

WESTERN AUSTRALIAN MARINE AMENDMENT BILL 2023

Second Reading

Resumed from 18 October.

MS C.M. COLLINS (Hillarys) [12.16 pm]: I rise to make a brief contribution to the second reading debate on the Western Australian Marine Amendment Bill 2023. I would first like to acknowledge students from Craigie Heights Primary School in the gallery today.

Congratulations to Minister David Michael for these reforms, through which the government will seek to improve the safety of our waters. My office has frequent contact with the Department of Transport, as Hillarys Boat Harbour is operated by the department and is a major feature of my electorate. The harbour and the surrounding local beaches are very much considered popular hotspots for recreational boating and water activities for both visitors and locals in the area. Boating is very much an integral part of the lifestyle in Hillarys, whether it is fishing, finding secret snorkel spots, going to Rottnest or simply cruising along our stunning coastline. When I am out doorknocking, it is very evident just how many people have boats or boat trailers in their driveways. The yacht club is a huge facility in the electorate that holds a number of both floating and fixed boat pens. The harbour also has pens that are operated by the Department of Transport.

However, we know that the ocean can be a very unpredictable place, and accidents can and do happen on a somewhat regular basis. I think if one were to speak to someone from Marine Rescue Whitfords, they could say just how frequent they are. Marine Rescue Whitfords has more than 120 active volunteer members and three rescue vessels, which are based at Hillarys Boat Harbour.

As we heard in the second reading speech, on-water incidents in WA have claimed 57 lives over the past seven years, which is the same number as for the previous 12 years, so something had to be done to address this. The Cook government really is serious about improving safety on our waters.

Before I discuss some of our reforms, I point out that they follow the recent introduction of more stringent safety equipment requirements for vessels. In December 2022, I was joined by Minister Saffioti to launch the Get on Board education campaign. More recently, I was joined by Minister Michael and campaign ambassador David Mundy. These equipment laws are now fully in place and operating for WA boat users. These changes follow the first review of safety equipment requirements in Western Australia in more than 30 years. The changes include life jackets and devices being required on vessels. I particularly note that children under the age of 12 years and anyone on a small vessel must wear a life jacket when they are more than 400 metres from the shore.

Although it is clear that in the northern suburbs, and all over WA, we value the freedom and joy that boating brings, there is no doubt that the excessive consumption of alcohol or use of illicit substances in a marine environment can be particularly dangerous. Comparisons can be drawn with impaired drivers on our roads who can cause so much damage. Skippers might often feel that they have some sense of invincibility because there is not the same level of traffic on our waters as there is on roads, but the risk can be just as high when there are other boats on the water due to those delayed judgement and reaction times.

This bill before the house will make amendments to the Western Australian Marine Act to enable drug and alcohol testing on waterways. Under these laws, skippers navigating a vessel will be subject to the same limits and penalties as drivers on WA roads. The need for random drug and alcohol testing for skippers cannot be overestimated. The safety of those on board, as well as other users, really is paramount.

I will go over some key reasons we really need to address these issues. Blood alcohol limits for drivers have been in place now for over 50 years, yet other jurisdictions across Australia apply these same penalties to their marine context. To give some context here, our legislation is over 40 years old. The penalties are quite small, and they are now no longer up to community expectations. These amendments will bring us into line with other states that have adapted their provisions to apply to the marine context. Just to reiterate, at the moment we are the only state in Australia that does not set blood and alcohol limits for skippers. Under the current legislation there are no specific testing powers. There is an absence of prescribed limits applying to blood alcohol content, which is inconsistent with road laws, and no specific treatment for incidents occasioning death or grievous bodily harm. The penalty right now is only \$1 000 for anyone who causes a lot of damage and is caught with drugs and alcohol in their system.

We can draw on a lot of real-life examples for why these laws are necessary. Growing public sentiment in recent years supports the government taking a stronger stance. We heard about Kylie Bazzo and Deborah Burdon, who tragically died after a boat crashed into a navigational marker in Mandurah on 21 January. There was Kate Campbell's accident back in 2007. Matthew Price died aged only 27 years, and Daniel Lloyd died aged 35 years back in 2020. There have been a number of alcohol-related deaths.

We heard in the minister's second reading speech that the first stage of these new laws will include offences and increased penalties targeting the unsafe operation of vessels. I mentioned the current penalty of \$1 000. The changes will increase that to up to \$3 750 for a first offence and more than \$7 500 and up to 18 months' imprisonment for a third or subsequent offence. Those responsible for causing death under the influence can face up to 20 years' imprisonment and a fine that reflects the severity of that offence.

I have only five minutes so I had better wrap up. Although the majority of skippers are responsible, this reform will ensure that all skippers adhere to the new regulations and act to improve safety. The government made a commitment to pass this legislation this year. We hope that we have the support of the opposition on this. These reforms are part of the Cook Labor government's commitment to improving safety. I commend the minister for bringing this bill to the house, and I commend this bill to the house.

MR R.S. LOVE (Moore — Leader of the Opposition) [12.23 pm]: I rise to make a contribution to this rather important Western Australian Marine Amendment Bill 2023. I am the lead speaker for the opposition and do not intend to take 60 minutes to talk about this bill because in essence it is fairly simple, although complex.

Some of the technical matters dealt with in the bill are a little bit difficult to understand because of the complexity of marrying this legislation with the recent passage of the other marine bill dealing with commercial vessels. They are almost being dealt with at the same time, so the drafting of legislation has some complexities, and that has led to many amendments on the notice paper. I thank the minister for arranging a briefing on those amendments yesterday in order for me to understand how the two pieces of legislation interact to enable certain things to happen.

The opposition will support this legislation. Over 100 000 people have been registered as skippers with the skipper's ticket that was brought in a number of years ago. We might have some questions about any further intentions. I raised yesterday in the discussion with the minister's advisers that there is a hint in some of the media releases and commentary in news reports that there may be changes to the current system and to what is proposed under this legislation to go to more random breath testing. Other states and jurisdictions across the world have some tie between drivers' licences and marine qualifications, or the skippers' tickets. I am not sure about Australian states, but certain states in the US certainly have that, and I wonder whether the minister could talk about any future intent that the government may have in those areas.

When most people understand that there is not really a testing regime available for the department to use at the moment, they are a bit surprised, because it is illegal to operate a boat when heavily intoxicated, and that is laid out in the current law, but unfortunately there is not the mechanism to enforce that. There is no way of gathering evidence. Unless there is a very visual display of public drunkenness, it is very difficult to gather the evidence to make a conviction. The member for Hillarys has outlined some of the penalties. The monetary penalties have not increased that much. I think it was \$1 000; some of the smaller fines are just over \$1 000, \$1 200 or \$1 300, and go up gradually from there for more serious offences. There will be the introduction of penalties involving prison sentences, and that mirrors to some extent serious offences under road traffic legislation. For instance, there is an established range of penalties for dangerous driving causing death. This legislation will introduce a similar regime for the marine and boating environment.

As a member who represents a constituency with a considerable amount of coastline, I want people kept safe—passengers and other users of the water. I have personally observed people who have been drinking cutting loose on the boat, you might say, very close to the shore where swimmers are in the water as well. Obviously, that is very dangerous. I do not want to see my constituents hit by boats or jetskis—I imagine mainly from the metropolitan area up for the weekend—going far too fast and close to the beach. I suspect drugs and alcohol are involved, if not both. This is a very important bill for public safety. I am not sure of the absolute number of people it will affect. I think most people who use boats, especially in my region, tend to get up very early in the morning to get out before the wind picks up. They are on the water just after sunrise or even before and will be back by 10 or 11 in the morning. Perhaps that pattern does not suit the consumption of too much alcohol, although we never know.

