

2016-2017

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Great Barrier Reef Marine Park
Amendment (Authority Governance and
Other Matters) Bill 2017**

No. , 2017

(Environment and Energy)

**A Bill for an Act to amend the *Great Barrier Reef
Marine Park Act 1975*, and for related purposes**

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A Bill for an Act to amend the *Great Barrier Reef Marine Park Act 1975*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Great Barrier Reef Marine Park Amendment (Authority Governance and Other Matters) Act 2017*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2	The day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Authority governance

Part 1—Main amendments

Great Barrier Reef Marine Park Act 1975

1 Subsection 3(1)

Insert:

CEO means the Chief Executive Officer of the Authority.

member of the governing body of a relevant interest group has the meaning given by subsection 10(10).

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

2 Subsection 3(1) (definition of *part-time member*)

Repeal the definition, substitute:

part-time member means a member appointed under subsections 10(2) and (2A).

3 Paragraph 6(2)(b)

Omit “Chairperson”, substitute “CEO”.

4 After subparagraph 6(2)(c)(i)

Insert:

(ia) the CEO;

5 Subsection 7A(8)

Omit “Chairperson”, substitute “CEO”.

6 Subsection 8(1) (note)

Omit “Chairperson”, substitute “CEO”.

7 Section 8B (heading)

Repeal the heading, substitute:

8B CEO not subject to direction by Authority on certain matters

8 Section 8B

Omit “Chairperson”, substitute “CEO”.

9 Section 8B

Omit “Chairperson’s”, substitute “CEO’s”.

10 Paragraph 10(1)(b)

Repeal the paragraph, substitute:

- (b) the CEO;
- (c) 5 other members.

11 Subsection 10(2)

Repeal the subsection, substitute:

- (2) A member, other than the CEO, is to be appointed by the Governor-General by written instrument.

(2A) A member, other than the CEO, is appointed on a part-time basis.

12 Subsection 10(3)

After “part-time members”, insert “(other than the Chairperson)”.

13 Subsections 10(6) to (8)

Repeal the subsections, substitute:

- (6) A person is not eligible for appointment as a part-time member of the Authority unless the Governor-General is satisfied that the person is suitably qualified for appointment because of significant knowledge of, or significant experience concerning, one or more of the following fields:
 - (a) science (including one or more fields related to climate change, marine science, coastal ecology, fisheries, social sciences or engineering);
 - (b) natural resource management;
 - (c) Indigenous matters relating to the Marine Park;
 - (d) the tourism industry associated with the Marine Park;
 - (e) business or industry;

- (f) resource economics;
 - (g) public sector governance;
 - (h) regulation;
 - (i) education or communications;
 - (j) strategic management.
- (7) At least one part-time member must be an Indigenous person who qualifies under paragraph (6)(c).
- (8) At least one part-time member must be a person who qualifies under paragraph (6)(d).
- (9) A person is not eligible for appointment as a part-time member of the Authority if, at the time of appointment, the person is a member of the governing body of a relevant interest group.
- (10) A person is a ***member of the governing body of a relevant interest group*** if:
- (a) the person is involved in the management of another entity (whether incorporated or otherwise); and
 - (b) the other entity represents one or more groups of people who:
 - (i) are directly involved in advocating about the management of the Marine Park; or
 - (ii) use the Marine Park for commercial purposes.

14 Sections 11 to 14

Repeal the sections, substitute:

11 Period of appointment of part-time members of Authority

- (1) A part-time member holds office for the period specified in the instrument of appointment. The period of appointment must not exceed 5 years.

Note: A member of the Authority may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) A person must not hold office as a part-time member for a continuous period exceeding 10 years.

- (3) For the purposes of subsection (2), any period when a person holds an acting appointment as a part-time member of the Authority under subsection 15(3) is to be disregarded.

12 Remuneration and allowances of part-time members of Authority

- (1) A part-time member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a part-time member is to be paid the remuneration that is prescribed by an instrument under subsection (4).
- (2) A part-time member is to be paid the allowances that are prescribed by an instrument under subsection (4).
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Minister may, by legislative instrument, prescribe:
- (a) remuneration for the purposes of subsection (1); and
 - (b) allowances for the purposes of subsection (2).

13 Leave of absence for part-time members of Authority

Chairperson

- (1) The Minister may grant leave of absence to the Chairperson on the terms and conditions that the Minister determines.

Other part-time members

- (2) The Chairperson may grant leave of absence to any other part-time member on the terms and conditions that the Chairperson determines.
- (3) The Chairperson must notify the Minister if the Chairperson grants a part-time member leave of absence for a period that exceeds 3 months.

14 Resignation of part-time members of Authority

- (1) A part-time member may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

15 Subsections 15(1) and (3) (note)

Omit “section 33A”, substitute “sections 33AB and 33A”.

