

Attention: _____

Western Australian Mooring Association
("WAMA")
(being incorporated)

SUBMISSION
in response to

WA Department of Transport's

MOORINGS MANAGEMENT POSITION PAPER
October 2015

WAMA

www.wamooringassociation.org

20th November 2015

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WAMA SUBMISSION Notes:

This submission has been prepared by the WAMA Office and is forwarded to the Department of Transport by the Western Australian Mooring Association (WAMA) (*being incorporated*) by the authority of the WAMA Preliminary Committee and WAMA Members present at the WAMA General Meeting held 17th November 2015.

Nothing written in this submission constitutes legal advice.

WAMA reserves the right to make amendments to the content of this submission at anytime.

WAMA Office
20th November 2015

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Western Australian Mooring Association ("WAMA")

(being incorporated)

RESPONSE

to the

Moorings Management Position Paper October 2015

as produced by the Department of Transport ("DoT"), Western Australia.

"WAMA"	- Western Australian Mooring Association
"DoT"	- Department of Transport
"MR1998"	- Mooring Regulations 1998
"S&PR1983"	- Shipping and Pilotage (MCA) Regulations 1983
"MMPP"	- DoT Moorings Management Position Paper

WAMA's Position in Response to the DoT Mooring Regulation Proposals in the DoT Moorings Management Position Paper October 2015.

PART ONE: Items of Major Concern to Recreational Mooring Owners.

After extensive consideration of the proposals in the DoT Moorings Management Position Paper ("MMPP") WAMA Members have by unanimous vote come to the following conclusions:

NOTE: If the current Mooring Regulations 1998 ("MR1998") are adopted unchanged by the DoT for use on a State wide basis then any following reference to the Shipping and Pilotage (MCA) Regulations 1983 ("S&PR1983") will become superfluous.

1.1 Transfer of Mooring Sites

WAMA supports the reintroduction of the ability to transfer mooring site licences and registered mooring sites by way of a joint application to the DoT by the current licensee or registered owner of a mooring site and the buyer of the mooring apparatus associated with the mooring site. (As the situation was managed prior to Dec 2010.) *(In accordance with the current regulations.)* (esp. Regulations 16, 11 and 12 of the MR1998.) (and R.12 S&PR1983)

(There must be NO REQUIREMENT FOR THE SALE OF THE VESSEL, registered as the Licensed Vessel or the Registered Vessel to the particular mooring site as a prerequisite for the transfer of the Mooring Site Licence or the Mooring Site Registration.)

1.2 Sale of Licensed/Registered Vessel including the Mooring Site

WAMA supports the status quo *(without prejudice)* that where a sale of a Licensed Vessel or a Registered Vessel and the mooring apparatus situated at a mooring site occurs and the new owner of that vessel requires the transfer of the associated Mooring Site Licence or Mooring Site Registration then the DoT will transfer the Mooring Site Licence or the Mooring Site Registered as required. *(In accordance with the current regulations.)* (R.16 MR 1998) (esp. R.12(3)(b) S&PR1983.)

1.3 Additional Vessels (Authorised Vessels)

WAMA requires the full retention of the ability for a Mooring Site Licensee or a Registered Mooring Site Owner to be able to nominate any vessel as an authorised vessel for his/her mooring site (subject to appropriate vessel length) in accordance with the 'Division 3 - Additional Vessels' of the MR1998 and R.16(1) S&PR1983 requirements.

Most moorings subjected to the proposed changes are long term storage moorings. The right of a Mooring Licensee to allow or apply for a boat owner known to him or her to use a mooring for short term or even long term storage purposes is an integral part of storage mooring use that has been in operation on the Swan and Canning for decades. The elimination of this right will be a profound disruption to the fair and equitable use of mooring apparatus owned by private individuals.

