

## Western Australian Mooring Association (WAMA) *(to be incorporated)*

**General Discussion Paper    Aug 2015**

### **Proposed Recreational Mooring Regulation Changes in Western Australia**

The Western Australian Department of Transport is endeavouring to produce major changes to the way the river and coastal recreational mooring system has worked in Western Australia for many decades. The push for changes to the system, which is currently comfortably managed under the Mooring Regulations 1998 and the Shipping and Pilotage (MCA) regulations 1984, began in December 2010 when the Department's Mooring Office Manager published a media release that proclaimed changes to the way mooring sites and related physical apparatus were to be transferred from one party to another. The historical practice of simply making an application to the Department to transfer one's mooring apparatus and mooring site to another party, along with the payment of a fee, was replaced with a condition that the only way a mooring licence or registration will be transferred is when the new applicant has purchased the vessel that is currently registered as the licensed vessel to the particular mooring site.

Furthermore, there was the implementation of a complete ban on the decades old practice of mooring apparatus owners allowing the use of their apparatus when another boat owner was in need of temporary or short term storage assistance for their vessel. Amounts paid to the mooring owner were never excessive and simply contributed to the cost of upkeep of the mooring apparatus. The Department now considers these temporary use arrangements as commercial gain to the mooring owner and has classified these arrangements as illegal.

The result of these two changes is that many mooring sites have been left idle with the owners seriously concerned that if they breached the new rules they would lose their mooring site licence or registration, this often being the advice of the Department's Mooring Office officers.

It is suspected that both of these changes may have been made outside of the intended authority of current legislation.

After perusing Departmental publications, it has become obvious to some mooring owners that the main aim of the current Mooring Regulation Streamline Review process is to introduce major changes to the recreational mooring system in Western Australia. Mooring owners consider that the current mooring regulations are entirely satisfactory for management purposes of recreational moorings. The Mooring Regulations 1998 were introduced only seventeen years ago. Those regulations took almost ten years to be formulated and drafted and were designed to be used across the entire State by way of declaration of Mooring Control Areas to be listed under Schedule 1 of the regulations. When the Shipping and Pilotage (MCA) Regulations 1984 were introduced they were intended to clarify recreational mooring management issues at the time and have worked quite successfully since introduction. The latter Mooring Regulations 1998 were meant to replace the former Shipping and Pilotage Regulations 1984 in the area of management of recreational moorings. For some questionable reason the former regulations were continued to be used in recently created mooring control areas such as Mangles Bay, Rockingham.

The Department now says that one set of mooring regulations for the management of recreational moorings throughout the State is the main reason why the Mooring Regulations Streamline Review is being undertaken. In the same breath the Department says that the new regulations will not apply to Rottnest Island, Garden Island and other port authority control areas throughout the State.

Other aspects such as fairness and equity ... are being put forward by the Department to rationalise the review of the current regulations. Initially the Mooring Regulations 1998 were used fairly and equitably since their introduction. Very few complaints were made by mooring owners about the system that was designed to be used State-wide, until Dec 2010 when the dramatic changes in the interpretation of the regulations, as described above, were implemented and accompanied by gargantuan increases in annual fees. Mooring owners are in a state of total bemusement. The Department's interpretation of the regulations is clearly in conflict with the obvious intent and purpose of the regulations as drafted. The Department now states that the mooring review will clear matters up and will simplify management processes for the management of recreational mooring site licence and registration issues and mooring apparatus ownership. Nothing could be further from the truth.

The irony is that the existing regulations, if applied properly by the Department, can already be used on a State-wide basis. The current regulations already facilitate almost all of the minor mooring usage management changes being espoused by the Department.

What the current regulations will not do is facilitate the dramatic and major recreational mooring management changes being pushed by the Department under the guise of a public benefit review.

The 'actual changes' being proposed by the Department are as follows:

- To introduce a completely new mooring acquisition system where 'waiting lists' are the only mechanism whereby boat owners can access mooring sites. (The proposed system is almost identical to the NSW regulatory process where some people have been on waiting lists for over 20 years. The Department denies there is any influence from the NSW system.)
- To acquire a mooring site and apparatus an applicant will be placed on a waiting list.
- If a mooring site of appropriate dimensions becomes available because the owner has decided he or she no longer wants the mooring site, the Department will put the person on top of the waiting list in contact with the mooring owner so that both parties can negotiate the sale and transition of the existing mooring apparatus.
- If a transaction to exchange ownership of the mooring apparatus is successfully negotiated the former owner will then be required to relinquish the mooring site licence and a new licence will be issued to the applicant. (It is probable that the same ID details will be used for the mooring site.)
- If an appropriate transaction is not negotiated successfully between the mooring owner and the applicant then the mooring owner will be instructed

by the Department to remove the existing physical mooring apparatus from the mooring site at the cost of the mooring owner.

