

PART 1

1. Introduction

1 Introduction

1.1 Background to the Review

It is now over 30 years since the *Great Barrier Reef Marine Park Act 1975* and the Great Barrier Reef Marine Park Authority (the Authority) were established. In the context of the 2004 Federal Election, the Australian Government made a commitment to review the Act 'to improve the performance of the Great Barrier Reef Marine Park Authority, its office holders and its accountability frameworks'.¹ The Minister for the Environment and Heritage, Senator the Hon. Ian Campbell, formally announced the Review and its Terms of Reference on 23 August 2005.

Since 1975 much has been achieved. In 1981 the conservation value of the Great Barrier Reef was internationally recognised with inscription on the World Heritage List. By 2001, 33 sections had been defined and proclaimed to be part of the Marine Park. In July 2004 the *Great Barrier Reef Marine Park Zoning Plan 2003* came into force, representing a major transition point in the management and protection of the Marine Park. The 2003 Zoning Plan consolidated the zoning of the Marine Park and significantly increased the area and level of protection. The introduction of this Plan was not without some social and economic impacts, with a number of stakeholders raising concerns about the process. In his August announcement of the Review, the Minister stated² that the Review would not revisit the outcomes of the 2003 Zoning Plan but that the Review's consideration of consultation, accountability and regulatory frameworks would be informed by an examination of the rezoning process.

Since the *Great Barrier Reef Marine Park Act 1975* and Authority were established there have been fundamental changes in Australia's regulatory and governance landscape. Most notably, the Australian Government's role in and approach to environmental regulation has changed with the enactment of the *Environment Protection and Biodiversity Conservation Act 1999*. There is a need to ensure that the *Great Barrier Reef Marine Park Act 1975* operates in a cohesive and integrated manner with this Act. The Review Terms of Reference provide for this to be addressed.

In recent years Australian Government agencies have seen governance and financial management frameworks evolve significantly, with landmark legislation like the *Commonwealth Authorities and Companies Act 1997* and the *Financial Management and Accountability Act 1997* impacting on their operating environments. In 2003 a report by Mr John Uhrig AC, the *Review of Corporate Governance of Statutory Authorities and Office Holders* (Uhrig 2003), established templates and principles for the governance of statutory authorities against which all Commonwealth statutory authorities are currently being assessed. The Terms of Reference for the current Review provide for the Authority's governance framework to be assessed in the context of these changes.

Consideration has also been given by the Review Panel to the regulatory and governance structures required for the continued protection, conservation and sustainable use of the Great Barrier Reef over the next 30 years.

¹ *The Howard Government Election 2004 Policy: Supporting North Queensland*, 2004, Canberra.

² Campbell I, Minister for the Environment and Heritage, *Review of the Great Barrier Reef Marine Park Act*, media release, Parliament House, Canberra, 23 August 2005.

1.2 Terms of Reference

The Terms of Reference (Appendix A) for the Review that have been addressed by the Review Panel are as follows:

The Review will focus on:

- the role of office holders
- the functions of the Authority
- accountability frameworks
- consultation mechanisms.

The Review will provide advice, in light of the Uhrig principles, on:

- the appropriateness of current arrangements
- the efficiency and effectiveness of current consultation mechanisms
- any changes to improve the corporate governance arrangements of the Authority
- any adjustment of the function of the Authority
- improving consistency between the *Great Barrier Reef Marine Park Act 1975* and the *Environment Protection and Biodiversity Conservation Act 1999*
- any legislative amendments required to make such changes.

1.3 The Review process

The Minister for the Environment and Heritage, in announcing the Review, also announced the appointment of a Review Panel chaired by Mr David Borthwick, Secretary of the Department of the Environment and Heritage, and assisted by Ms Barbara Belcher, First Assistant Secretary, Department of the Prime Minister and Cabinet and Mr Jonathan Hutson, General Manager, Department of Finance and Administration. The Review Panel was supported by a secretariat staffed by officers of the Department of the Environment and Heritage (Appendix B).

Public submissions

Public submissions to the Review were invited on 23 August 2005, with a closing date of 30 September 2005, although a small number of submissions received after the closing date were also considered. The invitation for submissions was advertised in national and Queensland State and regional newspapers.

To guide submissions, the Terms of Reference and a background³ paper discussing issues covered by the Review were provided on a Review website⁴ and via post (upon request). All substantive submissions not containing confidential information were published on the Review website. A total of 227 substantive submissions were received, as well as a number of 'campaign' submissions. A list of the persons and organisations that made substantive submissions to the Review is provided in Appendix C.

