



Department of
**Primary Industries and
Regional Development**

Information sheet

Marine Reserve Compensation Process

Fishing and Related Industries Compensation (Marine Reserves)
Act 1997

March 2020

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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 government policy. A major component of the policy is to establish a comprehensive and state-wide system of marine reserves under the *Conservation and Land Management Act 1984* (the CALM Act).

Under the CALM Act, marine reserves may be one of three types:

- 1) marine nature reserve
- 2) marine park
- 3) marine management area

Marine nature reserves offer the highest level of biodiversity protection, and all fishing activities are prohibited. Marine parks are created for 'multiple use', meaning certain areas (commonly referred to as 'zones') can be used for different purposes. Sustainable commercial fishing may continue in marine park general use areas and some special purpose areas (if the particular type of commercial activity is deemed compatible, or consistent, with the determined conservation purpose of the area), subject to fisheries regulations. However, commercial fishing is not permitted in marine park sanctuary areas or recreation areas. Sustainable commercial fishing is permitted in marine management areas, subject to fisheries regulations.

Importantly, the holder of an authorisation will be eligible to apply for compensation under the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* (the Compensation Act) if the holder believes the value of the authorisation has been diminished by the establishment of a marine nature reserve or an area which prohibits fishing in a marine park. Marine management areas do not prohibit fishing and the Compensation Act does not apply.

2. RELEVANT LEGISLATION

Department of Biodiversity, Conservation and Attractions (DBCA)

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

Administered by DBCA. Marine reserves are established and reviewed under the CALM Act and vested in the Marine Parks and Reserves Authority (MPRA).

(https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a170.html)

Department of Primary Industries and Regional Development (DPIRD)

- *Fish Resources Management Act 1994 (the FRMA)*

Administered by the DPIRD. Fishing within marine reserves is managed under the FRMA.

(https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a283_currencies.html)

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

Administered by DPIRD. Commercial fishers affected by the establishment of a marine nature reserve or a marine park may be eligible for compensation under the Compensation Act.

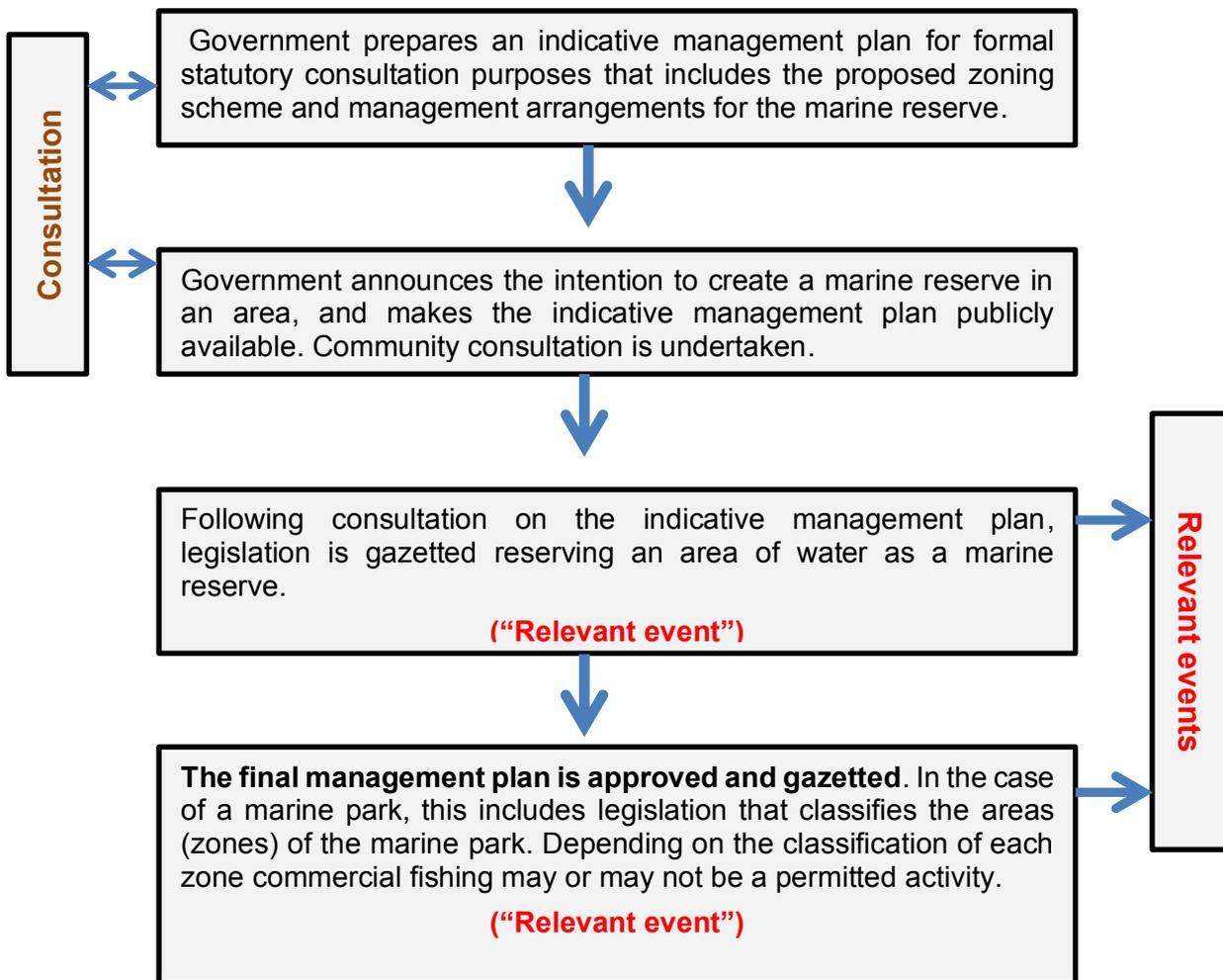
(https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a1838.html)

