

WESTERN AUSTRALIA

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**FISHING AND RELATED  
INDUSTRIES COMPENSATION  
(MARINE RESERVES) ACT 1997**

**(No. 39 of 1997)**

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ARRANGEMENT

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**FISHING AND RELATED  
INDUSTRIES COMPENSATION  
(MARINE RESERVES) ACT 1997**

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No. 39 of 1997

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**AN ACT to provide for the payment of compensation to holders of leases, licences and permits under the *Fish Resources Management Act 1994* and *Pearling Act 1990* on account of the effect of marine nature reserves and marine parks constituted under the *Conservation and Land Management Act 1984*, and for related matters, and to make consequential amendments to the —**

- ***Fish Resources Management Act 1994*; and**
- ***Fisheries Adjustment Schemes Act 1987*.**

[Assented to 2 December 1997.]

The Parliament of Western Australia enacts as follows:

**Short title**

1. This Act may be cited as the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997*.

**Commencement**

2. This Act comes into operation on —

- (a) the day of the coming into operation of section 10 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) the day on which this Act receives the Royal Assent,

whichever is later.

**Definitions**

3. (1) In this Act, unless the contrary intention appears —

“**affected person**” means a person who suffers loss as referred to in section 5;

“**authorization**” means —

- (a) an aquaculture lease;
- (b) an aquaculture licence;
- (c) a commercial fishing licence;
- (d) a fishing boat licence;
- (e) a fish processor’s licence;
- (f) a managed fishery licence;
- (g) an interim managed fishery permit;

- (h) a farm lease;
- (i) a hatchery licence;
- (j) a hatchery permit;
- (k) a pearling licence; or
- (l) a pearling permit;

**“CALM Act”** means the *Conservation and Land Management Act 1984*;

**“CALM Minister”** means the Minister administering the CALM Act;

**“commercial activity”** means —

- (a) aquaculture;
- (b) commercial fishing;
- (c) pearling; or
- (d) hatchery activity;

**“management plan”** has the same meaning as it has in the CALM Act;

**“Minister”** means the Minister administering the *Fish Resources Management Act 1994*;

**“relevant event”** means an event referred to in section 4;

**“Tribunal”** means the Fisheries Adjustment Compensation Tribunal established under section 140 of the *Fisheries Adjustment Schemes Act 1987*.

(2) Subject to subsection (1), an expression that is given a meaning by the *Fish Resources Management Act 1994* or the *Pearling Act 1990* has the same meaning in this Act.

#### **Events that can give rise to compensation**

**4.** The following events can cause an entitlement to compensation under this Act to arise —

- (a) the coming into operation of section 10 of the *Acts Amendment (Marine Reserves) Act 1997*;
- (b) the coming into operation of an order under section 13 (1) of the CALM Act constituting or adding to a marine nature reserve or marine park;
- (c) the coming into operation under Division 1 of Part V of the CALM Act of —
  - (i) an amendment to a management plan; or
  - (ii) a substituted management plan,so that the renewal of an authorization would no longer be consistent with a management plan;
- (d) the classification of an area of a marine park by notice under section 62 of the CALM Act as —
  - (i) a sanctuary area;
  - (ii) a recreation area; or
  - (iii) a special purpose area which, or that part of a special purpose area which, the CALM Minister has declared in the notice to be an area where a commercial activity specified in the notice would be incompatible with a conservation purpose specified in the notice.

**Compensation for loss suffered**

5. (1) A person who holds an authorization is entitled to fair compensation for any loss suffered by the person as a result of a relevant event.

(2) For the purposes of subsection (1) a person suffers loss if and only if the market value of the authorization held by the person is reduced because —

- (a) the authorization will not be able to be renewed;
- (b) the authorization relates to an area and will only be able to be renewed in respect of a part of that area;
- (c) the authorization relates to an area and will only be able to be renewed in respect of another area;
- (d) the authorization relates to an area and will not be able to be renewed in relation to that area without the recommendations of the CALM Minister being taken into account under section 94 (3) (d) or 98A (2) (d) of the *Fish Resources Management Act 1994* or section 27A (2) (d) or 27B (2) (d) of the *Pearling Act 1990*;
- (e) an area will not be available for commercial fishing after the renewal of the authorization; or
- (f) in the case of a fishing boat licence or a fish processor's licence, an area used for fishing under one or more associated or relevant commercial fishing licences, managed fishery licences or interim managed fishery permits (the “**related authorizations**”) will not be available for commercial fishing after the renewal of the related authorizations.

(3) For the purposes of subsection (1) the amount of any loss suffered by a person is limited to the amount of the reduction in market value referred to in subsection (2) and in determining —

- (a) whether any such reduction has occurred; and

(b) the amount of any such reduction,

account is to be taken of whether such a reduction has been offset or mitigated by an increase in the market value of the authorization as a result of a voluntary or compulsory fisheries adjustment scheme established under the *Fisheries Adjustment Schemes Act 1987* because of the relevant event.

(4) If the transfer of an authorization is liable to be refused under section 140 (2) (b) of the *Fish Resources Management Act 1994*, the market value of the authorization is to be assessed, for the purposes of this section, as if the authorization were fully transferable.

(5) Subsection (2) (e) does not apply to a person unless the person obtains a certificate from the Executive Director stating that, in the Executive Director's opinion, the history of the authorization shows that the area has been fished under the authorization on a long term and consistent basis.

(6) Subsection (2) (f) does not apply to a person unless the person obtains a certificate from the Executive Director stating that, in the Executive Director's opinion, the histories of the related authorizations show that the area has been fished under those authorizations on a long term and consistent basis.