Within the electorate I represent, there are many dedicated people at Volunteer Marine Rescue Western Australia who put their time aside to ensure that the people using the water are safe. In the electorate of Moore there is a service at Lancelin, Jurien Bay, Leeman and Dongara, and Kalbarri, which I used to represent and still have a very strong connection with, also has a volunteer marine rescue service. The volunteer marine rescue service is amongst the organisations that have said they support this legislation. I note a report in one of the local papers—the *Mandurah Mail*—that talked about the support of the local group there and the importance of making sure that legislation like this is brought to the fore and passed. In the article, Mr Haines, a member of Volunteer Marine Rescue, spoke on its behalf and acknowledged the risk posed by drunk boat skippers. He also said that as far as he was aware, very few incidents actually occur because of that. He said —

“An extremely small proportion of recoveries and rescues could be attributed to excess alcohol with our group ...

“Most are due to a lack of attention, lack of preparation or lack of common sense.”

I think that is probably true for a lot of it, but it is very dangerous when intoxicated people are in charge of a vessel. They are a danger to not only themselves and their passengers, but also other water users. Other groups have come out in support of the legislation, including Boating Western Australia. I will quote Colin Lockley, the president of the organisation, from its website under the heading “Education fails — Regulation prevails!!” I will read the quote because it is not very long. It states —

With the mayhem that has occurred in the last couple of years with Boating and Alcohol—it had to happen.

Attached is the Ministers Future Plan for us—and in some senses it is sad that we had to have this prescribed for us. The Government had to provide a law, a mechanism to stop some Boaters from putting themselves and others in jeopardy.

It certainly wont stop those with a modicum of common sense from enjoying their boat and a drink with friends. It just means they will have to think about that 2nd (sober skipper) or staying a little longer on anchor before they put themselves and others at risk.

Our belief at Boating WA is that there was essentially no other choice—this decision was in the wind.

So we are still able to celebrate living in this beautiful place and being lucky enough to be out on the water with friends. We just have to now know our limits and not put ourselves or others at risk.

Enjoy—but be careful and be safe

We know that this legislation has support from those important sectors that deal with the industry. The member for Central Wheatbelt is here. I know that she is vitally interested in boating safety because after the harvest, many people from the wheatbelt go to the coastal communities and use the water. Of course, there are also waterski lakes in the inland areas that are also very popular with members of the local community and others. This legislation is vitally important, even in what is basically a landlocked electorate such as the Central Wheatbelt because, I dare say, thousands of people with a skipper’s ticket live in that electorate. People might not expect that, but it is a fact that everybody in Western Australia, I believe, who has the opportunity enjoys getting out on the water.

I mentioned the US experience. Its experience is more confronting in terms of numbers. BoatUS, which is the equivalent national organisation of Boating WA, says —

This tragic story, unfortunately, is too common. According to the latest U.S. Coast Guard statistics, alcohol use is the leading known contributing factor in fatal boating accidents. Where the primary cause was known, it was listed as the leading factor in 19% of deaths. And alcohol use ranks as one of the top five primary contributing factors in accidents.

It is very dangerous to imbibe alcohol when people are on the water. BoatUS goes on to talk about those dangers —

Most people know that alcohol affects judgment, vision, balance, and coordination, which greatly increase the likelihood of accidents. The Coast Guard says that in alcohol-related fatalities, more than half the victims capsized their boats or went overboard. But what you might not know is that a boater is even more likely to become impaired than a driver of a car.

Stressors, such as exposure to noise, vibration, sun, glare, wind, and the motion of the water affect our skills when we drive a boat. Research shows that hours of exposure to these stressors produce a kind of a fatigue, or “boater’s hypnosis,” which slows reaction time almost as much as if you were legally drunk. Adding alcohol intensifies the effects, and each drink multiplies your accident risk.

That is a little explanation, I guess, of the particular dangers faced on the water. If someone happens to tip over the boat and is inebriated, the outcome might not be very pleasant to contemplate.

The member for Hillarys also mentioned Kate Campbell. I will talk a little bit about her story. On 25 January this year, she came out and expressed her disappointment with the laggard nature of these laws and the production of these laws in Western Australia. Kate was hit by a drunk skipper in 2007. Members in this chamber will know the story very well and the circumstances of that particular incident. That is a long time ago now—2007—and this has been, I think, a matter of debate in this chamber going back over the years ever since because we know that a family member of a member of Parliament was involved in that incident. That brought to the fore the need for this legislation. Although it is now 16 years or so since that accident, we are still here debating the introduction of this measure, which I do not think has ever not been supported in the community. I cannot imagine that, since the introduction and bedding down of the road safety regimes, people would have a different view about boating. This has taken quite some time to bring on board. Maybe the minister can provide an idea why the government did not prioritise this matter in the way that it promised to do when it came to office. Later, I will quote the former Premier from January 2019.

I will continue to refer to an article that outlined the case in 2017 of Matthew Price, whom the member for Hillarys also spoke about, and another accident in Mandurah involving Daniel Lloyd, who was in a boat that it was claimed was speeding and involved an extremely intoxicated skipper. Those types of incidents have happened. Thankfully, they are not as common as car accidents, but, of course, people generally spend a lot less time in a boat than in a car. I think it is obvious that the risk to people and their passengers is very, very great indeed in a boat. Because of that, there are some differences in the way that that is addressed in the marine environment. People may be ordered to go to a safer place to have the test et cetera. These types of things are not as common on the road. A police officer can pull over a car on the road, step out of their car, approach the driver's car and ask that they take the test. It is a bit more difficult in the marine environment when, for example, boats are bouncing up and down in a swell; we do not want to make a dangerous situation more dangerous. There are obvious differences, and we will explore those during consideration in detail.

I think this legislation was first mooted in 2017. This newspaper article from 2019 refers to the former Premier and legislation to be introduced in Parliament "this year". The legislation was expected to be introduced in 2019 but, of course, we know that did not happen. Here we are in 2023, getting towards the end of the year, and we are still waiting for the legislation to be passed so that a regime can be developed and rolled out. This legislation will not affect boaters immediately. Certain aspects of the legislation will affect boaters immediately, but I understand that aspects around the testing regime, gathering evidence et cetera will have a different time line due to regulatory work and the rollout of training and equipment et cetera. Those matters will take a bit more time. For those people who want to find out what the changes mean, the department provides a very good explanation on its webpage. I urge anybody who wants to understand more about their responsibilities and how the regime will roll out to avail themselves of the information, which is comprehensive. It is one of the better government websites that I have looked at for some time in terms of the ability to find information. So often when we go to government websites, we are directed to a page with very little explanation about how to get information. We can find ourselves going around in circles trying to get information, which should be relatively easy to find, but often government websites do not make it easy.

The minister is here. We are talking about the laggard approach to the introduction of legislation. I will broaden this topic a little for a moment now that I have the minister's undivided attention. The minister would have seen reports about the police crackdown on tow trucks and exposing drivers who take drugs and have links to bikies. I remind the minister about the importance of sorting the industry out. The minister and I had a discussion about this topic in the chamber not that long ago during debate on a grievance. The minister told me that work was being done on legislation. I have a police report that shows that the police have established links between tow truck drivers and outlaw motorcycle gangs and that all sorts of shocking behaviours are taking place in the industry. We are dealing with the Western Australian Marine Amendment Bill 2023, which was promised in 2019 and only delivered in 2023. The minister gave a commitment that work was being done and that we would see legislation shortly. I ask the minister to guarantee that that is happening and advise how it is progressing. It is one of those things that shows the inability of government to get on with the job. This bill was kicked around between commerce in the Department of Mines, Industry Regulation and Safety and the Department of Transport before finally landing with Transport. We are finally dealing with it, but we need to see legislation brought to the house as soon as possible so that the minister can make good on the promises that he made to me and my constituent who was involved in the grievance and to assure the people of the Western Australia, who may read this troubling report from the Western Australia Police Force —

Mr P. Papalia: What are we debating right now?

