

## COMMENTARY 10 WAMA Office

### THE TRANSFER OF MOORINGS (Mooring Regulations 1998) ("MR98")

The current transfer process for mooring site licences is largely governed by MR98 r.11, r12 and r.16. Discussion papers and explanatory memoranda (*some published and some kept 'in house' by DoT*) related to the construction of the Mooring Regulations 1998 accessed by way of FOI clearly and explicitly anticipated and allowed for the transfer of mooring licences if requested by the current mooring site licensee. (See WAMA Office Commentary 3 and 4.)

In one paper current sale prices were mentioned.

From the commencement of the MR98 up until December 2010 it was common practice for the DoT to transfer a mooring site licence when a current licensee made an application that included the details of the transferee along with details of the transferee's vessel. If the transferee's vessel was equal to or less in boat length than the transferor's licensed vessel then the transfer was largely undertaken immediately.

A transfer request that required an increase in the mooring site swing was to be accompanied with a mooring inspection report and was to be assessed by the DoT before the mooring site transfer took place. These applications were approved relatively rapidly if there was room to increase the swing. On the other hand if the transferee's vessel was of a shorter length than the current licensee's vessel then the DoT would reduce the swing length for the mooring site to the length of the new vessel.

The adjustment of swing length of the mooring sites with every transfer application sometimes created havoc. In some cases neighbouring mooring licensees applied for swing increase for longer vessels when they discovered that the swing of an adjacent mooring had been reduced. This process was often the cause of conflict between mooring licensees. The mooring apparatus subject of the swing reduction had been constructed to safely harness larger vessels and when a swing increase was subsequently applied for it was found that the prior and necessary swing room had been taken up by the neighbouring licensee.

In 2010 the DoT fixed mooring swing lengths at maximum vessel lengths. The conflict related to mooring swings largely dissipated.

In 2010 the DoT reinterpreted the regulation 16 of the MR98 to mean that a mooring site licence would only be transferred to another party if that party became the owner of the current licensed vessel as registered or 'nominated' on the current mooring site licence. In other words, if you became the owner of the current licensed vessel and required the mooring site licence to be transferred to you then that mooring site licence would be transferred. The DoT also decided that these circumstances will be the only way a mooring site licence would be transferred.

In Dec 2010 the transfer processes as utilised since the proclamation of the MR98 came to a dead halt.

The DoT stated that they had legal advice supporting their position in relation to mooring site licence transfers, the renting out of mooring sites, inter alia. (Department of Transport navigational safety compliance manager Ray Buchholz stated in the West Australian December 13, 2010.)

Various requests to the DoT to view the legal advice have been refused. (Even an FOI request to view the advice was refused.)

Many mooring licensees found themselves totally confused in respect to the MR98 interpretation changes. Many have become worried that they will lose all the funds that they have expended over years on mooring apparatus construction, annual licence fees and mooring maintenance and inspection reports.

Prior to Dec 2010 a mooring site that became superfluous to its owner because of a boat sale or whatever would be or could be transferred to another party and that party would compensate the prior owner for expenses and so on by buying the mooring apparatus situated on the mooring site. The mooring site licensee would apply to have the mooring site licence transferred to the buyer of the mooring apparatus and the new owner would have his vessel registered as the licensed vessel. The new owner would maintain the apparatus over the following years and if and when he wished to transfer the mooring site licence he would be compensated by the new interested party. The process worked. Everybody was happy. That came to an end in Dec 2010.

Since Dec 2010 mooring licensees have become disgruntled and confused. Some have simply held on to their mooring site because they do not want to sell their boat to facilitate the transfer of their superfluous mooring. Others have tried to advertise their mooring apparatus but have been contacted by DoT and simply been told that it is illegal to sell their mooring site licence. Others who may have rented their mooring apparatus on a casual basis no longer provide their site for others to use because the DoT has told them it is illegal and they could lose their mooring site licence. (There was no positive assistance given by the DoT to help mooring owners.)

Since Dec 2010 there has been total confusion amongst mooring owners *with many receiving or getting conflicting advice from the DoT as to their actual rights*. The result has been a decrease in the physical use of mooring sites in the Swan and Canning Rivers over the past years.

