



PARLIAMENT OF WESTERN AUSTRALIA

**JOINT STANDING COMMITTEE
ON
DELEGATED LEGISLATION**

THIRTIETH REPORT:

Rottnest Island Amendment Regulations 1997

Presented by the Hon Robert Laurence Wiese MLA (Chairman)

**30
March 1998**

Joint Standing Committee on Delegated Legislation

Members

Hon Bob Wiese MLA (Chairman)
Hon Nick Griffiths MLC (Deputy Chairman)
Hon Simon O'Brien MLC
Hon Barbara Scott MLC
Hon Jim Scott MLC
Mr Ted Cunningham MLA
Mr Norm Marlborough MLA
Mr Iain MacLean MLA

Advisory/Research Officer

Andrew Mason

Committee Clerk

Jan Paniperis

Terms of Reference

It is the function of the Committee to consider and report on any regulation that:

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
- (b) unduly trespasses on established rights, freedoms or liberties;*
- (c) contains matter which ought properly to be dealt with by an Act of Parliament; or*
- (d) unduly makes rights dependent upon administrative, and not judicial, decisions.*

If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.

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Report of the Joint Standing Committee on Delegated Legislation

in relation to

Rottnest Island Amendment Regulations 1997

1 Introduction

- 1.1 By its Rules the Committee is constrained in the performance of its scrutiny function to the examination of legislative instruments to determine whether they comply with certain legal principles and broader issues relating to rights, liberties and freedoms.
- 1.2 Where the Committee is of the view that a regulation is beyond power or that there are other matters of concern it is the practice of the Committee to consult the relevant Minister or Department to determine whether the matter can be resolved other than by disallowance of the offending regulation. In some cases this consultative process will lead the Committee to the conclusion that the regulation is in fact within power or that the particular concern of the Committee can or has been met.
- 1.3 It is also the practice of the Committee, where an inquiry into a matter has not been finalised within the time allowed, to move for disallowance of the regulations in order to protect the initial position taken by the Committee. Taking this course of action allows sufficient time for the Committee to address the issues raised in any inquiry. Of course as stated the initial position taken by the Committee can be moved as a result of the consultative process undertaken. The result may well be that the Committee ultimately recommends that the disallowance motion be withdrawn.

2 The Rottnest Island Amendment Regulations 1997

- 2.1 The Committee has had cause to examine the *Rottnest Island Amendment Regulations 1997* (“the Regulations”) as a result of which a number of concerns were taken up with the Minister for Tourism (“the Minister”) and the Rottnest Island Authority (“the Authority”). Attached and marked “Annexure A” is a copy of the Regulations. A number of these concerns were brought to the attention of the Committee by the stakeholders principally affected by the Regulations, the mooring licensees.
- 2.2 The Regulations, which amend the *Rottnest Island Regulations 1988* (“the Principal Regulations”), contain a number of initiatives in relation to the management and control of the Rottnest Island Reserve, an A-class reserve. In particular it implements the new

moorings policy of the Authority. This policy is designed to ensure that mooring licences are only held by those who require and are in a position to use them and eliminates the situation where one boat is used to licence more than one mooring. The policy aims to shorten the waiting list and period for allocation of mooring licences and encourages maximum use of moorings. In addition the policy clarifies the licensee's and the Authority's responsibilities. Attached and marked "Annexure B" is a copy of the moorings policy which provides a full explanation of the background and justification for the policy.

- 2.3 Other initiatives implemented by the Regulations include controls on environmentally damaging activities such as sandboarding, disposal of sullage from boats, feeding of fauna and littering.

3 The Committee's Concerns

- 3.1 The Committee first addressed this matter at its meeting on 2 October 1997 and subsequently wrote to the Authority outlining its initial concerns on 7 October 1997. Attached and marked "Annexure C" is a copy of a letter from the Chairman of the Committee to the Authority dated 7 October 1997. A response to these initial queries was received from the Minister dated 14 October 1997 but unfortunately this was not before the Committee when it met at 8.30 am on 16 October 1997. Attached and marked "Annexure D" is a copy of a letter together with its enclosure from the Minister to the Committee dated 14 October 1997.
- 3.2 The Regulations were gazetted on 4 July 1997 and tabled in the Parliament on 19 August 1997. Under the provisions of section 42 of the *Interpretation Act 1984* there are 14 sitting days from the date of tabling in which there is power for the Parliament to move for the disallowance of such subordinate legislation. This period ended on 16 October 1997. In the circumstances the Committee resolved for the Deputy Chairman to table a Notice of Motion of Disallowance over the Regulations in the Legislative Council in order to protect the initial position of the Committee and to enable sufficient time for the Committee to handle the inquiry. Accordingly a Notice of Motion was tabled in the Legislative Council on 16 October 1997 and moved *pro forma* on 22 October 1997 by virtue of Legislative Council Standing Orders.
- 3.3 Subsequent to the above the Committee engaged in correspondence with the Minister in which the initial concerns of the Committee were addressed in addition to some further matters which the Committee became aware of as the inquiry proceeded. Attached and marked "Annexure E" is a copy of a letter from the Chairman of the Committee to the Minister dated 3 November 1997. Attached and marked "Annexure F" is a copy of a letter from the Minister to the Committee dated 12 November 1997. Attached and marked "Annexure G" is a copy of a letter from the Chairman of the Committee to the Minister dated 17 November 1997. Attached and marked "Annexure H" is a copy of a letter from the Minister to the Committee dated 18 November 1997. The Chairman and the Committee's legal advisor also had the opportunity to meet with the Chief Executive Officer of the Authority, Mr Brian Easton, and Mr Bart Boland from the Minister's Office on 18 November 1997.

- 3.4 At this point the Committee resolved to remove the disallowance motion for reasons to be outlined below. However, the Committee agreed to continue to monitor the matter, particularly in relation to a number of issues where the Authority had given undertakings to take further action and continue with a consultation process. As a result the Committee heard evidence from the Authority on 16 December 1997 and from the Rottnest Island Mooring Licensees Association on 5 February 1998. Mr Brian Easton and the Authority's solicitor Ms Eliza Clapin gave evidence on 16 December 1997 and Mr John Barrymore and Mr Morris Fisher gave evidence on 5 February 1998. As a result of these hearings the Committee is now of the view that its inquiry is complete and has resolved to table this report.
- 3.5 The principal matters raised by the Committee can be summarised as follows:
- 3.5.1 The Regulations require that an applicant for a mooring licence must be the owner of a suitable vessel (see Reg. 8 of the Regulations - new Sub-Reg. 20(3)(d) of the Principal Regulations). The Committee was of the view that given the waiting period may be as long as 10 years this requirement seems unduly harsh and restrictive. During such a lengthy period of time an individual's circumstances can change dramatically and the individual's ownership of a suitable vessel may be one of those circumstances. As the objective behind this requirement appears to be to ensure that moorings are not allocated to those who are unable to use the licence, the Committee suggests that this objective could be achieved by a requirement that the applicant be the owner of a suitable vessel at the time the allocation is made;
- 3.5.2 The Regulations create an offence for the disposal of sullage within the limits of the Island other than by means of an approved treatment system (see Reg. 11 of the Regulations - new Reg. 38C of the Principal Regulations). There are no facilities for the disposal of sullage on the Island. On the basis of this information the Committee was of the view that it would appear to be an unreasonable requirement as it would necessitate the individual returning to Perth to dispose of the sullage properly. However, the Committee is appreciative of the intent of this regulation in relation to environmental and health issues and therefore looked to determine whether there were other options for boat owners. Until pump-out facilities are provided on the Island the options available to boat owners are to use land based toilet facilities or install sullage tanks and then pump out outside of 3 nautical miles. In respect of the installation of holding tanks the Committee understands that this could be an expensive and sometimes difficult task given space limitations within most vessels. Most vessels would need to come out of the water to have the work done. The Committee came to the initial view that there should be some lead in time before this regulation is enforced to allow for boat owners to install holding tanks and for the Authority to provide pump-out facilities on shore;
- 3.5.3 All craft mooring in Rottnest waters are now required to be covered by "adequate insurance" as determined by the Authority from time to time (see Reg. 20 of the Regulations - new Reg. 72A of the Principal Regulations). The Committee understands that what is "adequate insurance" has not yet been settled by the Authority, however the terms and conditions on which mooring licences are now being issued reflect the

responsibilities of licensees and the Authority and will govern what type of insurance will be required. The Committee received from one applicant for a mooring licence details of the “terms and conditions” offered by the Authority for the grant of a mooring licence. These “terms and conditions” set out a number of exclusions and indemnities in respect of loss or damage. In particular the Authority’s liability for an act or omission of an employee is effectively excluded, and the licensee is obliged to indemnify the Authority against any liability or claim made against it by anyone who is in any way connected to the licence or the use of the mooring by anyone (for example, the licensee is bound to indemnify the Authority against the claim of an unauthorised user or trespasser or the claim of someone who has suffered loss caused by such a user). There are additional obligations imposed on the licensee under the proposed “terms and conditions” which expose the licensee to further risk. The Committee was of the view that these “terms and conditions” expose the licensee to risks and liabilities that should not be their responsibility. The Committee became concerned that the impact of these requirements effectively will prevent the licensee from obtaining suitable or reasonably priced insurance due to the extent of risk;

- 3.5.4 New regulations 14 and 72A(6) of the Principal Regulations (see Reg. 8 and Reg.20 of the Regulations) deem any person who is on a vessel to have committed the particular offences referred to the Committee. The Committee is concerned that this provision may be too wide and potentially beyond the general regulation making power contained in section 48 of the *Rottnest Island Authority Act 1987* (“the Act”). In particular it may lead to the prosecution of innocent guests or visitors on board a vessel who are oblivious to whether the vessel is entitled to be on a particular mooring or whether it is adequately insured. The Committee was of the view that a provision which deems the person on the vessel to be in control of the vessel unless he or she identifies the owner or person in control would be more appropriate; and
- 3.5.5 New sub-regulation 20(11) of the Principal Regulations (see Reg. 8 of the Regulations) may be void pursuant to section 43(1) of the *Interpretation Act 1984*. Section 43(1) provides that:

“Subsidiary legislation shall not be inconsistent with the provisions of the written law under which it is made, or of any Act, and subsidiary legislation shall be void to the extent of any such inconsistency.”

New sub-regulation 20(11) provides that “Part VII of the *Property Law Act 1969* does not apply to a mooring site licence”. Part VII of the *Property Law Act 1969* (“the PLA”) may apply to a mooring site licence in so far as a mooring site licence can be regarded as “any instrument of letting” (per section 69 of the PLA). Whether a mooring site licence is an “instrument of letting” will depend on the case law and the particular circumstances of the licence. This is a difficult legal question and one which the Committee has had insufficient time to examine, but it is evident that there may be circumstances in which Part VII of the PLA will apply to a mooring site licence. A regulation cannot amend or repeal the application of an Act and nor can it be inconsistent with the provisions of any Act. As a result it is likely that the new sub-regulation 20(11) may be void.

4 The Minister's Response and the Committee's Position

4.1 Requirement that an applicant for a mooring licence be the owner of a suitable vessel:

The Minister advised the Committee that as at 1 July 1997 there were 449 people on the waiting list for a mooring at Geordie Bay with only 3-4 moorings becoming available each year. The waiting list for moorings needed to be cut to a realistic period and hence the requirement for an applicant to be the owner of a suitable vessel. This requirement prevents speculative applications and thereby reduces the waiting period. In relation to the suggestion of the Committee to require boat ownership at the time of allocation rather than application, the Minister advised that it has been used in the past with extensive delays as a result of speculative applications.

In view of the obvious need to reduce the waiting list and give priority to those applicants who actually require a mooring, the Committee resolved to take no further action in relation to this issue.

4.2 Disposal of sullage:

The Minister responded that the Authority is not convinced that on-shore pump-out facilities would provide the answer based on experience in other similar holiday destinations. Nevertheless this option is being examined and in the meantime toilets are provided in most bays and the Authority is committed to providing them in other bays in the near future. The Minister highlighted to the Committee that existing legislation already prohibits the disposal of sullage in Rottnest waters and that this provision only maintains consistency with that approach and demonstrates proper management of the Authority's marine health responsibilities. In this respect reference is made to the following regulations:

- Regulation 262(4)(b) of the *Fremantle Port Authority Regulations 1971* prohibits the disposal of any garbage, ashes, mud, refuse, offensive matter or inflammable liquid from a vessel or barge within a radius of 3 miles of the seaward end of the north mole.
- By-Law 16 of the *Health (Rottnest Island) By-Laws 1989* provides that no person shall from any vessel discharge or deposit solid refuse in the waters of the Rottnest Island Reserve.
- Regulation 8(a) of the *Navigable Waters Regulations* provides that no person shall throw or cause to be placed in any port or harbour or any navigable waters (which includes the waters of the Rottnest Island Reserve) any matter or thing except with the permission of the department.

In evidence before the Committee Mr Brian Easton confirmed the above views in respect of the waste management responsibilities of the Authority. In addition the Authority is undertaking a community education programme for boat owners. A brochure has been distributed which advises boat owners that it is an offence to dispose

of sullage in Rottnest waters under the Regulations and under other legislation. The brochure also advises how boat owners should deal with sullage and refuse and describes the chemical toilets that are available which allow the waste to be flushed straight into the water. It was confirmed that a pump out facility was not being considered for the Island. The expense and environmental damage that would be associated with developing such a facility were reasons advanced for the decision not to provide a pump-out facility on the Island. It is always expensive to build on the Island and a large amount of environmentally damaging digging would be required to connect the facility to the new sewerage treatment plant. In addition the Authority is of the view that it is likely that boat owners would not use the facility. This view is apparently based on examination of experiences with such facilities at similar holiday destinations in other States.

The evidence before the Committee was that the Authority is of the view that a pump-out facility will not provide a solution to the problem. The Authority believes that the proper disposal of sullage will be addressed by educating boat owners and providing suitable toilets and waste management facilities in all of the bays that have moorings. In this respect the Authority advised the Committee that there is an upgrade of the Island's facilities underway and the provision of toilets is a priority. The Authority has included this regulation as it is consistent with other legislation and with the Authority's responsibility to manage the quality of the water surrounding the Island.

