



Western Australia

## **Fishing and Related Industries Compensation (Marine Reserves) Act 1997**

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# **Fishing and Related Industries Compensation (Marine Reserves) Act 1997**

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## **Fishing and Related Industries Compensation (Marine Reserves) Act 1997**

**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*<sup>2</sup>; and  
*Fisheries Adjustment Schemes Act 1987*<sup>2</sup>.**

### **1. Short title**

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

### **2. Commencement**

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<sup>1</sup>.

### **3. Definitions**

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

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

***authorisation*** 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.

- (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.

*[Section 3 amended by No. 55 of 2004 s. 403.]*

**4. Events that can give rise to compensation**

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 authorisation 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.

**5. Compensation for loss suffered**

- (1) A person who holds an authorisation 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 authorisation held by the person is reduced because —

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- (a) the authorisation will not be able to be renewed;
  - (b) the authorisation relates to an area and will only be able to be renewed in respect of a part of that area;
  - (c) the authorisation relates to an area and will only be able to be renewed in respect of another area;
  - (d) the authorisation 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 authorisation; 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 authorisations***) will not be available for commercial fishing after the renewal of the related authorisations.
- (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 authorisation 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 authorisation is liable to be refused under section 140(2)(b) of the *Fish Resources Management Act 1994*,



the market value of the authorisation is to be assessed, for the purposes of this section, as if the authorisation were fully transferable.

- (5) Subsection (2)(e) does not apply to a person unless the person obtains a certificate from the CEO stating that, in the CEO's opinion, the history of the authorisation shows that the area has been fished under the authorisation 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 CEO stating that, in the CEO's opinion, the histories of the related authorisations show that the area has been fished under those authorisations on a long term and consistent basis.
- (7) In the event of the CEO 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 CEO to review the matter within the time specified in the direction.
- (9) The CEO 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.

*[Section 5 amended by No. 28 of 2006 s. 230.]*

## **6. Notification of affected persons**

- (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;

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- (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.

**7. Application for compensation**

- (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.

**8. Determination of entitlement**

- (1) Within 30 days after receiving an application from a person under section 7(1) the Minister is to decide whether or not the person is entitled to compensation under this Act and advise the person in writing of the decision.
- (1a) A person who receives advice from the Minister under subsection (1) that the person is not entitled to compensation under this Act may apply to the State Administrative Tribunal for a review of the decision.
- (2) If a person does not receive advice from the Minister within the period specified in subsection (1), the person may apply to the

State Administrative Tribunal to determine whether or not the person is entitled to compensation under this Act.

- (3) An application to the Tribunal under subsection (1a) or (2) cannot be made later than 21 days after the advice is received or the period expires, as the case may be.

*[Section 8 amended by No. 55 of 2004 s. 404.]*

**9. Agreement as to amount of compensation**

- (1) If the Minister advises a person under section 8(1), or the State Administrative Tribunal determines, 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.

*[Section 9 amended by No. 55 of 2004 s. 405.]*

**10. Application to Tribunal if no agreement**

- (1) An affected person or the Minister may apply to the State Administrative 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, or of the State Administrative Tribunal determining that, the person is entitled to compensation under this Act.
- (2) An application to the State Administrative Tribunal under subsection (1) may be made at any time after the expiration of the period specified in that subsection.

*[Section 10 amended by No. 55 of 2004 s. 406.]*

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**11. Agreement may be entered into despite proceedings**

The Minister may enter into an agreement with an affected person as to the amount of compensation payable to the person even though an application has been made under section 8 or 10 to the State Administrative Tribunal.

*[Section 11 amended by No. 55 of 2004 s. 407.]*

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

(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 State Administrative 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*.

*[Section 12 amended by No. 55 of 2004 s. 408.]*

**13. Regulations**

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.

*[14. Omitted under the Reprints Act 1984 s. 7(4)(e).]*

*[Schedule 1 omitted under the Reprints Act 1984 s. 7(4)(e).]*

## Notes

- <sup>1</sup> This is a compilation of the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997*. The following table contains information about that Act and any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Fishing and Related Industries Compensation (Marine Reserves) Act 1997</i>	39 of 1997	2 Dec 1997	2 Dec 1997 (see s. 2)
<b>Reprint 1: The Fishing and Related Industries Compensation (Marine Reserves) Act 1997 as at 6 Aug 2004</b>			
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 53</i> <sup>3,4</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 8 Div. 2</i> <sup>5</sup>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)

- <sup>2</sup> The provisions in this Act amending these Acts have been omitted under the *Reprints Act 1984* s. 7(4)(e).

- <sup>3</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administration Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

- <sup>4</sup> The *State Administrative Tribunal Regulations 2004* r. 51 reads as follows:

“

**51.        *Fishing and Related Industries Compensation (Marine Reserves) Act 1997***

- (1) In this regulation —  
**commencement day** means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 53 comes into operation.
- (2) If —

- (a) advice has been given under the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* section 8(1) before the commencement day; and
- (b) the person who received the advice has not applied to the Fisheries Adjustment Compensation Tribunal established under the *Fisheries Adjustment Schemes Act 1987* section 14O before that day,

on or after that day, the advice is to be taken to be an advice under the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* section 8(1) received on the commencement day.

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<sup>5</sup> The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 8 Div 5 reads as follows:

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#### **Division 5 — Transitional provisions**

##### **242. References to the Executive Director**

- (1) After commencement, a reference in a written law that is, or is to be taken to be, to the Executive Director (as defined in the *Fish Resources Management Act 1994* as in force before commencement) is to have effect as if it had been amended to be a reference to the CEO (as defined in the *Fish Resources Management Act 1994* as in force after commencement).
- (2) Subsection (1) does not apply if a contrary intention appears or the context otherwise requires.
- (3) In this section —  
**commencement** means the time at which section 232 comes into operation.

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## **Defined terms**

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
affected person.....	3(1)
authorisation .....	3(1)
CALM Act .....	3(1)
CALM Minister .....	3(1)
commercial activity.....	3(1)
management plan .....	3(1)
Minister.....	3(1)
related authorisations .....	5(2)
relevant event.....	3(1)