³ <http://www.deh.gov.au/coasts/mpa/gbrmpa/pubs/background-paper.pdf>

⁴ <http://www.deh.gov.au/coasts/mpa/gbrmpa/index.html>

Consultation

The Review Panel met with key groups and interested persons in Cairns, Townsville, Brisbane, Sydney and Canberra. A total of 36 meetings were held with:

- associations representing commercial and recreational fishing, marine services and tourism interests
- Queensland Government officials
- the board and senior management of the Authority
- Chairpersons of Local Marine Advisory Committees and Reef Advisory Committees
- researchers and academics
- conservation organisations
- federal parliamentarians
- ports and shipping authorities.

Appendix D provides a full list of parties with whom the Review Panel met.

1.4 Structure of this report

This report is presented in two parts. Part 1 provides context and raises issues that need to be addressed in the future. Part 2 provides analysis and the Review Panel's considerations in developing their recommendations.

Part 1

Part 1 explains the establishment and evolution of the Great Barrier Reef Marine Park in the context of its environmental, social, economic and cultural values. This includes an overview of the Authority and the legislative and policy environment in which it operates. Issues raised by stakeholders in submissions to the Review and consultations are covered in this part. The development of the *Great Barrier Reef Marine Park Zoning Plan 2003*, which implemented the Representative Areas Programme, is then described in some detail, as the 2003 Zoning Plan provides the basis for the protection of the Marine Park into the future. The future role and functions of the Authority, and the legal and governance structures in place, will need to provide a comprehensive framework for maintaining the health and resilience of the Marine Park ecosystem. Part 1 therefore concludes with a description of the nature and relative scale and scope of pressures on the Marine Park.

Part 2

Part 2 distils the issues to be addressed and sets out the reasoning and recommendations of the Review Panel. It discusses the roles and responsibilities of the Authority and the Australian and Queensland governments, consultative arrangements, accountability mechanisms, governance structures and the regulatory environment. A consolidated summary of the findings and recommendations of the Review Panel is provided at the end of Part 2.

2. Executive summary

2 Executive summary

In 1975 the Australian Government, in its introduction of the legislation to establish the Marine Park, stated that ‘protection of our unique Barrier Reef is of paramount importance to Australia and the world’ and ‘conservation and protection of the Great Barrier Reef will be the paramount aim of the Authority in all zones of the Marine Park.’⁵

The *Great Barrier Reef Marine Park Act 1975* was ground breaking legislation in providing for ‘reasonable use’ to co-exist with conservation, thus establishing the concept of a multiple use park. The Act provides for the ‘establishment, control, care and development of a marine park in the Great Barrier Reef Region’ and establishes the Great Barrier Reef Marine Park Authority (the Authority).

On 23 August 2005 the Minister for the Environment and Heritage, Senator the Hon. Ian Campbell, announced a review of the *Great Barrier Reef Marine Park Act 1975* with terms of reference that focus on improving the performance of the Authority, its office holders and its accountability frameworks. The Terms of Reference of the Review are at Appendix A.

The Great Barrier Reef has significant environmental, social, economic and cultural values. It is the world’s largest coral reef ecosystem, and within Australia the Great Barrier Reef Marine Park is by far the largest of any Commonwealth or State Marine Protected Area. The Marine Park extends over 2 300 kilometres along the Queensland coastline and covers approximately 344 400 square kilometres. It includes some 2 900 individual reefs, 900 islands and cays and 70 distinct habitat types, called bioregions. These habitats contain great biodiversity including 30 per cent of the world’s soft corals, 30 per cent of Australia’s sponges, six of the world’s seven species of marine turtle and breeding areas for humpback whales and dugong.

The Great Barrier Reef is an Australian and international icon. In 1981 its conservation value was internationally recognised with its inscription on the World Heritage List as:

- an outstanding example representing the major stages of the earth’s evolutionary history
- a significant example of an ongoing ecological and biological process
- a superlative natural phenomenon
- a source of important and significant habitats for *in situ* conservation of biological diversity.

The Great Barrier Reef and the surrounding coastal and catchment areas support substantial economic activity. The catchment area adjacent to the Great Barrier Reef comprises 22 per cent of Queensland’s land area and around 850 000 people live along the coast. Mining and tourism are the largest industries in catchment areas. The Gross Value of Production for minerals is around \$7 billion per annum and for tourism \$4 billion, with the value for commercial and recreational fishing being \$359 million per annum. Shipping within the Great Barrier Reef and Torres Strait is vital to this economic activity, with the majority of Queensland’s \$17 billion per annum commodity exports being shipped through 10 major ports on the coast adjacent to the Great Barrier Reef. Unusual as it may seem, the Great Barrier Reef Marine Park also overlays and abuts some of Australia’s most important military training areas and facilities.

