

TN302

Jetties Act 1926
Shipping and Pilotage Act 1967
Western Australian Marine Act 1982

Transport Regulations Amendment (Waiver and Refund) Regulations 2022

SL 2022/47

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Transport Regulations Amendment (Waiver and Refund) Regulations 2022*.

2. Commencement

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

Part 2 — *Jetties Regulations 1940* amended

3. Regulations amended

This Part amends the *Jetties Regulations 1940*.

4. Regulation 67DB deleted

Delete regulation 67DB.

5. Part 5 inserted

After regulation 108 insert:

Part 5 — Waiver and refund of fees

109. Terms used

In this Part —

authorised fee officer means an officer designated under regulation 110 acting in accordance with the terms of the designation;

fee means a fee, due or charge in respect of which these regulations make provision;

written instrument means an instrument in writing signed by the chief executive officer or by an authorised fee officer.

110. Authorised fee officers

- (1) The chief executive officer may, in writing, designate an officer to be an authorised fee officer for the purposes of this Part.
- (2) A designation under this regulation may authorise the officer to act —
 - (a) generally for the purposes of this Part; or
 - (b) as specified in the terms of the designation, only —
 - (i) in relation to particular functions under this Part; or
 - (ii) in relation to particular fees or kinds of fees; or
 - (iii) in particular circumstances.
- (3) An officer performing a function in reliance on a designation under this regulation is taken to do so in accordance with the terms of the designation unless the contrary is shown.

111. Waiver of fees

- (1) The chief executive officer or an authorised fee officer may by written instrument waive in whole or in part, during a period specified in the instrument, a fee or a class of fees either —
 - (a) generally; or
 - (b) as specified in the instrument, in relation to —
 - (i) a particular vessel or a class of vessels; or
 - (ii) a particular place or places; or
 - (iii) a particular person or a class of persons.
- (2) The chief executive officer or an authorised fee officer may by written instrument (the *amending instrument*) —
 - (a) if a waiver made under subregulation (1) has not yet come into effect — revoke the waiver; or

- (b) if a waiver made under subregulation (1) is in effect — alter the date on which the waiver is to cease to have effect, but not to a date earlier than the day after the date on which the amending instrument is signed.
- (3) A written instrument made under this regulation is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

112. Details of waivers to be accessible on website

- (1) While a waiver made under regulation 111(1) is in effect and for at least 12 months after it ceases to have effect, the chief executive officer must provide public access on a website maintained by, or on behalf of, the Department to —
 - (a) the written instrument by which the waiver is made; and
 - (b) any amending instrument, as defined in regulation 111(2), relating to the waiver.
- (2) A failure to comply with subregulation (1) does not affect the validity of the written instrument or instruments concerned.

113. Emergency waivers

The chief executive officer or an authorised fee officer may, without the need for a written instrument, waive in whole or in part a fee for the use of a pen, alongside berth or mooring by a vessel —

- (a) in need of emergency repair; or
- (b) in another situation of urgency.

114. Effect of waiver

Despite any other provision of these regulations, if a fee that would otherwise be payable is waived under regulation 111 or 113 —

- (a) there is no requirement to pay the fee; and
- (b) the rights and obligations under the Act of every person are as they would be if the fee had not been waived, and had been paid.

115. Refund of fees

- (1) The chief executive officer or an authorised fee officer may refund in whole or in part any fee that has been paid.

- (2) If a fee is refunded under subregulation (1) the rights and obligations under the Act of every person —
 - (a) are as specified by the chief executive officer or authorised fee officer on making the refund; and
 - (b) to the extent that they are not specified under paragraph (a), are as they would be if the fee, or so much of it as has been refunded, had not been paid.

Part 3 — *Mooring Regulations 1998* amended

6. Regulations amended

This Part amends the *Mooring Regulations 1998*.

7. Part 7 inserted

After regulation 36 insert:

Part 7 — Waiver and refund of fees

37. Terms used

In this Part —

authorised fee officer means an official designated under regulation 38 acting in accordance with the terms of the designation;

fee means a fee, due or charge in respect of which these regulations make provision;

written instrument means an instrument in writing signed by the CEO or by an authorised fee officer.

38. Authorised fee officers

- (1) The CEO may, in writing, designate an official to be an authorised fee officer for the purposes of this Part.
- (2) A designation under this regulation may authorise the official to act —
 - (a) generally for the purposes of this Part; or
 - (b) as specified in the terms of the designation, only —
 - (i) in relation to particular functions under this Part; or
 - (ii) in relation to particular fees or kinds of fees; or
 - (iii) in particular circumstances.

- (3) An official performing a function in reliance on a designation under this regulation is taken to do so in accordance with the terms of the designation unless the contrary is shown.