For its part, the Mooring Licensees Association highlighted to the Committee the practical difficulties of complying with this regulation. In order to dispose of sullage properly it will be necessary for the boat to have appropriate storage tanks. These are expensive. An estimate of 10% of the value of the boat was provided to the Committee as a gauge to the cost. In addition small and medium boats would find it difficult to find the space for a holding tank. A small treatment plant would also be necessary. The Association stated to the Committee that the treatment plant that is currently available would quickly drain the battery power of a small boat and cannot treat galley water, toilet water or floor water, all of which are covered by the definition of sullage in this regulation. Even if a boat has a storage tank the lack of a pump-out facility on the Island means that it will be necessary for boats to go beyond the 3 nautical mile limit to dispose of the sullage. The Association made the point that the practical reality is that boat owners will not go offshore to dispose of sullage. The Association stated that it is unlikely that boat owners will be able to comply with the regulation. For the present they did not see this as an environmental problem due to the natural flushing of the bays and the existing Leeuwin current.

After considering the evidence, the Committee resolved to take no further action in relation to this issue. Despite the evident practical difficulties that arise for boat owners with this regulation the Committee agrees with the Authority that the regulation is consistent with its waste management responsibilities and with other existing legislation. In respect of the difficulties that are created, the provision of toilet and waste disposal facilities in each of the relevant bays will eventually enable those who don't have sullage tanks with a means of disposing waste appropriately. Otherwise the Authority's efforts at educating boat owners on their responsibilities are a positive step.

In particular the Committee is supportive of the health and environmental initiative behind the regulation.

4.3 Insurance and Liability:

The Minister has confirmed to the Committee that under the particular indemnity and exclusion clauses of the “terms and conditions” under which a mooring site licence is issued, there is the possibility that a licensee may have to indemnify the Authority against a claim even if the loss was caused by the Authority’s negligence. He advises the Committee that the reason why this possibility has not been excluded is to make the Authority a less attractive defendant and to discourage the tendency for people to include the Authority in a claim almost automatically because it is perceived as having “deep pockets”. This results in a significant amount of money being wasted on legal advice for both the Authority and its insurers in respect of claims that are at best tenuous. There is also the risk that due to the strict liability that the courts have recently applied to public authorities the Authority could be found liable in respect of such a claim. This is of grave concern to the members of the Authority who then become exposed personally as a result of the *Statutory Corporations (Liability of Directors) Act 1996*. In these circumstances the Authority has moved to place responsibility for the mooring site on the licensees and reduce the exposure of the members through the widely drafted indemnity and exclusion provisions.

The Committee’s view remains that it is unsatisfactory that liability for the negligent acts or omissions of others should be forced on to the mooring site licensees. However, the Committee also understands the difficulties that the new *Statutory Corporations (Liability of Directors) Act 1996* creates for the members of the Authority. The Committee understands that the members have advice that adequate insurance to cover their personal exposure cannot be obtained and as a result they have moved to place the exposure upon licensees. The Authority has advised the Committee that what constitutes “adequate insurance” for a vessel has not been finalised. Prior to removing the disallowance motion over these regulations the Committee was advised that there may prove to be suitable insurance on offer for licensees to cover the risks they are exposed to as a result of the proposed “terms and conditions” of a licence. The Minister originally advised the Committee that the Authority was in ongoing discussions with Jardines Australian Insurance Brokers Pty Ltd and that two proposals had been developed. These proposals were to be the subject of consultation with the licensees.

By the time the Committee met with the Mooring Licensees Association on 5 February 1998 a bulk policy for Association members had been agreed upon. This policy covers claims for personal injury and property damage arising out of the ownership of moorings, whether used by the Assured or not, and contractual obligations to indemnify the Authority. The policy is a bulk policy and is only available to members of the Association. The Association currently represent approximately 370 licensees out of approximately 900 possible. Membership is \$25 per year and the policy is available for \$50. It provides a limit to liability of \$5,000,000.

In view of the availability of a policy on the market the Committee no longer takes issue

with the requirements of the Authority as to what amounts to “adequate insurance”.

4.4 Regulations 14 and 72A:

In response to the Committee’s concern in relation to these deeming provisions the Minister has proposed amending the Regulations as follows:

- 4.4.1 the new regulations 11, 12 and 13 of the Principal Regulations be amended to refer to “*a person with responsibility for the vessel*”;
- 4.4.2 the deeming provision in new regulation 14 of the Principal Regulations be amended to refer to “*for the purposes of regulation 11, 12 and 13, a person who is on a vessel that is anchored or secured to a mooring is taken to be a person with responsibility for the vessel unless that person shows, to the satisfaction of the Authority, that some other person is properly responsible for the vessel; and*
- 4.4.3 new regulation 72A(5) and (6) of the Principal Regulations to be amended in similar terms.

The Committee is of the view that amendments in the terms proposed would address the situation where a guest or visitor on the boat may be held to be responsible for the vessel. Similar to traffic and parking infringements the individual is given the opportunity to establish that someone else should be prosecuted for the alleged offence. In these circumstances the Committee has resolved to accept that amendments in the terms proposed be made and notes the Minister’s comment that in the interim the regulations would be implemented in this manner.

4.5 Sub-regulation 20(11):

The Minister has responded that he has legal advice that some particular provisions of Part VII of the PLA are specifically stated in the legislation to be incapable of exclusion and that by inference the remainder of Part VII may be excluded. The Minister makes the point that some provisions of Part VII of the PLA are almost invariably excluded from the operation of leases. The Minister argues that as a result, regulations controlling mooring site licences can also exclude the operation of those provisions of Part VII of the PLA that are capable of exclusion. As a result the new sub-regulation 20(11) is not inconsistent with the PLA and not void under section 43(1) of the *Interpretation Act 1984*. However to remove any doubt, the Minister proposes amending sub-regulation 20(11) of the Principal Regulations to read:

“To the extent permitted by law, part VII of the Property law Act 1969 does not apply.....”

The Committee has had insufficient time to ascertain whether the proposed amendment will clarify the situation and resolve any problems that may arise. However the Committee is of the view that the proposal may address the problem and is happy to accept that the matter can be resolved through further correspondence.

- 4.6 Based on the information to hand at 20 November 1997 the Committee resolved to withdraw the disallowance motion. As a result of further inquiries the Committee has resolved to take no further action other than to table this report.

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GOVERNMENT GAZETTE, WA

[4 July 1997]

*"Amendment A"***ROTTNEST ISLAND**

FI301*

ROTTNEST ISLAND AUTHORITY ACT 1987

ROTTNEST ISLAND AMENDMENT REGULATIONS 1997

Made by the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Rottnest Island Amendment Regulations 1997*.

Principal regulations

2. In these regulations the *Rottnest Island Regulations 1988** are referred to as the principal regulations.

[* Published in Gazette 30 May 1988, pp. 1825-46.
For amendments to 16 June 1997 see 1996 Index to Legislation of
Western Australia, Table 4, pp. 238-9.]

Regulation 3 amended

3. Regulation 3 of the principal regulations is amended by inserting, in the appropriate alphabetical positions, the following definitions —

“

“adequate insurance cover”, in relation to a vessel, means adequate insurance cover of a kind specified by notice under regulation 72A (1);

“annual admission payment” means the annual payment in lieu of admission fees referred to in regulation 7;

“approved” means approved by the Authority;

“certificate of registration” means a certificate of registration issued under the *Navigable Waters Regulations*;

“length”, in relation to a vessel, means —

(a) in the case of a vessel that is registered under the *Navigable Waters Regulations* —

(i) the length of the vessel specified in the certificate of registration of that vessel; or

(ii) if the Authority is not satisfied as to the accuracy of that registered length, the length determined under paragraph (b); and

(b) in any other case, the distance from the fore part of the hull to the after part of the hull taken at the upperside of the uppermost weathertight deck or, in the case of an open vessel, at the height of the gunwale;

“mooring” means any gear (including an anchor or stake) set out on the seabed in a permanent manner to which a vessel or other floating structure may be secured by a chain, cable, wire or rope;

“mooring area” means each of the following —

Porpoise Bay, Thomson Bay, Geordie Bay, Longreach Bay, Catherine Bay, Stark Bay, Narrow Neck and Marjorie Bay;

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“mooring site” means a mooring site recorded in the register;

“mooring site licence” means a licence granted under regulation 20;

“mooring site licensee” means a person who holds a mooring site licence;

“overall length”, in relation to a vessel, means the length of the vessel plus any bow sprit or marlin board;

“register” means the register referred to in regulation 25;

“rental licence” means a licence granted under regulation 15;

“rental mooring” means a mooring designated by the Authority as a rental mooring;

“vessel” means any floating object capable of carrying a person but does not include —

- (a) surfboards;
- (b) windsurfing boards;
- (c) canoes;
- (d) surfskis; or
- (e) other non-motorized recreational flotations of a similar nature.

Regulation 5 amended

4. Regulation 5 of the principal regulations is amended —

- (a) in subregulation (1) by inserting after “an admission fee” the following —
“ set out in Schedule 7 ”;
- (b) by repealing subregulation (2); and
- (c) in subregulation (4) by deleting “\$300” and substituting the following —
“ \$500 ”.

Regulation 7 repealed and substituted

5. (1) Regulation 7 of the principal regulations is repealed and the following regulation is substituted —

“

Annual payment in lieu of admission fee

7. Where —

- (a) in respect of any vessel or aircraft (not being a vessel or aircraft in which persons are usually carried for reward) the relevant payment set out in Schedule 7 is paid in respect of any year, or part of a year, ending on 31 August following the payment; and
- (b) an adhesive label issued by the Authority on receipt of that amount is exhibited on that vessel or aircraft in such a position as to be clearly visible from the exterior,

a person who is carried to the Island on that vessel or aircraft during that year is taken to have paid the admission fee required under regulation 5.

”

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(2) Any payment made under regulation 7 of the principal regulations in respect of the financial year ending 30 June 1997 is taken to have been made in respect of the period ending 31 August 1997.

Regulation 7D amended

6. Regulation 7D (1) (b) of the principal regulations is amended by deleting "a charter operator approved by the Authority" and substituting the following —

" an approved charter operator ".

Regulation 9 amended

7. Regulation 9 (1) of the principal regulations is amended —

- (a) by inserting "or" after subparagraph (i); and
- (b) by deleting subparagraphs (ii) and (iii) and substituting the following —

"
 (ii) is secured to a rental mooring, or a mooring on a mooring site, and is authorized to be so secured under Division 2 or 3 of Part 4.
 and

- (c) by deleting "\$300" and substituting the following —

" \$1 000 ".

Part 4 repealed and a new Part substituted

8. Part 4 of the principal regulations is repealed and the following Part is substituted —

PART 4 — MOORINGS

Division 1 — General Control Provisions

Use of moorings

11. (1) A person shall not without permission —

- (a) install a mooring for a vessel in the waters of the Island; or
- (b) secure a vessel, or allow it to remain secured, to a mooring that is installed without such permission.

Penalty: \$1 000.

(2) A person shall not secure a vessel, or allow it to remain secured, to a mooring in the waters of the Island unless —

- (a) the vessel is authorized under Division 2 or 3 to be secured to that mooring; and
- (b) the vessel exhibits, so that it is clearly visible from the exterior of the vessel —
 - (i) an adhesive sticker issued for that vessel under Division 3; or
 - (ii) a rental licence specifying that vessel.

Penalty: \$500.

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(3) A person shall not secure a vessel, or allow it to remain secured, to —

- (a) a mooring to which a vessel is already secured; or
- (b) a vessel that is secured to a mooring.

Penalty: \$500.

(4) Subregulation (3) does not apply so as to prohibit a vessel with an overall length of up to 3.75 metres from being secured to another vessel.

Anchorage

12. (1) A person shall not anchor a vessel, or allow it to remain anchored, unless the vessel lies in a position where —

- (a) no part of the vessel, or a vessel attached to it, is closer than 50 metres to any mooring; and
- (b) the vessel, or a vessel attached to it, does not obstruct or interfere with access to a mooring.

Penalty: \$500.

(2) Subregulation (1) does not apply in respect of a vessel that is required to anchor contrary to that subregulation to avoid or mitigate danger to human life or significant damage to property.

Competent operator

13. (1) A person shall not anchor a vessel or secure it to a mooring, or allow it to remain so anchored or secured, unless a competent operator of the vessel —

- (a) is within the limits of the Island; and
- (b) if the vessel remains so anchored or secured overnight, resides on the vessel or in casual residence on the Island under regulation 9.

Penalty: \$300.

(2) In subregulation (1) —

“competent operator”, in relation to a vessel, means an individual who —

- (a) is over 18 years of age;
- (b) is capable of operating the vessel; and
- (c) has responsibility for the vessel.

Application to person on vessel

14. For the purposes of regulations 11, 12 and 13, a person who is on a vessel that is anchored, or secured to a mooring, is taken to allow it to remain so secured or anchored.

Division 2 — Rental Moorings

Licence to occupy rental mooring

15. (1) The Authority may, on application under subregulation (2), grant to the applicant a licence for the use of a specified rental mooring by a specified vessel for a specified period.

- (2) An application shall be —
 - (a) made by an individual over the age of 18 years; and
 - (b) in an approved form that is duly completed.
- (3) A rental licence may be granted on such conditions as the Authority thinks fit.
- (4) A vessel is authorized to be secured to a rental mooring during any period if a rental licence for the use of that particular rental mooring by that vessel for that period is of effect.
- (5) A rental licence is not transferable.
- (6) In subregulation (1) —
“specified” means specified in the licence.

Rent

16. (1) The rent payable for a rental licence during any period shall be calculated at such rate as the Authority may determine for use of that rental mooring during that period.
- (2) If a licensee cancels a rental licence before the rental period specified in the licence has commenced, the Authority —
- (a) may retain from the rent as a cancellation fee —
 - (i) \$15 if the cancellation is more than 48 hours before the notice period specified in the licence; and
 - (ii) 50% of the rent if the cancellation is less than 48 hours before the notice period specified in the licence;
 - and
 - (b) shall refund or credit to the licensee the balance of the rent.
- (3) No rent is refundable or to be credited in respect of a licence cancelled under regulation 17 or cancelled after the rental period specified in the licence has commenced.