Mr R.S. LOVE: We are debating the second reading on legislation within the transport portfolio.

Several members interjected.

Mr R.S. LOVE: Acting Speaker, I seek your support. I am allowed to have a wide discussion in my contribution to the second reading debate.

The ACTING SPEAKER (Ms A.E. Kent): I will allow you to continue, Leader of the Opposition.

Mr R.S. LOVE: Thank you. Despite members opposite wanting to shut down debate on this very important issue, the Western Australian public has a right to know when the government will sort out this issue. We hear the government say in this place that it is tough on crime. It introduced legislation for bkie insignia. It knows that this situation is occurring in the tow truck industry, but nothing is being done to address it in legislation.

Mr W.J. JOHNSTON: Point of order.

Mr R.S. LOVE: I ask the minister to explain to me where that legislation is at.

The ACTING SPEAKER: A point of order needs to be heard. Can you please sit, Leader of the Opposition?

Point of Order

Mr W.J. JOHNSTON: Acting Speaker, I am reluctant to limit discussion during a second reading debate. However, I draw your attention to standing order 94(1), which states that a member's speech must be relevant to the question under discussion. Clearly, the member is way off topic. I also draw your attention to standing order 94(2), which states that matters relating to public affairs may be debated during the second reading debate, but only on specific bills, which, generally speaking, are money bills. This is not one of those. I ask you to draw the Leader of the Opposition's attention back to the matter in question because then there will not be this interplay between the minister whose responsibility this is discussing, which is, of course, a police matter, not the Minister assisting the Minister for Transport, who is the minister dealing with this bill. It will help the debate if we keep the debate relevant to the matter at hand.

The ACTING SPEAKER (Ms A.E. Kent): Leader of the Opposition, can you please try to confine your statements somehow to the bill and the question that is being debated. Thank you.

Debate Resumed

Mr R.S. LOVE: Thank you. I believe I am because I am talking to the Minister assisting the Minister for Transport on a matter of legislation under his control.

Point of Order

Mr D.A.E. SCAIFE: The Leader of the Opposition is just canvassing your ruling, Acting Speaker, which is not permissible and it is an abuse of privilege of the house.

The ACTING SPEAKER (Ms A.E. Kent): Can you please get back to the bill, Leader of the Opposition.

Debate Resumed

Mr R.S. LOVE: Acting Speaker, we are talking about the introduction of legislation that was mooted to be introduced in 2019.

Point of Order

Mr W.J. JOHNSTON: The member should be called to order. What he is doing is saying that because we are debating legislation, any legislation is subject to the debate. The member for Central Wheatbelt sitting behind him is very experienced and knows that that is an inappropriate pathway. The member is raising a police matter that cannot be dealt with by the Minister assisting the Minister for Transport—it is a matter for the Minister for Police. We are very reluctant to try to limit debate but one has to take a commonsense approach. Unfortunately, the Leader of the Opposition is choosing not to use common sense. We ask him to talk about marine matters. If he were to reflect on any issue relating to marine matters, I would raise no objection. But this silly behaviour of raising matters relating to the police portfolio cannot be acceptable.

The ACTING SPEAKER (Ms A.E. Kent): Leader of the Opposition, please continue, but can you please keep your remarks to marine matters and not drift off. Thank you.

Debate Resumed

Mr R.S. LOVE: Acting Speaker, I was talking about the marine bill. It was spoken about in 2019. That is where I was at before I was interrupted yet again by what I think were inappropriate points of order.

Withdrawal of Remark

Mr W.J. JOHNSTON: I take specific exception to those words. They imply that I was not complying with the standing orders. That is an imputation on me. That is unparliamentary. Acting Speaker, I ask you to direct the member to withdraw that allegation and apologise.

The ACTING SPEAKER (Ms A.E. Kent): Yes. Can you please withdraw those remarks, Leader of the Opposition.

Mr R.S. LOVE: I am not sure what I am being asked to withdraw. I am happy to accede to your request, Acting Speaker, and withdraw whatever remark has offended the member for Cannington.

The ACTING SPEAKER: Thank you. The Leader of the Opposition has withdrawn the remark. Please continue, Leader of the Opposition.

Debate Resumed

Mr R.S. LOVE: I return to 2018 when the introduction of the marine legislation that we are dealing with at the moment, which was said to be important, was mooted. In the early days of 2019—I think it was 6 January, so everybody was probably still on holidays—it was announced that the legislation would see the light of day in the Parliament that year. My question to the minister is: Why has it taken an additional four years for the legislation to be introduced? We had an election in the meantime. The then government never delivered on that legislation at all, despite saying it was a priority. What happened in the four years since it was announced that it would be introduced

into Parliament, not when it was first mooted? Perhaps the minister does not know the answer to that because he has not been in his position for long. I am sure he will be able to get some information throughout the day to explain that.

We are seeing a pattern of legislation that is spoken about—it may be introduced or it may not be introduced—and then not progressed. At some point, the government starts to blame others for not getting through its legislative program. There seems to be a difference between when a piece of legislation is announced and the importance attached to it and the progress of the legislation through the Parliament. That pattern has become very common under this government.

As far as I am concerned, this legislation was never meant to be controversial. I cannot imagine people thinking that people who are not fit to drive a car towing a trailer with a boat on it should be able to operate it in the water.

Mr P. Papalia interjected.

Mr R.S. LOVE: Colin Barnett was not relevant at that time.

Mr P. Papalia: He was your Premier.

Mr R.S. LOVE: I am talking about the Labor Party's term of government. The Minister for Police frequently blames others for things and takes no responsibility for what occurred during his government's term of office, which is now in its seventh year. We are nearly at the end of the seventh year of a Labor government and it is its turn to take responsibility for the laggard progress of an important piece of legislation such as this. You and you—all the ministers—are responsible for that. It is no-one else's responsibility. It is your responsibility. If you do not prioritise important legislation that will keep the public safe, that is not the opposition's issue. The opposition supports this legislation.

The ACTING SPEAKER: Can you please direct your comments through the chair.

Mr R.S. LOVE: I am. Thank you.

The opposition supports this legislation. We will go into consideration in detail, which I hope will be completed by four o'clock. I think that should be well and truly achievable. The third reading can then occur tomorrow and the legislation can continue to progress through the Parliament so that those matters that can be addressed before the start of summer—the navigational safety matters that are not reliant upon the alcohol and drug testing regime—can be in place for summer and we can begin the process of keeping Western Australian boaters and other water users safe this summer. With that, I conclude my remarks and commend the bill to the house now that it has finally been introduced.

MR D.R. MICHAEL (Balcatta — Minister assisting the Minister for Transport) [12.55 pm] — in reply: I thank all members who contributed to the second reading debate of the Western Australian Marine Amendment Bill 2023. I will not make a long reply; I will just reiterate some of the information that has come through. The member for Hillarys talked about the lovely Hillarys Boat Harbour—a place that my parents frequent quite often, living very close—and some of the local beaches in her electorate. Many of her constituents enjoy recreational boating, as do many of the visitors to her electorate. She talked about the fact that accidents can and do happen. She also spoke of the great work of the 120 volunteers from Marine Rescue Whitfords. She mentioned something that I said during my second reading speech—that 57 lives have been lost on the water and that the number of lives lost and injuries that have occurred in our waters seems to be increasing as the years go on, which is one reason to introduce this legislation.

