



Cockburn Power Boats Club Inc.

Pen Regulations

Current at 14 October 2020

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1. Definitions

- **Club** - means the Cockburn Power Boats Club Inc.
- **Club Area** - means the whole of the marina complex, hard standing, parking areas, waterways, buildings and other facilities, plant and equipment, seabed and waters owned, leased or otherwise held or occupied by the Club at 28 Jervoise Bay Cove, Coogee WA.
- **Licensee** - means the person or persons named in any Licence with the Club which entitles that or those persons to moor a watercraft in a Club pen.
- **Licensee's guests** - means all passengers, family members, contractors, employees, customers and any other person within the Club Area with the express or implied consent or approval of the Licensee.
- **Licensee's Pen** - means the Club Pen within the Club Area described in a Licence.
- **Licensee's watercraft** – means any watercraft described in a Licence with the Club or a substitute watercraft, the details of which have been given to and approved by the Club in accordance with a Licence under these Regulations.
- **Management Committee** - means the Management Committee of the Club.
- **Pen Fee** - means the Licensee's annual Club Pen occupancy fee for watercraft set by the Management Committee.
- **Pen Licence** - means any current or future Pen Licence whereby the Club permits a Licensee to moor a watercraft in a Club Pen upon the terms of that Licence as modified by these Regulations (as amended from time to time).
- **Regulations** – means these Pen Regulations made or amended by the Club in accordance with its Constitution.
- **Rules** - means all the Rules made or amended by the Club in accordance with its Constitution.
- **Term** - means the initial period from the commencing date of a Pen Licence and each renewal term of twelve (12) months thereafter granted pursuant to these Regulations.

2. Terms of Pen Licence

- 2.1 Licences for Club Pens may only be granted and entered into by the Club with a person who is and remains a financial Full Member or Life Member of the Club.
- 2.2 If a watercraft, intended to be the subject of a Licence, is owned by more than one person, all must be and remain financial Full Members or Life Members of the Club.
- 2.3 The Management Committee granting and entering into Pen Licences shall be guided by the interests of the Club having regard to the information provided in a Pen Application form approved from time to time by the Management Committee.
- 2.4 In consideration of the required payment in accordance with the Pen Licence, the Licensee shall have the entitlement of mooring the Licensee's watercraft (as approved by the Club from time to time) within the Club Pen designated in the Pen Licence, responsible use of potable water supply, metered 240 Volt power supply (chargeable at a rate amended from time to time) and, to embark and disembark the Licensee's guests from jetties within the Club Area in accordance with these Regulations.
- 2.5 No watercraft shall occupy a Club Pen on an annual basis unless:
 - a) The watercraft has a current Club Fire and Safety Compliance notification, issued by the Club after a compliance check has been carried out by a Fire and Safety Officer (appointed from time to time by the Club);
 - b) The Licensee, at their own expense and, to the satisfaction of the Club, takes out and keeps in force at all times during the period of a Pen Licence, a Pleasure/Water Craft Insurance Policy with a cover of not less than TEN MILLION DOLLARS (\$10,000,000) in respect of any one event;

and -

provides a Certificate of Currency in respect of the Pleasure/Water Craft Policy covering the Licensee's watercraft for the Term.

- 2.6 A Licensee and the Licensee's guests shall at all times when within the Club Area, be obliged to observe and comply to the Club's Rules and Regulations and, in the event of any of them not complying, the Licensee shall, upon the request of an authorised person, immediately take corrective action or leave the Club Area.
- 2.7 A Licensee shall not during the currency of a Pen Licence permit or omit to do any act or thing which may invalidate or prejudice the Pleasure/Water Craft Insurance Policy effected by the Licensee or which

may render any proceeds of the Pleasure/Water Craft Insurance Policy irrecoverable.