Cancellation by Authority

17. The Authority may, by written notice given to the licensee, cancel a rental licence if it is satisfied on reasonable grounds that the licensee has —
- (a) failed to comply with a condition of the licence; or
 - (b) committed an offence under the Act or these regulations,
- or caused or permitted another person to do any of those things.

Damage to mooring

18. (1) If a rental mooring is damaged or destroyed (“the loss”) during the period of a rental licence granted in respect of that rental mooring, the cost of repair or replacement is a debt due to the Authority by the licensee and is recoverable in a court of competent jurisdiction unless the licensee can show that —
- (a) the loss was caused by the act or omission of some other person; and
 - (b) the licensee could not have prevented the loss by the exercise of reasonable care.

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(2) For the purposes of subregulation (1), the loss is taken to have occurred during the period of the licence if —

- (a) the mooring is found to be damaged or destroyed at the end of the rental period specified in the licence; and
- (b) the licensee did not report the loss to the Authority at the commencement of the rental period.

Division 3 — Mooring site licences

Interpretation

19. In this Division, unless the contrary intention appears —

“additional vessel” means a vessel authorized to be secured to a mooring under regulation 27;

“authorized user” means a person authorized under regulation 31 to occupy a mooring site;

“authorized user’s vessel” means a vessel authorized to be secured to a mooring under regulation 31;

“licensed vessel” means a vessel authorized to be secured to a mooring under regulation 26;

“mooring inspection report” means a report by an approved mooring contractor that —

- (a) is in an approved form;
- (b) certifies that ‘a mooring’ on a mooring site inspected —
 - (i) complies with the approved mooring specifications; and
 - (ii) is suitable for the use of a vessel with specifications up to and including the specifications of the longest vessel registered, or proposed to be registered, in respect of that mooring site as a licensed vessel, additional vessel or authorized user’s vessel, at the date of the mooring inspection report;

and

- (c) is less than 12 months old;

“suitable vessel” means a vessel which —

- (a) has a length of at least 6.4 metres;
- (b) is a sailing vessel or has its own form of self propulsion capable of achieving a speed of 5 knots; and
- (c) has adequate insurance cover;

“waiting list” means the waiting list referred to in regulation 21 (1) (a).

Mooring site licence

20. (1) Subject to section 13 (3) of the Act and regulation 22, the Authority may, on application under subregulation (3), grant to the applicant a licence to occupy a specified mooring site.

(2) A mooring site licence may be granted on such conditions as the Authority thinks fit.

- (3) An application shall —
- (a) be in an approved form that is duly completed;
 - (b) be made by a person —
 - (i) whose principal place of residence is in the State;
 - (ii) whose name appears on an electoral roll as an elector under the *Electoral Act 1907*;
 - (iii) who is named on the certificate of registration of the vessel nominated under paragraph (d) as the owner of that vessel, or who produces evidence of ownership satisfactory to the Authority;
 - (iv) who is the owner of at least 25% of the net worth of the vessel nominated under paragraph (d);
 - (v) who does not already have an application recorded on the waiting list; and
 - (vi) who does not hold another mooring site licence;
 - (c) be accompanied by the application fee set out in Schedule 7;
 - (d) nominate a suitable vessel which has not been nominated under any other application recorded on a waiting list and is not a licensed vessel or an additional vessel for any other mooring site; and
 - (e) nominate a mooring area.
- (4) The applicant shall supply such further information as the Authority may require.
- (5) An applicant may by written notice to the Authority amend any part of the application other than —
- (a) the date of the application;
 - (b) the name of the applicant; and
 - (c) the nominated mooring area.
- (6) If an application is withdrawn or amended, or the applicant's name is removed from the waiting list under subregulation (9) or (10), the Authority is not required to refund the application fee or any part of it.
- (7) The applicant shall give written notice to the Authority of any alteration to the particulars provided by the applicant in the application as soon as it is practicable to do so.
- Penalty: \$300.
- (8) If the applicant's interest in a vessel nominated in the application is sold or disposed of, the applicant —
- (a) shall give written notice to the Authority of the sale or disposal, and the date of the sale or disposal, as soon as is practicable after that date; and
 - (b) may, by written notice given to the Authority, nominate another suitable vessel for the purposes of subregulation (3) (d) —
 - (i) in respect of which the applicant is named on the certificate of registration as the owner or in respect of which the applicant produces evidence of ownership satisfactory to the Authority; and

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- (ii) of which the applicant is the owner of at least 25% of the net worth.

Penalty applicable to paragraph (a): \$300.

(9) If an applicant who has given notice of the date of a sale or disposal under subregulation (8) does not nominate a vessel under subregulation (8) (b) within 6 months of that date, the Authority may remove the applicant's name from the waiting list without further notice.

(10) The Authority 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;
- (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 without further notice; and
- (c) if the Authority is satisfied that an applicant listed on a waiting list, or a vessel nominated by that applicant, no longer meets the requirements of subregulation (3) (b) or (d), give notice to that effect to the applicant and remove the applicant's name from the waiting list.

(11) Part VII of the *Property Law Act 1969* does not apply to a mooring site licence.

Lists of applicants

21. (1) The Authority shall —

- (a) maintain a waiting list specifying the particulars of applicants for mooring site licences in each mooring area; and
- (b) on receipt of an application for a mooring site licence in a mooring area, place the applicant at the end of the waiting list for that mooring area.

(2) A copy of —

- (a) each waiting list; and
- (b) a list setting out the name of every applicant for a mooring site licence and the date of the application,

shall be kept at the office of the Authority.

(3) The Authority shall, on written request by an applicant, provide that applicant with a copy of his or her application particulars as set out in a waiting list.

(4) The list referred to in subregulation (2) (b) shall be available for inspection by the public during office hours free of charge.

Offer of mooring site licence

22. (1) If the Authority is satisfied that a mooring site is available for allocation in a mooring area the Authority shall, by written notice —

- (a) offer a mooring site licence in respect of the mooring site to the first applicant recorded at the time on the waiting list for that mooring area as having made an application that, having regard to the specifications of the vessel in the application, is appropriate for that mooring site; and

- (b) give the applicant contact details of the previous licensee of the mooring site to allow the applicant, if he or she so wishes, to negotiate with that licensee for the purchase of the mooring on the mooring site to which the licence relates.
- (2) The Authority shall send the notice to the address specified in the application.
- (3) When accepting an offer, the applicant shall —
 - (a) give the Authority written notice as to whether the applicant has, or has not, reached an agreement with the previous licensee to acquire the mooring; and
 - (b) pay to the Authority —
 - (i) the annual mooring site licence fee set out in Schedule 7; and
 - (ii) the annual admission payment in respect of the vessel to be licensed.
- (4) When —
 - (a) the Authority is notified of acceptance of an offer;
 - (b) the prescribed payments are made under subregulation (3);
 - (c) the Authority has received evidence satisfactory to the Authority that the applicant has acquired the mooring on the mooring site or that the applicant does not intend to acquire the mooring; and
 - (d) if the applicant has acquired the mooring, the Authority has received a satisfactory mooring inspection report in respect of the mooring,

the Authority shall grant the mooring site licence to the applicant.

- (5) If, for any reason —
 - (a) the applicant does not accept the offer in accordance with its terms within 14 days of receiving notice of the offer, or such further time as the Authority may by written notice allow; or
 - (b) the applicant accepts the offer under paragraph (a) but the evidence referred to in subregulation (4) (c) and, if required, the mooring inspection report referred to in subregulation (4) (d) are not provided to the Authority within 28 days of receiving notice of the offer, or such further time as the Authority may by written notice allow,
- then —
- (c) the offer lapses;
 - (d) the Authority shall remove the name of the applicant from the waiting list; and
 - (e) the Authority may make the offer to another applicant.
- (6) Nothing in subregulation (5) prevents an applicant from making a further application for a mooring site licence.

Authority not obliged to offer licence

23. Nothing in these regulations imposes an obligation on the Authority to offer a mooring site licence in respect of a mooring site, and the Authority may deal with a mooring site in respect of which there is no licence in force as it thinks fit.

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Mooring site licence

24. (1) When a mooring site licence is granted, the Authority shall issue a licence to the licensee.

(2) The licence shall specify —

- (a) the licence number of the mooring site;
- (b) the full name of the licensee;
- (c) the name and registration number (if any) under the *Navigable Waters Regulations* of the licensed vessel; and
- (d) such other particulars as the Authority determines.

Register

25. (1) The Authority shall cause to be kept a register of mooring sites in such manner and form as the Authority determines.

(2) The register shall specify in respect of each mooring site —

- (a) its location and number;
- (b) the particulars of the mooring site licensee (if any), including the full name, address, contact telephone numbers, date of birth and the particulars of the person nominated by the licensee to be contacted in an emergency;
- (c) the particulars of the licensed vessel (if any) and any additional vessel, including any name of the vessel, any registration number under the *Navigable Waters Regulations*, the owner or owners of the vessel, the length and overall length of the vessel, the weight in metric tonnes, the draft, the vessel type, the name of the vessel's insurers and the percentage of the licensee's interest in the net worth of the vessel;
- (d) the date of the last mooring inspection report for the mooring site; and
- (e) the particulars of any authorized users, and their vessels, as given to the Authority under regulation 31.

(3) The mooring site licensee must give the Authority written notice of any alteration to the particulars referred to in subregulation (2) (b), (c) and (d) as soon as it is practicable to do so.

Penalty: \$300.

(4) The Authority shall, on written request by a mooring site licensee, provide that licensee with a copy of particulars of that mooring site as set out in the register.

(5) A list setting out the number of every mooring site and the name of the mooring site licensee for that mooring site, shall be —

- (a) kept at the office of the Authority; and
- (b) available for inspection by the public during office hours free of charge.

Licensed vessels

26. (1) A vessel is authorized to be secured to a mooring on a mooring site if it is recorded in the register, and on the mooring site licence, as the licensed vessel for that mooring site.

(2) Only one vessel shall be recorded as a licensed vessel for any mooring site.

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(3) The Authority shall issue to each mooring site licensee an adhesive sticker designed to identify the licensed vessel for that mooring site.

(4) A mooring site licensee may, by written notice to the Authority, request the Authority to —

- (a) delete the particulars of the licensed vessel from the register and licence; and
- (b) substitute as a licensed vessel in the register and on the licence another suitable vessel nominated by the mooring site licensee —
 - (i) which is not a licensed vessel, an additional vessel for any other mooring site or a vessel nominated under any application recorded on a waiting list;
 - (ii) in respect of which the licensee is named on the certificate of registration as the owner, or in respect of which the licensee has produced evidence of ownership satisfactory to the Authority; and
 - (iii) of which the licensee is the owner of at least 25% of the net worth.

(5) A notice referred to in subregulation (4) shall be accompanied by —

- (a) the mooring site licence;
- (b) the sticker issued in respect of the licensed vessel;
- (c) full particulars of the nominated vessel;
- (d) certificates of insurance showing that the nominated vessel has adequate insurance cover; and
- (e) if the nominated vessel has a length that is more than that of the longest vessel specified in the last mooring inspection report for the mooring, a fresh mooring inspection report certifying that the mooring is suitable for the use of a vessel up to and including the specifications of the nominated vessel.

(6) A mooring site licensee who sells or otherwise disposes of his or her interest in a licensed vessel —

- (a) shall give written notice of the sale or disposal, and the date of the sale or disposal, to the Authority as soon as is practicable after the sale or disposal; and
- (b) may, within 6 months of the date of the sale or disposal, by written notice request the Authority to substitute as a licensed vessel in the register and on the licence another suitable vessel nominated by the licensee —
 - (i) in respect of which the licensee is named on the certificate of registration as the owner, or in respect of which the owner has produced evidence of ownership satisfactory to the Authority; and
 - (ii) of which the licensee is the owner of at least 25% of the net worth.

Penalty applicable to paragraph (a): \$300.

(7) A notice referred to in subregulation (6) (a) shall be accompanied by —

- (a) the mooring site licence; and
- (b) the sticker issued in respect of the licensed vessel.

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(8) A request referred to in subregulation (6) (b) shall be accompanied by —

- (a) full particulars of the nominated vessel;
- (b) certificates of insurance showing that the nominated vessel has adequate insurance cover; and
- (c) if the nominated vessel has a length that is more than that of the longest vessel specified in the last mooring inspection report for the mooring, a fresh mooring inspection report certifying that the mooring is suitable for the use of a vessel up to and including the specifications of the nominated vessel.

(9) If a notice is given in accordance with subregulations (4) and (5), or subregulations (6) (b) and (8), the Authority shall amend the licence and register as requested.

(10) A mooring site licensee shall maintain any mooring on the mooring site, irrespective of whether or not there is a licensed vessel recorded on the register for that mooring site.

Additional vessels

27. (1) A mooring site licensee may, by written notice given to the Authority, nominate vessels other than the licensed vessel to use the mooring site if —

- (a) the mooring site licensee is named on the certificate of registration of each nominated vessel as the owner of that vessel, or produces evidence of ownership satisfactory to the Authority; and
- (b) each nominated vessel has adequate insurance cover.

(2) A vessel is authorized to be secured to a mooring on a mooring site if it is recorded in the register as being an additional vessel in respect of that mooring site.

(3) A notice under subregulation (1) shall be accompanied by —

- (a) the annual admission payment in respect of the nominated vessel;
- (b) a copy of the nominated vessel's certificate of registration or, if the vessel does not have a certificate of registration, evidence of ownership of the vessel;
- (c) a copy of insurance certificates showing that the nominated vessel has adequate insurance cover; and
- (d) if the nominated vessel has a length that is more than that of the longest vessel specified in the last mooring inspection report for the mooring, a fresh mooring inspection report certifying that the mooring is suitable for the use of a vessel up to and including the specifications of the nominated vessel.

(4) If a notice is given in accordance with subregulations (1) and (3), the Authority shall —

- (a) enter the details of the nominated vessel in the register; and
- (b) issue to the mooring site licensee an adhesive sticker designed to identify the additional vessel as being so registered.

(5) A mooring site licensee may, by written notice to the Authority accompanied by the relevant adhesive sticker, request the Authority to delete the particulars of an additional vessel from the register.

