

South Australia

# **Marine Parks (Statutory Authorisation Compensation) Regulations 2015**

under the *Marine Parks Act 2007*

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## **Part 1—Preliminary**

### **1—Short title**

These regulations may be cited as the *Marine Parks (Statutory Authorisation Compensation) Regulations 2015*.

### **2—Commencement**

These regulations will come into operation 4 months after the day on which they are made.

### 3—Interpretation

In these regulations, unless the contrary intention appears—

*Act* means the *Marine Parks Act 2007*;

*advisory panel* means an advisory panel established under Part 2;

*Court* means the Environment, Resources and Development Court.

## Part 2—Advisory panels

### 4—Advisory panels

- (1) The Minister may establish advisory panels for the purposes of these regulations.
- (2) An advisory panel is to consist of 3 members appointed by the Minister who together have extensive knowledge and experience in—
  - (a) law or public administration; and
  - (b) financial matters, economics or asset evaluation; and
  - (c) the industry in which holders of relevant statutory authorisations are participants.
- (3) The members of an advisory panel will hold office for a period, and on terms and conditions, determined by the Minister.
- (4) Subject to any directions of the Minister, an advisory panel may determine its own procedures.

## Part 3—Applications

### 5—Applications for compensation under section 21 of Act

- (1) If, as a result of the creation of a zone or the imposition of a temporary prohibition or restriction of activities within a marine park, the rights conferred by a statutory authorisation under another Act are affected, the holder of the statutory authorisation may apply to the Minister for compensation under section 21 of the Act in accordance with this regulation.
- (2) The application must—
  - (a) be in writing; and
  - (b) identify the zone or the temporary prohibition or restriction to which the application relates; and
  - (c) identify the statutory authorisation in respect of which the application is made; and
  - (d) include details of how, and the extent to which, rights conferred by the statutory authorisation have been affected; and
  - (e) specify the amount of compensation claimed; and
  - (f) be accompanied by evidence supporting the claim and the calculation of the amount claimed (including any documentation of a kind required by the Minister); and

- (g) specify—
    - (i) a residential or (in the case of a corporation) registered address; or
    - (ii) a fax number or email address,for the purpose of giving notices to the applicant under these regulations; and
  - (h) provide details of an ADI account into which any payment of compensation resulting from the application should be made.
- (3) The Minister may, by written notice, request that an applicant provide further information, documents or records for the purpose of determining the application (but if the applicant fails to provide any such information, documents or records within 28 days after the request, or such longer period as the Minister may allow, the Minister may proceed to determine the application in the absence of such information, documents or records).
- (4) If the Minister is satisfied that, as a result of the creation of a zone or the imposition of a temporary prohibition or restriction of activities within a marine park, the rights conferred by a statutory authorisation under another Act are affected, the Minister—
- (a) must determine (in accordance with section 21 of the Act) whether or not it would be appropriate to compulsorily acquire the statutory authorisation, or any interest (or part of any interest) under the statutory authorisation; and
  - (b) may refer the application to an advisory panel for advice in relation to the amount of compensation—
    - (i) that should be paid in respect of the affected rights; or
    - (ii) that should be paid for a compulsory acquisition,(as the case may require).
- (5) The Minister must give the applicant written notice of the determination referred to in subregulation (4)(a).

## **6—Minister may pay compensation in absence of application**

The Minister may pay compensation to a person under section 21 of the Act (being compensation in respect of affected rights or compensation for a compulsory acquisition) whether or not an application has been received from the person under this Part.

## **Part 4—Determination of claim**

### **7—Report by advisory panel**

- (1) An advisory panel must, at the request of the Minister, make recommendations as to what, in the opinion of the panel, would constitute fair and reasonable compensation in the particular case, having regard to—
- (a) the extent to which the rights have been affected; and
  - (b) the fair market value of the affected rights; and
  - (c) any other matters the panel thinks fit.

- (2) If the Minister makes a request to an advisory panel in accordance with subregulation (1), the Minister must provide the advisory panel with such information relating to the application as the panel might reasonably require for the purpose of making recommendations.