Data from Royal Life Saving WA shows that between 2002 and 2019, of the 98 boating and watercraft fatalities that occurred in WA, a little over 12 per cent of the people involved had an alcohol content above the legal driving limit. Nearly seven per cent had a blood alcohol concentration of .15 or above, and nearly 11 per cent of the 98 people who died had illicit drugs in their system. That clearly indicates that there is an issue and a reason for introducing this bill.

The member for Hillarys talked about the link that we are making to the Road Traffic Act 1974 and that for over 50 years, drivers have known their obligations around not having alcohol and, more recently, drugs, in their system. She spoke about the small penalties imposed and the difficulty of ascertaining whether someone has drugs or alcohol in their system, unless there has been a catastrophic incident, and that Western Australia is the last state to make these changes. She gave some examples of the catastrophic deaths and injuries that have occurred.

I thank the opposition for its support of the bill. I will answer the Leader of the Opposition's final question first. He talked about the complexities of this bill, especially given the recent passage and assent through this place of the Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023. The Leader of the Opposition mentioned a couple of issues that I will try to cover off. He came to see me yesterday and had me slightly panicked for a while. There are a few amendments to the bill, which we will go through later. The Leader of the Opposition found it difficult to find those clauses. When I tried to find them, I could not find them either, so I made an inquiry.

The provisions in the Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023, which went through the upper house in October and was recently assented to, applies the national law as a law of WA. The majority of the act is intended to be proclaimed in mid-December. At the same time, provisions in that act that support or are affected by amendments made in this bill with respect to commencing the safe navigation or culpable navigation offences will also commence. The bulk of the remaining amendments in the national law application act that amend the Western Australian Marine Act are intended to commence some time around April next year. This would align with the intended commencement of the remaining provisions in this bill in April 2024. Basically, we have a bill amending the WA Marine Act, which was passed by this Parliament. Nearly all the provisions have not been proclaimed. This bill amends some of those not-yet-proclaimed provisions, which was the confusion. Hopefully we have settled all that now and we know where we are going. It baffled me a little bit as well yesterday.

The member mentioned the possibility of having random breath testing on our waters. Legislatively, the testing regime will align with road law and will provide flexibility to allow officers to require a sample for preliminary testing on the basis that they reasonably believe a person was navigating or attempting to operate a vessel under the influence. The enforcement approach for the marine regime is intended to be very different from the RBT approach used on our roads. In most cases, it is envisaged that testing would occur in circumstances in which the marine inspector in the course of their ordinary duties comes across a vessel the skipper of which appears to be under the influence of drugs or alcohol and may be a risk to themselves or others. They will be guided by standard operating procedures that will help marine inspectors exercise their discretion whether to test based on the time, place and circumstance. There is absolutely no intention to have random breath testing barges on the water—mainly for operational reasons. The member mentioned the possibility of having people pull off to a mooring, a pier or somewhere to get tested. Obviously, a roadside bus cannot be easily set up on the water. It is very much not the intention and not something we will be doing.

The member also talked about the beautiful coastline in his electorate and some important marine rescues in Lancelin, Jurien, Leeman and Dongara. Bringing these laws in will increase safety for not only all boat users but also swimmers, snorkellers and other people in the water. It will very much improve public safety. I mentioned before how many people these changes might impact. The stats from Royal Life Saving WA gave a pretty high percentage of fatalities. Hopefully, the implementation of these rules will save lives. Hopefully, more people will get educated and do the right thing out on the water.

The member talked about support from some of the peak bodies like Boating Western Australia and he went through some of the evidence from the United States. It is pretty common sense that boating can be very dangerous. It is a bit like driving. I am the Minister for Road Safety. Obviously, vehicles can go very fast and people control them. Road vehicles are pretty fast projectiles and so are boats, and they can do a lot of damage on the water.

The member also mentioned timing. I go back to his comment at the start of his contribution that this is a complex bill. I stand here today as the Minister Assisting the Minister for Transport, and I feel very lucky that the Minister for Transport has already undertaken, and continues to undertake, a lot of work on this legislation. This legislation was very much on its way, and we are proud to be able to bring it into Parliament. The Leader of the Opposition had a bit of a crack over the time taken. I will not go through some of the more high-profile incidents, but one incident related to Ms Campbell. When that incident occurred, the Minister for Police at the time was Hon Liza Harvey. I quote from an ABC news article from 23 January 2015 —

“At the moment, and even of the past few years, we’re not seeing a huge number of catastrophic crashes on the water that have been caused by the driver having consumed too much alcohol,” Mrs Harvey said.

“I’m a bit reluctant to change the entire laws of the state around the one issues.

“I think we need to actually demonstrate that there’s a systemic problem that needs to be addressed by a change in either legislation or regulation.”

As the Leader of the Opposition said, I have been in this job for almost six months now, but I suspect that when parties come to government and no work and planning has been done, a little like Metronet and other infrastructure projects, they find it takes a lot of work to get things up and running. I am proud to be putting history behind us. I thank the member for his support today and I thank the Minister for Transport for her work on this legislation over the last year or so to get to this point.

The Leader of the Opposition briefly mentioned towing. No government has looked at regulating towing in Western Australia before. The member knows that the Minister for Transport brought in some new regulations about a year ago because regulations were the quickest thing we could do. Some regulations have just come onstream after an amnesty period. There are standards and inspection requirements for tow trucks, and requirements on the disclosure of maximum fees and future fees have come in. The member said we are doing nothing, but he then talked about something we are doing, which is the massive crackdown. I congratulate the Western Australia Police Force, the Department of Transport and Main Roads WA for working on that for the last week. That has obviously

been worked on for a while, and it will continue to get those good results we saw to keep certain people out of the industry. Member, we are working hard on the legislation. It is complex. There is not a towing regime in Western Australia that we can amend. This is an entirely new regime for towing and regulations for towing in Western Australia. It is complex but it is prioritised. We are working very hard and I very much look forward to briefing the member once we have completed that work. I hope it is not too far away.

I thank the Leader of the Opposition again for his contribution and the opposition's support. I thank my office, the Minister for Transport and the Minister for Police and their offices, the Department of Transport and the WA police for all their work done on this. These amendments are very sensible. I think they have the support of most boaties and most of the Western Australian public, as the member mentioned. We are the last state to bring in such a regime. I think most boaties support it. Of the people I have spoken to, a lot think the .05 and .08 blood alcohol level regime we are used to on our roads already operates on our waters. This regime is not in place already. I look forward to getting into consideration in detail. I commend the bill to the house.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement —

Mr R.S. LOVE: Thank you very much. Is it chair or Speaker when we are in consideration in detail?

The ACTING SPEAKER: Chair.

Mr R.S. LOVE: I am not sure. I do not want to offend the chair by calling him by the wrong name. We will leave it at Acting Speaker.

During the second reading debate, we had a discussion around the timing of the commencement provisions. In the last paragraph of its outline of commencement, the explanatory memorandum states —

The remainder of the Act commences on a day fixed by proclamation, which may be different days for different provisions. This is necessary to allow the Department of Transport, as supported by the Western Australia Police Force, to make administrative and operational arrangements to support the implementation of amendments in this Bill. Supporting regulations will also be drafted and timed to commence with the amendments in this Bill to support implementation.

I have a couple of questions on that. Firstly, will all the regulations be drafted in one tranche or will there be a number of different releases or gazettals?

Mr D.R. MICHAEL: I am advised it will be just one tranche.

Mr R.S. LOVE: Given that the regulations will all be released at the same time, will there effectively be two commencement dates, one in April and one as soon as assent is granted?

Mr D.R. MICHAEL: It will all be done in April. There will be a non-legislative rollout of standard operating procedures, procurement of breathalysers and training Department of Transport staff. There will not be a second tranche of regulations.