1.4 Transfer of Mooring Site to an Estate Beneficiary Owner

WAMA states that if a beneficiary of an estate becomes the owner of a Licensed Vessel or a Registered Vessel and the owner of the mooring apparatus associated with a mooring site then the DoT must, upon application, transfer the Mooring Site Licence or the Mooring Site Registration to that new owner. (WAMA believes that this process is the correct interpretation of R.17(b)MR1998 in that an application under the circumstances should be made under R.16 MR1998) (Concern about the transfer of a Mooring Site Licence as the personal property of the deceased is entirely irrelevant. The executor of an estate will legally step into the role of the deceased owner and relinquish the past owner's Mooring Site Licence to the DoT.) (Note: R.12(3)(c)S&PR1983 allows transfer by will.)

1.5 Proposed Casual Use System for Recreational Moorings

WAMA members understand the possible social and boating benefits of a casual use system being introduced into Western Australia. In WAMA's first submission to the DoT first phase of consultation for the Mooring Regulation Streamline Review WAMA detailed how a casual use system might function. DoT picked up a number of WAMA's concepts.

However, upon further and extensive examination of the DoT's proposed casual use system as explained in the DoT MMPP, WAMA is now of the view that DoT's proposed casual use system will not work and is, in fact, fraught with danger and is riddled with many unresolved issues that have serious social, financial, legal and public benefit problems. Issues such as comprehensive public liability insurance for fee paying casual users have not even been considered by the DoT. Social conflict; potential damage; recreational mooring owners insurance limitations; potential nuisance; increased criminal activity and many more issues have not been touched upon by the DoT. Further issues with DoT's casual use system are discussed in following parts of this submission.

Much of the discussion about the DoT Casual Use System in the DoT MMPP is about the trivial functional aspects of the system such as whether there is a bridle on a mooring; no anchoring within fifty metres of a mooring area; the size of a boat that can use a mooring; the fees to be charged etc. None of these matters are important until the major issues such as insurance, public liability, social conflict etc. are resolved. Once these major issues are all resolved WAMA may support a trial of a casual use system to be undertaken over three or four years. A trial may be implemented without any changes being made the MR1998. (A casual use trial might be implemented under S.65 of the WA Marine Act 1982.)

No legislative or regulatory change should be undertaken until an extensive trial of the proposed casual use system (modified as required) is undertaken and thoroughly assessed from all perspectives.

Under the circumstances no WAMA member will support the DoT's proposed casual use system in its current form.

1.6 Swan River Trust Courtesy Moorings

Until a proper casual use system is devised WAMA members do support an increase in the number of Swan River Trust Courtesy Moorings (Red Floats) being placed in the Swan and Canning Rivers along with an increase in the number of courtesy moorings being placed in Mangles Bay and anywhere else as required.

1.7 DoT Proposed Mooring Hire Service

The majority of WAMA members believe it is not the job of the DoT to run a mooring hire business, however if the DoT is desirous of spending large amounts of capital on setting up mooring sites 'For Hire' to the standard of the Swan River Trust courtesy moorings then so be it - as long as that proposal does not interfere with any of the rights of existing recreational mooring owners. (esp. the proposed elimination of additional vessel rights in order to prop up the demand for the DoT mooring hire sites.) (WAMA believes that a State wide DoT mooring hire system will be a financial drain on DoT resources.)

1.8 Proposed DoT Waitlist

WAMA is totally bemused by the DoT waitlist proposal as the current MR1998 r.10 and r.11 provides for the operation of a waitlist of mooring site applicants. Since the introduction of the MR1998 the DoT has not bothered to implement a waitlist. The waitlist in accordance with the MR1998 is designed, quite specifically, to operate in a parallel manner to the normal application and transfer procedures facilitated by the MR1998. In other words the waitlist operates disjunctively to the rights of individual applications and individual transfer applications as allowed by the MR1998. WAMA may support the operation of a waitlist as it is described in the current regulations.

WAMA does not support, in any manner, the waitlist proposal as it is described in the DoT MMPP. The DoT waitlist proposal completely overturns the intent of the MR1998. The DoT proposes that the only method of acquiring a mooring apparatus and then having a Mooring Site Licence transferred to an interested party is through the operation of the DoT proposed waitlist. Negotiations will be enforced between a party nominated by the DoT and the owner of a mooring apparatus who may be considering selling. (If negotiations fail the mooring owner might have his or her Mooring Site Licence cancelled by the DoT.) (This type of proposal may have severe Australian Consumer Law conflicts and consequences.) The sale of a boat and mooring apparatus as a package will also be eliminated by the DoT waitlist proposal. This will have major detrimental effects on the boating industry as many vessels will not be capable of being sold without the associated mooring storage capability being included in the transaction - especially deep keeled yachts.

