

COMMENTARY 8 WAMA Office

Waiting Lists under the Mooring Regulations 1998

Waiting list can be explicitly established under the Mooring Regulations 1998. Why is there so much discussion about changing the regulations in order to create waiting lists for mooring control areas or parts thereof?

From the Explanatory Memorandum 22 Dec 1998 for Mooring Regulations 1998

List of applicants for mooring licences (Regulation 10)

This Regulation establishes an explicit and public procedure with respect to waiting lists for mooring sites. Experience in NSW and in Rottnest suggests that this has been the area of most public concern and this arrangement is essential to avoid any perception of inequity in the allocation of mooring sites, especially those which are the most desirable.

The operative statement is of course "This Regulation establishes an explicit and public procedure with respect to waiting lists for mooring sites."

Mooring Regulations 1998

"10. List of applicants for mooring licences

- (1) The Minister may divide a mooring control area into different areas for the purpose of establishing waiting lists.
- (2) If insufficient mooring sites are available in an area the Minister may —
 - (a) maintain a waiting list specifying the particulars of applicants for mooring licences in that area; and
 - (b) subject to subregulation (3), on notification of an application for a mooring licence in that area, place the applicant at the end of the waiting list for that area.
- (3) The Minister is not to place an application on the waiting list if the maximum overall length of the vessel specified under regulation 9(1)(d) is less than 5 metres.
- (4) The Minister may —
 - (a) at any time by written notice require an applicant to confirm or update the particulars provided by the applicant in an application or to provide further particulars; and
 - (b) if an applicant fails to respond to a notice given to the applicant under paragraph (a) within the time specified in the notice, remove the applicant's name from the waiting list."

From the Explanatory Memorandum 22 Dec 1998 for Mooring Regulations 1998

Regulation 11 sets out specific procedures for the offering of mooring licences. Regulation 11 does not set out one procedure only for the offering of mooring licences by the Minister.

Offer of mooring licence (Regulation 11)

This is another important element to ensure public accountability for the administration of the mooring management system. This Regulation requires mooring licences to be offered in accordance with specific procedures and for certain time limits to be applied within those processes. This is important to ensure that the mooring management system is administered in an impartial manner and appropriate manner.

There is a view, mainly by DoT administrative staff, that applicants on a waiting list will have preference in being offered available mooring licences over and above all other applicants created through the operation of the Mooring Regulations 1998.

Mooring Regulations 1998

"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...."

The Minister may "... offer a mooring licence ..."

1. "... by written notice to the applicant ..." created under the Mooring Regulations 1998 (particularly an applicant under Regulation 16)

"... **or** ..."

2. "... if there is a waiting list ... to the first applicant on the waiting list ..."

It is quite clear that the operation of a waiting list does not and was not intended to override the operation of Regulation 16 which is specifically designed to facilitate "... the transfer of licences." (Explanatory Memorandum 12 Dec 1998) An applicant under r.16 clearly and explicitly is not subject to the procedures under the waiting list provisions of r.10

There are two types of applicants:

1. Applicants formed under the general intention of all of the regulations in the Mooring Regulations 1998. (i.e. those applications formed outside of r.10), and
2. Those applicants who have used the r.10 waiting list to become applicants.

An interpretation that an applicant on a waiting list has preference over a licensed vessel purchaser or over an applicant for transfer of the licence under r.16 is clearly incorrect.

Furthermore the Interpretation Act 1984 elaborates on the use of the word 'or' in legislation:

17. Disjunctive construction of “or”

In relation to a written law passed or made after the commencement of this Act, but subject to section 3(3), **or**, **other**, and **otherwise** shall be construed disjunctively and not as implying similarity unless the word “similar” or some other word of like meaning is added.

It is very clear that there is no preference of waiting lists over and above other applicants formed under the MR1998.

Why is the DoT persisting with the view that there is a preference or higher order if a waiting list was in effect?

WAMA Office June 2015 - Modified July 3