(6) If particulars of an additional vessel are removed from the register pursuant to a request under subregulation (5), the Authority is not required to refund the annual admission payment or any portion of it.

(7) A mooring site licensee may have more than one additional vessel registered in respect of a mooring site at any time.

Mooring and mooring inspection report

28. (1) A mooring site licensee shall ensure that any mooring on the mooring site of the licensee complies at all times with the approved mooring specifications.

Penalty: \$500.

(2) A mooring site licensee is responsible for any cost incurred by the mooring site licensee in ensuring that the mooring complies with the mooring specifications.

(3) A mooring site licensee shall at all times have a mooring inspection report in respect of a mooring on the mooring site of the licensee.

Penalty: \$500.

(4) A mooring site licensee shall give to the Authority a copy of any mooring site inspection report made for the licensee within 7 days of receiving the report.

Penalty: \$300.

(5) A mooring site licensee shall not use a mooring on the mooring site of the licensee, or cause or permit the mooring to be used, unless a mooring inspection report in respect of the mooring has been provided to the Authority.

Penalty: \$500.

Unattended vessels

29. (1) A person shall not, without permission, cause or permit an unattended vessel to remain secured to a mooring on a mooring site for a period of longer than 24 hours.

(2) The Authority may, if it is satisfied that a person has contravened subregulation (1), by written notice served on the mooring site licensee or, if the vessel is an authorized user's vessel, the authorized user, direct that the vessel be removed from the mooring within the period specified in the notice.

(3) A person on whom a notice is served under subregulation (2) shall comply with the notice.

Penalty: \$500.

(4) If a notice served under subregulation (3) is not complied with, the Authority may take possession of the vessel and deal with it as if it were abandoned, and for that purpose the notice given under subregulation (3) is taken to be a notice given under regulation 74 (2) (b).

Dealing with mooring site licence and mooring

30. (1) A mooring site licence is a licence to occupy the mooring site specified in the licence and does not apply in respect of the mooring on that mooring site.

(2) Rights conferred on a mooring site licensee under these regulations are not assignable and shall not pass by will or on intestacy or vest by operation of law in any person.

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(3) Nothing in subregulation (2) prohibits the sale or disposal, in accordance with these regulations, of a mooring.

(4) Subject to subregulation (8), if a mooring site licence ceases to have effect, the person who was the mooring site licensee immediately before the licence ceased to have effect (or, if that person has died, his or her personal representative) ("the previous licensee") shall —

- (a) remove the mooring; or
- (b) dispose of the mooring to the person to whom the Authority has offered the mooring site licence.

Penalty: \$500.

(5) The Authority may, by written notice given to the previous licensee, direct the previous licensee to comply with subregulation (4) within a time specified in the notice.

(6) If a previous licensee does not comply with a direction given under subregulation (5), the Authority may take possession of the mooring and deal with it as if it were abandoned.

(7) If the Authority determines on reasonable grounds that removing a mooring on a mooring site, or any part of the mooring, will have an adverse effect on the environment, the Authority may, by written notice given to the owner of the mooring and, if that person is not the owner, the mooring site licensee —

- (a) notify those persons that the mooring, or any part of the mooring, may not be removed; and
- (b) take possession of the mooring.

(8) A mooring site licensee or owner of a mooring shall not remove, or cause to be removed, a mooring, or a part of a mooring, in respect of which a notice has been issued under subregulation (7).

Penalty: \$500.

(9) No compensation is payable in respect of a mooring that is the subject of a notice under subregulation (7).

(10) The Authority may, by written notice given to both mooring site licensees, approve the exchange of mooring sites between mooring site licensees if —

- (a) the mooring sites are within the same mooring area; and
- (b) both mooring site licensees have complied with the directions of the Authority in respect of the exchange.

(11) If the Authority approves the exchange of mooring sites under subregulation (10), it shall cause the register to be amended accordingly.

Authorized users

31. (1) A person other than a mooring site licensee may occupy a mooring site if —

- (a) the mooring site licensee of the mooring site has authorized, in the approved form, that person to occupy the mooring site;
- (b) the person so authorized has —
 - (i) given the authorization to the Authority; and
 - (ii) by written notice given to the Authority, nominated a vessel that complies with subregulation (3) to use the mooring site;

and

- (c) particulars of the authorization and nominated vessel are recorded in the register for that mooring site.
- (2) A vessel is authorized to be secured to a mooring on a mooring site if it is recorded in the register as being an authorized user's vessel for that mooring site.
- (3) A vessel complies with this subregulation if —
 - (a) the authorized person is named on the certificate of registration of the nominated vessel as the owner of that vessel or produces evidence of ownership satisfactory to the Authority; and
 - (b) the nominated vessel has adequate insurance cover.
- (4) An authorization given to the Authority under subregulation (1) (b) (i) shall be accompanied by —
 - (a) the annual admission payment in respect of the authorized vessel; and
 - (b) if the nominated vessel has a length that is more than that of the longest vessel specified in the last mooring inspection report for the relevant mooring, a fresh mooring inspection report certifying that the mooring is suitable for the use of a vessel up to and including the specifications of the nominated vessel.
- (5) If an authorization and notice of nominated vessel are given to the Authority in accordance with this regulation, the Authority shall —
 - (a) record the particulars of the authorization and nominated vessel in the register; and
 - (b) issue to the authorized user an adhesive sticker designed to identify the authorized user's nominated vessel as the vessel so recorded in the register.
- (6) The Authority shall delete the particulars of an authorized user and authorized user's vessel from the register if —
 - (a) the mooring site licensee who gave the authorization gives the Authority written notice that the licensee withdraws the authorization; or
 - (b) the mooring site licence of the mooring site licensee who gave the authorization ceases to have effect.
- (7) The Authority may delete the particulars of an authorized user and authorized user's vessel from the register if the authorized user —
 - (a) fails to comply with a direction under regulation 34 (4); or
 - (b) fails to make an annual admission payment in respect of the authorized user's vessel.
- (8) The Authority shall not delete particulars under subregulation (6) (a) or (7) until the Authority has given the authorized user written notice, sent to the address recorded on the register, that the particulars are to be deleted.
- (9) If the particulars of an authorization and authorized user's vessel are deleted from the register, the Authority is not required to refund the annual admission payment or any portion of it.

Term of mooring site licence

- 32.** (1) Subject to these regulations, a mooring site licence has effect for a period expiring on 31 August next following the grant of the licence.

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- (2) A mooring site licence ceases to have effect —
- (a) on the death of the mooring site licensee;
 - (b) upon receipt by the Authority of a written request from the mooring site licensee that the licence be cancelled;
 - (c) upon cancellation of the licence by the Authority under subregulation (3); and
 - (d) subject to regulation 33, upon the expiration of the licence.
- (3) The Authority may, by written notice served on a mooring site licensee, cancel or refuse to renew the mooring site licence of the licensee if —
- (a) the Authority is satisfied that —
 - (i) the mooring site licence was obtained by deception or fraud;
 - (ii) the mooring site licensee has committed an offence under the Act or these regulations, or caused or permitted another person to do so; or
 - (iii) the mooring site licensee has failed to comply with a condition of the mooring site licence or caused or permitted another person to do so;
 - (b) the mooring site licensee has given notice under regulation 26 (6) of the date of the sale or disposal of a licensed vessel and has not nominated a substitute vessel within 6 months of that date;
 - (c) the mooring site licensee has failed to comply with a notice under regulation 34;
 - (d) the mooring site licensee —
 - (i) does not have a mooring inspection report in respect of the mooring on the mooring site; or
 - (ii) has failed to provide the mooring inspection report to the Authority under regulation 28;or
 - (e) the Authority considers that it is in the public interest or in the best interests of good management of the waters of the Island to do so.
- (4) If the Authority cancels or refuses to renew a mooring site licence under subregulation (3) (e), the Authority may, despite regulation 22 (1) (a), offer under that regulation to the mooring site licensee another mooring site that is available for allocation.

Renewal of licence

33. (1) The Authority may, on application by the licensee for renewal and subject to regulation 32 (3), renew a mooring site licence from time to time for a period of 12 months.
- (2) A renewal of a licence takes effect from the day next succeeding the day of its expiry.
- (3) An application for renewal shall be —
- (a) made by the mooring site licensee in the approved form within one month before, or within one month after, the expiry of the licence: and

- (b) accompanied by —
 - (i) the annual mooring site licence fee set out in Schedule 7; and
 - (ii) the annual admission fee in respect of the licensed vessel and each additional vessel of the licensee.

Notices

34. (1) The Authority may, if it is satisfied that a mooring does not comply with the approved mooring specifications, by written notice served on the relevant mooring site licensee, direct that licensee to obtain a fresh mooring inspection report in respect of the mooring within the period specified in the notice and at the licensee's expense.

(2) The Authority may give a direction under subregulation (1) notwithstanding that the mooring site licensee already has a mooring inspection report in respect of the mooring.

(3) The Authority may, by written notice served on a mooring site licensee, direct the licensee to provide to the Authority, within the period specified in the notice, evidence satisfactory to the Authority that —

- (a) the licensee meets all or any of the requirements of an applicant under regulation 20 (3) (b);
- (b) a licensed vessel of the licensee is a suitable vessel; or
- (c) the licensee meets the ownership requirements of these regulations in respect of a licensed or additional vessel of the licensee.

(4) The Authority may, by written notice served on an authorized user direct the authorized user to provide to the Authority, within the period specified in the notice, evidence satisfactory to the Authority that the authorized user's vessel complies with regulation 31 (3).

Fees

35. The Authority may, on granting a mooring site licence, or on receiving an authorization under regulation 31, allow a rebate (to be calculated on a *pro rata* basis) of any fee or annual admission payment where the mooring site licence or annual admission payment will be of effect for a period of less than 6 months.

Net worth of vessel

35A. If there is a dispute as to the net worth of a vessel between the Authority and a person claiming to be the owner of at least 25% of the net worth of the vessel, the Authority shall accept an independent valuation by a valuer nominated by the President of the Institute of Valuers.

Notices may be affixed to vessel, etc.

35B. Without limiting sections 75 and 76 of the *Interpretation Act 1984*, a notice or direction may be given by the Authority under these regulations —

- (a) to a mooring site licensee by affixing it to the licensee's licensed or additional vessel; and
- (b) to an authorized user by affixing it to the authorized user's nominated vessel.

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Division 3 — Transitional provisions**Interpretation****35C.** In this Division —

“commencement” means the day on which the *Rottnest Island Amendment Regulations 1997* come into operation;

“eligible applicant” means an applicant who meets the requirements of regulation 20 (3) (b);

“existing certificate of registration” means a certificate of registration in force under these regulations immediately before commencement;

“registered owner” means a person who, immediately before commencement, was a registered owner under these regulations.

Registrations in effect until 31 August 1997

35D. (1) Despite the repeal effected by regulation 8 of the *Rottnest Island Amendment Regulations 1997*, by virtue of this regulation —

- (a) each existing certificate of registration continues in force until 31 August 1997 and then ceases to be in force;
- (b) each vessel specified in an existing certificate of registration continues to be authorized to be secured to a mooring on the mooring site to which the certificate relates until 31 August 1997 and then ceases to be so authorized; and
- (c) Part 4, as in force immediately before the coming into operation of regulation 8 of the *Rottnest Island Amendment Regulations 1997*, continues to apply in respect of registered owners and authorized vessels until 31 August 1997 and then ceases to so apply.

(2) The Authority shall, as soon as practicable after commencement, by written notice given to each registered owner, notify the registered owner that —

- (a) any certificate of registration issued to the registered owner will cease to be in force on 1 September 1997; and
- (b) if the registered owner is an eligible applicant, the registered owner or, if the registered owner is not a natural person, an eligible applicant nominated by or on behalf of the registered owner, may apply under regulation 20 for a mooring site licence to occupy one mooring site in respect of which that registered owner has an existing certificate of registration.

(3) An application referred to in subregulation (2) (b) shall be made not later than 15 August 1997 or such later date as the Authority may by written notice, in any particular case, allow.

(4) Despite any other provision of these regulations, on receiving —

- (a) an application that is made in accordance with subregulations (2) (b) and (3) and meets all of the requirements of regulation 20 (3);
- (b) the annual mooring site licence fee specified in Schedule 7; and
- (c) the annual admission payment in respect of the vessel to be licensed,

the Authority shall grant to the applicant a mooring site licence in respect of the mooring site nominated by the applicant.

(5) A mooring site licence referred to in subregulation (4) comes into force on 1 September 1997.

(6) This Part applies to and in respect of a mooring site licence granted under subregulation (4) as if the licence were granted under regulation 20.

(7) If a registered owner in respect of a mooring site is not granted a mooring site licence under subregulation (4) in respect of that mooring site —

- (a) the Authority may offer another person a mooring site licence in respect of the mooring site under regulation 22; and
- (b) any references in regulations 22 and 30 to the previous licensee shall be taken to be references to the registered owner.

Moorings in Little Armstrong Bay and Eagle Bay

35E. (1) The Authority may include in the register any mooring site in Little Armstrong Bay or Eagle Bay in respect of which immediately before commencement a registered owner holds a certificate of registration but shall not grant a mooring site licence in respect of that mooring site other than pursuant to an application referred to in subregulation (2).

(2) A registered owner who —

- (a) holds a certificate of registration in respect of a mooring site in Little Armstrong Bay or Eagle Bay immediately before commencement; and
- (b) is an eligible applicant,

may apply in accordance with regulations 20 and 35D (2) and (3) for a mooring site licence in respect of that mooring site.

(3) A person granted a mooring site licence in respect of a mooring site in Little Armstrong Bay or Eagle Bay may, with the permission of the Authority and subject to such conditions as the Authority may impose, exchange that mooring site licence for a mooring site licence in respect of another mooring site that is available for allocation.

(4) The Authority may allocate a mooring site under subregulation (3) despite regulation 22 (1) (a).

Waiting lists

35F. (1) Subject to subregulation (3), the Authority shall transfer, in the same order, entries on any waiting list maintained by it immediately before commencement to the waiting lists required to be maintained under regulation 21 (1) (a).