The MR1998 will have to be completely re-written to facilitate the operation of the DoT waitlist proposals.

WAMA is totally against all of the 'waitlist' proposals as described in the DoT Moorings Management Position Paper October 2015.

PART TWO: WAMA's General Commentary and Observations.

(About the conduct of the Mooring Regulation Review Processes.)

2.1 DoT Public Information Sessions

All WAMA members wish to express their complete disappointment with the Second Stage Public Information Sessions. The set up of the information sessions was obviously designed to avoid an integrated approach to questioning by recreational mooring owners. All that happened was that DoT staff were required to answer the same question on multiple occasions over a four hour period (or thereabouts) - to the extent that some DoT staff obviously become tired of answering the same legitimate questions from mooring owners. All DoT responses to questions appeared to be coached and there was no flexibility in answers given by DoT staff that might have shown the slightest concern towards the plight of mooring owners.

2.2 DoT Current Position as Described in the MMPP

The DoT position in October/November 2015 is exactly the same as it was at the beginning of the first consultation phase in February 2015. The DoT's position has not changed in any way as a result of any of the consultation period, any meetings or any of the submissions made by WAMA and private recreational mooring owners. If anything the DoT has responded by rejection and become more fixed and are adamant in wanting to implement their proposed changes - all of which have not been thought out and studied anywhere near to an appropriate extent.

In contrast to the DoT, WAMA has extensively reviewed the proposals put forward by the DoT in February 2015. WAMA was formed on the 25th March 2015 with the aim of responding to the DoT proposals in the so called Mooring Regulations Streamline Review. WAMA is continuing its 'incorporation' program. Since March 2015, WAMA has conducted three (3) general membership meetings; ten (10) WAMA committee meetings; two (2) meetings with other boating associations; attended the DoT Key Stakeholder Working Group; one (1) direct meeting with DoT staff; attended all four (4) public information sessions; had major discussions with authorised mooring contractors; set up a WAMA information web site [www.wamoorningassociation.org] containing multiple discussion papers; along with continual communications with WAMA members.

As a result some of the views expressed by WAMA, in WAMA's first submission to the DoT Regulatory Review, have changed. WAMA has thoroughly examined all proposals by the DoT and has sensibly changed its position to some degree, as expressed in this submission. The contrast is that the DoT has not changed its position in any manner whatsoever, except for a few minor functional aspects about how the proposed DoT casual user system might function on the water.

2.3 First Stage Survey

The DoT has used the so called results of the first survey to qualify the DoT current position. Use of the first survey to qualify proposed radical changes to the current mooring regulations - proposals that were not even understood by many who undertook the first survey - is completely wrong. To use the first survey to qualify changes to 'mooring transfer regulations' and the deletion of 'additional vessel' regulations is completely unjust. WAMA members and multitudes of boaters who do not own moorings have discussed the structure of the first survey and it was soon obvious that most participants did not understand or were not even aware of the intention of the DoT to introduce radical and significant changes to the existing mooring regulations - changes that dramatically affect the use and private property rights of all recreational mooring owners.

WAMA completely rejects the results of the first public consultation survey, obviously designed, by KREAB Strategic Communications Counsellors on behalf of the DoT, to achieve a specific outcome

that is now being used by the DoT as qualification for proposed undisclosed changes to the mooring regulations.

The survey and the structure of the questions were and still are statistically corrupt. The survey questions were designed to achieve a particular outcome.

The number of recreational mooring owners from the Swan, Canning and Mangles Bay Mooring Control Areas that participated in the survey is unknown. WAMA has determined from discussions with other boating organisations that most respondents who were asked if they had access to a mooring and replied 'yes' were users of Rottneest and Garden Island moorings. These moorings areas are not part of the proposed changes.