- 2.8 In the event that a Licensee fails to keep or maintain a Pleasure/Water Craft Insurance Policy pursuant to these Regulations then the Licensee shall be liable for any loss or damage suffered by any person as a result of any act or omission on the part of the Licensee or his employees, agents, independent contractors, invitees or licensees and shall indemnify and keep indemnified the Club against all liability in respect of any suits, proceedings, claims, demands, costs, expenses, losses, damages made or taken against the Club by any third party.
- 2.9 A Licensee shall, within 24 hours of its occurrence, give to the Club written notice of any accident or event involving the Licensee or the Licensee's guests which results in injury or death of any person or loss or damage to property or assets of the Club or any other person within the Club Area.
- 2.10 Notwithstanding any provision of a Pen Licence to the contrary, in the event that any charge, duty or tax or any additional charge, is imposed upon the Club during the term of any Pen Licence that was not imposed at the commencement of that term, which is referable to the Club providing watercraft occupancy within Club Pens under a Pen Licence, then the expense of that charge, duty or tax or any additional charge shall be recoverable from the Licensee proportionately (by reference to the designated Pen) as an additional amount to the Pen Fee and such amount(s) shall be paid to the Club by the Licensee upon demand.

3. Ownership Details

- 3.1 At all times during the Term of a Pen Licence, if a Licensee has not previously provided the same to the Club, the Licensee shall maintain registration of the Licensee's watercraft, required by these Regulations, with the WA Department of Transport (or equivalent authority) as a registered watercraft and shall, upon request by the Club, immediately provide the Club with copies of the papers of registration showing the measurements, registration and ownership of the Licensee's watercraft corresponding with the details shown in the Licensee's current Pen Licence. That ownership must be a beneficial ownership of a majority interest in the Licensee's watercraft by:
 - a) the Licensee; or
 - b) an entity in which the Licensee is the beneficial owner of a majority interest or that the Management Committee is satisfied (in its absolute discretion) is an entity sufficiently influenced by the Licensee as to be akin to such majority ownership.
- 3.2 A Licensee shall give to the Club prompt written notice of any change of the watercraft or entity referred to the Pen Licence which the Licensee desires to moor within or at the Licensee's Pen and of any change in the name, make, dimensions or other relevant particulars of the Licensee's watercraft reasonably required by the Management Committee and shall notify the Club in writing immediately post any sale, transfer or entry into partnership or other change in the beneficial ownership of the Licensee's watercraft or change in ownership or control of the entity owning the Licensee's watercraft.
 - a) If a Licensee fails to notify the Club of a change in the watercraft, referred to in the Pen Licence, to be moored within the Licensee's Pen or particulars of the Licensee's watercraft, as described in the Pen Licence or any change in or encumbrance on the beneficial ownership of the Licensee's watercraft or change in beneficial ownership or control of the entity referred to in the Pen Licence or if the Management Committee notifies the Licensee that it does not approve of any such change or encumbrance the Club may immediately determine the Pen Licence of the Licensee.
- 3.3 A Licensee shall not without the prior written approval of the General Manager, assign sub-let or part with possession or occupation of the Licensee's Pen nor dispose of any estate or interest in the Licensee's Pen or mortgage charge or encumber the Licensee's Pen.
- 3.4 Notwithstanding the provisions of any Pen Licence, the Club reserves the right at any time and from time to time by written notice to a Licensee, to substitute an alternative Pen for any Pen allotted to the Licensee under a Pen Licence whereupon that Licence shall apply to

such substituted Pen but so that a Licensee shall at all times during the term of a Licence be entitled to the use of a Club Pen suitable for the dimensions of the Licensee's watercraft.

4. Temporary Occupation Rights

- 4.1 Only a Licensee under a Pen Licence granted by the Club shall have any claim in respect of the Licensee's Pen or rights under these Regulations (which are not transferable) provided however, that the General Manager may from time to time grant temporary rights to a financial Full Member or Life Member of the Club in respect of a Club Pen during any period when a Club Pen is not the subject of a Pen Licence, or the Licensee is not using the same for a period in excess of fourteen (14) consecutive days.
- 4.2 Any temporary Pen Licence granted shall:
 - a) be upon and subject to these Regulations so far as they are not inconsistent with the temporary nature of the Pen Licence;
 - b) be subject to determination by the Club without notice although the General Manager shall endeavour to give as much written notice as is practicable;
 - c) be subject to determination by the temporary occupier; and
 - d) be subject to the temporary occupier providing his own mooring ropes and being fully responsible for any damage to existing mooring ropes; and
 - e) be subject to payment of a temporary weekly/monthly Pen Fee, payable in advance. Payments to be retained by the Club.