3. MARINE RESERVE PLANNING PROCESS

The CALM Act sets out the process for the establishment, ongoing management and review of marine reserves. The marine reserve planning process must be well understood in order to gain an understanding of how the compensation process is applied under the Compensation Act.

The concurrence of the Ministers for Fisheries and for Mines and Petroleum is required before Government can approve the release of an indicative marine reserve management plan; gazette an area of water as a marine reserve and/or approve a final marine park zoning scheme.

A summary of the process for establishing a marine reserve is provided below. This process applies to marine nature reserves, marine parks and marine management areas.



Relevant events 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.

4. COMPENSATION PROCESS

The Compensation Act provides the mechanism by which commercial fishers who are affected by the establishment of a marine reserve may apply for compensation.

The first key step to the compensation process is determining whether a person is **entitled** to compensation. The second key step is determining the **amount** of compensation payable. If agreement cannot be reached on either being entitled to, or the amount of, compensation the decision/s may be independently reviewed or made by the State Administrative Tribunal (SAT).

Under the Compensation Act, there can be two '**relevant events**' that occur during the marine reserve planning process that may give rise to compensation:

1. The making of an order under section 13(1) of the CALM Act (reservation of waters as a marine nature reserve or marine park); and
2. In the case of a marine park only, the classification of an area by notice under section 62 of the CALM Act (implementing the 'zoning' scheme and giving effect to restrictions on continuing fishing activities).

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

A summary of the marine reserve compensation process is provided below. The Compensation Act can be viewed in full through the following link - https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a1838.html

“Relevant event” occurs.
Minister for Fisheries must, as soon as practicable, publish a notice inviting affected persons to apply for compensation.

A person who claims to be an affected person must apply for compensation in the manner and form, and within the period, specified in the notice.

Step 1. The Minister must determine whether or not the affected person is entitled to compensation, and notify that person of the decision within **30 days** of receiving an application.

Minister for Fisheries determines the affected person is entitled to compensation.

Minister for Fisheries determines the affected person is not entitled to compensation.

Step 2. The Minister is to commence negotiations with the affected person with a view to settling the amount of compensation payable to the person, and setting out the terms of the agreement.

The affected person may apply to the SAT to have the decision reviewed. An application to the SAT cannot be made any later than **21 days** after the Minister’s advice is received.

Agreement is reached. The Minister for Fisheries is to give effect to the agreement. Government must appropriate money for payment.

If agreement cannot be reached on the quantum payable within **60 days** of the decision on being entitled to compensation is made, the affected person or the Minister may apply to the SAT to determine the amount of compensation payable.

The Minister may enter into agreement with an affected person on the amount payable even if an application has been made to the SAT.

The Minister for Fisheries is to give effect to the determination by the SAT of the amount of compensation payable. Government must then appropriate money for payment.

5. ELIGIBILITY REQUIREMENTS

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 farm lease;
 - a managed fishery licence;
 - an interim managed fishery permit;
 - a hatchery licence;
 - a hatchery permit;
 - a pearling lease; or
 - a pearling permit.
- A person must be **affected by a 'relevant event'**.
- A person must demonstrate a **reduction in market value** of the authorisation as a result of the establishment of the marine reserve (this is explained further below). It should be noted that the Compensation Act does not provide compensation for every impact on an affected person.
- A person must apply for compensation by submitting an application **within the time period** specified in the Minister's notice inviting applications. If the deadline is not met, the application cannot be considered.