(2) The Authority shall, as soon as practicable after commencement, by written notice require each applicant on a waiting list immediately before commencement —

- (a) to confirm or update the particulars provided by the applicant; and
- (b) to provide such further particulars as the Authority may require, including the nomination of a single mooring area and the nomination of a suitable vessel,

within the time specified in the notice.

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(3) The Authority may remove an applicant's name from the waiting list if —

- (a) the applicant fails to respond to a notice given to the applicant under subregulation (2) within the time specified in the notice;
- (b) the applicant does not meet all of the requirements of an applicant under regulation 20 (3) (b); or
- (c) the applicant does not nominate a vessel that meets all of the requirements of a vessel nominated under regulation 20 (3) (d).

Moorings in Porpoise Bay — waiting list

35G. Despite regulation 20 (3) (b) (vi), a person who —

- (a) was the registered owner of a mooring site in Porpoise Bay immediately before commencement;
- (b) is granted a mooring licence in respect of that mooring site pursuant to an application under regulation 35D; and
- (c) was listed on a waiting list as an applicant for a mooring site in another mooring area immediately before commencement,

shall not be removed from the waiting list by reason only of holding a mooring site licence.

”

Division heading and regulation 36A inserted

9. After regulation 36 of the principal regulations the following Division heading and regulation are inserted —

“

Division 1A — Vessels

Anchoring of vessels

36A. A person shall not —

- (a) secure a vessel to a fence or other land-based structure that is not designed principally for the purpose of securing vessels; or
- (b) use any apparatus as a beach anchor unless that apparatus is designed principally for use as a beach anchor.

Penalty: \$500.

”

Regulation 37 amended

10. Regulation 37 of the principal regulations is amended —

- (a) in subregulation (1) —
 - (i) by deleting “boat” in both places where it occurs and substituting in each case the following —

“ vessel ”; and
 - (ii) by deleting “\$300” and substituting the following —

“ \$500 ”;

- (b) in subregulation (2) (b) by deleting "boats" and substituting the following —

" vessels "; and

- (c) by repealing subregulations (3), (4), (5) and (6) and substituting the following regulations —

"

(3) The Authority may, if it is satisfied that a vessel is beached or anchored in contravention of subregulation (1), direct the owner or person in charge, or apparently in charge, or a user of the vessel to remove immediately the vessel from the place where it is beached or anchored.

(4) A person given a direction under subregulation (3) shall comply with the direction.

Penalty: \$500.

- (5) If —

(a) a person to whom a direction is given under subregulation (3) fails to comply with the direction; or

(b) a vessel beached or anchored in contravention of subregulation (1) is unattended,

the Authority may —

(c) cause the vessel to be removed to a place where the beaching or beach anchoring of vessels is permitted; or

(d) take possession of the vessel and deal with it as if the vessel were abandoned and, for that purpose, if the direction under subregulation (3) is given in writing, that direction shall be taken to be a notice given under regulation 74 (2) (b).

"

Regulations 38A, 38B and 38C inserted

11. After regulation 38 of the principal regulations the following regulations are inserted —

"

Speed restrictions — vessels

38A. (1) The Authority may, by notice published in the *Gazette*, limit the speed of any specified class or classes of vessel in any area of the waters of the Island defined in the notice.

(2) The Authority may vary or cancel a notice under this regulation.

(3) A person shall not drive a vessel in an area defined in a notice under subregulation (1) at a speed exceeding the limit specified for a vessel of that class in the notice.

Penalty: \$1 000.

Restricted areas for certain vessels

38B. (1) The Authority may, by notice published in the *Gazette*, define and set aside, and impose conditions on the use of, any area of the waters of the Island for the purposes of vessels of a class or classes specified in the notice.

(2) The Authority may vary or cancel a notice under this regulation.

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(3) A person shall not use a vessel of a class specified in a notice under subregulation (1) except —

- (a) in the area set aside under the notice for that purpose; and
- (b) in accordance with the conditions specified in the notice.

Penalty: \$1 000.

Sullage from vessels

38C. (1) In this regulation —

“liquid waste” means faecal matter or urine and any waste composed wholly or in part of liquid;

“sullage” means liquid waste from bathrooms, laundries and galleys including floor waste from those sources.

(2) A person shall not discharge or deposit within the limits of the Island any sullage from a vessel other than by means of an approved treatment system.

Penalty: \$1 000.

”

Regulation 41A inserted

12. After regulation 41 of the principal regulations the following regulation is inserted —

“

Feeding of fauna

41A. (1) The Authority may by resolution determine that the feeding of fauna of a kind specified in the resolution is prohibited within the limits of the Island.

(2) A person shall not feed fauna in respect of which a resolution has been made under subregulation (1) within the limits of the Island if the Authority has —

- (a) erected signs on the Island notifying the public that feeding fauna of that kind is prohibited; or
- (b) otherwise notified that person that the feeding of fauna of that kind is prohibited.

Penalty: \$500.

”

Regulation 59 amended

13. Regulation 59 (4) of the principal regulations is amended —

- (a) by deleting “or” after paragraphs (a) and (b); and
- (b) by deleting paragraph (c) and substituting the following paragraphs —

“

(c) the carrying of a marine flare in the waters of the Island; or

(d) the discharge of a marine flare in the waters of the Island in the case of an emergency, or where a vessel is in distress and requires assistance.

”

Regulation 60 amended**14. Regulation 60 (1) of the principal regulations is amended —**

- (a) in paragraph (a) by deleting “a cooking” and substituting the following —
“ a gas cooking ”;
- (b) in paragraph (b) by deleting “a fireplace” and substituting the following —
“ an indoor fireplace ”; and
- (c) by deleting “\$600” and substituting the following —
“ \$1 000 ”.

Regulations 60A and 60B inserted**15. After regulation 60 of the principal regulations the following regulations are inserted —**

“

Sandboarding

60A. (1) A person shall not use a board or other object to slide down sandhills on the Island.

Penalty: \$1 000.

(2) A person shall not possess a sandboard on the Island.

Penalty: \$500.

(3) In this regulation —

“sandboard” means a board designed to be used for sliding down a slope of land.

Litter

60B. (1) A person shall not deposit litter, or cause litter to be deposited, within the limits of the Island unless the litter is deposited in a place or receptacle set aside or provided for that purpose.

Penalty: \$1 000.

(2) In this regulation —

“litter” has the same meaning as in the *Litter Act 1979*.

”

Regulation 69 amended**16. Regulation 69 of the principal regulations is amended by deleting “\$500” and substituting the following —**

“ \$1 000 ”.

Regulation 70 amended**17. Regulation 70 of the principal regulations is amended —**

- (a) in subregulation (1) by deleting “\$500” and substituting the following —
“ \$1 000 ”; and

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- (b) in subregulation (3) by deleting "\$500" and substituting the following —

" \$1 000 ".

Regulation 71 amended

18. Regulation 71 of the principal regulations is amended by deleting "\$500" and substituting the following —

" \$1 000 ".

Regulation 72 amended

19. Regulation 72 (1) of the principal regulations is amended —

- (a) by deleting "boat" and substituting the following —

" vessel ";

- (b) by deleting "by the Authority"; and

- (c) by deleting "\$500" and substituting the following —

" \$1 000 ".

Regulation 72A inserted

20. After the heading to Part 8 of the principal regulations the following regulation is inserted —

"

Adequate insurance cover

- 72A. (1) The Authority may, by notice published in the *Gazette* —

- (a) specify, in relation to any class or classes of vessel —

(i) the type of insurance; and

(ii) the amount of indemnity provided by that insurance,

that is adequate insurance cover for the purposes of these regulations; and

- (b) exempt any vessel, class or classes of vessel from the operation of any of these regulations to the extent that the regulation requires the vessel to have adequate insurance cover.

- (2) An exemption under subregulation (1) (b) —

- (a) is subject to such conditions and restrictions as the Authority may specify in the notice of exemption; and

- (b) has effect according to its tenor.

- (3) If the conditions or restrictions to which an exemption is subject are breached, the exemption ceases to have effect.

- (4) The Authority may vary or revoke a notice under subregulation (1).

- (5) A person shall not bring a vessel within the limits of the Island, or allow a vessel to remain within the limits of the Island, unless the vessel has adequate insurance cover.

Penalty: \$500.

(6) For the purposes of subregulation (5), any person on a vessel (other than a vessel on which persons are usually carried for reward) is taken to allow the vessel to remain within the limits of the Island.

Regulation 74 repealed and a regulation substituted

21. Regulation 74 of the principal regulations is repealed and the following regulation is substituted —

“

Removal of abandoned or dangerous property

74. (1) Subject to this regulation, the Authority may take possession of any property within the limits of the Island if —

- (a) the Authority has reasonable grounds to believe that it has been abandoned, is derelict or constitutes a danger to persons or property or an environmental risk; or
- (b) a notice under subregulation (2) (b) relating to that property has not been complied with.

(2) Before exercising the power in subregulation (1) (a) in respect of property that is abandoned or derelict the Authority shall —

- (a) make reasonable inquiry as to the identity and whereabouts of the person who is or has been the owner or part owner of the property or has or last had possession of the property; and
- (b) if the identity and whereabouts of that person become known to the Authority, give written notice to the person requiring the person to remove the property within the time specified in the notice.

(3) A person to whom a notice is given under subregulation (2) (b) shall comply with the notice.

Penalty: \$1 000.

(4) Any cost incurred by or on behalf of the Authority under this regulation is a debt due to the Authority by a person who is shown to have been the owner or a part owner, or in the case of abandoned property, the former owner or a former part owner, at the time of removal and is recoverable in a court of competent jurisdiction.

(5) Subject to subregulations (6), (7) and (8) any property removed under this regulation becomes the property of the Authority and may be disposed of as it thinks fit.

(6) If the Authority's estimate of the value of the property exceeds the costs referred to in subregulation (4) together with the costs associated with the sale of the property, the Authority shall sell the property and after payment of all of its costs, hold the proceeds in accordance with subregulation (7).

(7) The proceeds of sale referred to in subregulation (6) shall become part of the funds of the Authority at the expiration of 12 months from the date of the sale unless within that time a person proves to the satisfaction of the Authority that the person is entitled to them or any part of them, in which case the Authority shall pay the proceeds or part of the proceeds in accordance with that entitlement.

(8) Despite subregulations (5), (6) and (7), the Authority shall give possession of the property to any person who proves that he or she is entitled to the property and who pays to the Authority all costs incurred by it under this regulation.

(9) If property is owned by more than one person each person shall be jointly and severally liable for any debt due to the Authority under this regulation.

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Regulation 74A inserted

22. After regulation 74 of the principal regulations the following regulation is inserted —

“

False information

74A. A person shall not provide to the Authority information, or authorize or permit the provision to the Authority of information, that the person knows —

- (a) to be false or misleading in a material particular; or
- (b) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect.

Penalty: \$500.

”.

Schedule 1 amended

23. Schedule 1 to the principal regulations is amended —

- (a) by deleting Form 1; and
- (b) in Form 2 under the heading “OFFENCE” —
 - (i) in the item commencing “Regulation 9 (1)” by deleting “\$50” and substituting the following —

“ \$100 ”;
 - (ii) by deleting “Regulation 12 (2)” and substituting the following —

“ Regulation 11 (2) ”;
 - (iii) in the item commencing “Regulation 37 (1) (a)” by deleting “boat” and substituting the following —

“ vessel ”; and
 - (iv) in the item commencing “Regulation 37 (1) (a)” by deleting “\$30” and substituting the following —

“ \$50 ”.

Schedule 4 repealed and a Schedule substituted

24. Schedule 4 to the principal regulations is repealed and the following Schedule is substituted —

“

**SCHEDULE 4 — OFFENCES TO WHICH MODIFIED
PENALTIES APPLY**

[Reg. 73]

Item	Regulation	Matter to which regulation relates	Modified penalty \$
1.	5 (4)	Failing or refusing to pay admission, not being a passenger on commercial transport	50
2.	9 (1)	Taking up unauthorized casual residence	100

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Item	Regulation	Matter to which regulation relates	Modified penalty \$
3.	11 (1) (a)	Installing mooring without permission	100
4.	11 (1) (b)	Securing vessel to mooring installed without permission	100
5.	11 (2) (a)	Securing vessel to mooring without authority	50
6.	11 (2) (b)	Securing vessel not displaying sticker or licence to mooring	50
7.	11 (3) (a)	Securing vessel to mooring where vessel already secured	50
8.	11 (3) (b)	Securing vessel to vessel secured to mooring	50
9.	12 (1)	Anchoring vessel closer than 50 metres to mooring or so that it obstructs mooring	50
10.	28 (3)	Licensee failing to have mooring inspection report	50
11.	28 (5)	Licensee using mooring in respect of which Authority does not have mooring inspection report	50
12.	29 (3)	Failing to comply with notice to move unattended vessel	50
13.	30 (8)	Removing mooring that is subject to notice prohibiting removal	50
14.	36 (1) (a)	Being in a restricted area without permission	50
15.	36 (1) (b)	Being in a protected area without permission	50
16.	36 (1) (c)	Using a closed track or path without permission	50
17.	36A (a)	Securing vessel to structure not designed for that use	50
18.	36A (b)	Using apparatus other than beach anchor as a beach anchor	50
19.	37 (1) (a)	Beaching vessel in Thomson, Longreach or Geordie Bay without permission and not in permitted area	50

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Item	Regulation	Matter to which regulation relates	Modified penalty \$
20.	37 (1) (b)	Beach-anchoring a vessel in Thomson, Longreach or Geordie Bay without permission and not in permitted area	50
21.	38A (3)	Exceeding speed limit set for vessel in defined area	100
22.	38B (3)	Using vessel contrary to notice setting aside area and imposing conditions for use of that vessel	100
23.	38C (2)	Discharging or depositing sullage from vessel other than by approved system	100
24.	39 (1)	Injuring etc. flora or removing stake or label relating to flora	100
25.	40	Interfering etc. with fauna or habitat etc. of fauna	100
26.	41 (1)	Without permission causing or allowing animal or bird to enter Island	100
27.	41A (2)	Feeding fauna contrary to sign or notice	50
28.	42 (1)	Causing damage to any rock or soil without permission	50
29.	44 (3)	Failing to comply with traffic sign or with ranger's signal or direction relating to vehicle	50
30.	47 (1)	Exceeding speed limit	100
31.	53	Without permission organizing, advertising or participating in any event or meeting	100
32.	55 (1)	Without permission affixing notice etc., defacing rock, tree, pavement, structure etc. or causing any such act to be done	50
33.	56 (1)	Without permission selling, distributing etc. printed or written matter	50

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Item	Regulation	Matter to which regulation relates	Modified penalty \$
34.	59 (1)(a)	Without permission carrying or discharging firearm, speargun, gidgie etc.	100
35.	59 (2)	Without permission having explosive device within limits of Island	100
36.	60 (1)	Without permission lighting, making or using fire other than in gas stove or indoor fireplace	100
37.	60A (1)	Sandboarding	100
38.	60A (2)	Possessing sandboard	50
39.	60B (1)	Littering	100
40.	65 (1)	Being within aerodrome limits without permission or authority	100
41.	69	Without authority destroying or damaging building or structure	100
42.	70 (1) (a)	Unlawfully assaulting a person	100
43.	70 (1) (b)	Using indecent, obscene, threatening, abusive or insulting language	80
44.	70 (1) (c)	Doing or engaging in any offensive, indecent or improper act, conduct or behaviour	80
45.	70 (1) (d)	Acting in such a way as to cause a nuisance or annoyance to persons	80
46.	70 (3)	Writing etc. or distributing or otherwise disseminating indecent or obscene matter	80
47.	71	Causing or producing noise that unreasonably interferes with convenience, comfort or amenity of any person	80
48.	72 (1)	Consuming alcoholic liquor in unauthorized place	80

"

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Schedule 7 inserted

25. After Schedule 6 to the principal regulations the following Schedule is inserted —

“

SCHEDULE 7 — MISCELLANEOUS FEES

PART 1 — ADMISSION FEES AND PAYMENTS

- | | | |
|----|--|--|
| 1. | Admission fee to Island (reg. 5 (1)) | 50 cents for a child who has reached 6 years, but is under 12 years of age.