5. Pen Applications and Changes in Watercraft

- 5.1 Only Full Members or Life Members may apply for watercraft occupancy in a Club pen.
- 5.2 All applications for permanent Pen occupancy of watercraft must be made to the Club on a Pen Application Form and be accompanied by the non-refundable application fee (as set by the Management Committee).
- 5.3 Any person applying for or who has been granted a Pen Licence shall, upon written request from the Club, provide a Statutory Declaration as to the existence or non-existence of any of the matters or things provided for in these Regulations.
- 5.4 Upon a Licensee being granted a Pen Licence for a larger Pen, at the Licensee's request, the Licensee shall be required to pay:
 - a) an additional annual Pen Fee, calculated at the applicable rate for that larger Pen for the balance of the Term (and any renewals).

- 5.5 In the event that a Licensee's watercraft will not be in the Licensee's Pen for a period exceeding fourteen (14) consecutive days the Licensee shall notify the General Manager whereupon (or in default of notice and without limiting the Club's rights for default) the General Manager may grant a temporary Licence for occupancy of the Licensee's Pen during the period it is vacant with the Club receiving the benefit of the temporary Pen Fee.
- 5.6 In the event of a Licensee notifying the Club of any intent to acquire another watercraft which is not suitable for the Licensee's Pen then the Licence for that Pen will determine at the time the Licensee's watercraft vacates that Pen, if not having earlier expired or been determined. The Licensee is required to complete a Pen Application form for the acquired watercraft and Pen size required with the date of submission of that form used by the General Manager to determine priority on the Pen Waiting List. Licensees should be aware that a suitable Pen cannot always be provided and Members should liaise with the General Manager before proceeding to acquire a larger or smaller watercraft.

6. Maintenance and Use of Club Property

- 6.1 A Licensee shall immediately notify the Club of any damage or lack of repair to the Licensee's Pen or any other property of the Club and be responsible for and shall indemnify or keep indemnified for and forthwith pay to the Club on demand the cost of repairing all damage and injury of every description to a Licensee's Pen or other property of the Club arising from the use of the Licensee's watercraft or the exercise of the rights granted by a Pen Licence or damage resulting from a failure of the Licensee to notify damage or lack of repair.
- 6.2 A Licensee shall take all necessary precautions against the outbreak of fire in or upon the Licensee's watercraft and the Licensee shall observe all statutory and Club Regulations, in particular whilst the watercraft is within the Club Area, the Licensee shall not fuel or refuel the Licensee's watercraft.
- 6.3 A Licensee will use their best endeavours to prevent the spillage or leakage of oil grease or fuel or sullage (from bilge or holding tanks) on to any part of the Club Area and a Licensee shall do all things necessary to prevent and not to do or permit or suffer to be done anything likely to cause contamination of the waters of the Jervis Bay Boat Harbour by waste, matter and other pollutants arising from use of the Licensee's watercraft or the exercise of the rights granted under a Pen Licence AND without limiting the generality of the Licensee's obligations under these Regulations to dispose of waste (solid and liquid) and other pollutants from the Licensee's

watercraft at a place and in manner required or approved from time to time by the Club AND if contrary to the covenants by the Licensee contained in these Regulations waste matter or other pollutants escape into the water of the Jervoise Bay Boat Harbour or Club Area then, without prejudice to any other right or remedy of the Club, the Licensee shall clear the waters of the Jervoise Bay Boat Harbour or Club Area and shall otherwise minimise and neutralise the effect of the escape and shall indemnify and keep indemnified the Club for and forthwith pay to the Club on demand the cost to the Club of any breach or remedy any of such breach.