16 After subsection 15(3)

Insert:

- (4) A person is not eligible for appointment to act as a part-time member unless the person is eligible for appointment as a part-time member of the Authority under subsections 10(6) and (9).

17 Subsection 15(5)

Repeal the subsection.

18 After section 15

Insert:

15A Outside employment

A part-time member must not engage in any paid work that, in the Minister’s opinion, conflicts or could conflict with the proper performance of his or her duties.

15B Member of governing body of a relevant interest group

A part-time member must not be a member of the governing body of a relevant interest group.

Note: For when an individual is a member of the governing body of a relevant interest group, see subsection 10(10).

19 Section 16

Repeal the section, substitute:

16 Termination of appointment of part-time members of Authority

- (1) The Governor-General may terminate the appointment of a part-time member:
 - (a) for misbehaviour; or
 - (b) if the member is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of a part-time member if:
 - (a) the part-time member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the part-time member is absent, except on leave of absence, from 3 consecutive meetings of the Authority; or
 - (c) the part-time member engages in paid work that, in the Minister's opinion, conflicts or could conflict with the proper performance of his or her duties (see section 15A); or
 - (d) the part-time member becomes a member of the governing body of a relevant interest group (see section 15B); or
 - (e) the Minister is satisfied that the performance of the part-time member has been unsatisfactory for a significant period; or
 - (f) the part-time member fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

20 Subsections 16A(1) and (3)

Omit "a member", substitute "a part-time member".

21 After section 16A

Insert:

16B Other terms and conditions

A part-time member of the Authority holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

22 Subsection 17(3)

Repeal the subsection, substitute:

(3) At a meeting of the Authority, 4 members constitute a quorum.

(3A) However, if:

- (a) a member of the Authority is required by the rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of the Authority with respect to a particular matter; and
- (b) when the member leaves the meeting concerned there is no longer a quorum present;

the remaining members at the meeting constitute a quorum for the purpose of any deliberation or decision at the meeting with respect to that matter.

23 Subsections 17(6) to (10)

Repeal the subsections, substitute:

- (6) At a meeting of the Authority, a question is decided by a majority of the votes of the members of the Authority present and voting.
- (7) The person presiding at the meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (8) The Authority must keep minutes of its meetings.

24 At the end of Part III

Add:

19 Other matters

The Authority may, subject to this Part, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which the members of the Authority may participate in meetings.

25 Before section 40

Insert:

Division 1—Chief Executive Officer of Authority

39ZJ Establishment

There is to be a Chief Executive Officer of the Great Barrier Reef Marine Park Authority.

39ZK Role

- (1) The CEO is responsible for the day-to-day administration of the Authority.
- (2) The CEO may do all things that are necessary or convenient to be done for or in connection with the performance of his or her duties.
- (3) The CEO must act in accordance with policies determined by the Authority.
- (4) The Authority may give written directions to the CEO about the performance of the CEO's responsibilities.

Note: The Authority cannot give a direction in relation to the CEO's functions or powers under the *Public Governance, Performance and Accountability Act 2013* or the *Public Service Act 1999*: see section 8B of this Act.

- (5) The CEO must comply with a direction under subsection (4).
- (6) A direction under subsection (4) is not a legislative instrument.

39ZL Appointment

- (1) The CEO is to be appointed by the Governor-General by written instrument.
- (2) The CEO is to be appointed on a full-time basis.

- (3) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The CEO may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (4) A person must not hold office as the CEO for a continuous period exceeding 10 years.
- (5) For the purposes of subsection (4), any period when a person holds an acting appointment as CEO under section 39ZM is to be disregarded.
- (6) A person is not eligible for appointment as the CEO if, at the time of appointment, the person is a member of the governing body of a relevant interest group.

Note: For when an individual is a member of the governing body of a relevant interest group: see subsection 10(10).

39ZM Acting appointments

The Minister may, by written instrument, appoint a person to act as the CEO:

- (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

39ZN Remuneration and allowances of CEO

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by an instrument under subsection (4).
- (2) The CEO is to be paid the allowances that are prescribed by an instrument under subsection (4).

- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Minister may, by legislative instrument, prescribe:
 - (a) remuneration for the purposes of subsection (1); and
 - (b) allowances for the purposes of subsection (2).

39ZP Leave of absence of CEO

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

39ZQ Outside employment

The CEO must not engage in paid work outside the duties of his or her office without the Minister's approval.

39ZR Member of governing body of a relevant interest group

The CEO must not be a member of the governing body of a relevant interest group.

Note: For when an individual is a member of the governing body of a relevant interest group: see subsection 10(10).

