



Department of
**Primary Industries and
Regional Development**

Information sheet

Marine Reserve Compensation Process

January 2019

INFORMATION SHEET – MARINE RESERVE COMPENSATION PROCESS

1. POLICY STATEMENT

The State Government is committed to the conservation of Western Australia's marine environment and the ecologically sustainable use of marine resources, consistent with its *New Horizons in Marine Management Policy*. A major component of the policy is to establish a comprehensive and state-wide system of marine conservation reserves.

Marine parks are created for 'multiple use', meaning certain areas known as 'zones' can be used for different purposes. Sustainable commercial fishing may continue in marine park general use zones and some special purpose zones. However, commercial fishing is not permitted in marine park sanctuary zones, recreation zones or marine nature reserves.

Importantly, the policy states that "if the commercial value of an authorisation is apparently diminished by the establishment of a marine nature reserve or exclusion zone in a marine park, then the holder of the authorisation will be eligible to apply for compensation".

2. RELEVANT LEGISLATION

Department of Biodiversity, Conservation and Attractions

- *Conservation and Land Management Act 1984 (the CALM Act)*

Administered by the Department of Biodiversity, Conservation and Attractions. Marine conservation reserves are established and reviewed under the CALM Act and vested in the Marine Parks and Reserves Authority (MPRA).

Department of Primary Industries and Regional Development

- *Fish Resources Management Act 1994 (FRMA)*

Administered by the Department of Primary Industries and Regional Development. Fishing within marine reserves is managed under the FRMA.

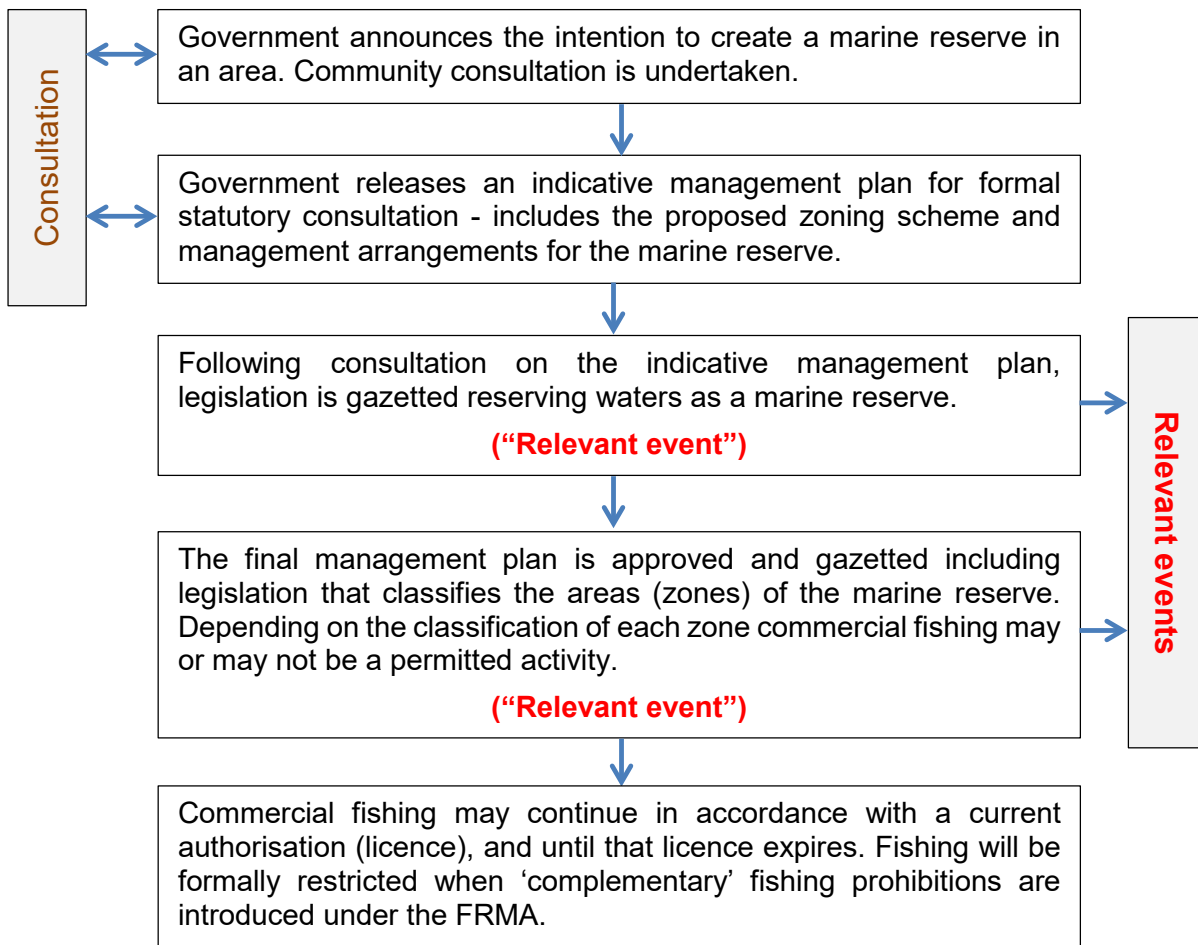
- *Fishing and Related Industries Compensation (Marine Reserves) Act 1997 (the Compensation Act)*