2.4 Key Stakeholder Working Group

WAMA understands recent governmental management systems that require authorities to organise 'key stakeholder groups' as part of various consultation phases for proposed governmental changes in planning, policy, regulations and so on. Key stakeholder groups are meant to be formed by participants that are directly affected by the proposals and decisions made by the governmental authority at the time.

WAMA was very happy to be invited to participate in the key stakeholder group meeting held by the DoT mooring staff and their consultants KREAB.

WAMA was completely bemused by the structure of the key stakeholder group. Of twenty two (22) participants who attended, only three owned or had owned a recreational mooring. All except five (5) participants were from government authorities or the government consultancy. The total number of government participants, including those who did not attend, in the key stakeholder group is twenty three (23). Two others sent apologies. In summary, of thirty (30) key stakeholder working group participants - three (3) are current or past recreational mooring owners.

Basically, the working group was a lecture by DoT staff about what they intended to do with the mooring regulations.

A key stakeholder group must be made up in the majority of those who will be directly affected by the DoT proposals. If WAMA did not attend there would have possibly been NO RECREATIONAL MOORING OWNERS attending the meeting.

DoT has seriously failed to construct a proper representation of recreational mooring owners for the purposes of the so called key stakeholder working group.

PART THREE: The Five Objectives of the MMPP

3.1 Provide a single set of mooring regulations.

WAMA states that the need for regulatory change in relation to recreational moorings has been greatly exaggerated by the DoT. The DoT simply needs to bring Mooring Control Areas (MCAs) external to the Swan and Canning Rivers under the management processes of the Mooring Regulations 1998. External and newly created MCAs would simply be listed under r.3 'Schedule 1 - Mooring control areas to which regulations apply' of the Mooring Regulations 1998.

The push by DoT for one set of recreational mooring regulations for the whole of the State of Western Australia is, knowingly, a falsity. Rottneest Island, Garden Island and Port Authority areas will not come under the control of the DoT.

One set of regulations was the primary reason the Mooring Regulations 1998 were drafted in the first place. The Department has misused the Mooring Regulations 1998 since gazettal 'and possibly got itself - the Department - into a bit of a bind.' Many of the proposals in the MMPP can be introduced under the current regulations without any modification at all.

Many mooring owners have suggested that some elements within the Department appear to be wanting credit for fixing problems that do not actually exist - except maybe as a result of recent mismanagement of some sections of the current regulations and also as a result of the casual, maybe *ultra vires*, reinterpretation of some sections of the regulations where it suited various philosophies and internal agendas of some.

WAMA supports the use of the Mooring Regulations 1998, in an unchanged format, on a State wide basis.

3.2 Establish classes of moorings.

Classes of Moorings Already Exist

The Mooring Regulation Streamline Review has always been primarily concerned with the Management of recreational moorings throughout the State. It will be the recreational mooring owners that are the most affected by the DoT proposals. Confusing recreational mooring management issues with a discussion about mooring classes is ridiculous. The Minister for Transport has the ability to establish any class of mooring he or she likes under s.65 of the WA Marine Act 1982.

Recreational Moorings Minimum Vessel Length

The "DoT proposes introducing a minimum size of five metres for vessels to be licensed to a mooring."

WAMA notes that r.9(1)(d) and r.10(3) of MR1998 already sets the minimum vessel length at five (5) metres.

Commercial Moorings

WAMA believes that Commercial Mooring throughout the State should be managed under their own regulations.

Maintenance of Apparatus for Maximum Swing.

"... mooring sites will be required to be maintained at the mooring's designated maximum vessel length." (... with example of a 9 metre vessel.)

A nine metre vessel might displace two tonne or it might displace fifteen tonne. The mooring contractor needs to know what the vessel specifications are in order to construct an appropriate apparatus. A six metre vessel might displace one tonne or 5 tonne.

The proposal that a mooring apparatus be constructed to maintain the maximum possible vessel length is totally unfair and inequitable on the part of the mooring owner. WAMA completely rejects this proposition.

The only reason this maximum vessel length capability has been put forward is to facilitate use by the proposed DoT casual users. This proposal will almost certainly dramatically increase overall costs on a great number of recreational mooring owners. The implementation of this proposal will also be an administrative nightmare.