Mr R.S. LOVE: Will the training, procurement and rollout commence prior to April, post-April, or has it already commenced?

Mr D.R. MICHAEL: Some of that work has commenced, but the training cannot commence until the regulations are in.

Clause put and passed.

Clause 3: Act amended —

Mr R.S. LOVE: This is where it all gets a bit tricky, is it not? The minister was referring before to some of the issues in the amendments on the notice paper. I went to the blue bill, which was on the Parliament website, and could not find the sections being amended, because they were from the Western Australian Marine Act, which was given assent in October.

Mr D.R. Michael: A couple of weeks ago. Yes.

Mr R.S. LOVE: Yes, and because it had not been updated on the website, I had no information to work with until the minister finally gave me a draft of the old blue bill from the Marine Safety (Domestic Commercial Vessel National Law Application) Bill, which amended the Western Australian Marine Act. After that, I could finally make sense

of the amendments yesterday with discussions with the adviser. I put it out there that it led me to spend a few rounds of beginning to doubt my own intelligence because I could not understand what was written, but I could not believe that it could be wrong. I was a little taken aback.

Anyway, that is the reason I ask: When do we get to “Section 3A amended”? Is that here? Where is it?

Mr D.R. MICHAEL: Excuse me? Clause 4A?

Mr R.S. LOVE: Clause 4A, but proposed section 3A is amended. I wonder when that amendment will be put. I seek instruction, basically, because it either has to be now or after we have dealt with the rest of section 3, but I do not know what is the appropriate place.

The ACTING SPEAKER: If the Leader of the Opposition is referring to “Part 3A inserted”, that is in clause 6.

Mr D.R. MICHAEL: The Leader of the Opposition also infected me when he was questioning his sanity yesterday afternoon going, “What am I doing wrong?” We are dealing with clause 3 of the amendment bill. Clause 3 only refers to the act being amended. We are amending section 3 of WAMA, which is clause 4A of the bill, and we will get to that shortly.

Clause put and passed.

Clause 4: Section 3 amended —

Mr R.S. LOVE: Does new clause 4A follow clause 4, or go before it?

Mr D.R. MICHAEL: It follows. We do clause 4 and then we do new clause 4A.

Mr R.S. LOVE: That is cool. We will deal with those amendments after the actual one. We can talk about the effect of them one by one as we go through. Clause 4 refers to section 3, which outlines some of the definitions that will be included. We note that although they are being placed in this bill, they will be almost immediately amended in some cases, so it is interesting that that has to take place. Can the minister explain the definition and meaning of drugs in the Road Traffic Act and what those particular drugs may be that are of most concern to the department? It is not strictly the definition, but the rollout of it. Which drugs will be targeted as part of that rollout?

Mr D.R. MICHAEL: The definition will be the same as that under the road law. Presently, I think it is called a polydrug test. I think THC, methamphetamine or MDMA are the three drugs in the polydrug test.

Mr R.S. LOVE: Basically, it will follow the standard that is already there. That is fine. I wanted to understand which drugs, as I am not familiar with the ones that police actually test for.

I move to the definition of a WA marine qualification. I understand that most of these will be skipper’s tickets. Are there other definitions or qualifications covered under the term “WA marine qualification”?

Mr D.R. MICHAEL: A WA marine qualification is just a skipper’s ticket.

Mr R.S. LOVE: It is just a skipper’s ticket?

Mr D.R. MICHAEL: Yes. As opposed to a general marine qualification, which could include one from another state or a commercial qualification and those sorts of things. A WA marine qualification is just a WA skipper’s ticket.

Mr R.S. LOVE: I will now look at the WA marine qualification that appears above. According to the explanatory memorandum, that qualification includes —

... WA marine qualification, or a qualification issued by a non-WA jurisdiction ...

That raises a question: Is there any sort of regime across the different states that will operate so that an offence in Western Australia is prosecuted in the home territory?

Mr D.R. MICHAEL: I am told that it is similar to the situation with road laws. There will be a provision in the regulations to recognise a disqualification from another state. At the moment, another state recognising a disqualification here is a matter for the other state. However, that is apparently similar to how road laws work.

Mr R.S. LOVE: If a person from Queensland came here and was found to be driving a boat with .08 blood alcohol content or at some other level at which there would be a disqualification, what would happen to them? Would they receive a fine? Would they get a disqualification that would apply only when they were in Western Australia? What will actually happen?

Mr D.R. MICHAEL: An infringement would be issued. As part of the regulations, the department will have a system in place to notify the licensing authority in other jurisdictions to inform them that the person was convicted and disqualified by a WA court. The intention, basically, is to set up a system of notification of the other states.

Mr R.S. LOVE: I turn to the definition of a pilot. Does a pilot have any relevance to the recreational skipper’s situation? Is it purely a commercial vessel that would ever have a pilot?

Mr D.R. MICHAEL: Correct.

Clause put and passed.

New clause 4A —

Mr D.R. MICHAEL: I think now is a good time to move new clause 4A standing in my name on the notice paper. I move —

Page 5, after line 10 — to insert —

4A. Section 3A amended

- (1) In section 3A(1) delete “masters” and insert:
masters, pilots
- (2) In section 3A(2) delete “is connected with the State if the vessel is —” and insert:
connected with the State includes a vessel that is —

New clause put and passed.

New clause 4B —

Mr D.R. MICHAEL: I move —

Page 5, after line 10 — To insert —

4B. Section 6 amended

In section 6(1) in the definition of *official details* delete paragraph (b) and insert:

- (b) of an inspector — means the inspector’s full name and official title;

New clause put and passed.

New clause 4C —

Mr D.R. MICHAEL: I move —

Page 5, after line 10 — To insert —

4C. Part 2 Division 2 Subdivision 4 inserted

At the end of Part 2 Division 2 insert:

Subdivision 4 — Obtaining business records

18A. Terms used

In this Subdivision —

business means any business, including a business of a governmental body or instrumentality or of a local government, or any occupation, trade or calling;

business record means a record prepared or used in the ordinary course of a business for the purpose of recording any matter related to the business;

order to produce means an order issued under section 18D.

18B. Application of this Subdivision

- (1) An order to produce must not be issued under this Subdivision to a person in relation to a business record that relates or may relate to an offence that the person is suspected of having committed.
- (2) This Subdivision does not prevent an inspector from applying for a warrant in relation to a business record, whether before or after the issue of an order to produce.

18C. Application for order to produce

- (1) An inspector may apply for an order to produce a business record for the purpose of investigating a suspected contravention of this Act.
- (2) An application for an order to produce must be made in person to a JP.
- (3) An application for an order to produce a business record must —
 - (a) state the applicant’s official details; and
 - (b) state the suspected contravention of this Act in relation to which the order is required; and
 - (c) state the grounds on which the applicant suspects that the contravention has occurred; and

- (d) set out the prescribed information (if any); and
- (e) state the name of the person to whom the order will apply; and
- (f) state that the person is not suspected of having committed an offence under this Act to which the business record relates; and
- (g) describe with reasonable particularity the business record or class of business record that the applicant wants the person to produce; and
- (h) state the grounds on which the applicant suspects the business record or class of business record is relevant to the investigation; and
- (i) state whether the original or a copy of the business record or class of business record is required.