Administered by the Department of Primary Industries and Regional Development. Commercial fishers affected by the establishment of a marine nature reserve or a marine park may be eligible for compensation under the Compensation Act.

3. MARINE RESERVE PLANNING PROCESS

The CALM Act sets out the process for the establishment, ongoing management and review of marine conservation reserves.

A summary of the process for establishing a marine reserve is provided below.



A **relevant event** can trigger the compensation provisions under the Compensation Act, or are important dates in determining the impact on the market (commercial) value of an authorisation (licence).

4. COMPENSATION PROCESS

The Compensation Act provides the mechanism by which commercial fishing, pearling and aquaculture interests affected by the establishment of a marine reserve may apply for compensation.

In accordance with Section 5(1) of the Compensation Act,

"A person who holds an authorisation is entitled to fair compensation for any loss suffered by the person as the result of a relevant event".

Following a relevant event, the Minister for Fisheries is to notify affected persons that applications can be made for compensation. Upon receipt of any applications for compensation, the first step is to assess whether applicants are **entitled** or eligible to compensation.

Step 1 - Entitlement to Compensation

General 'Criteria' for Eligibility

- A person must be the **holder of an authorisation**, which is defined in the Compensation Act (**s 3**) and includes:
 - an aquaculture lease;
 - an aquaculture licence;
 - a commercial fishing licence;
 - a fishing boat licence;
 - a fish processor's licence;
 - a managed fishery licence;
 - an interim managed fishery permit;
 - a farm lease;
 - a hatchery licence;
 - a hatchery permit;
 - a pearling lease; or
 - a pearling permit.
- A person must be **affected by a 'relevant event'**.
- In the case of applications for compensation from commercial fishers where an area may be closed to fishing as a result of a Marine Park, subsection 5(2)(e) of the Compensation Act applies.

(e) *"an area will not be available for commercial fishing after the renewal of the authorisation"*

In order for subsection 5(2)(e) to apply, the person must obtain a certificate of fishing history from the CEO. Section 5(5) of the Compensation Act states *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".*

Long term and consistent is defined as fishing at least once a year for five years out of the last seven years that fishing has been permitted.

Step 2 - Agreement on Compensation Amount

If an applicant is considered to be entitled to compensation, the next step is to determine the amount of compensation payable.

A person who holds an authorisation is entitled to fair compensation for any loss suffered by the person as a result of the relevant event, and a person suffers loss if, and only if, the market value of the authorisation held by the person is reduced. Importantly, any loss suffered is limited to the amount by which the market value of an authorisation has been reduced as a result of the establishment of the marine reserve.

Under the Compensation Act:

- 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**, and
- a person suffers loss if, and only if, the **market value** of the authorisation is reduced (any loss suffered is limited to the amount by which the market value of an authorisation has been reduced as a result of the establishment of the marine reserve).

The amount of any loss suffered by a person is limited to the amount of the reduction in market value after determining:

- **whether** any such reduction has occurred; and
- the **amount** of any such reduction.

Considerations include:

- A closure to part of a fishery as a result of the introduction of a marine reserve may or may not impact on market value (see scenarios below).
- There is likely to be other factors that contribute to a change in market value over time (e.g. fisheries management changes). The Compensation Act only provides compensation for a reduction in market value attributed to the establishment of a marine reserve.
- There may be impacts on individual operations and circumstances arising from creation of a marine reserve (e.g. increased travel time and fuel costs), but this does not mean that the market value of the authorisation is necessarily reduced.

Summary of Compensation Process

A summary of the marine reserve compensation process is provided below. Relevant sections of the Compensation Act are in brackets.

Once a 'relevant event' has occurred, the Minister for Fisheries must, as soon as is practicable, publish a notice inviting affected persons to apply for compensation (**s 6**).



A person who claims to be an affected person may apply to the Minister for Fisheries for compensation. An application must be made in the manner and form and within the period specified in the notice (i.e. not less than **30 days**) (**s 7**).



The Minister for Fisheries must determine whether or not the affected person is entitled to compensation. The Minister's decision is reviewable by the SAT. In the case of commercial fishing, long term and consistent fishing history in the area to be closed to fishing must be established for an applicant to be considered entitled to compensation (**s 5**).