39. Waiver of fees

- (1) The CEO or an authorised fee officer may by written instrument waive in whole or in part, during a period specified in the instrument, a fee or a class of fees either —
 - (a) generally; or
 - (b) as specified in the instrument, in relation to —
 - (i) a particular vessel or a class of vessels; or
 - (ii) a particular place or places; or
 - (iii) a particular person or a class of persons.
- (2) The CEO or an authorised fee officer may by written instrument (the *amending instrument*) —
 - (a) if a waiver made under subregulation (1) has not yet come into effect — revoke the waiver; or
 - (b) if a waiver made under subregulation (1) is in effect — alter the date on which the waiver is to cease to have effect, but not to a date earlier than the day after the date on which the amending instrument is signed.
- (3) A written instrument made under this regulation is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

40. Details of waivers to be accessible on website

- (1) While a waiver made under regulation 39(1) is in effect and for at least 12 months after it ceases to have effect, the CEO must provide public access on a website maintained by, or on behalf of, the Department to —
 - (a) the written instrument by which the waiver is made; and
 - (b) any amending instrument, as defined in regulation 39(2), relating to the waiver.
- (2) A failure to comply with subregulation (1) does not affect the validity of the written instrument or instruments concerned.

41. Emergency waivers

The CEO or an authorised fee officer may, without the need for a written instrument, waive in whole or in part a fee for the use of a mooring site by a vessel —

- (a) in need of emergency repair; or
- (b) in another situation of urgency.

42. Effect of waiver

Despite any other provision of these regulations, if a fee that would otherwise be payable is waived under regulation 39 or 41 —

- (a) there is no requirement to pay the fee; and
- (b) the rights and obligations under the Act of every person are as they would be if the fee had not been waived, and had been paid.

43. Refund of fees

- (1) Subject to subregulation (2), the CEO or an authorised fee officer may refund in whole or in part any fee that has been paid.
- (2) Subregulation (1) does not apply to —
 - (a) a fee paid under regulation 7F(4)(b) in connection with a rental mooring site authorisation that is surrendered under regulation 7G; or
 - (b) an annual mooring licence fee paid under regulation 13(1) in connection with a mooring licence that is surrendered under regulation 13A.
- (3) If a fee is refunded under subregulation (1) the rights and obligations under the Act of every person —
 - (a) are as specified by the CEO or authorised fee officer on making the refund; and
 - (b) to the extent that they are not specified under paragraph (a), are as they would be if the fee, or so much of it as has been refunded, had not been paid.

Part 4 — *Shipping and Pilotage (Mooring Control Areas) Regulations 1983* amended

8. Regulations amended

This Part amends the *Shipping and Pilotage (Mooring Control Areas) Regulations 1983*.

9. Regulation 3 amended

- (1) In regulation 3 insert in alphabetical order:

authorised fee officer means a person designated under regulation 20 acting in accordance with the terms of the designation;

fee means a fee, due or charge in respect of which these regulations make provision;

written instrument means an instrument in writing signed by a controlling authority or by an authorised fee officer.

- (2) In regulation 3 in the definition of *registered owner* delete “regulations.” and insert:

regulations;

10. Regulations 20 to 24 inserted

After regulation 19 insert:

20. Authorised fee officers

- (1) A controlling authority may, in writing, designate a person to be an authorised fee officer for the purposes of these regulations in relation to fees payable to that controlling authority.
- (2) A designation under this regulation may authorise the person to act —
- (a) generally for the purposes of these regulations; or
 - (b) as specified in the terms of the designation, only —
 - (i) in relation to particular functions under these regulations; or
 - (ii) in relation to particular fees or kinds of fees; or
 - (iii) in particular circumstances.

- (3) A person performing a function in reliance on a designation under this regulation is taken to do so in accordance with the terms of the designation unless the contrary is shown.

21. Waiver of fees

- (1) A controlling authority or an authorised fee officer designated by it may by written instrument waive in whole or in part, during a period specified in the instrument, a fee or a class of fees payable to the controlling authority either —
 - (a) generally; or
 - (b) as specified in the instrument, in relation to —
 - (i) a particular vessel or a class of vessels; or
 - (ii) a particular place or places; or
 - (iii) a particular person or a class of persons.
- (2) The controlling authority or an authorised fee officer designated by it may by written instrument (the *amending instrument*) —
 - (a) if a waiver made under subregulation (1) has not yet come into effect — revoke the waiver; or
 - (b) if a waiver made under subregulation (1) is in effect — alter the date on which the waiver is to cease to have effect, but not to a date earlier than the day after the date on which the amending instrument is signed.
- (3) A written instrument made under this regulation is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

22. Details of waivers to be accessible on website

- (1) While a waiver made under regulation 21(1) is in effect and for at least 12 months after it ceases to have effect, the controlling authority must provide public access on a website maintained by, or on behalf of, the Department to —
 - (a) the written instrument by which the waiver is made; and
 - (b) any amending instrument, as defined in regulation 21(2), relating to the waiver.
- (2) A failure to comply with subregulation (1) does not affect the validity of the written instrument or instruments concerned.

23. Effect of waiver

Despite any other provision of these regulations, if a fee that would otherwise be payable is waived under regulation 21 —

- (a) there is no requirement to pay the fee; and
- (b) the rights and obligations under the Act of every person are as they would be if the fee had not been waived, and had been paid.

24. Refund of fees

- (1) A controlling authority or an authorised fee officer designated by it may refund in whole or in part any fee that has been paid to the controlling authority.
- (2) If a fee is refunded under subregulation (1) the rights and obligations under the Act of every person —
 - (a) are as specified by the controlling authority or authorised fee officer on making the refund; and
 - (b) to the extent that they are not specified under paragraph (a), are as they would be if the fee, or so much of it as has been refunded, had not been paid.

N. HAGLEY, Clerk of the Executive Council.