\$4.50 for every other person |
| 2. | Annual payment in lieu of admission fee (reg. 7) | \$40 |

PART 2 — MOORING LICENCES

- | | | |
|----|---|---|
| 3. | Application fee for mooring site licence (reg. 20 (3) (c)) | \$30 |
| 4. | Annual mooring site licence fee (regs. 22 (3) (b), 33 (3) (b), 35D (4) (b)) | \$24.50 per metre of length of licensed vessel or vessel to be licensed |

”

By Command of the Governor,

J. PRITCHARD, Clerk of the Executive Council.

TREASURY

TY401*

FINANCIAL ADMINISTRATION AND AUDIT ACT 1985

The Treasury,
Perth, 4 July, 1997.

It is hereby notified for general information that, pursuant to section 58 of the Financial Administration and Audit Act 1985, the Treasurer has issued the following new and amended Treasurer's Instructions to be effective from the operative date specified in the Treasurer's Instruction or, in the absence of a specified date, from the date this notice is published in the *Government Gazette*.

Treasurer's Instruction	Paragraph	Topic
109-New	1	Risk Management
202	1-3	Collection Agencies
203	1-8	Receipting of Moneys
206	1-6	Banking of Moneys
207	1-2	Accounting for Moneys Received
209	1-4	Outstation Collectors
212	1-4	Dishonoured Cheques
213	1-3	Receipt of Moneys by Credit/Debit Card
215	1-2	Estimated Revenue Cash Flows
303	1-3	Expenditure Cash Flows and Governor's Warrants

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Treasurer's Instruction	Paragraph	Topic
314	1-2	Bank Accounts
315	1-5	Returned, Uncollected and Stale Cheques and Cash Orders
316	1-2	Cheques in Lieu
321	1-5	Credit Cards
509	1	Method of Payment
510	1-4	Payment In Cash
513	1-6	Unclaimed Salaries and Wages
516	1-4	Voluntary Deductions
517	1-3	Disbursement of Deductions
801	1-4	Trust Statements for Holding Of Other Moneys In Accordance With Section 36(2) of the Act
802	1-4	Trust Statements
803	1-10	Shortages and Surpluses of Moneys
806	1-5	Monetary Forms
807	1-3	Write Offs
816-New	1-2	Annual Estimates for Certain Trust Accounts of Departments and Statutory Authorities in Terms of section 15A of the Act
819	1-3	Treasury and Other Accounting Forms
941	1-3	Status of Statements of Accounting Concepts
942	1-3	Accounting Policies: Determination, Application and Disclosure
943	1-2	Materiality In Financial Statements
950	1-4	Publication of Trust Statements
952	1-11	General Information In Financial Statements
953	1-3	Publication of Estimates
1101	1-4	Application of Australian Accounting Standards
1101A	1-4	Financial Reporting By Departments on an Accrual Basis
1105	1-6	Consolidated Financial Statements

It is hereby notified for general information, that pursuant to section 58 of the Financial Administration and Audit Act 1985, the Treasurer has deleted the following Treasurer's Instructions effective from the date this notice is published in the *Government Gazette*.

Treasurer's Instruction	Paragraph	Topic
Part III		Payment of Moneys
312	1-3	Inter-Organisation Payments
317	1	Cash Order Clearances
Part V		Salaries and Wages
511	1-2	Payment by Cheque
Part VI		Accounting and Financial Systems
601	1-3	Development of Computerised Accounting and Financial Management Systems
Part X		Financial Statements Prepared on a Cash Basis
1001	1-3	Cash Basis of Accounting
1002	1-3	Consolidated Fund
1003	1-4	Capital Works Program
1004	1-6	Accounts of The Trust Fund and Bank Accounts
1005	1-3	Treasurer's Advance
1006	1-6	Financial Statements of Statutory Authorities
1007	1-5	Supplementary Information
1009	1	Treasurer's Instructions for Cash Based Reporting Not to Apply Where Accountable Officers Prepare Financial Statements in Accordance With Treasurer's Instruction 1101A.
Part XI		Financial Statements Prepared on An Accrual Basis
1102A	1-13	Operating Statements
1103A	1-8	Statements of Financial Position
1104	1-4	Statement of Capital Accumulation

WATER

WA401

RIGHTS IN WATER AND IRRIGATION ACT 1914

Notice under Section 13 of the Act

(Made on 1/1/11)

ANNEXURE B THE POLICY

1. The Mooring Licensee

This section of the policy is designed to ensure that mooring licences are only held by individuals who require and are in a position to use them. It also safeguards the interests of applicants by ensuring that every mooring site eventually becomes available for reallocation, rather than being controlled in perpetuity by the same small group of people.

- The licensee must be an individual, at least 18 years of age, whose normal place of residence is Western Australia, is on the electoral role, and who is the owner of a suitable vessel (see section 2, "The Licensed Vessel").
- No licensee is entitled to more than one mooring site. *(This provision will enable approximately 70 more individuals to become mooring licensees.)*
- Moorings held by a corporation, trust, partnership or other entity as at 1 July 1997 must nominate an individual to become the licensee by the 1 September 1997.

- A licensee may not sell, sub-lease or give away his/her mooring, nor pass it on by will, and does not have the right to nominate a successor. A relinquished or cancelled mooring, unless resumed by the Authority, must be reallocated strictly in accordance with the waiting list.
- It is the responsibility of the licensee to notify the Authority, in writing, of any change to their vessel ownership or contact details.
- The mooring site licence is provided for a 12 month period (1 September - 31 August) and can be renewed each year, subject to the Regulations.

2. The Licensed Vessel

The purpose of this section is to ensure that moorings are allocated to vessel owners who require them, rather than to owners of smaller boats which may safely access jetty pens, beach moorings or anchorage areas; and that sites are not retained for protracted periods by people who no longer own a boat. It also eliminates the situation where a single boat can be used to license more than one mooring, though clearly it cannot use more than one at any time. The policy is also designed to increase the safety of persons and property.

- The licensee must be able to prove ownership of 25% net worth of a suitable vessel, and the licensee's name must appear on the registration papers of the vessel.
- To qualify for a mooring, a person's vessel must be a minimum length of 6.4m. Licensees who sell their boats must notify the Authority and have six months to acquire and prove ownership of another appropriate boat. While looking for or buying another boat, the licensee must still pay for and maintain the mooring.
- A single vessel may be the licensed vessel for only one mooring licence. *(At 1 July 1996, 102 moorings were licensed to individuals whom owned 46 boats in total, therefore an additional 56 individuals could become mooring licensees with this new policy.)* Multiple owners of a

single boat who currently hold more than one mooring licence between them must decide by 1 September 1997 which mooring licence will be retained or, if they prefer, to acquire the necessary interest in another vessel to be issued with a mooring licence.

- To qualify for a mooring, a person's vessel (with the exception of sailing vessels) must have its own form of self-propulsion capable of achieving a minimum speed of 5 knots. The licensee may only leave his/her boat on the mooring when a competent boat operator is present on the island or is residing overnight on the vessel, unless otherwise approved in writing by the Authority.
- Tenders may be left on moorings between 1 October and 30 April, but outside these dates must be removed from Rottnest Island and Island waters, unless stored in an appropriate facility.
- A licensee who owns more than one boat may use each on his/her mooring, but must pay annual admission fees for each boat. Owners are not required to pay admission fees for tenders less than 3.75m in length; if the additional vessel is 3.75m or more in length, the owner must pay admission fees and display the relevant sticker.

3. The Mooring Site and Apparatus

These policy provisions are designed to reduce damage to seagrass beds, clarify the licensee's responsibilities, and increase the safety of persons and property.

- Each licensee is liable for the safety of the mooring apparatus, which must be maintained to the specifications provided by the Authority. *(The Authority will gazette these specifications by July 1998.)*
- As a condition of licence, the licensee must provide an annual inspection report from an RIA approved mooring contractor showing that the mooring is safe to use. *(Inspections carried out by mooring licensees themselves can no longer be accepted.)*
- By 1 July 2000, all mooring apparatus must be of an environmentally friendly low-impact type approved by the Authority. The mooring licensee will be responsible for any upgrade required. *(The Authority will provide these details by July 1998.)*
- If the licensee acquires a boat larger than the one currently licensed to his/her mooring, providing there is sufficient swing room available and it does not hinder navigation, and the apparatus is certified as suitable by an RIA approved contractor, the new vessel may be licensed to the mooring. However, if insufficient swing room is available for the new boat, the licensee must relinquish the mooring and reapply.
- A mooring swap in the same bay between two licensees in mutual agreement can only be considered by application to the Chief Executive Officer.
- Mooring swaps between licensees in different bays cannot be approved as this is inconsistent with the principle of the waiting list and the Regulations.

4. The Authorised User

Changes made to this policy aim to encourage maximum use of moorings. However, Licensees and Authorised Users alike must understand that, at present levels of usage, the system can be efficiently managed, and abuses avoided, only if the formal procedures are observed. Verbal permissions, and letters of permission not lodged with the Authority, are insufficient.

- The mooring licensee may permit owners of other vessels of suitable length to use his/her mooring. No such permission will be recognised unless it is given on the official form, lodged with the Authority, and the Authority has issued an Authorised User sticker for display on the authorised vessel.
- Authorised Users are bound by the relevant terms and conditions. They must also recognise that they have no ownership rights in relation to the mooring apparatus, nor any priority in relation to reallocation of the mooring if relinquished.
- Conflicts between Authorised Users of a particular mooring is a matter dealt with by the mooring licensee, not the Authority.
- The Authority is investigating methods of achieving greater use of moorings through increased use of the Authorised User system.

5. The Waiting List

The waiting list for moorings has been artificially inflated by out-of-date applications and duplications. (In July 1996, 827 applicants made a total of 1858 applications; of these, 135 were mooring licensees.) Applicants can wait for periods up to 10 years or more before being offered a mooring site. The policy is designed to shorten the waiting list and waiting period, reduce the administrative burden and simplify and hasten the procedures for reallocation. It is also aimed at making the allocation system fair and equitable.

- The waiting list for mooring sites is arranged in order of priority by date and time of application. (Note: the "category" system will no longer be used as it was not considered an equitable means of allocating mooring sites).
- The applicant must be an individual, at least 18 years of age, whose normal place of residence is Western Australia, and must be the owner of an appropriate vessel (see section 2, "The Licensed Vessel"). If the applicant disposes of the boat, he/she must notify the Authority, and has six months to acquire and prove ownership of another suitable boat.
- The applicant may submit only one application for one nominated bay. This application is fixed and cannot be changed with respect to the nominated bay. Mooring licensees cannot remain on the waiting list (with the exception of persons who as at 1 July 1997, were existing licensees of Porpoise Bay moorings and were on the waiting list). No application can be received from a person whose nominated vessel is jointly owned by an existing mooring licensee or by another applicant on the waiting list.
- The applicant will receive only one offer of a mooring site appropriate (depth and swing room) for his/her vessel. If the offer is declined, the applicant's name will be removed from the waiting list, though he/she may reapply.
- There is no requirement on the part of the Authority to reallocate every relinquished mooring site. (The Authority may wish, for example, to move or remove a site for safety reasons, or to take it over as a rental site to increase access to moorings for a greater number of boat owners.)

6. Rental Moorings

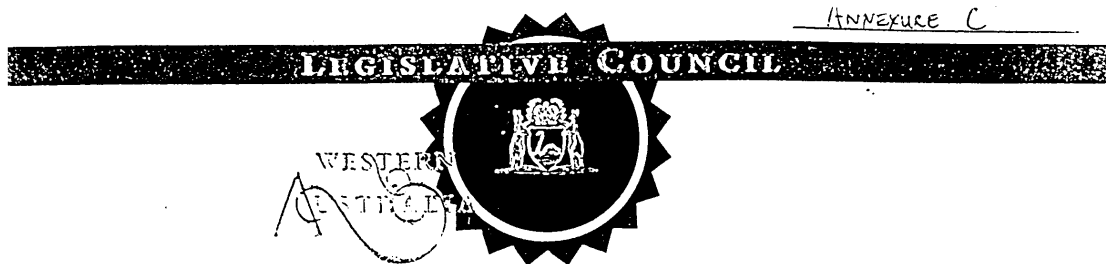
For the itinerant visitor to Rottnest who is not a mooring licensee or an Authorised User, there are limited options for safely mooring a large vessel. Rental moorings are however a convenient option for visitors to Rottnest. As at July 1997 the Authority had sixteen rental moorings. The number of rental moorings will be increased to provide greater access for all boat owners.

