for environmental impact assessment and approval of activities within the Marine Park. More specifically, where a proposed activity within the Marine Park is likely to have a significant environmental impact, the assessment and approval requirements of the *Environment Protection and Biodiversity Conservation Act 1999* should apply. An approval under the *Environment Protection and Biodiversity Conservation Act 1999* would then suffice for the purposes of permission requirements under the *Great Barrier Reef Marine Park Act 1975*.

Under these arrangements, the Authority should, in most cases, be delegated responsibility for assessment and approval by the Minister and would perform this task in an integrated and concurrent manner with any related assessment and permitting requirements under the *Great Barrier Reef Marine Park Act 1975*. However, where a proposed activity is primarily outside the Marine Park, carries significant environmental risks and/or requires complex and detailed assessment, it may be more appropriate for the Department to take the lead and/or for approval to be the responsibility of the Minister. In such cases, consultation with the Authority would be appropriate.

These changes would help to provide a more streamlined and consistent regulatory environment in a key area affecting Marine Park users. Furthermore, the changes would ensure that environmental impact assessment and approval processes employed in relation to the Marine Park are modern, comprehensive and robust. The *Environment Protection and Biodiversity Conservation Act 1999* processes establish a clearly defined framework for impact assessment and decision making and provide appropriately for transparency, accountability and opportunities for public participation. These EPBC Act processes and requirements are generally acknowledged as best practice. The *Great Barrier Reef Marine Park Act 1975* and Regulations at present do not contain equivalently comprehensive processes and requirements.

Subject to the above, the Review Panel **recommends** that the Authority continue to be responsible for issuing permissions as required by the *Great Barrier Reef Marine Park Act 1975*, Regulations and the *Great Barrier Reef Marine Park Zoning Plan 2003*. Given the importance of this function to management and users of the Marine Park, it is **recommended** that the basis and procedures for doing so be consolidated within a single part of the *Great Barrier Reef Marine Park Act 1975* or Regulations.

This new part of the Act should describe the permitting and assessment process, including permit application requirements, timelines, factors the Authority must consider in issuing permits, and public notification requirements. The new part should apply to all activities that require permission under the Act, Regulations and 2003 Zoning Plan with the exception of the assessment and accreditation of Traditional Use of Marine Resources Agreements. This process should remain separate, as these Agreements are a new initiative and may need refinement over time.

In order to minimise regulatory 'red tape', the Review Panel **recommends** that different assessment processes be available. Streamlined assessment based on application documentation and undertaken against standardised considerations should be available for activities with minimal risk and impact and/or where the activity does not require in-depth assessment, such as continuation of an existing activity. More intensive assessment requirements should be available where appropriate. However, given the application of the *Environment Protection and Biodiversity Conservation Act 1999* to matters of national environmental

significance, including in the Marine Park, it is not expected that the *Great Barrier Reef Marine Park Act 1975* would contain provision for assessment by public environment report or environmental impact statement.

Finally, the Review Panel **recommends** that in order to promote integration with the *Environment Protection and Biodiversity Conservation Act 1999*, in considering permit applications the Authority should be required to consider (among other things):

- the Australian World Heritage Management Principles as set out in the Environment Protection and Biodiversity Conservation Regulations, to the extent to which they apply to environmental impact assessment and approval
- where relevant, the National Heritage/Commonwealth Heritage Management Principles as set out in the Environment Protection and Biodiversity Conservation Regulations
- any relevant recovery, threat abatement and/or wildlife conservation plans made under the *Environment Protection and Biodiversity Conservation Act 1999*.

13.5 Protected species

Both the *Environment Protection and Biodiversity Conservation Act 1999* and *Great Barrier Reef Marine Park Act 1975* prohibit actions without a permit that (variously) take, kill, harm and/or interfere with specified protected species.

Great Barrier Reef Marine Park Act 1975 provisions apply within the Marine Park, including within Queensland coastal waters up to the low water mark. *Environment Protection and Biodiversity Conservation Act 1999* provisions apply to Commonwealth waters both within and outside the Marine Park, but not to the areas within three nautical miles of the shore. This creates some regulatory overlap and in some cases, duplicative and differing permitting requirements.