- The related mooring site licence will then be required to be relinquished by the mooring owner or the mooring site licence will be cancelled by the Department.
- The applicant will then be required to have a mooring contractor place new and appropriate physical mooring apparatus at the mooring site.
- Subject to a satisfactory mooring inspection report by a mooring contractor and appropriate specifications of the new vessel to occupy the site a new mooring site licence will be issued to the applicant.
- When the applicant decides he no longer requires use of the mooring site he will be required to undertake the same disposal process.
- (If the transition of ownership of a mooring site and use of the apparatus is found to be under the process of private negotiation [Whatever form that will take?] the mooring site licence will be cancelled by the Department.)
- There will be no other method of acquiring a mooring site licence except by transition by way of will or estate. (That process may even be restricted to prevent generational ownership of the same mooring site.)
- A mooring site licensee will not be allowed to permit any other person's vessel to use his/her mooring site by way of private arrangement which the existing 'additional vessel' procedures of the current Mooring Regulations 1998 clearly facilitate.
- An additional vessel will only be allowed if the additional vessel is owned by the current mooring site licensee.
- A mooring site licensee will be forced by the Department to allow other vessels or casual users to use his/her mooring site and apparatus whenever the mooring site is not being used by the principal or licensed vessel.
- An appropriate bridle or head ropes must be available at all times for use by other boat owners.
- No compensation will be available to the mooring site licensee for the provision of use of his/her mooring apparatus to others.
- The Department will tag the mooring site to indicate the maximum boat length of a casual user.
- The mooring site licensee will not be able to tag his mooring site apparatus as not being available for casual use by others.
- The Department will set up a registration system along with a fee for boat owners who want to use other people's mooring sites freely.

No insurance proposals have been put forward by the Department in relation to the proposed casual use system.

Whatever the media statements or information as issued by the Department the aim of the mooring regulation review is to introduce the above changes. The changes are dramatic. The proposals will require a complete overhaul of the existing regulations. This was not the original stated intent of the Mooring Regulation Streamline Review throughout which the Department has suggested any changes will be relatively minor.

Major changes are being proposed to the relatively successful recreational mooring management system historically used in Western Australia.

In the main, mooring owners do not mind if other vessels of appropriate size use their mooring apparatus for short term stays providing the boat operator is on board at all times. That process can easily be facilitated under the current statutes and regulations by the Department.

However, mooring owners, who are aware of what is going on, completely reject the major changes proposed to the regulations that will completely annul their choice of to whom they might like to transfer their mooring site. Mooring owners also completely oppose the proposed deletion of their right to allow other vessels to use their mooring site through the additional vessel regulations. Restrictions enforced, probably *ultra vires*, by the Department since December 2010 in respect to these two rights has decimated the fair and equitable use of mooring sites and resulted in many sites not being used at all.

Mooring owners are in a complete state of bemusement.

The Department has not presented any reasonable rationale for their desire to completely change the recreational mooring system in Western Australia.

From an expenditure viewpoint the overall cost of this unnecessary review must be phenomenal. It is understood that the big majority of attendees to a mooring review stakeholder reference group are government officers and other government agency personnel, most of whom do not have any connection to recreational mooring use at all. This is *somewhat* astounding.

What is the purpose of such expense and resource waste?

On average over the past ten years, from Department information, there has only been 103 mooring transfers per annum processed by the Mooring Office. Since 2010, as a result of the restrictions imposed by the Mooring Office on freely negotiated short term use of mooring sites by third parties there has been a dramatic decrease in the frequency of use of many mooring sites in the Swan and Canning Rivers. These restrictions have come about as a the result of an in-house reinterpretation of the Mooring Regulations 1998 by the Department of Transport Mooring Office after the regulations had been in operation for twelve to thirteen years.

Before the current regulations are set aside and replaced by a completely different approach to recreational mooring management processes used within the State, the current state of recreational mooring management by the Mooring Office should be examined and reinstated to the position and intent of the Mooring Regulations 1998 as they were when gazetted.

There is no need for such an upheaval in the recreational mooring management processes that had been successfully applied in Western Australia until 2010 when some sort of philosophical or ideological change occurred in the Department of Transport that resulted in the implementation of highly unreasonable re-interpretations of the mooring regulations.

If and when changes to the recreational mooring management system in the State are required those changes should be instigated by the mooring owners themselves by representation to Government not by Government forcing radical, unnecessary and unwanted and predetermined regulatory changes on mooring owners by way of the so-called Mooring Regulations Streamline Review.

A review should be directed towards the total un-fairness of the current management practices being implemented by the Department of Transport before consideration is given to the introduction of a radical and un-proven new mooring management system.

**WAMA Office**

**Print Date: 4 August 2015**

Please review further information at [www.wamooringassociation.org](http://www.wamooringassociation.org)

Send any comments to WAMA at [wamooringassoc@gmail.com](mailto:wamooringassoc@gmail.com)

Please forward this discussion paper to other mooring owners you may know.

Send you comments and concerns to your local parliamentary member.