18D. Issue of order to produce

- (1) On an application made under section 18C, a JP may issue an order to produce a business record if satisfied, by information on oath and in respect of each of the matters in section 18C(3) that the applicant suspects, that there are reasonable grounds for the applicant to have that suspicion.
- (2) However, the JP must not issue the order to produce unless the applicant or some other person has given the JP, either orally or by affidavit, any further information that the JP may require concerning the grounds on which the issue of the order to produce is sought.
- (3) An order to produce must contain the following information —
 - (a) the applicant's official details;
 - (b) the name of the person to whom the order applies;
 - (c) a reasonably particular description of the business record or class of business record to be produced by the person;
 - (d) an order that the person produce the record or records;
 - (e) whether the original or a copy of the record or records is required;
 - (f) whether a paper, electronic or other version of the record or records is required;
 - (g) the place where the record or records are to be produced;
 - (h) the date on or before which the order must be obeyed, which must allow a reasonable period for the person to obey the order;
 - (i) the name of the JP who issued the order;
 - (j) the date and time when the order was issued.
- (4) An order to produce must be in the prescribed form.
- (5) If a JP refuses to issue an order to produce, the JP must record on the application the fact of, the date and time of, and the reasons for, the refusal.

18E. Order to produce applied for remotely

- (1) An inspector may apply, by remote communication, to a JP for an order to produce under section 18C —
 - (a) in an urgent case; or
 - (b) if the inspector believes on reasonable grounds that a JP is not available within a reasonable distance of the inspector.
- (2) The JP must not issue the order to produce unless satisfied as to the matter in subsection (1)(a) or (b) (whichever is relevant).
- (3) The *Criminal Investigation Act 2006* section 13(5) to (8) apply in relation to an application under this section.

18F. Service of order to produce

- (1) An order to produce must be served on the person to whom it applies as soon as practicable after it is issued.

- (2) An order to produce may be served —
 - (a) by personal service or by post; or
 - (b) with the consent of the person to be served, by email or fax or in another agreed way.

18G. Effect of order to produce

- (1) An order to produce has effect according to its contents.
- (2) A person who is served with an order to produce and who, without reasonable excuse, fails to comply with it commits an offence.

Penalty for this subsection: A fine of \$5 000.

18H. Powers in relation to order to produce

- (1) An inspector to whom a business record is produced under an order to produce may retain it for a reasonable time to determine its evidentiary value.
- (2) An inspector to whom a business record is produced may, if necessary to preserve the evidentiary value of the document or to subject it to forensic analysis —
 - (a) seize the document; and
 - (b) whether or not the document is seized, inspect, examine, take measurements of or conduct tests on it; and
 - (c) make and retain a copy of it.
- (3) Section 40(1)(c) does not apply in relation to a thing seized under subsection (2)(a).
- (4) A person who produces a business record in compliance with an order to produce is not liable to any action or remedy by any person at common law for producing that document.

Mr R.S. LOVE: New clause 4C is quite a lengthy proposed subdivision and proposes new sections 18A, 18B, 18C, 18D, 18E, 18F, 18G and 18H. I have an explanation for why all this was necessary. Again, we know that it has resulted from the situation of the two bills coming in more or less at the same time. However, for the record and the benefit of the house, could the minister perhaps explain in general terms the operation of the proposed new sections of 18A through to 18H?

Mr D.R. MICHAEL: These amendments will introduce a new process for inspectors to obtain records to assist with investigating offences under the Western Australian Marine Act.

I should mention that this applies to all the new clauses, including new clauses 4B, 4C and 4D. We are obviously dealing with new clause 4C at the moment. An inspector may apply to a justice of the peace in order to produce records and documents. This is an alternative approach to obtaining a search warrant from a magistrate. For example, investigators may obtain CCTV footage of a marine incident or medical records related to an incident to investigate offences for dangerous navigation occasioning grievous bodily harm or bodily harm.

These provisions are based on similar provisions in the Criminal Investigation Act 2006, and a similar process has been used in other transport legislation such as the Transport (Road Passenger Services) Act 2018.

Mr R.S. LOVE: I have a more specific question about proposed new section 18A, “Terms used”. A business record is defined as —

... a record prepared or used in the ordinary course of a business for the purpose of recording any matter related to the business;

When it refers to a matter related to the business, what is the nexus for it to be captured as a record that is required to be produced? A business will have many records, so what is the nexus between the CEO calling for that to be released and it actually being available?

Mr D.R. MICHAEL: The evidence has to be provided to a justice of the peace who then must be satisfied of the evidence under proposed new section 18D(1) that there are reasonable grounds for the information to be produced.

Mr R.S. LOVE: We are talking about records here, and we could talk about it in more detail down the track; however, I think it is just as easy to do it here because all these provision are in one new clause. What type of records might be required relating to marine safety? There are a few aspects here. It could be related to the safety of the vessel—perhaps to the physical capacity of the person in charge of the vessel or to the operation of the vessel. Would I be

right in saying that it matters that have to pertain to those types of things? Would it include things such as a photographic evidence and CCTV footage?

Mr D.R. MICHAEL: I think we have said that that is correct. CCTV is obviously the example that I gave earlier, but as the member said, it could include anything related to the seaworthiness of vessel or photos of work that had been done on it. It is anything material to an investigation.

Mr R.S. LOVE: In new clause 4C, proposed section 18B(1) states —

An order to produce must not be issued under this Subdivision to a person in relation to a business record that relates or may relate to an offence that the person is suspected of having committed.

Can the minister explain why that is there? If a person had a video of themselves, for instance, that they were going to use for business promotion and it showed them doing something dangerous, why would we not want that to be made available?

Mr D.R. MICHAEL: If it deals with a person who is suspected, a warrant is required, which is covered under proposed section 18B(2).

New clause put and passed.

New clause 4D —

Mr D.R. MICHAEL: I move —

Page 5, after line 10 — To insert —

4D. Section 38 amended

- (1) Delete section 38(2) and insert:
- (2) The following persons may request the inspector to give a copy of the thing or the information to that person —
 - (a) if the inspector seized the thing or information under section 18H(2)(a) — the person who produced the thing or the information to the inspector;
 - (b) otherwise — the occupier of the premises.
- (2) In section 38(4) after “by the” insert:
 - person or

Mr R.S. LOVE: Could the minister explain why this amendment is necessary because we did not really discuss this in great detail yesterday? I notice that it contains the good old definition of “the thing”, which has been the subject of much discussion in this place over the years. Can the minister explain a little about this new clause?

Mr D.R. MICHAEL: This amendment provides that any person whose record has been obtained via an order to produce, may request that the inspector provide them with a copy of that record.

Mr R.S. LOVE: Thank you.

New clause put and passed.

Clause 5: Section 59 deleted —

Mr R.S. LOVE: The provisions that are in place around safety and relating to penalties are to be replaced. Once section 59 is deleted, the minister will move some amendments. We might talk about those amendments then because they are more mystery amendments that I did not know a thing about until we had—all right, I will sit down.

Clause put and passed.

New clause 5A —

Mr D.R. MICHAEL: I move —

Page 5, after line 12 — To insert —

5A. Section 64 amended

- (1) In section 64 delete “64A and 64B —” and insert:
 - 64A, 64B and 64D —
- (2) In section 64 in the definition of *marine incident* paragraph (a) delete “pleasure vessel or a prescribed”.

Mr R.S. LOVE: I think that amendment was discussed and was fairly straightforward. Can the minister give a brief explanation as to the purpose of this new clause? Again, there is no associated explanatory memorandum so an explanation would be helpful. If the minister touches on new clause 5B, I might still ask a little bit about new clause 5A.

Mr D.R. MICHAEL: This amendment amends the definition of “marine incident” in section 64 of the Western Australian Marine Act, as amended by the national law application act. The definition of “marine incident” will be updated and expanded to be an incident involving any vessel, irrespective of the type of vessel.

New clause put and passed.