WAMA does not support the proposed casual use system in its current form but regardless, if there eventually is a casual use system, the casual user boat length must always be less than the boat length of the licensed vessel.

3.3 Short term casual use of vacant recreational moorings.

As stated above "... no WAMA member will support the DoT's proposed casual use system in its current form" and *"No legislative or regulatory change should be undertaken until an extensive trial of the proposed casual use system (modified as required) is undertaken and thoroughly assessed from all perspectives."*

Further to discussions earlier in this submission WAMA members have put forward some more of their concerns with the DoT proposed casual user system as follows:

Some Casual Use Problems

- Conflict between casual users and owners of the mooring apparatus.
- Abuse of the system by casual users.
- Damage to mooring apparatus by inexperienced boaters.
- Potential for casual users to leave their vessel unattended.
- Confusion with the swing length identification system.
- Casual users using the mooring site for live on board purposes.
- Loud parties being held in quiet mooring areas.
- Potential for more criminal activity within mooring areas. (Theft, damage, vessel break ins etc.)
- Insurance issues; public liability; no mooring contractors insurance for casual users.
- Private property in the form of the mooring apparatus should not be commandeered by government for the political or social purposes of use by unknown members of the public.

3.4 Improved administration of mooring licences.

The Mooring Regulations 1998 and the Shipping and Pilotage (MCA) Regulations 1983 are not overly complicated. Administration of both sets of regulations simultaneously surely cannot be a difficult task undertaken by the DoT that is fraught with major management problems.

Regardless, and as noted in 3.1, all the DoT needs to do is bring all Shipping and Pilotage Act and WA Marine Act MCAs under the management system of the Mooring Regulations 1998 r.3 Schedule 1, without any changes being made to the regulations, to achieve a so called 'improved administration.'

3.5 Ensure equal and fair access to moorings and prevent moorings gaining proprietary value.

The DoT's position in relation to this objective is exactly the same as expressed in the DoT's Moorings Management Discussion Paper February 2015. This demonstrates that the DoT has not listened at all to the concerns and preferences of existing recreational mooring owners.

The DoT proposal that "... there will be no transfers of mooring site licences with a preference for licences to be relinquished to the DoT for reallocation via a waitlist" will be a complete and utter disruption to the fair and equitable management of the recreational mooring system as it currently exists. As noted early this proposal will require a complete re-write of the mooring regulations currently in place.

This proposal is frightening to many mooring owners who regard their mooring apparatus as their own private property as they regard their boat as their own private property. It is the case - mooring apparatus is private property. Now the DoT wants to commandeer all rights to its use and direct how that private property should be bought or sold. WAMA questions the whole concept and as stated above the processes suggested by DoT may be in breach of Australian Consumer Law and other Commonwealth Statutes.

WAMA is adamant that the transfer of mooring site capability as expressed in the current MR1998 should be retained and properly managed by DoT. The current interpretation of the transfer processes as used by the DoT since Dec 2010 should be dropped immediately - although that interpretation does allow the transfer of a mooring site if the sale of the vessel is involved. The DoT even wants to delete that capability by introducing their proposed overbearing waitlist processes.

WAMA does not support a waitlist as currently espoused by the DoT. A waitlist as described will not work.

The DoT has completely exaggerated the concept of "... the potential for a mooring licence to gain proprietary value." All WAMA members and the majority of other recreational mooring owners completely understand that a 'Mooring Site Licence' or a 'Mooring Site Registration' is not personal property. It is ridiculous that the DoT persists with the view that 'mooring licences' and 'mooring site registrations' are being bought and sold by speculators. This does not happen.

It is the private property in the form of the mooring apparatus which is negotiated through a potential mooring transfer process. The parties to the negotiations are always completely aware of the circumstances. Mooring apparatus of varying maximum vessel capability and situated in varying localities must obviously have variable values or worth. The worth might also vary in respect to the potential buyers wants and needs. The majority of recreational mooring owners are aware of this

fact and accept the situation. A buyer will pay more for an apparatus that is heavy duty, has a big mooring swing and is situated in a good location near easily accessible facilities and services than he or she will pay for a small mooring apparatus situated in a location that is difficult and tedious to approach. This is the way mooring transaction prices are determined in our fair and equitable society and economy.