39ZS Resignation of CEO

- (1) The CEO may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

39ZT Termination of appointment

- (1) The Governor-General may terminate the appointment of the CEO:
 - (a) for misbehaviour; or
-

- (b) if the CEO is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of the CEO if:
- (a) the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the CEO engages, except with the Minister's approval, in paid work outside the duties of his or her office (see section 39ZQ); or
 - (d) the CEO becomes a member of the governing body of a relevant interest group (see section 39ZR); or
 - (e) the Minister is satisfied that the performance of the CEO has been unsatisfactory for a significant period; or
 - (f) the CEO fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

39ZU Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Division 2—Staff and inspectors

26 Paragraphs 40(2)(a) and (b)

Omit “Chairperson” (wherever occurring), substitute “CEO”.

27 Before section 46

Insert:

Division 3—Delegations

28 After paragraph 47(1)(a)

Insert:

(aa) the CEO;

29 Section 48 (heading)

Repeal the heading, substitute:

48 Delegation by CEO

30 Before subsection 48(1)

Insert:

(1AA) The CEO may, by signed writing, delegate a power or function of the CEO under this Act to a member of the staff of the Authority who:

(a) is an SES employee or an acting SES employee; or

(b) holds, or is acting, in an Executive Level 2, or equivalent, position.

31 Subsections 48(1) and (2)

Omit “Chairperson” (wherever occurring), substitute “CEO”.

32 After subsection 48(3)

Insert:

(3A) In exercising powers or performing functions under a delegation, the delegate must comply with any directions of the CEO.

33 Subsections 48(4) and (5)

Omit “Chairperson” (wherever occurring), substitute “CEO”.

34 Sections 53 and 53A

Omit “Chairperson”, substitute “CEO”.

35 Paragraphs 59F(7)(b) and (c)

Repeal the paragraphs, substitute:
(b) the CEO;

36 Section 61AMA

Omit “Chairperson” (wherever occurring), substitute “CEO”.

37 Subsections 61AMB(4) and (5)

Omit “Chairperson” (wherever occurring), substitute “CEO”.

38 Subsections 61AMC(1), (2), (3) and (4)

Omit “Chairperson”, substitute “CEO”.

Part 2—Consequential amendments

Environment Protection and Biodiversity Conservation Act 1999

**39 Subsection 486E(2) (paragraph (d) of the definition of
official)**

Omit “Chairperson”, substitute “Chief Executive Officer”.

40 Paragraph 515AA(1)(b)

Omit “Chairperson”, substitute “Chief Executive Officer”.

41 Paragraph 515AB(1)(b)

Omit “Chairperson”, substitute “Chief Executive Officer”.

42 Subparagraph 17(3)(c)(i) of Schedule 1

Omit “Chairperson”, substitute “Chief Executive Officer”.

43 Paragraph 38(3)(b) of Schedule 1

Omit “Chairperson”, substitute “Chief Executive Officer”.

44 Subclause 38(4) of Schedule 1

Omit “Chairperson”, substitute “Chief Executive Officer”.

Part 3—Application and transitional provisions

45 Interpretation

In this Part:

Authority means the Great Barrier Reef Marine Park Authority.

commencement day means the day on which this Schedule commences.

Minister means the Minister responsible for administering the *Great Barrier Reef Marine Park Act 1975*.

46 Period of appointment

Subsections 11(2) and (3) of the *Great Barrier Reef Marine Park Act 1975*, as in force on or after the commencement day, apply in relation to a member of the Authority whether the member's continuous period of office starts before or after the commencement day.

47 Conditions of appointment

Sections 15A, 15B, 16 and 16B of the *Great Barrier Reef Marine Park Act 1975*, as in force on or after the commencement day, apply in relation to a member of the Authority whether the member was appointed before or after the commencement day.

48 References in certain instruments to the Chairperson of Authority

- (1) This item applies to an instrument that:
 - (a) is in force immediately before the commencement day; and
 - (b) contains a reference to the Chairperson of the Authority:
 - (i) as the accountable authority of the Authority under the *Public Governance, Performance and Accountability Act 2013*; or
 - (ii) as the Head of the Statutory Agency constituted under paragraph 40(2)(a) of the *Great Barrier Reef Marine Park Act 1975*.
- (2) A reference in an instrument to which this item applies to the Chairperson of the Authority has effect, on and after the

commencement day, as if it were a reference to the CEO of the Authority.

- (3) This item does not apply to an instrument excluded from the operation of this item by rules made under item 49.
- (4) In this item:
instrument includes:
 (a) a contract, undertaking, deed or agreement; or
 (b) a notice, authority, order or instruction; or
 (c) an instrument made under an Act or a legislative instrument;
but does not include an Act.

49 Transitional rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including any saving or application provisions) relating to the amendments or repeals made by this Act.
- (2) Without limiting subitem (1), rules may be made for the purposes of subitem 48(3).
- (3) To avoid doubt, the rules may not do any of the following:
 (a) create an offence or civil penalty;
 (b) provide powers of:
 (i) arrest or detention; or
 (ii) entry, search or seizure;
 (c) impose a tax;
 (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 (e) directly amend the text of this Act.