- The Authority will maintain a number of moorings available for rental which cater for a range of vessel sizes and locations. This will be achieved by retaining appropriate mooring sites from time to time.

7. Insurance

All craft mooring in Rottnest waters will be required to be covered by appropriate insurance as determined by the Authority from time to time. The Authority is considering what

the minimum requirements for insurance will be. These will be determined by July 1998 and will form a requirement of renewal of mooring licences.



*Joint Standing Committee
on Delegated Legislation*

7 October 1997

B W Easton
Chief Executive Officer
Rottnest Island Authority
PO Box 693
Fremantle
WA 6959

Dear Sir

Rottnest Island Amendment Regulations 1997

The Committee has recently had the opportunity to consider the above regulations.

A number of concerns have arisen:

- a. An applicant for a mooring licence must be the owner of a suitable vessel. Given that the waiting period may be as long as 10 years this requirement seems unduly harsh and restrictive. During such a lengthy period of time peoples circumstances can change dramatically and their ownership of a suitable vessel may be one of those circumstances. The objective behind this requirement appears to be to ensure that moorings aren't allocated to those who are unable to use the licence. The Committee is of the view that this objective could be achieved by a requirement that the applicant be the owner of a suitable vessel at the time the allocation is made.
- b. The regulations create an offence for the disposal of sullage within the limits of the Island other than by means of an approved treatment system. It is the Committee's understanding that there are no facilities for the disposal of sullage on the Island. In the circumstances this would appear to be an unreasonable requirement as it would necessitate the individual to return to Perth to dispose of the sullage properly.
- c. All craft mooring in Rottnest waters will be required to be covered by appropriate insurance as determined by the Authority from time to time. The Committee has received from one applicant for a mooring licence details of the "terms and conditions" offered by the Authority. These "terms and conditions" set out a number of exclusions and

indemnities in respect of loss or damage. In particular the Authorities liability for an act or omission of an employee is effectively excluded and the licensee is obliged to indemnify the Authority against any liability or claim made against it by any one which is in any way connected to the licence or the use of the mooring by anyone (ie. the licensee is bound to indemnify the Authority against the claim of a trespasser). There are additional obligations imposed on the licensee under the proposed "terms and conditions" which expose the licensee to further risk. The impact of these requirements effectively will prevent the licensee from obtaining suitable or reasonably priced insurance due to the extent of risk.

Your comments on these concerns are now sought.

The relevant by-laws were gazetted on 4 July 1997 and tabled in the Parliament on 19 August 1997. Under the provisions of section 42 of the *Interpretation Act 1984* there are 14 sitting days from the date of tabling in which there is power for the Parliament to move for the disallowance of such subordinate legislation. This period ends on 16 October 1997. Under the Committees Terms of Reference if the Committee is of the opinion that a regulation (this includes by-laws) ought to be disallowed it is required to report that opinion and the grounds thereof to each House before the end of the period during which any motion for disallowance of those regulations may be moved in either House. Accordingly it is necessary for the Committee in the performance of its functions to finalise its inquiries on this matter before 16 October 1997.

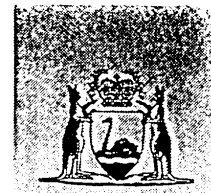
It has been the Committee's practice in the past that if matters such as this have not been finalised within the time allowed it will move for disallowance of the regulations in order to protect the initial position taken by the Committee. This is obviously a course which both the Committee the agency and the affected Minister are anxious to avoid. In the circumstances the Committee would appreciate your response as soon as possible.

Yours sincerely

p.p. Andrew Mason.
ARO.

Hon R L (Bob) Wiese, MLA
Chairman

"ANNEXURE D"



MINISTER FOR
T O U R I S M

Hon RL Wiese, MLA
Chairman
Joint Standing Committee on Delegated Legislation
Parliament House
PERTH WA 6000

3508/11

ROTTNEST ISLAND AMENDMENT REGULATIONS 1997

Thank you for your letter of 7 October 1997 addressed to the Chief Executive Officer of the Rottnest Island Authority and received in his office on 8 October 1997.

Attached are comments that relate directly to the matters you have raised.

A handwritten signature in black ink, appearing to read 'Norman Moore'.

NORMAN MOORE MLC
MINISTER FOR TOURISM

14 October, 1997

10th Floor, London House 216 St George's Terrace Perth WA 6000
Telephone 321 1444 Facsimile 321 1445

ROTTNEST ISLAND AMENDMENT REGULATIONS 1997

Requirement that an applicant for a mooring licence must be the owner of a suitable vessel

1. The waiting list for moorings at Rottneest had reached a point where there was a need for a significant change of policy. The list contained multiple applications, many applications from people who did not own boats, applicants from existing mooring licensees etc. As an example of the extent of the problem at 1 July, 1997 there were 449 people on the waiting list for Geordie Bay. On average 3-4 moorings become available each year and so the waiting period in that bay would be more than 100 years. Quite obviously the Authority needed to address this situation and major changes were required to cut the waiting list to a realistic waiting period.

There are many boat owners who regularly visit Rottneest who wish to obtain a mooring. These legitimate boat owners should not be disadvantaged by non boat owners making speculative applications. The Authority believes that moorings should only be allocated to persons who will use them and the vessel requirement is one strategy to encourage this situation. The Authority has had positive feedback on this policy initiative from people on the waiting list.

It should be noted that this initiative will reduce the waiting period which is in the best interest of both the existing boat owners and future boat owners.

The suggestion of the committee to require a boat ownership at the time of allocation has been used in the past however, it results in extensive delays in allocating moorings and as has been previously discussed results in many speculative applications from people who think they may want a mooring in the future.

Delays in mooring allocation have been identified as a risk management issue (as moorings in the process of reallocation could be the responsibility of the Authority in the event of loss of life or property), and the cause of many complaints from the outgoing licensee.

In summary this policy is an important strategy in increasing the use of moorings, reducing the waiting list and waiting period, fast-tracking reallocation of moorings and most importantly places the priority with people who actually require a mooring.

Disposal of Sullage

2. This is not a new initiative. The disposal of sullage within 3 nautical miles of the Island is already illegal under the Marine Act. The Authority has however gazetted this new regulation to assist in reducing the extent of the illegal dumping of sullage.

There are many reasons why sullage should not be dumped within the Rottnest Island Reserve. Sewage disposal has the potential to cause long term environmental impacts however, of greater concern is the health concerns for visitors who swim in bays where boating visitors have pumped out faecal matter. The Authority has a duty of care to provide a safe and clean environment and the Health Department and the general public are concerned that current disposal of sullage may be placing visitors at risk.

Boat visitors have several alternatives. They may use land based toilet facilities, they may install sullage tanks and then pump out outside of 3 nautical miles from the Island or they can purchase an approved treatment device. The provision of pump out facilities on the Island is currently being considered. This is an extremely important regulation and is consistent with the existing legal requirements on boat owners

Terms and Conditions

Background

3. The Authority has always prided itself on Rottnest's relaxed and informal environment and many of the island's facilities, including the moorings have previously been provided on a fairly informal basis. Obviously the Authority would like to preserve this atmosphere as far as possible however, unfortunately, the current environment means that the old system in respect of permanent moorings posed a significant legal exposure risk for the Authority. The Authority's potential exposure in relation to the moorings has been highlighted by some recent incidents involving the moorings. Significant legal exposure has a serious impact on the cost at which the Authority can provide facilities, and indeed on whether the Authority can, or should, provide a particular facility at all.
4. The central problem in relation to the moorings is that the Authority has certain legal responsibilities in relation to the safety of people who enter the Rottnest Island Reserve. This duty extends to people who enter the reserve and use the moorings, even if that person's use of the mooring is not authorised. For example, if a person who is not authorised to use a rental mooring secures his vessel to an Authority rental mooring to do some fishing, and the mooring breaks because the Authority has not properly maintained that mooring, the Authority may well be liable for any damage. To minimise this risk the Authority has put in place a system to ensure, as far as possible, that its rental moorings are properly maintained. Of course this will never remove the risk entirely so the Authority will insure against the remaining risk.
5. However the Authority cannot reduce its risk in the same way for the 'permanent moorings' because it does not own the moorings themselves and because the Authority does not have the resources to maintain all of these moorings. The Authority's broad policy in relation to these moorings

is to ensure that the owners of the moorings take responsibility for ensuring that they are safe.

6. It is important to note that the registered licensees of the mooring sites only have a licence to use the *mooring site*. The mooring itself belongs to the registered licensee and for that reason can be removed and sold (subject to certain environmental considerations) at any time during the period of the licence. The amended regulations, and in particular the requirement as to the existence of a current mooring inspection report, are designed to ensure that the moorings are maintained to a certain minimum level. However, ultimately the maintenance of the mooring is within the control of the licensee and for this reason it is only fair that the licensee be responsible for any loss that is suffered if the mooring is not properly maintained. The alternative would be that the Authority could be responsible if someone pulled up on a licensee's mooring and the mooring failed because the licensee had not properly maintained it.

Indemnities and Exclusions

7. The indemnity does not mean that the licensee will be responsible for damage suffered by anyone secured to his or her mooring, regardless of the way the damage was suffered. This is because the licensee's duty to the person is only to take reasonable care. For example, a licensee is unlikely to be liable to a third party if he has been properly maintaining the mooring, but a vessel is damaged because someone else has cut through the rope securing the mooring.
8. In relation to the liability in respect of unauthorised users, or trespassers, it is important to realise that the new regulations are *not* the source of the licensee's potential liability to an unauthorised user or trespasser. Under normal legal principles there has always been potential for an unauthorised user to make a claim against the licensee. In view of the fact that a duty is owed to unauthorised users in any event, and the fact that the licensee has the ultimate control over the maintenance of the mooring, the Authority feels that it is entirely appropriate that the licensee be responsible for any claims made.
9. It is true that the indemnities and exclusion clauses mean that theoretically the licensee would have to indemnify the Authority against a claim in relation to the mooring brought against the Authority even if the loss was caused by the Authority's negligence. However, although this is a theoretical possibility, we do not consider that it poses a significant risk for the licensee for the following reasons. Firstly, it is hard to think of circumstances where the Authority's negligence could cause the loss because the Authority has a minimum of responsibilities in relation to the 'permanent' moorings and the mooring and its maintenance is the sole responsibility of the licensee. Secondly, to the extent that a party is able to show that the Authority has acted negligently, there may well be a good argument that the Authority has been negligent in providing services and if this is the case then the *Fair Trading Act 1987* will mean that the Authority

cannot rely on the exclusion clause to escape its obligation to render services with due care and skill. There is also a possibility (our legal advice is that this area is not entirely clear) that if the *Fair Trading Act 1987* does apply, the Authority would not be able to rely on the indemnity.

10. The main advantage of the current wide exclusion and indemnity is its practical effect in making the Authority a less attractive defendant and discouraging the tendency for people to include the Authority in a claim almost automatically, because it is perceived as having 'deep pockets'. Every one of these claims, whether well-founded or not, results in significant amounts of money being wasted on legal advice by both the Authority and its insurers. The current drafting of the indemnities and exclusions should prove significantly discouraging in respect of this type of claim.

Insurance

11. In relation to insurance, the Authority is obviously not in a good position to comment on whether or not licensees can obtain insurance. However, it is obviously in everyone's best interests that the licensees be adequately protected by insurance and the Authority is very much in favour of all licensees being insured.
12. To this end there have been several discussions between the Authority, the Mooring Licensees' Association and various insurance brokers. The last such discussion took place at a meeting at the Authority's premises on 1 October 1997. At this meeting, it was agreed that Mr Don Hopkins of Jardines would make some enquiries as to the type of insurance available and the premiums that were likely to be charged if all of the licensees took out insurance. These figures were then intended to form the basis of further discussion as to possible ways of encouraging or ensuring that licensees obtain appropriate protection through insurance. To date, to the Authority's knowledge, there is not enough information to say that insurance is not available.

Increased Safety Standards

13. In the past the Authority has come across many moorings which have been extremely badly maintained by licensees and which posed a serious danger to both the licensees and others. It is the Authority's belief that the policy of making licensees responsible for their own moorings (as implemented by the new regulations and the terms and conditions) and the resulting level of awareness amongst licensees, will have the effect of dramatically increasing the safety standard of permanent moorings at Rottneest Island.
14. The Mooring Licensees Association has already made some very good suggestions as to the ways in which they can assist their members to ensure that their moorings are as safe as possible, and that any potential exposure is minimised. This is very encouraging and augurs well for the new policy resulting in a much higher standard of moorings and,

consequently, both a high level of safety and a significant reduction in the number of incidents and claims arising from the use of moorings.

The Regulations the Committee have questioned are the result of extensive consideration of the issues, legal advice and considerable public consultation. As such there is a strong rationale for these changes.

13 October, 1997



ANNEXURE E¹

*Joint Standing Committee
on Delegated Legislation*

3 November 1997

Norman Moore MLC
Minister for Tourism
10th Floor, London House
216 St George's Terrace
Perth
WA 6000

Our Ref: 3508/11

Dear Sir

Rottnest Island Amendment Regulations 1997

I refer to your letter and attached comments dated 14 October 1997. The Committee has now had the opportunity to consider the matter further. The Committee is satisfied with the comments made in respect of ownership of a suitable vessel and disposal of sullage. No further issue is to be taken with those matters.