Speculators do not exist within the recreational mooring fraternity in Western Australia. It is the case however that occasionally a mooring owner, who might be a budding entrepreneur, might advertise his mooring apparatus for sale a ridiculous price. WAMA members can state categorically that these situations are rare and always fail to be successful.

These rare cases cannot be used as the rationale by the DoT to claim that all recreational moorings are gaining unwarranted proprietary value. This is simply not the case. WAMA members and the majority a recreational mooring owners are very fair and reasonable when they are in a situation of wanting to buy or sell a mooring apparatus for whatever reason they may have.

The 'proprietary value' scare tactic adopted by the DoT is completely rejected by WAMA. This tactic is being used to try and introduce radical changes to the mooring regulations that are completely unnecessary and unwarranted.

Many of the proposed DoT changes will annihilate the many 'quite enjoyment' use rights that a recreational mooring owner currently enjoys. The current rights of a mooring owner to make an application to transfer his mooring will also be obliterated.

All WAMA members are completely against the proposed implementation of a waitlist to control transfer of mooring sites under the guise of controlling 'mooring licence' proprietary value.

PART FOUR: Further Concerns Raised by WAMA Members

Some aspects of the DoT proposals look innocent enough BUT underlying the so called five main objectives is the intention to radically change the Mooring Regulations 1998 (which were originally designed to be used State-wide.)

Just some of the underlying proposals which seriously concern recreational mooring owners include:

- The elimination of a mooring owner's right to allow somebody else use their mooring apparatus on a short term basis.
- The elimination of a moorings owner's right to sell their mooring apparatus and their boat as a package.
- The complete elimination of a mooring owner's right to transfer their Mooring Site Licence to anybody of your choice.
- The forceful requirement that a mooring owner should negotiate the sale of their mooring apparatus with a person solely nominated by the DoT.
- If those forced negotiations for the mooring apparatus fail a mooring owner will be required to relinquish their Mooring Site Licence.
- After failed negotiations for the mooring apparatus, then if a mooring owner does not surrender their Mooring Site Licence it will be cancelled by the DoT.
- A mooring owner will then be required to remove their private property in the form of their mooring apparatus at their cost or probably suffer a fine and costs.
- A mooring owner's mooring apparatus will able to be used by anybody with a boat who is authorised by the DoT. (The DoT collects a fee for this.)
- There will be no recompense for the use of the mooring or for any damage to the mooring owner's apparatus by complete strangers.
- There are no proposals for any insurance scheme to cover use of a private mooring by others.
- A mooring owner will be responsible for any damage to their mooring apparatus by complete strangers.
- Mooring owners will be required to continue to provide mooring inspection reports to the DoT at their cost.
- There are no insurance proposals to cover highly likely damage to other boats caused by inexperienced casual users of mooring apparatus in a mooring control area.
- A mooring site licence fee will continue to be charged to the mooring owner by the DoT.
- While eliminating a mooring owner's right to loan their mooring apparatus to friend and those in need, the DoT will take over or set up mooring sites which they will rent out.
- The DoT propose to eliminate a mooring owner's right to transfer the use of his or her mooring to his or her descendants. (Eliminating 'generational use' is the DoT term.)

There are many other problems with the proposals being put forward by the DoT.

There are many major legal, financial and social implications that need to be resolved if a casual use of moorings system is introduced.

PART FIVE: WAMA Survey - Notes

WAMA is undertaking a survey that is being responded to by recreational mooring owners only.

The results give a true idea of the viewpoint of the most affected parties in this mooring regulation review process - that is the mooring owners themselves.

Current results indicate very little support for the changes proposed by the DoT in the MMPP.

An analysis of results along with all questions used in the survey will be forwarded to the DoT for perusal and consideration in the near future.

**WAMA Office.
20th November 2015**

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WAMA reserves the right to make changes and additions
to this submission if the changes are seen to be in the best
interest of WAMA Members and other recreational mooring owners.

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