6. EXPLANATION OF MARKET VALUE

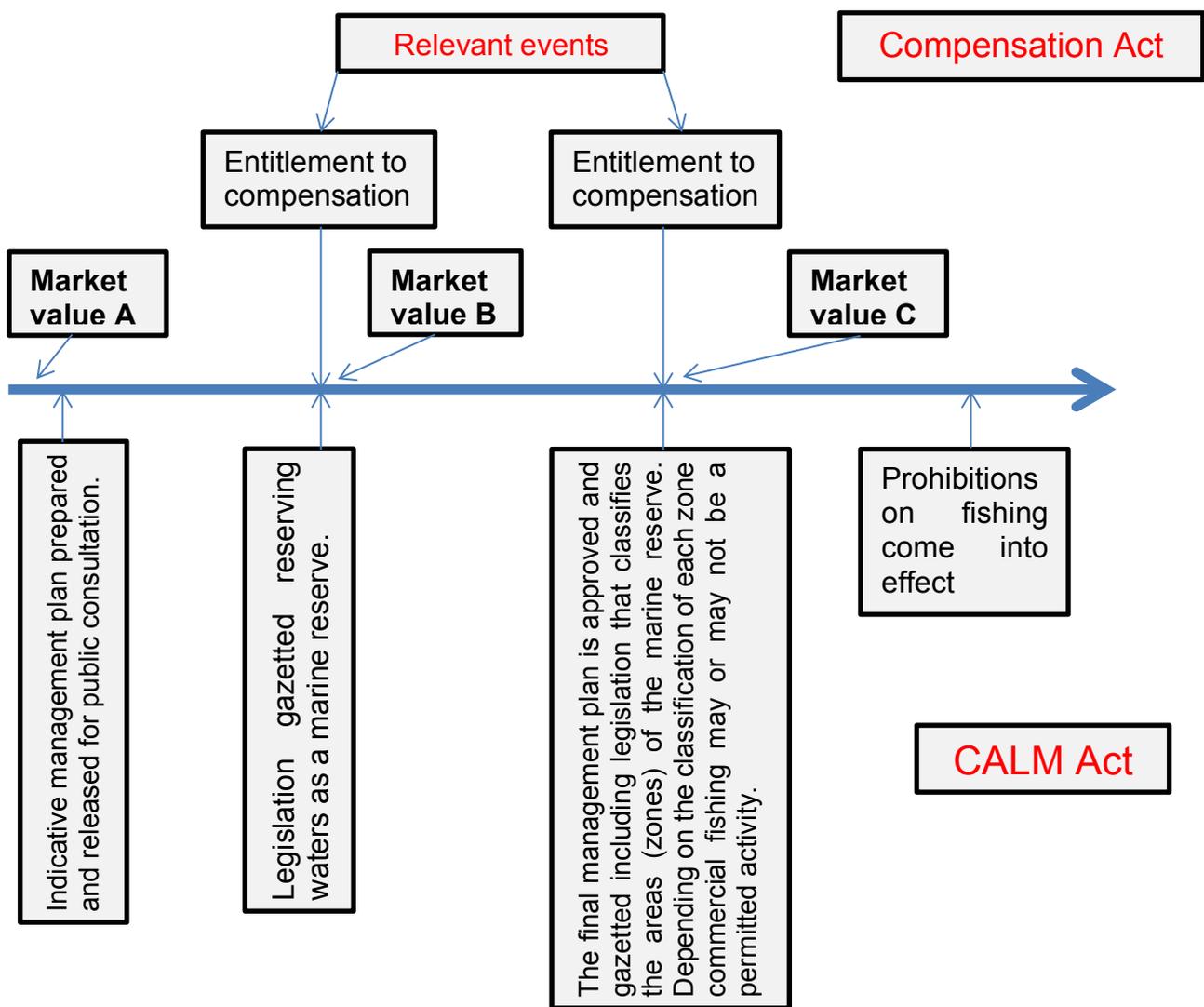
Under the Compensation Act:

- a person who holds an authorisation is entitled to fair compensation for the loss suffered by the person as a result of a **relevant event**, and
- a person can only be regarded as suffering 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.

It is important that commercial fishers, who consider they may be affected by the introduction of a marine park or marine nature reserve, understand the notion of **market value**, as prescribed under the Compensation Act. Market value is illustrated below.



Establishing a "reduction in market value" of an authorisation can be made by comparing the market values at A, B and C above.

The questions that need to be considered when determining a change in market value include:

1. What was the market value of the authorisation before Government formed the proposal to create a marine reserve in the area (**Market value A**)?
2. What is the market value of the authorisation now that the marine reserve has been created (**Market value B**) and fishing activities have been restricted in certain areas (**Market value C**)?
3. What is the difference between these market values, and what are the reasons for that difference?

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 are 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 as a result of the establishment of a marine reserve. An application for compensation should explain the impact of all factors.
- 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. These can be identified, but compensation cannot be paid under the Compensation Act.

Generic examples - Possible considerations

- Sedentary species (e.g. abalone) or trawl fishing grounds

For sedentary species, or trawl fishing, a closure to fishing grounds may have a direct impact on the available catch of the authorisation. In these instances a reduction in the market value of an authorisation may be more readily demonstrated.

- Non-sedentary species (e.g. demersal or pelagic scalefish)

These fish species are more mobile and may be seasonally abundant. An exclusion area may not impact on the quantity of these species that can be taken, rather only where the fish can be caught, and may have little or no impact on the market value of an authorisation.

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