(7) In the event of the Executive Director not issuing a certificate under subsection (5) or (6) within the prescribed time after being asked by a person to do so, the person may apply to the Minister to have the matter reviewed.

(8) If the Minister receives an application under subsection (7), the Minister is to direct the Executive Director to review the matter within the time specified in the direction.

(9) The Executive Director must, within the time specified in the direction —

(a) review the matter; and

- (b) either issue a certificate to the applicant under subsection (5) or (6) (whichever is applicable) or advise the applicant in writing of the reasons for not doing so.

### **Notification of affected persons**

**6.** (1) The Minister must, as soon as practicable after a relevant event occurs, cause notice to be published informing affected persons —

- (a) that the relevant event has occurred;
- (b) of the nature of the relevant event;
- (c) that affected persons may apply to the Minister for compensation; and
- (d) of how, when and in what form affected persons may make an application referred to in paragraph (c).

(2) Notice under this section is to be published —

- (a) in a newspaper, or in a fishing magazine, circulating generally in the State; or
- (b) in such other manner as is prescribed.

(3) If this Act comes into operation after the event referred to in section 4 (a), this section must be complied with in relation to that event as soon as practicable after the coming into operation of this Act.

### **Application for compensation**

**7.** (1) A person who claims to be an affected person may apply to the Minister for compensation.



(2) An application under subsection (1) must be made in the manner and form, and within the period, specified in the notice under section 6.

### **Determination of entitlement**

**8.** (1) Within 30 days after receiving an application from a person under section 7 (1) the Minister is to advise the person in writing as to whether or not the Minister considers that the person is entitled to compensation under this Act.

(2) If a person —

- (a) receives advice from the Minister under subsection (1) that the Minister does not consider that the person is entitled to compensation under this Act; or
- (b) does not receive advice from the Minister within the period specified in subsection (1),

the person may apply to the Tribunal to determine whether or not the person is entitled to compensation under this Act and, if so, the amount of the compensation payable to the person.

(3) An application to the Tribunal under subsection (2) cannot be made later than 21 days after the advice is received or the period expires, as the case may be.

### **Agreement as to amount of compensation**

**9.** (1) If the Minister advises a person under section 8 (1) that the Minister considers that the person is entitled to compensation under this Act, the Minister is to conduct negotiations with the person with a view to settling the amount of compensation payable to the person.

(2) If the amount of compensation is agreed under subsection (1) the Minister is to enter into an agreement with the person setting out the terms of the agreement.

**Application to Tribunal if no agreement**

**10.** (1) An affected person or the Minister may apply to the Tribunal to determine the amount of compensation payable to the person if an agreement relating to the amount of compensation payable to the person has not been entered into under section 9 within 60 days of the person receiving advice under section 8 (1) that the Minister considers that the person is entitled to compensation under this Act.

(2) An application to the Tribunal under subsection (1) may be made at any time after the expiration of the period specified in that subsection.

**Agreement may be entered into despite proceedings**

**11.** The Minister may enter into an agreement with an affected person as to the amount of compensation payable to the person even though proceedings have been instituted before the Tribunal under section 8 or 10.

**Minister to give effect to agreement or determination**

**12.** (1) If —

- (a) the Minister and an affected person have entered into an agreement as to the amount of compensation payable to the person; or
- (b) the Tribunal has determined the amount of compensation payable to an affected person,

the Minister is to pay the amount of compensation to the person.

(2) Compensation is to be paid out of moneys that have been —

- (a) appropriated for the purposes of this Act; and
- (b) credited to the Fisheries Research and Development Fund continued under section 238 of the *Fish Resources Management Act 1994*.

### **Regulations**

**13.** The Governor may make regulations prescribing all matters that by this Act are permitted to be prescribed or that are necessary or convenient to be prescribed for giving effect to this Act.

### **Consequential amendments to other Acts**

**14.** The Acts referred to in Schedule 1 are amended as set out in that Schedule.

**SCHEDULE 1 — CONSEQUENTIAL AMENDMENTS TO  
OTHER ACTS**

[Section 14]

1. *Fish Resources Management Act 1994*

After section 238 (5) (k) insert the following paragraph —

“  
(ka) in payment of compensation under section 12 of the  
*Fishing and Related Industries Compensation (Marine  
Reserves) Act 1997* and of the costs of administering  
that Act;  
”

In section 246 (1) insert after “this Act” the following —

“  
or any other Act relating to the fishing industry or the  
pearling industry  
”

In section 246 (5) (c) delete “this Act” and substitute the  
following —

“ the Act under which the function is conferred ”.

2. *Fisheries Adjustment Schemes Act 1987*

In section 3 (1) insert after the definition of “committee” the  
following —

“  
“**Compensation Act**” means the *Fishing and Related  
Industries Compensation (Marine Reserves) Act 1997*;  
”

In section 6 insert after “6.” the following —

“ (1) ”.

At the end of section 6 insert the following —

“  
(2) In the case of a scheme established because of a  
relevant event as defined in the *Fishing and Related  
Industries Compensation (Marine Reserves) Act 1997*, a  
payment or purchase under subsection (1) (a), (aa) or (b) is  
to be made from moneys appropriated for the purposes of  
this subsection.  
”

In section 14S insert after “14L” the following —

“ or under section 8 or 10 of the Compensation Act ”.

In section 14ZA insert after “Act” the following —

“ or the Compensation Act ”.

In section 14ZB insert after “this Act” the following —

“ and the Compensation Act ”.

In clause 8 (3) (b) of Schedule 1 insert after “Act” the following —

“ or the Compensation Act ”.