In addition, there are more than 70 Traditional Owner groups along the Great Barrier Reef coast from Bundaberg to the eastern Torres Strait islands. Their traditional customs, spiritual lore and beliefs continue to be practised today. The sense of custodianship extends to all marine resources, and the sea and islands are collectively considered to be an integral part of their traditional country, known as ‘sea country’.

Since 1975, both the Australian and Queensland governments have demonstrated their long-term commitment to work together collaboratively and protect the Great Barrier Reef. During this time the Queensland Government has been actively and formally engaged at many levels in the strategic oversight

⁵ Hansard, House of Representatives, 22 May 1975, pp. 2679–2680

and management of the Marine Park. Under the *Great Barrier Reef Marine Park Act 1975* the State nominates one of the four members of the Authority. A Commonwealth/State Ministerial Council was established in 1979, under the Emerald Agreement, to oversee establishment of the Marine Park, research and field management. This agreement also provides for the operational day-to-day management of the Marine Park to be delivered by the Queensland Parks and Wildlife Service.

A collaborative approach has also been necessary due to jurisdictional issues. The Marine Park lies within both Commonwealth and Queensland coastal waters and, by agreement under the Offshore Constitutional Settlement, the Commonwealth has jurisdiction up to low water mark. This agreement also provides for Queensland management of the fisheries within its coastal waters, including the Marine Park. The Queensland coastal marine park covers areas between low and high water mark and areas recognised as Queensland 'internal waters'. Queensland national parks cover the State islands within the Marine Park. Around 1 per cent of the Great Barrier Reef World Heritage Area is constituted as Queensland marine and national parks.

Equally important are the many points of intersection in both policy and legislation that apply to the Marine Park and surrounding area, which require the two governments to work closely together. These areas include environment protection and impact assessments, marine park management, natural resource management, coastal development, heritage management, pollution, climate change, fishing and shipping. There are a number of matters affecting the Marine Park where assessments and permits are required from the Australian Government, Queensland and the Authority. A range of administrative arrangements have been put in place to minimise overlap and duplication from a stakeholder perspective. However, greater streamlining and integration is possible.

The *Great Barrier Reef Marine Park Act 1975* established the Great Barrier Reef Marine Park Authority as a statutory authority and body corporate. The Authority comprises the Chairperson, and a member nominated by Queensland and two other members. In addition, there is a statutory Consultative Committee in place to advise the Authority and the Minister for the Environment and Heritage. The Authority has also established a number of consultative committees, in particular, four Reef Advisory Committees and 11 Local Marine Advisory Committees. The Authority opened its headquarters in Townsville in 1979 and is supported by around 180 staff employed under the *Public Service Act 1999*. The Authority is subject to the *Commonwealth Authorities and Companies Act 1997*. It has an overall budget of \$38 million for 2005–06, which includes a \$4.8 million contribution from the Queensland Government for day-to-day management.

In the 30 years since the *Great Barrier Reef Marine Park Act 1975* came into force much has been achieved. The Act established the Authority and defined the boundaries of the Great Barrier Reef Region—the 'outer shell'—within which areas can be declared as marine park. Thus, the establishment of the Marine Park itself has been a major focus of the Authority and governments over this period. The first section of the Marine Park was proclaimed in 1979 and by 2001, 33 component sections had been defined and formally declared to be part of the Marine Park.

In July 2004, the *Great Barrier Reef Marine Park Zoning Plan 2003* consolidated the zoning of the Marine Park and significantly increased the area and level of protection. The 2003 Zoning Plan implemented the Representative Areas Programme and, in conjunction with associated State processes, has put in place a level of protection that will place the ecosystem in a strong position to maintain its resilience over the longer term. Such resilience will be of paramount importance in helping the Great Barrier Reef withstand the impacts of climate change in particular. This resilience can be eroded through the gradual accumulation of pressures on the ecosystem, for example, from poor water quality entering the waters of the Great Barrier Reef, poorly planned coastal development, unsustainable fishing or mounting demands on the Marine Park for recreational and commercial activities.

Whilst globally 27 per cent of coral reefs have already been lost to human impacts and coral bleaching, with many more under threat, the Great Barrier Reef is in relatively good shape. The Australian and Queensland governments are determined to keep it that way by being proactive and avoiding the

mistakes that have severely degraded many other coral systems around the world. This aspiration was universally shared in submissions to the Review. Nevertheless, managing and deciding between alternative uses of the Marine Park is likely to become much more challenging in the future. In meeting this challenge there will be a need to scientifically and transparently assess the overall level of protection of the Marine Park ecosystem and the likely social and economic impacts of any changes being considered. Comprehensive processes for engaging with stakeholders and clearly understood decision making will also be of paramount importance, as illustrated by the introduction of the 2003 Zoning Plan.