Schedule 2—Powers of zoning plans and plans of management

Part 1—Amendments

Great Barrier Reef Marine Park Act 1975

1 After section 35D

Insert:

35DA Power of zoning plans

- (1) A zoning plan may provide in relation to a matter by providing that the regulations, or any other legislative instrument, provide in relation to that matter.
- (2) To avoid doubt, a reference to a zoning plan in this Part (except subsections 32B(2) and 35A(1)) does not include a reference to regulations, or another legislative instrument, covered by subsection (1) of this section.

2 After section 39ZF

Insert:

39ZFA Power of plans of management

- (1) A plan of management may provide in relation to a matter by providing that the regulations, or any other legislative instrument, provide in relation to that matter.
- (2) To avoid doubt, a reference to a plan of management in this Part (except section 39W) does not include a reference to regulations, or another legislative instrument, covered by subsection (1) of this section.

3 Subsection 66(1)

After “a zoning plan”, insert “(disregarding regulations made for the purposes of subsection 35DA(1))”.

4 At the end of subsection 66(1)

Add:

Note: The regulations may provide for a matter that a zoning plan or plan of management may otherwise provide for (see sections 35DA and 39ZFA. See also subsections (4) and (4A) of this section).

5 After paragraph 66(2)(ba)

Insert:

(bb) providing that zoning plans or plans of management may provide in relation to a matter in relation to which the regulations may provide;

Part 2—Application and transitional provisions

6 Definitions

In this Part:

affected order means:

- (a) either:
 - (i) an order purportedly made, before the commencement of this Part, in relation to any pre-commencement GBRMPA instrument; or
 - (ii) an order purportedly made, before the commencement of this Part, on appeal from, or review of, an order referred to in subparagraph (i); or
- (b) if, before the commencement of this Part, a court or Registrar purported to vary, revoke, set aside, revive or suspend an order referred to in paragraph (a)—an order in the form in which, and to the extent to which, it purports or purported to have effect from time to time.

pre-commencement GBRMPA instrument means any of the following instruments as in force under the *Great Barrier Reef Marine Park Act 1975* at any time before the commencement of this Part:

- (a) any zoning plan;
- (b) any plan of management;
- (c) any regulations.

7 Application of amendments

The amendments of the *Great Barrier Reef Marine Park Act 1975* made by Part 1 of this Schedule apply in relation to:

- (a) any zoning plan; and
- (b) any plan or management; and
- (c) any regulations;

made under that Act, whether before or after the commencement of this Part.

8 Instruments made before commencement etc.

- (1) A pre-commencement GBRMPA instrument is, and is taken to always have been, as valid as the instrument would have been if the instrument had been made under the *Great Barrier Reef Marine Park Act 1975* as amended by Part 1 of this Schedule.
- (2) Any thing done before the commencement of this Part under a pre-commencement GBRMPA instrument is, and is taken always to have been, as valid as it would have been if the instrument had been valid.

9 Rights and liabilities of persons

- (1) Subject to subitems (3) and (4), the rights and liabilities of all persons are, by force of this item, declared to be, and always to have been, the same as if each pre-commencement GBRMPA instrument had always been valid.
- (2) Without limiting the effect of subitem (1):
 - (a) all persons are, by force of this item, declared to be, and always to have been, entitled to act on the basis that other persons had, and have, the rights and liabilities as declared by subitem (1); and
 - (b) a right or liability that a person is declared by subitem (1) to have, or to have had:
 - (i) is exercisable or enforceable; and
 - (ii) is to be regarded as always having been exercisable or enforceable;as if each pre-commencement GBRMPA instrument had always been valid; and
 - (c) the rights and liabilities that a person is declared by subitem (1) to have, or to have had, include any right the person would have or have had to appeal, or to seek review of, an affected order, if each pre-commencement GBRMPA instrument had always been valid.

Effect on proceedings

- (3) This item does not affect rights or liabilities of parties to proceedings for which leave to appeal to the High Court has been given on or before

the day this Part commences, to the extent that the fact a pre-commencement GBRMPA instrument was not valid is in issue in the proceedings.

- (4) Nothing in this item is intended to affect the jurisdiction of the High Court under section 75 of the Constitution.

10 Compensation for acquisition of property

- (1) If the operation of this Part would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in any of the following courts for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines:
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit Court of Australia;
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under the *Great Barrier Reef Marine Park Act 1975*.

11 Evidence

The court record, or a copy of the court record, of an affected order may be adduced in evidence to show the existence, nature and extent of an order-based right or liability.

12 Part does not apply to certain orders

Nothing in this Part applies to an order declared or held to be invalid, or to have been made without power, by a court before the commencement of this Part.