Some of this overlap is currently managed by providing that *Environment Protection and Biodiversity Conservation Act 1999* protected species offences, with the exception of those applying to cetaceans, do not apply to activities done in accordance with a permit issued by the Authority. Legislative amendments currently being prepared will extend this exemption to apply to the cetacean provisions of the *Environment Protection and Biodiversity Conservation Act 1999* and to provide that protected species offences do not apply to activities authorised under an accredited Traditional Use of Marine Resources Agreement. The Review Panel supports these proposed changes and notes that the general approach proposed for the Great Barrier Reef Region is consistent with the proposed treatment of Commonwealth Reserves under the *Environment Protection and Biodiversity Conservation Act 1999*.

Notwithstanding the above, one area in which duplicative regulatory requirements remain is in relation to activities occurring both within and outside the Marine Park. To address this, the Review Panel **recommends** that arrangements be put in place to accredit *Great Barrier Reef Marine Park Act 1975* permits for the purpose of the *Environment Protection and Biodiversity Conservation Act 1999* and vice versa. These arrangements should provide, for example, that where an activity affecting protected species is undertaken predominately outside the Marine Park, an *Environment Protection and Biodiversity Conservation Act 1999* permit will satisfy the requirements of the *Great Barrier Reef Marine Park Act 1975*. In such a case, the Authority would be consulted about the granting of the permit, which would expressly indicate the terms and conditions that apply within the Marine Park.

Management of protected species

Both the *Environment Protection and Biodiversity Conservation Act 1999* and the *Great Barrier Reef Marine Park Act 1975* provide for management actions directed at the recovery of protected species. The *Environment Protection and Biodiversity Conservation Act 1999* provides for the creation of recovery, threat abatement and wildlife conservation plans. The *Great Barrier Reef Marine Park Act 1975* provides for plans of management and Special Management Areas.

These management actions, whilst potentially applying to the same species, are different in nature. *Environment Protection and Biodiversity Conservation Act 1999* provisions are concerned with recovery and conservation planning whereas *Great Barrier Reef Marine Park Act 1975* provisions are locally based and practical management actions for the conservation of the species.

As a Commonwealth agency under the *Environment Protection and Biodiversity Conservation Act 1999*, the Authority must not take any action that contravenes a recovery plan or threat abatement plan under that Act and must take all reasonable steps to act in accordance with a wildlife conservation plan. There is nevertheless scope to improve integration and complementarity between protected species management actions under the two Acts. Accordingly, plans relevant to the Marine Park should continue to be developed in consultation between the Department and the Authority. Once developed, plans should provide a framework for management by the Authority, recognising that differences may be required as a result of local application and/or management needs unique to the Great Barrier Reef World Heritage Area.

Accordingly, the Review Panel **recommends** that actions by the Authority such as developing zoning plans and plans of management and undertaking permitting functions should proactively seek to implement *Environment Protection and Biodiversity Conservation Act 1999* plans. This can be achieved by specifically requiring the Authority to have regard to relevant recovery, threat abatement and wildlife conservation plans when undertaking such activities.

13.6 Enforcement and compliance

Enforcement and compliance will be key challenges for effective management of the Great Barrier Reef into the future. At present, however, penalties under the *Great Barrier Reef Marine Park Act 1975* are generally less than under equivalent provisions of the *Environment Protection and Biodiversity Conservation Act 1999* and a number of modern enforcement options, such as civil penalties as an alternative to criminal prosecution, are absent.

The Review Panel **recommends** that investigation, enforcement and offence provisions be reviewed and updated in light of the importance of effective and efficient enforcement in the future and to achieve better consistency with *Environment Protection and Biodiversity Conservation Act 1999* provisions. This review should be done in consultation with the Attorney-General's Department.

Emergency management powers

The Authority's primary means of responding to situations requiring immediate management action is the declaration of Special Management Areas. Emergency Special Management Areas may be declared by the Authority for a maximum of six months duration. Special Management Areas of a longer duration are created by issuing a Regulation.

Problematically, Special Management Areas only allow the Authority to restrict activities in particular areas. They do not empower the Authority to require persons to take specified actions. Furthermore, Special Management Areas can only be created within the Marine Park, not the entirety of the Great Barrier Reef Region.

The Review Panel notes that currently proposed changes to the *Environment Protection and Biodiversity Conservation Act 1999* will broaden the scope of Conservation Orders made under Part 17 of that Act to allow these Orders to be used to protect all matters of national environmental significance. This will enable Conservation Orders to be made to protect the world heritage values of the Marine Park, which will provide a means of prohibiting or restricting activities in defined areas and/or requiring persons to take specified action for the purpose of responding to emergency situations impacting on world heritage values. Such orders should be made by the Minister on the advice of the Authority. The Review Panel considers that these changes will provide appropriate emergency response powers in relation to the Marine Park.