The 2003 Zoning Plan covers the entire Marine Park. Its development and implementation was an undertaking of considerable scale and scope with the potential to affect many local and regional communities and stakeholders. Indeed, nearly 32 000 submissions were made over the course of the development of the Plan. The final 2003 Zoning Plan drew both accolades and severe criticism in regard to the process and outcome. On the one hand, many stakeholders, including the tourism industry, scientific community, and shipping and maritime safety interests, considered that the Representative Areas Programme was well handled and produced a sound overall outcome. However, a number of other stakeholders, mainly recreational and commercial fishers and related businesses, disagreed with the Zoning Plan's scientific basis and considered that the process and approach were biased, with inadequate consideration of the impacts on individuals and communities. Indeed, the 2003 Zoning Plan has resulted in short-term adjustment pressures that have been locally quite intense, particularly as its introduction came at a time when businesses were also being impacted by a number of State fisheries management changes, State coastal marine park zoning changes and external market factors.

Whilst the Review Panel has not revisited the outcomes of the 2003 Zoning Plan itself, as this is outside the scope of the Review, the Zoning Plan process has been considered with a view to applying the lessons learnt to the future. The Review Panel considers that the Authority undertook extensive consultations and, in implementing the overarching operating principles of the Representative Areas Programme, sought to achieve a balanced outcome between alternative uses. However, it appears 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. Nevertheless, the Review Panel is of the view that the processes for engagement with all stakeholders can be improved. The Review Panel has made recommendations with regard to the need for transparent scientific and socio-economic analyses, consultation and measures which will improve the accountability of the Authority.

After 30 years of intense activity under the *Great Barrier Reef Marine Park Act 1975*, the establishment of the Marine Park has been completed and an effective operational and institutional framework for the management of the Park has been put in place. The current level of protection in place for the Marine Park provides a sound base for achieving a balance of commercial activities, while maintaining the health of the Great Barrier Reef in the future. However, the Review Panel considers that improvements can be made to increase the capacity of governments and the Authority to deliver the goal of the long-term protection of the Great Barrier Reef. This view is based on three considerations. Firstly, it recognises the importance of addressing the pressures on the Marine Park ecosystem in an integrated manner, including developments along the coast and in the catchments. Secondly, the maintenance of effective collaboration with the Queensland Government and its agencies is essential and needs to be underpinned by a more clearly articulated framework. Thirdly, there is a need for trends in the health of the Great Barrier Reef to be regularly reported and consideration of any changes in future planning and zoning arrangements to be undertaken in a robust, transparent and accountable way.

The Review Panel's recommendations are summarised below. They provide for enhancements to the governance arrangements, updating and streamlining the regulatory framework and ensuring effective engagement across all stakeholder groups.

The current suite of formal and informal agreements between governments would benefit from being updated and consolidated. Under such an integrated intergovernmental agreement, the Great Barrier Reef Ministerial Council would provide a forum for strategic oversight of Marine Park management and consideration of onshore and offshore issues affecting the Great Barrier Reef. Such issues include the challenges of catchments, coastal development and island management, and improving the coordination of management activities impacting fishing.

The long-term protection and management of the Great Barrier Reef is a complex and intensive task requiring an objective and expertise-based approach. The Review Panel is of the view that the original conception of there being a dedicated statutory authority responsible for advising and acting on behalf of the Australian Government in relation to management of the Great Barrier Reef Marine Park was well founded. A statutory authority allows for a focused, specialised and expertise-based approach to management, as well as providing a degree of independence from government, while being accountable to government. The Review Panel considers that the Authority should be constituted with a minimum of three statutory officeholders and a maximum of five. The officeholders should not be representational but appointed for their relevant expertise, with one member being nominated by the Queensland Government, as at present. An Advisory Board comprising members representing a broad range of interests would provide a further avenue for advice on specific issues to the Minister for the Environment and Heritage.

The Authority should remain as a body corporate so as to provide for collective decision making. However, as a 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.

The Authority will need to focus on the day-to-day management of the Marine Park on an ecosystem basis, on facilitating multiple use and on ensuring that longer-term issues are effectively and accountably addressed. To undertake these things effectively, more attention needs to be given to monitoring the use of the Marine Park and the performance of management measures, assessing future risks and pressures, and analysing biophysical, social and economic factors necessary to support consideration of any changes to the level, area or type of protection.