In relation to the insurance and indemnity issues the Committee makes the following observations:

- a. The point is well made that the Authority is simply ensuring that the owners of permanent moorings take responsibility for ensuring that they are safe. However in placing this responsibility on licensees the comment is also made that it is in everyone's best interests that the licensees be adequately protected by insurance. In this respect the Committee is then advised that the Authority has had discussions with various insurance brokers as to the type of insurance available and the premiums that were likely to be charged. The Committee understands that this information is not yet available. Despite this it is understood that licensees are being asked to provide the wide indemnities that are part of the Terms and Conditions. If licensees are to provide these type of indemnities and responsibility for the mooring is to reside with the licensee the Committee is anxious to ensure that adequate insurance at a reasonable premium is available. Can you please advise the Committee of the results of the Authority's discussions in this regard as soon as possible;

Joint Standing Committee on Delegated Legislation

Page 2

- b. In respect of the indemnity and exclusion clauses under the Terms and Conditions the Committee notes that it is accepted that a licensee is being asked to indemnify the Authority against a claim even where the loss is caused by the Authority's negligence. Several arguments are presented as to why this does not pose a significant risk for the licensee. However, the Committee is of the view that if the possibility exists that the Authority's negligence can cause the loss this possibility should be excluded in the indemnity clause. Are there any reasons why the indemnity clause cannot be drafted in a manner which excludes this possibility?

As you are aware the Committee has at this stage tabled a motion for the disallowance of the regulations in the Legislative Council. This is seen as a protective measure pending the outcome of the Committee's inquiries in respect of the above matters. The motion was tabled on 16 October 1997 and moved *pro forma* on 22 October 1997. As such under Legislative Council Standing Orders the motion must be debated within 10 sitting days. If the House sits as scheduled this will mean that it must be debated by 27 November 1997. In the circumstances the Committee seeks your response in sufficient time for the Committee to consider the matter further. The Committee will meet next on 13 November 1997.

Yours sincerely

p.p. Andrew Mason

Hon R L (Bob) Wiese, MLA
Chairman

ANNEXURE F

12 November 1997

Hon R L Wiese MLA
Chairman
Joint Standing Committee on
Delegated Legislation
Parliament House
PERTH WA 6000

Dear Mr Wiese

ROTTNEST ISLAND AMENDMENT REGULATIONS 1997

Thank you for your letter of 3 November 1997.

The points in relation to insurance and indemnity have been noted and are addressed in the order raised by you.

Insurance

1. Discussions in relation to insurance are ongoing as the Authority is awaiting figures from Jardines Insurance Brokers.
2. As the Joint Standing Committee on Delegated Legislation is no doubt aware, the *Statutory Corporations (Liability of Directors) Act 1996* ("the Act") imposes significant new duties on directors of public authorities, including the Rottnest Island Authority. Whilst the Authority remains of the view that it is in the best interests of everyone that licensees be adequately protected by insurance, the fact remains that in view of the potential exposure to the Rottnest Island Authority, and of the members of the Authority (Board) personally, it remains their view that the responsibility for permanent moorings, along with any resulting liability, must rest with the owners of the moorings.

Indemnity and Exclusion Clauses

3. Legal advice confirms that the indemnities mean that there is a possibility that a licensee may have to indemnify the Authority against a claim even if the loss was caused by the Authority's negligence.
4. It would be possible to draft the indemnity clause to exclude the possibility of the licensee being held responsible for the Authority's negligence. The reason that approach has not been taken to date is because:
 - 4.1 As set out in our letter of 10 October 1997 it is our view that the real threat to the licensee posed by the inclusion of negligence in this clause is not significant.
 - 4.2 The main purpose of the current wide exclusion and indemnity is its practical effect in making the Authority a less attractive defendant, and in discouraging the tendency for people to include the Authority in a claim almost automatically because it is perceived as having 'deep pockets'.
5. Further on this second point, the Authority has been very careful to take on a minimum of responsibilities in relation to the 'permanent moorings' and to ensure that the mooring and its maintenance is the sole responsibility of the licensee. Consequently, it is hard to think of circumstances where the Authority's negligence would be the actual cause of a party's loss. However, if the possibility of arguing negligence against the Authority is left open to potential claimants, it is inevitable that the Authority will be joined as a defendant by claimants because the Authority is such an attractive defendant. In the majority of these instances the grounds for a claim against the Authority will be tenuous at best. However, every one of these claims, whether well founded or not, will result in a significant amount of money being wasted on legal advice for both the Authority and its insurers. In addition, there is strong tendency for the courts to apply very strict liability on public authorities as is seen in *Nagle v Rottnest Island Authority* (1993). This leaves the possibility that the Rottnest Island Authority could be found liable on the most tenuous grounds.

If it would be of assistance, the Chief Executive Officer and the Manager, Environment of the Rottnest Island Authority, would be happy to discuss this matter in person with the Joint Standing Committee. This could be helpful in setting the full context of the changes being made to the moorings policy and the attendant Regulations.

Yours sincerely



NORMAN MOORE MLC
MINISTER FOR TOURISM



*Joint Standing Committee
on Delegated Legislation*

17 November 1997

Norman Moore MLC
Minister for Tourism
10th Floor, London House
216 St George's Terrace
Perth
WA 6000

Dear Sir

Rottnest Island Amendment Regulations 1997

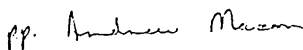
I refer to the above matter and note your correspondence of 12 November 1997. The Committee met on 13 November 1997 and a number of further concerns were raised as follows:

1. Regulations 14 and 72A(6) deem any person who is on a vessel to have committed the particular offences referred to. The Committee is concerned that this provision may be too wide and potentially beyond the general regulation making power contained in section 48 of the *Rottnest Island Authority Act 1987*. In particular it may lead to the prosecution of innocent guests or visitors on board a vessel who are oblivious to whether the vessel is entitled to be on a particular mooring or whether it adequately insured. Perhaps a provision which deems the person on the vessel to be in control of the vessel unless he or she identifies the owner or person in control would be more appropriate;
2. Sub-regulation 20(11) may be void pursuant to section 43(1) of the *Interpretation Act 1984*. Part VII of the *Property Law Act 1969* may apply to a mooring site licence in so far as a mooring site licence can be regarded as "any instrument of letting" (per section 69 PLA). Whether a mooring site licence is an "instrument of letting" will depend on the case law and the particular circumstances of the licence. The Committee has had insufficient time to examine this question but it is evident that there may be circumstances in which Part VII of the *Property Law Act 1969* will apply and therefore a regulation cannot amend or repeal the application of that Act;

3. The issue of sullage has been raised again. The Committee is appreciative of the intent of this regulation in relation to environmental and health issues. Until pump out facilities are provided on the Island the Committee understands that the options available to boat owners is to use land based toilet facilities or install sullage tanks and then pump out outside of 3 nautical miles. In respect of the installation of holding tanks the Committee understands that this would be an expensive and sometimes difficult task given space limitations within most vessels. The Committee understands that most vessels would need to come out of the water to have the work done. The Committee is of the view that there should be some lead in time before this regulation is enforced to allow for boat owners to install holding tanks and for the Authority to provide pump out facilities on shore;
4. In respect of regulation 60A there is total ban placed on sandboarding on the Island. Are there any areas on the Island where sandboarding would not cause any harm and which could be set aside for this activity?
5. In relation to the ongoing concerns of the Committee in respect of insurance and liability the Committee notes that discussions are ongoing as to what insurance is available. This does not satisfy the Committee as there is no assurance that cover at a reasonable price will be available. The Committee also notes the rationale behind the wide exclusion and indemnity provisions in respect of discouraging the inclusion of the Authority in a claim simply because the Authority is perceived to have deep pockets. The Committee accepts that responsibility for permanent moorings should rest with the owners of the moorings. However the Committee does not accept that a licensee should bear any more responsibility (however ill-defined) simply because there is a tendency for litigants to include the Authority in any claim. Nor is the fact that the courts have a tendency to apply very strict liability on public authorities a relevant consideration. No doubt there are very good policy reasons for such strict liability. However the Committee is mindful that these objections to the insurance provisions under the Terms and Conditions are issues of policy which is appropriate for the Government to determine and not the Committee. However, sub-regulation 72A(1)(a) may well exceed the regulatory making power under section 48 of the Act. What possible connection is there between the proper management of Rottnest Island and the prescribing of insurance cover for vessels visiting the Island?

In view of the above comments the Committee now seeks your further response to the issues raised. The Committee will be meeting on Thursday morning 20 November 1997 between 830 am and 10.00 am and will be considering this matter. It is noted that the CEO and the Manager, Environment of the Rottnest Island Authority would be happy to attend before the Committee if this proves necessary. At this stage the Committee would prefer to make an assessment of the position through correspondence and then make a decision as to whether attendance before the Committee would be useful. Accordingly the Committee now seeks your reply as soon as is possible.

Yours sincerely



Hon R L (Bob) Wiese MLA
Chairman

ANNEXURE H

Government of Western Australia

Hon. Norman Moore
BA Dip Ed MLC

Minister for Tourism.

10th Floor,
London House
216 St. Georges Terrace
Perth 6000.
Western Australia.

Tel: (08) 9321 1444
Fax: (08) 9321 1445
e-mail:

nmoore@mpc.wa.gov.au

18 November 1997

Hon (Bob) Wiese MLA
Chairman
Joint Standing Committee on Delegated Legislation
Parliament House
PERTH WA 6000

Dear Mr Weise

Rottnest Island Amendment Regulations 1997

Thank you for your letter of 17 November 1997.

I address the points raised in the order contained in your letter.

Regulation 14 and 72A (6)

1. These deeming provisions have been taken directly from the Rottnest Island Authority Regulations 1988 (see for example Regulation 12(5) of the Rottnest Island Regulations 1988). The deeming provisions were originally included because of practical difficulties in enforcing regulations in relation to the improper mooring and anchoring of vessels
2. As we understand it, the committee's concerns could be addressed by amending:
 - 2.1 regulations 11, 12 and 13 to refer to 'a person with responsibility for the vessel';

2

- 2.2 the deeming provision in regulation 14 to read 'for the purposes of regulation 11,12 and 13, a person who is on a vessel that is anchored or secured to a mooring is taken to be a person with responsibility for the vessel unless that person shows, to the satisfaction of the Authority, that some other person is properly responsible for the vessel';
- 2.3 regulation 72A (5) and (6) in similar terms.
3. The main difficulty is that it is likely that the Authority will end up in endless arguments, and be forced to make endless enquiries, in trying to enforce these provisions. Those people on the vessel will always argue that someone else is responsible for the vessel whilst the person that they nominate as being responsible for the vessel may claim that this is not the case.
4. Notwithstanding, however, if the amendments are agreed but there is not sufficient time to progress them at this stage, the Authority would implement the Regulations in that manner.

Sub-Regulation 20(11)

5. It is noted that an almost identical provision is contained in regulation 8 of the Rottnest Island Authority Regulations 1988. This regulation has not been amended by the proposed amendment regulations.
6. Section 43 of the Interpretation Act 1984 reads as follows:
- 'Subsidiary legislation shall not be inconsistent with the provisions of the written law under which it is made, or of any act, and subsidiary legislation shall be void to the extent of any such inconsistency.'
7. My advice is that some particular sections of Part VII of the Property Law Act 1969 are specifically stated in the legislation to be incapable of exclusion. By inference the remainder of Part VII of the Property Law Act 1969 may be excluded, and in fact this is almost invariably done in leases. It would be argued that sub-regulation 20(11)(and regulation 8) can only operate to exclude those sections of Part VII of the Property Law Act 1969 which are not expressed by the Act as being incapable of exclusion. Consequently, it is the view that regulation 20 (11) is not inconsistent with the provisions of the Property Law Act 1969 and is therefore not in breach of section 43 of the Interpretation Act 1984. However, if there is any doubt on this point, given that you have drawn a possible problem to our attention, perhaps both regulations could be amended slightly to read:
- 'To the extent permitted by law, part VII of the Property Law Act 1969 does not apply...'

Sullage

8. It is not the responsibility of the Authority to insist on boat owners having facilities such as on-board toilets. The concern is to ensure that the marine environment is not subjected to discharge of sullage in the interest of responsible marine management and promoting healthy conditions for people swimming in the water.
9. The Authority is not convinced that on-shore pump-out facilities would provide the answer based on experience in other similar holiday destinations. However it is an option that is being examined. The fragile nature of the Rottnest environment is also part of that consideration.
10. Toilets are provided in most bays and the Authority is committed to providing them in other bays in the near future.
11. It should be noted that existing legislation prohibits sullage being disposed of overboard. Amendments to the Rottnest Island Authority Regulations are proposed to maintain consistency with that approach and to demonstrate proper management of its marine health responsibilities in that regard.
12. A community education program is also underway and an informative pamphlet is made available to all boating visitors. The Health Department also has an advisory pamphlet.

Sandboarding

13. Sandboarding results in direct erosion of dune areas plus the physical destruction of vegetation which holds fragile dune systems in place.
14. Rottnest Island has a very fragile coastline which can be damaged easily, especially given that it has 400,000 visitors annually.
15. The Authority cannot allow sandboarding to continue. It has introduced other recreational activities to interest young people in particular.

Insurance and Liability

16. The committee's comments are noted. However, as this issue has been dealt with at length in previous correspondence it is not proposed to recover the same ground. It is noted, however, that the exclusion and indemnities are not contained in the regulations but instead simply form part of the contractual terms and conditions between the licensees and the Rottnest Island Authority. As with any contract, it is open to a licensee to decide that the terms and conditions are unacceptable and that the licensee therefore does not wish to apply for a permanent mooring.

17. Notwithstanding, however, it is acknowledged that the reference to adequate insurance cover is to be subject of further examination and is to be contained in a subordinate instrument. The Authority would be prepared to continue discussions in this matter.

18. In relation to the connection between the proper management of Rottneet Island and the prescribing of insurance cover, the following points are made:

18.1 it is an invariable requirement of insurance that vessels be properly maintained and kept in a seaworthy condition. There have been problems within the waters of the island in the past which have been caused by poorly maintained vessels. It is hoped that the insurance requirement will result in the vessels which visit Rottneet generally being better maintained. This should result in a reduced risk of collision, pollution and other possible problems caused by poorly maintained vessels.

18.2 if a vessel becomes a wreck within the waters of the island, it can have significant environmental consequences, as well as pose a danger to other people who are using the waters. The Authority and the Board will have an exposure in relation to any resulting loss. The removal of wrecks is severely hampered by impecunious owners. Wreck removal insurance (which is generally a component of hull insurance) would greatly assist the timely removal of wrecks.

I look forward to hearing from you after the committee's meeting on Thursday morning.

Yours sincerely



NORMAN MOORE, MLC
MINISTER FOR TOURISM