## **8—Determination of claim**

- (1) The Minister must, on making a determination in relation to the payment of compensation to a person under section 21 of the Act (being compensation in respect of affected rights or compensation for a compulsory acquisition), give written notice of the determination to the person.
- (2) The written notice must—
- (a) give reasons for the Minister's determination; and
  - (b) if a statutory authorisation or interest (or part of an interest) is to be compulsorily acquired—be accompanied by a notice of acquisition given in accordance with subregulation (3); and
  - (c) set out the rights of review and appeal under these regulations.
- (3) A notice of acquisition must—
- (a) be in writing; and
  - (b) identify the zone or the temporary prohibition or restriction to which the notice of acquisition relates; and
  - (c) identify the statutory authorisation to which the notice relates; and
  - (d) specify whether the notice is for the acquisition of the statutory authorisation or a specified interest (or part of an interest) under the statutory authorisation; and
  - (e) specify the date on which the acquisition will take effect (subject to any decision of the Minister on a review, or order of the Court on an appeal, under Part 5).
- (4) A notice under this regulation may be combined with a notice required under regulation 5(5).

## **9—Obligation not to enter into transactions after notice of acquisition**

- (1) If the holder of a statutory authorisation is given written notice (whether under regulation 5(5) or under regulation 8) of a determination to compulsorily acquire the statutory authorisation, or any interest (or part of any interest) under the statutory authorisation, the holder of the authorisation must not enter into any transaction in respect of the statutory authorisation without first disclosing that fact.
- (2) If any contract or agreement in relation to the statutory authorisation is entered into without the required disclosure, the contract or agreement is voidable at the option of the person to whom disclosure should have been made.

## 10—Acquisition

- (1) On the day on which an acquisition is to take effect (being the day specified in a notice in accordance with regulation 8(3) or some other day determined by the Minister on a review, or ordered by the Court on an appeal, under Part 5)—
  - (a) the authorisation or interest to which the notice relates is vested in the Minister; and
  - (b) if a residual interest remains after the acquisition, the interest is modified to the extent required by the acquisition.
- (2) A copy of the notice of acquisition must be given to the Minister responsible for the administration of the Act under which the statutory authorisation was issued and that Minister must—
  - (a) if the statutory authorisation was acquired pursuant to the notice—cancel the statutory authorisation; or
  - (b) if an interest (or part of an interest) under the statutory authorisation was acquired pursuant to the notice—cause any necessary adjustments to be made to the statutory authorisation, such that the interest (or that part of an interest) will cease to exist.

## Part 5—Reviews and appeals

### 11—Review

- (1) The holder of a statutory authorisation may, within 21 days after being given a written notice by the Minister under regulation 8, apply to the Minister for a review of the determination in relation to the payment of compensation to which the notice relates.
- (2) The application for the review must be made in writing and must set out details of the grounds on which the review is sought.
- (3) The Minister may, by written notice, require the applicant for the review to provide further information, documents or records for the purpose of determining the review.
- (4) On a review, the Minister may affirm, vary or reverse the determination the subject of the review.
- (5) The Minister must give the applicant for the review written notice of the Minister's decision on the review and the reasons for the decision.

### 12—Appeal

- (1) The holder of a statutory authorisation who has applied for a review of a determination in relation to the payment of compensation under regulation 11 and who remains dissatisfied with the determination in relation to the payment of compensation following the review may appeal to the Court within 21 days after being given written notice of the decision on the review.
- (2) An appeal must be made in a manner and form determined by the Court, setting out the grounds of the appeal.
- (3) The Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period fixed by this regulation.

- (4) Unless otherwise determined by the Court, an appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to that appeal).
- (5) The Court may, on hearing an appeal under this regulation—
  - (a) confirm, vary or revoke the determination appealed against; and
  - (b) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.

## **Schedule 1—Transitional**

### **1—Application of regulations**

- (1) These regulations apply in relation to rights affected as a result of the creation of a zone, or the imposition of a temporary prohibition or restriction of activities, within a marine park whether the zone was created, or the prohibition or restriction imposed, before or after the commencement of these regulations.
- (2) If the Minister has, before the commencement of these regulations, received an application for compensation under section 21 of the Act, the Minister may, if he or she thinks fit, determine that the application should be treated as if it were an application under regulation 5 (and may do so regardless of whether the application complies with regulation 5(2)).
- (3) These regulations apply to an application the subject of a determination under subclause (2) as if the application had been made under these regulations.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal regulations

Year	No	Reference	Commencement
2015	227	<i>Gazette 5.11.2015 p4859</i>	5.3.2016: r 2