Given the degree of interest in, and concern about, the level of protection of the Great Barrier Reef, the Review Panel recommends that information gained from this monitoring, assessment and analysis should be drawn together and published as the '*Great Barrier Reef Marine Park Outlook Report*' on a five-yearly basis in order to better inform the public and decisions on management.

To a large extent the concerns raised by stakeholders in regard to the 2003 Zoning Plan process arise from disagreement with the scientific underpinning, and perceptions of a lack of transparency, accountability and due process. While not sharing all these concerns, the Review Panel proposes that any future zoning arrangements be undertaken following approval of the process and operational principles by the Minister, that they allow for extended public consultation and that they be based on substantive socio-economic and biophysical information. In addition, the Review Panel considers that it is important that the 2003 Zoning Plan remain in place for a period that provides stability for business and the community and is long enough for the ecosystem to respond. The Panel also considers it important that information on the nature of that response is available through the five-yearly *Outlook Reports*.

The *Great Barrier Reef Marine Park Act 1975* has served its purpose well and the legislation remains sound. However, there are three areas that need to be addressed to meet future requirements. Firstly, the Act needs to be brought up to date and better aligned with the *Environment Protection and*

Biodiversity Conservation Act 1999. Secondly, it is important that issues arising from overlaps and gaps in Commonwealth and Queensland legislation are addressed to deliver streamlined and consistent environmental impact assessment, approval and permit processes for business and the community. Thirdly, the compliance provisions in the *Great Barrier Reef Marine Park Act 1975* are less robust than in its more modern counterpart, the *Environment Protection and Biodiversity Conservation Act 1999*.

The Review Panel has provided a number of proposals aimed at modernising the *Great Barrier Reef Marine Park Act 1975*, including that the objects of the Act incorporate contemporary concepts such as ecologically sustainable development and improved recognition of the Authority's role in helping Australia meet its obligations under the World Heritage Convention. In regard to enforcement and compliance, the current provisions are not consistent with the *Environment Protection and Biodiversity Conservation Act 1999*. The enforcement provisions of the *Great Barrier Reef Marine Park Act 1975* are broad and this is a highly technical area. Therefore, rather than making specific recommendations, the Review Panel considers that this area requires detailed and expert consideration, and recommends that the enforcement and compliance powers of the Act be reviewed to ensure consistency with the *Environment Protection and Biodiversity Conservation Act 1999* and that the Authority is appropriately positioned to effectively manage the Marine Park.

The Review Panel, in considering the interaction between the *Great Barrier Reef Marine Park Act 1975* and the *Environment Protection and Biodiversity Conservation Act 1999*, has concluded that it is appropriate to maintain a separate Act relating to the Great Barrier Reef. Whilst both Acts do have a range of issues in common, the *Great Barrier Reef Marine Park Act 1975* applies uniformly to both Queensland and Commonwealth waters within the Great Barrier Reef Region, but the *Environment Protection and Biodiversity Conservation Act 1999* does not. Another important difference is that the *Great Barrier Reef Marine Park Act 1975* reflects and implements a cooperative approach to management agreed between the Australian and Queensland governments.

The Review Panel recommendations are designed to ensure that the two Acts do not unnecessarily duplicate each other and operate in a cohesive and integrated manner. It is proposed that the *Environment Protection and Biodiversity Conservation Act 1999* provide the overarching basis for environmental impact and assessment and for approval of activities affecting the Marine Park. Under this approach, responsibility for assessment and approval under the *Environment Protection and Biodiversity Conservation Act 1999*, where the activity is within the Marine Park, would generally remain with the Authority. This would remove regulatory duplication in a key area and allow the comprehensive, transparent and robust environmental impact assessment processes and requirements of the *Environment Protection and Biodiversity Conservation Act 1999* to be employed. The Authority would continue to perform its normal regulatory permitting functions.

After 30 years of intense activity under the *Great Barrier Reef Marine Park Act 1975*, the establishment of the Marine Park has been completed and an effective framework for the management of the Marine Park has been put in place. The level of protection in place for the Park provides a sound base for maintaining the health of the Great Barrier Reef in the future. This will require effective collaboration between the Australian and Queensland governments, particularly as many of the issues impacting on the Marine Park are external to the Park. The recommendations of the Review Panel seek to improve the capability to address these future challenges through updating the consultative arrangements between the Australian and Queensland governments and adjusting elements of the regulatory framework, whilst strengthening the transparency and accountability of decision making affecting the protection and use of the Marine Park.