- 6.4 A Licensee shall moor the Licensee's watercraft within a Club Pen in the manner specified in the these Regulations and shall keep and maintain the Licensee's watercraft in good and safe repair AND in the event of the Licensee failing to so moor or maintain the Licensee's watercraft and in any event for the purpose of maintaining and repairing the Licensee's Pen the Club, its Management Committee members, staff, agents or independent contractors may board the Licensee's watercraft at any time with all necessary materials and appliances to inspect the same and execute all or any repairs to the Licensee's watercraft (but without obligation to do so) or Licensee's Pen as are necessary to put it in a safe state of repair and shall indemnify and keep indemnified the Club for and forthwith pay to the Club on demand the cost to the Club of any breach or any remedy of such breach.
- 6.5 No rubbish or accumulation of useless property (from time to time identified specifically or generally by the Club) shall be allowed by the Licensee upon a Licensee's watercraft or upon any part of the Club Area except in areas which may from time to time be designated for that purpose by the Club.
- 6.6 A Licensee shall not nor permit their own or the Licensee's guests to leave any property whatever on the jetties or other areas of the Club Area except in areas designated by the Club from time to time for storage of property of a designated description nor permit a Licensee's watercraft or mooring lines to obstruct the waterways or jetties of the Club Area or prevent or restrict the passage of other watercraft, the use of any sullage waste system by other watercraft or the embarkation or disembarkation of passengers, their luggage or supplies to or from watercraft within the Club Area otherwise than as and in accordance with directions of the Club (as displayed by notices within the Club Area from time to time authorised by the Club).
- 6.7 A Licensee shall not, without the permission of the General Manager at any time during the Term of a Pen Licence undertake

or permit to be undertaken at the Licensee's Pen or within the Club Area any repair work on the Licensee's watercraft other than routine maintenance or repair and shall not, in any event, carry out any grinding of metal or any spray painting within the Club Area.

- 6.8 A Licensee may, with the approval in writing of the General Manager, use a step to assist in embarkation and disembarkation to the Licensees watercraft provided that it does not protrude or interfere with the clear right of passageway of others using the jetties or waterways adjacent to the Licensee's Pen.
- 6.9 Persons are allowed to reside on a watercraft berthed in the Marina in compliance with the Department of Transport Regulations.
- 6.10 Vessels shall not be moored in the Club Area unless moored or in accordance with these Regulations unless otherwise temporarily approved specifically by the General Manager.
- 6.11 A Licensee is fully responsible for the security of a watercraft in the Licensee's Pen including regular inspection to ensure that all mooring equipment is maintained in good condition.
- 6.12 All watercraft must be located within the limits of the Licensee's Pen unless otherwise pre-approved in writing by General Manager.
- 6.13 All watercraft in Club Pens must, at the cost of the Licensee, be tied at least fore and aft together with a minimum of one springer line.
- 6.14 While a Licensee's watercraft is not in the Club Pen the Licensee shall ensure that mooring ropes left on walkways are positioned such to avoid creating trip hazards. No mooring lines shall be allowed to trail in the water.
- 6.15 Spliced ropes as detailed in the Club's Fire and Safety Compliance Regulations must be used and be maintained in good and serviceable condition at all times, protected from chaffing.
- 6.16 Mooring ropes considered unfit for further use by the Club (or person authorised by it) if not forthwith replaced by the Licensee, after notice from the General Manager or authorised person, may be replaced at the discretion of the Club and shall indemnify and keep indemnified the Club for and forthwith pay to the Club on demand the cost to the Club of any breach or any remedy of such breach
- 6.17 No apparatus (electrical, structural or mechanical) shall be installed by a Licensee without prior written approval of the General Manager and any approval (current or future) shall be subject to the installation being completed within three (3) months.

6.18 A Licensee shall pay to the Club from time to time such amount as the Club demands for electricity consumed by the Licensee from any electricity outlet that may be provided by the Club for a Licensee's Pen.

7. Club's Responsibility

- 7.1 The Club does not expressly or impliedly warrant that the Licensee's Pen, the waterways, jetties or other facilities of the Club Area are now or will remain suitable or adequate for all or any of the purposes of a Licensee and all warranties as to suitability and adequacy of a Club Pen or other facilities within the Club Area, express or implied by law, are hereby expressly negated save to the extent that an obligation is imposed on the Club which cannot, by law, be excluded.
- 7.2 The Club shall not be liable to a Licensee for any personal injury or any damage or loss to property whatsoever which may occur or be sustained;
- a) to or by a Licensee or any of the Licensee's guests or any other person in or about the Club Area; or
 - b) to or by any watercraft in or, entering or leaving the Club Area;
 - c) arising out of the use of the Licensee's watercraft for the exercise of the rights granted under this Pen Licence.
- 7.3 The Club shall not in any way be responsible for any loss resulting from the theft of a Licensee's watercraft or of any of the parts equipment or contents of a Licensee's watercraft or any vehicle or other property of a Licensee or Licensee's guest on a Licensee's watercraft or within the Club Area.