The following regulations related to mooring licence transfer appear to be clear and explicit. [R.16 (1)(b) is also subject to r. 12 (1)(b)]

## **Mooring Regulations 1998**

### **16. Transfer of mooring licence**

- (1) A mooring licensee may apply to the Minister to transfer the mooring licence to a person specified in the application who is —
  - (a) an individual over the age of 17 years whose principal place of residence is in the State; and
  - (b) the owner of the licensed vessel nominated on the mooring licence.
- (2) An application to transfer a mooring licence is to be —
  - (a) in an approved form that is duly completed;
  - (b) accompanied by the transfer fee specified in Schedule 2.
- (3) Regulations 11 and 12 apply to the transfer of a mooring licence under these regulations as if the person to whom the licence is proposed to be transferred were the applicant for the mooring licence.
- (4) The transfer takes effect on the day specified in the endorsement of the transfer.
- (5) The Minister is not to grant the transfer of a mooring licence if an applicant is on the waiting list who could be granted a mooring licence if the mooring site specified in the licence proposed to be transferred were available.

**17. Mooring licences not otherwise transferable**

- (1) Except as provided in regulations 15 and 16 —
  - (a) a mooring licence is not transferable; and
  - (b) rights conferred on a person in respect of a mooring licence under these regulations are not assignable and may not pass by will or intestacy or vest by operation of law in any other person.
- (2) No person is entitled to the transfer of a mooring licence as of right.
- (3) Nothing in this regulation prohibits the sale or disposal of a mooring installed on a registered mooring site.

**11. Offer of mooring licence**

- (1) If the Minister is satisfied that a mooring site is available the Minister, by written notice to the applicant or, if there is a waiting list in respect of the area in which the mooring site is available, to the first applicant on the waiting list who has specified a vessel of appropriate length for the site, may —
  - (a) offer a mooring licence to that applicant; and
  - (b) if there is already a mooring on the site, give the applicant contact details of the name of the person in whose name the mooring site was previously registered to allow the applicant, if he or she so wishes, to negotiate with that person for the purchase of the mooring.
- (2) The Minister is to send the notice to the address specified in the application.
- (3) When accepting an offer in respect of a mooring site on which there was already a mooring, the applicant is to give the Minister written notice as to whether the applicant has, or has not, reached an agreement with the person in whose name the mooring site was previously registered to acquire the mooring.
- (4) If, for any reason —
  - (a) the applicant does not accept the offer in accordance with its terms within 14 days of being given notice of the offer, or such further time as the Minister may by written notice allow; or
  - (b) the applicant accepts the offer under paragraph (a) but does not meet the requirements of regulation 12(1)(b), (c), (d) and (e) within 28 days of receiving notice of the offer, or such further time as the Minister may by written notice allow,then —
  - (c) the offer lapses; and
  - (d) the name of the applicant is to be removed from the waiting list; and
  - (e) the Minister may make the offer to another applicant.
- (5) Nothing in subregulation (4) prevents an applicant from making a further application for a mooring licence.
- (6) The Minister is not obliged to offer a mooring licence in respect of any mooring site.

**12. Mooring licence and registration of mooring site**

- (1) If —
  - (a) the Minister is notified of acceptance of an offer; and

- (b) the applicant nominates a suitable vessel as the licensed vessel; and
  - (c) the annual mooring licence fee specified in Schedule 2 is paid; and
  - (d) if there is a mooring on the mooring site, the Minister has received evidence satisfactory to the Minister that the applicant has acquired the mooring or that the applicant does not intend to acquire the mooring; and
  - (e) if the applicant has acquired the mooring, the applicant has notified the Minister in the approved form that the mooring is safe for its intended purpose,
- the Minister is to grant the mooring licence.
- (2) If the Minister grants a mooring licence, the Director General is to register the mooring site for which the licence is granted.
  - (3) A vessel is a suitable vessel for the purposes of subregulation (1)(b) if —
    - (a) the applicant is named on the certificate of registration of the vessel as the owner of that vessel, or produces evidence of ownership satisfactory to the Minister; and
    - (b) the overall length of the vessel does not exceed the length specified in the application; and
    - (c) the vessel is not the licensed vessel for any other registered mooring site.
  - (4) A mooring licence may be granted on conditions as to —
    - (a) the location of any mooring to be installed on the mooring site; and
    - (b) the form and maintenance of any mooring to be installed on the mooring site; and
    - (c) the size, shape and colour of any mooring float used on the mooring site; and
    - (d) the display of a mooring number or other identification data on any mooring to be installed on the mooring site; and
    - (e) the inspection of any mooring to be installed on the mooring site; and
    - (f) such other matters as the Minister thinks fit.
  - (5) In accordance with paragraph (d) of the definition of **licence** in the *Personal Property Securities Act 2009* (Commonwealth) section 10, a mooring licence is declared not to be personal property for the purposes of that Act.

*[Regulation 12 amended in Gazette 14 Feb 2012 p. 669.]*

Clearly the current restriction on transfer of mooring licences is not supported by the Mooring Regulations 1998.

*To be continued...*

WAMA Office