New clause 5B —

Mr D.R. MICHAEL: I move —

Page 5, after line 12 — To insert —

5B. Section 64A amended

(1) In section 64A(1):

- (a) delete “pleasure vessel or a prescribed vessel is involved in a marine incident, the master of the vessel must,” and insert:
vessel is involved in a marine incident, the master of the vessel must do each of the following,
- (b) in paragraph (a) delete “assistance; and” and insert:
assistance;
- (c) in paragraph (b) delete “incident; and” and insert:
incident;

(2) Delete section 64A(2) and (3) and insert:

(2) The master of a vessel commits a crime if —

- (a) the vessel is involved in a marine incident that occasions the death of, or grievous bodily harm or bodily harm to, a person; and
- (b) the master, without reasonable excuse, fails to comply with subsection (1)(a) or (b) in relation to the incident.

Penalty for this subsection:

- (a) if the marine incident occasions the death of a person — imprisonment for 20 years;
- (b) if the marine incident occasions grievous bodily harm to a person — imprisonment for 14 years;
- (c) if the marine incident occasions bodily harm to a person — imprisonment for 10 years.

Summary conviction penalty for this subsection in a case in which the marine incident does not occasion the death of, or grievous bodily harm to, a person: Imprisonment for 3 years.

(2A) A court sentencing a person for an offence against subsection (2) must order that the person is disqualified from holding or obtaining a WA marine qualification as follows —

- (a) if the marine incident occasions the death of, or grievous bodily harm to, a person — for a period of not less than 2 years;
- (b) if the marine incident occasions bodily harm to a person — for a period of not less than 12 months.

(3) The master of a vessel commits an offence if the master, without reasonable excuse, fails to comply with subsection (1)(a), (b) or (c).

Penalty for this subsection: A fine of \$5 000.

Mr R.S. LOVE: I will ask about this amendment because I must admit, I am still a little confused about the “pleasure boat or a prescribed vessel” part. For the benefit of the house, can we perhaps have some further discussion around that? Section 64B of the Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023 is to be amended. This relates to marine incidents reporting and, as I say, it was not on the website before so we now have a copy of it. I am told that there were no amendments to the blue bill from the previous one, so we assume

that this is the act as it now reads. Section 64B, “Marine incidents: Reporting” will be amended by the new clause in subsection (1) with the deletion of “pleasure vessel or a prescribed”. In the act, section 64B(1) states —

This section applies if a pleasure vessel or a prescribed vessel is involved in a marine incident and 1 or more of the following result —

It goes on to list: If a person dies, the boat sustains damage or another vessel is lost or sustains damage. That will set up the requirement for a person to report such a thing. Can the minister explain the import of removing “pleasure vessel or a prescribed” and then inserting the words “each of” after the word “includes” into section 64B(2), which relates to the giving of information —

The master and the owner of the vessel must, as soon as practicable after becoming aware of the incident, give a report (which need not be in writing) to the chief executive officer that includes the following —

Can the minister explain exactly what this new clause is about and why it is necessary?

Mr D.R. MICHAEL: The term “marine incident” is defined for the purpose of master or owner duties to render assistance, report incidents and when required, to identify the person in charge of the vessel at the time of the marine incident. This answer probably goes to quite a few amendments from new clauses 5A to 5D. This amendment deletes references to the types of vessel that need to be involved in a marine incident for those duties in sections 64A and 64B to apply. Reference to “pleasure vessel or a prescribed” will be deleted. This leaves only the term “vessel”. The effect will be that a marine incident will now cover incidents involving any type of vessel. This then follows that the master and owner duties and requirements in sections 64A to 64D will now apply to all types of vessels that are involved in the incident.

Mr R.S. LOVE: Further in the same clause, it refers to —

(3) After section 64B(3) insert:

(3A) ...

It goes on to quite a lengthy matter and involves the insertion of some criminal offences. Could the minister please give an explanation of the insertion of (3A)? If he wants to continue on with (3B) and (3C), I would be obliged.

Mr D.R. MICHAEL: Sorry, member, unless I have got it wrong, I think the member has skipped through to my next amendment, new clause 5C. I think we are still doing new clause 5B. Is that right?

Mr R.S. LOVE: I think we are doing proposed new section 64B but new clause 5C.

Mr D.R. Michael: No, I think we are still on new clause 5B.

Mr R.S. LOVE: Are we? All right; I take your word for it. Which are we on?

The ACTING SPEAKER (Mr P. Lilburne): We are on new clause 5B. Would you like to explore that?

Mr R.S. LOVE: Okay; I have skipped through. I would. Sorry; I turned the page. I actually refer to new clause 5B —

(2) Delete section 64A(2) and (3) and insert:

That inserts criminal offences. I was referring to the wrong offences but the right sort of sentiment. Could the minister give an explanation of new clauses 5B(2A) and (3)?

Mr D.R. MICHAEL: More broadly, this amendment, which will cover the bits the member just asked about, will amend section 64A of the Western Australia Marine Act as inserted by the national law application act. Section 64A relates to a master’s duty to render assistance to the extent they can without their endangering their vessel, crew or passengers. This amendment will provide that this duty will apply to all masters, irrespective of the class of vessel involved in the marine incident, whether it be commercial or recreational. The amendment will create a crime if the master contravenes the duty to render assistance without a reasonable excuse if the incident occasions the death or injury to a person. This approach is consistent with road law, which is section 54 of the Road Traffic Act. For example, a master may be liable for up to 20 years’ imprisonment if they fail to render assistance following a marine incident and someone dies.

New clause put and passed.

New clause 5C—

Mr D.R. MICHAEL: I move —

Page 5, after line 12 — To insert —

5C. Section 64B amended

(1) In section 64B(1) delete “pleasure vessel or a prescribed”.

- (2) In section 64B(2):
 - (a) after “includes” insert:
each of
 - (b) delete the Penalty
- (3) After section 64B(3) insert:
 - (3A) A person commits a crime if —
 - (a) the person is the master or owner of a vessel; and
 - (b) the vessel is involved in a marine incident that occasions the death of, or grievous bodily harm or bodily harm to, another person; and
 - (c) the person, without reasonable excuse, fails to comply with subsection (2) in relation to the incident.

Penalty for this subsection:

 - (a) if the marine incident occasions the death of, or grievous bodily harm to, a person — imprisonment for 10 years;
 - (b) if the marine incident occasions bodily harm to a person — imprisonment for 12 months.

Summary conviction penalty for this subsection in a case in which the marine incident occasions the death of, or grievous bodily harm to, a person: Imprisonment for 12 months.
 - (3B) A court sentencing a person for an offence against subsection (3A) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 12 months.
 - (3C) A person commits an offence if —
 - (a) the person is the master or owner of a vessel; and
 - (b) the person, without reasonable excuse, fails to comply with subsection (2).

Penalty for this subsection: A fine of \$2 000.

Mr R.S. LOVE: I will give the minister the opportunity to explain new clause 5C. Again, it will insert matters of potential criminal offences and convictions, and some of them include imprisonment for 12 months or so. Perhaps the minister could explain the impact of this particular provision.

Mr D.R. MICHAEL: This is very similar to the answer for new clause 5B. This amendment amends section 64B of the Western Australian Marine Act, as inserted by the national law application act. Section 64B relates to a master’s duty to report a marine incident involving injury or death or resulting in vessel damage affecting the vessel’s seaworthiness. This amendment provides that this duty will apply to all vessel masters and owners, irrespective of the class of vessel involved in the marine incident, whether it be commercial or recreational. This amendment creates a crime if the master or owner fails to report the incident that occasions death or injury to a person. The penalties are higher for these incidents. This approach is consistent with road law, specifically section 56 of the Road Traffic Act.

New clause put and passed.