If the Minister for Fisheries determines that the affected person is entitled to compensation, the Minister is to commence negotiations with the person with a view to settling the amount of compensation payable to the person, and setting out the terms of the agreement (**s 9**).



If agreement cannot be reached on the quantum payable, the affected person or the Minister may apply to the State Administrative Tribunal (SAT) to determine the amount of compensation

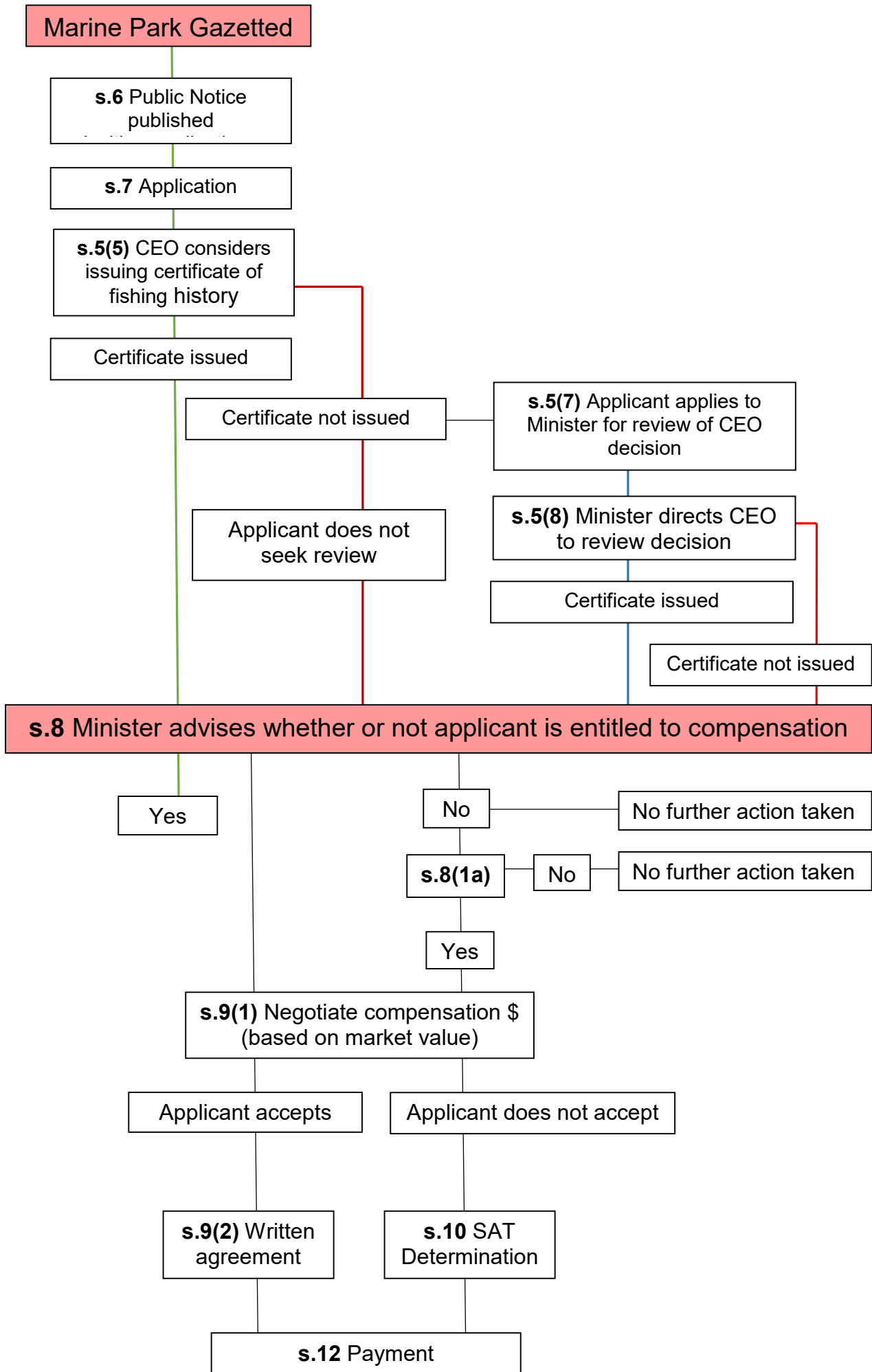


The Minister may enter into agreement with an affected person on the amount of compensation payable even if an application has been made to the SAT (**s 11**).



The Minister for Fisheries is to give effect to the agreement or determination by the SAT of the compensation payable (**s 12**).

COMPENSATION ACT PROCESS FOR COMMERCIAL AUTHORISATIONS



Extract: “Fishing and Related Industries Compensation (Marine Reserves) Act 1997”

Section 5

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 —
 - (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.]