8. Termination or Determination of a Pen Licence

- 8.1 If the annual Pen Fee, is not paid on the due date (whether formally demanded or not) or in the event of breach or non-observance of any of the other conditions or stipulations on the Licensee's part contained in a Pen Licence or these Regulations and such breach or non-observance is not remedied by the Licensee within 48 hours of written notice to the Licensee to remedy the same THEN in any such case the Club may determine the Pen Licence.
- 8.2 Notwithstanding anything to the contrary contained in a Pen Licence or these Regulations a Pen Licence shall forthwith terminate upon the termination of the Seabed Lease, the Jetty Licence or Land Lease of the Club Area held by the Club and furthermore nothing herein contained shall in any way inhibit or restrict the right of the Minister or any person authorised by each of them respectively from the proper exercise of their powers and responsibilities pursuant to the Seabed Lease, the Jetty Licence and the Land Lease.

- 8.3 Upon the expiration of the Term of a Pen Licence or any earlier determination of that Licence, if the Licensee fails to remove the Licensee's watercraft from the Club Area, or if in the opinion of the General Manager, the mooring of a Licensee's watercraft in a Licensee's Pen is unsafe, the Club, by its officers, staff, agents or independent contractors ("the Club's Representatives") may at any time thereafter board, enter and remove a Licensee's watercraft to any part of or from the Club Area to any jetty, mooring or other place that the General Manager deems appropriate (whether within or outside the Club Area).
- 8.4 In so boarding entering and removing a Licensee's watercraft and in boarding and entering for the purposes set out in these Regulations the Club's Representatives are hereby authorised to so act as the agent of the Licensee and to break and use such force and do all things as reasonably necessary without incurring any liability for any damage to the Licensee's watercraft or other property occasioned thereby.
- 8.5 The Licensee shall forthwith pay to the Club upon demand, the Club's cost of labour and materials of so entering and removing the Licensee's watercraft, making it reasonably secure and in providing or securing the jetty, mooring or other place for it to be moored.
- 8.6 Save to extent that any obligation is imposed on the Club or the Club's Representatives which cannot, by law, be excluded neither the Club nor the Club's Representatives shall be liable to a Licensee for any damage to the Licensee's watercraft or other property of a Licensee in the course of the Club exercising its rights under these Regulations or in removing a Licensee's watercraft from the Licensee's Pen and/or the Club Area and while it is moored at such jetty or other place.
- 8.7 Upon expiration of the Term of the Pen Licence or any earlier determination of that Licence, all rights to and property in all parts of the Licensee's Pen at that date, shall belong to the Club with no right in the Licensee to remove any part thereof.
- 8.8 Upon the expiration of the Term of the Pen Licence, so long as the Licensee's watercraft remains within the Club Area, a Licensee's Licence shall (unless the annual renewal has been completed) continue as a Licence from day to day determinable by the Club either giving notice to the Licensee or by the removal of the Licensee's watercraft from the Club Area pursuant to these Regulations, with a fee payable by the Licensee (based on the applicable temporary weekly fee) in advance for each week or part thereof that the Licensee's watercraft remains in the Club Area (whether in the Licensee's Pen or elsewhere).

9. Term and renewal of Pen Licence

- 9.1 A Licensee shall have the right to moor the Licensee's watercraft (or other watercraft approved by the General Manager in accordance with these Regulations) within a Licensee's Pen during the Term;
- 9.2 So long as a Licensee has remedied, within 48 hours of written notice, any breach or non-observance of the conditions or stipulations of a Pen Licence and the Licensee, during the Term and each successive renewal of the Term, is a financial Full Member or Life Member, the Club shall offer a renewal of that Licence for a period of the next 12 months from the 1st July, on the same terms and conditions (including this right of renewal) as provided in the Pen Licence (as modified by these Regulations from time to time).
- 9.3 Renewal of a Pen Licence (and subsequent renewals thereof) shall be effected by:
 - a) The Club forwarding an invoice for the renewal period; and
 - b) the Licensee accepting the renewal by paying to the Club, prior to the 30th June, the renewal invoice for the relevant annual Pen Fee.
- 9.4 If a Pen Licence is renewed in accordance with these Regulations both parties shall be bound by the Terms and Conditions set out in that Licence as modified by these Regulations and in the renewal invoice for the new 12 month term.