New clause 5D—

Mr D.R. MICHAEL: I move —

Page 5, after line 12 — To insert —

5D. Section 64D inserted

After section 64C insert:

64D. Marine incidents: Power to require responsible person to give information

- (1) In this section —
responsible person, in relation to a vessel, means —
 - (a) the master or owner of the vessel; or
 - (b) another person who appears to be in possession or control of the vessel.
- (2) This section applies if a vessel is involved in a marine incident.
- (3) An inspector or police officer may require a responsible person for the vessel to give the inspector or police officer any information that —

- (a) is in the responsible person's power to give; and
 - (b) may assist in identifying a person who was the master of the vessel, or operating or attempting to operate the vessel (as defined in section 75AA(1)), when the marine incident occurred.
- (4) A person who, without reasonable excuse, fails to comply with a requirement under subsection (3) commits an offence.
- Penalty for this subsection:
- (a) if the marine incident occasions the death of, or grievous bodily harm or bodily harm to, a person — imprisonment for 12 months or a fine of \$3 000;
 - (b) otherwise — a fine of \$3 000.

Mr R.S. LOVE: Again, by way of explanation, could the minister talk about this? We are talking about a power to require a responsible person to give information with the insertion of proposed new section 64D after proposed new section 64C. It defines a responsible person —

... in relation to a vessel, means —

- (a) the master or owner of the vessel; or
- (b) another person who appears to be in possession or control of the vessel.

Perhaps the minister could explain the requirement for this. We might talk a little bit about who appears to be in control and what the test for that might be.

Mr D.R. MICHAEL: This amendment will create a new requirement in proposed new section 64D for the master or owner to give inspectors or police officers, when required, information that is in their power to give relating to the person who may have been in charge of the vessel at the time of the incident.

Mr R.S. LOVE: I refer to proposed new section 64D(1)(b) —

... another person who appears to be in possession or control of the vessel.

Can the minister explain what will happen if the master or owner is on the vessel and someone else appears to be in control? We know that people will let someone else steer the boat. Although I know it is in other areas of the bill and they do explain it a little bit, can the minister explain that in this particular circumstance?

Mr D.R. MICHAEL: There might be a situation in which someone might be steering the vessel, for instance, but being directed by someone else. I have been given the example of a driving instructor—not that that is the kind of thing we are looking at. It could be that an instruction has been given. It could be just that the master is sitting back and letting someone else navigate. Other examples are following an incident or a health issue, someone might be possibly directing over the phone or something like that; they sort of have control in directing someone else what to do.

New clause put and passed.

Clause 6: Part 3A inserted —

Mr R.S. LOVE: This is one of the core elements of the bill. It inserts part 3A, which is the section titled “Safe navigation of vessels, and alcohol and drug related offences”. I note that it has about 43 pages of import, so it should take us through to question time. Then, we will be continuing and, hopefully, we will get through it in the next hour after that.

If the minister turns to the legislation, he will see that it refers to the matters we just spoke about. We should probably go through it as best we can. Proposed section 75AA is headed “When individual operates or navigates vessel”. Can the minister explain the import of the difference between the operator and the navigator and any effect that might have for any legal consequences for the safe operation of the vessel?

Mr D.R. MICHAEL: Legally, there is no difference; they would both be liable. Proposed section 75AA defines what navigating a vessel is, which is used also in proposed part 3A, proposed part 3B, proposed part 9 and proposed section 124GS. A person navigates a vessel if the person operates the vessel or is in command or in charge of the vessel. In other words, the person is the vessel master or skipper.

Proposed section 75AA(1) states that the definition of an individual who operates a vessel is —

An individual *operates a* vessel if the individual —

- (a) determines or exercises control over the course or direction of the vessel, or the means of propulsion of the vessel ...

Generally, a person is operating a vessel if they have physical control over the vessel's wheel, outboard motor, tiller, sails or other thing that can change the vessel's movement. A person also operates a vessel when they pilot a vessel. For example, commercial vessel pilots are considered to be operating a vessel when they pilot a vessel.

A person can be considered to operate a vessel whether or not that vessel is underway; for example, by starting the vessel's engine. However, actions that do not affect the vessel's movement are not considered to be operating a vessel under this definition. A person can attempt to operate a vessel generally if they attempt to affect the vessel's movement; for example, by raising or starting the vessel's engine or motor.

Mr R.S. LOVE: It is fairly broad, in a sense, to say “determines or exercises control over the course or direction of the vessel”. Would I be right in saying that if a person had a marine drone, the operator of that drone could be captured by this legislation, or is that not expected to happen?

Mr D.R. MICHAEL: Marine drones are not considered a vessel under this legislation.

Mr R.S. LOVE: Thank you for that. Proposed section 75AB is titled “When vessel is involved in incident” and states —

A vessel is *involved* in an incident if —

- (a) the presence of the vessel occasioned the incident; or
- (b) the use of the vessel is an immediate or proximate cause of the death of, or injury to, a person or damage to property occasioned by the incident.

Would proposed section 75AB(a) apply if, for instance, a vessel was adrift? In which case, who would be responsible? I refer to a vessel that has slipped its mooring, so to speak, and somehow ended up in the path of another vessel.

Mr D.R. Michael: With anyone on board?

Mr R.S. LOVE: No, if there was nobody on board. Would a person or operator be responsible for that? It is still a vessel that would perhaps be involved in an incident.

Mr D.R. MICHAEL: For the purposes of an investigation, it would still be considered a vessel under this definition. We would need to investigate how that vessel broke loose from its mooring or anchor, or however else it potentially got in the way of another vessel.

Mr R.S. LOVE: Proposed section 75AC is headed “Person taken to be in command or charge of vessel for purposes of Parts 3A and 3B”. Proposed section 75AC(2) states —

A person is taken to be in command or charge of a vessel at a particular time if, at that time —

- (a) the person is the only person, or the only person who is 18 years of age or above, on the vessel ...

As I understand it, a skipper's ticket can be issued to someone who is 14. I stand to be corrected if I am wrong. If a 15-year-old is in charge of a boat and has a 19-year-old on the boat with him or her, who would be in charge of the vessel if the 19-year-old is not the skipper and does not have a skipper's licence? The 19-year-old might be on the boat just for the ride.

Mr D.R. MICHAEL: When a 19-year-old is on board who is obviously an adult and a 16-year-old has the skipper's ticket, the adult would be investigated initially, but there is a rebuttal presumption, meaning that the person who is presumed to be master of the vessel can show proof they were not the master at the time. That could be, for example, a statement from the vessel operator or statements from other passengers or crew members.

Mr R.S. LOVE: There is a presumption, therefore, that the 19-year-old is the person in charge. We could go closer to the fence. It could be an 18-year-old or a 17-year-old who is only days away from becoming an 18-year-old. Would that presumption still remain in place?

Mr D.R. MICHAEL: That is correct, member. There is a rebuttal presumption whereby they can, through those statements, prove that they were not in control.

Mr R.S. LOVE: Proposed section 75AC(3) states —

A person who owns a vessel is taken to be in command or charge of the vessel if the person —

- (a) is on the vessel; and
- (b) holds a marine qualification that authorises the person to navigate the vessel.

I assume that refers to a person who owns their own boat and has a skipper's ticket and is out on the water with two or three people. If, by agreement, the skipper said he would not drive because the skipper wanted to have a few beers but the skipper goes out with the others and the boat is driven by another mate or someone else with a skipper's ticket, would that have to be rebutted or would it be more firm?

Mr D.R. MICHAEL: Again, it is a rebuttal presumption. Proposed section 75AC(4) states —

A person who has command or charge of a vessel continues to have command or charge of the vessel until the person has ensured that —

- (a) the command or charge of the vessel has been handed to another person; and
- (b) the other person has accepted the command or charge.

In that situation, the owner, presumably, could hand over the charge of vessel with the agreement of another person who has the relevant qualifications.

Debate interrupted, pursuant to standing orders.

[Continued on page 6019.]