

**MARINE SAFETY (DOMESTIC COMMERCIAL VESSEL  
NATIONAL LAW APPLICATION) BILL 2023**

*Introduction and First Reading*

Bill introduced, on motion by **Ms R. Saffioti (Minister for Transport)**, and read a first time.

Explanatory memorandum presented by the minister.

*Second Reading*

**MS R. SAFFIOTI (West Swan — Minister for Transport)** [12.25 pm]: I move —

That the bill be now read a second time.

I am pleased to introduce the Marine Safety (Domestic Commercial Vessel National Law Application) Bill 2023. On 19 August 2011, the Council of Australian Governments signed the Intergovernmental Agreement on Commercial Vessel Safety Reform to establish a national marine safety law and National Marine Safety Regulator for all commercial vessels in Australian waters. On 1 July 2019, the commonwealth Marine Safety (Domestic Commercial Vessel) National Law Act 2012 gave effect to this agreement, historically shifting responsibility for commercial vessel safety from states and territories to the commonwealth. Each state and territory has also fulfilled its obligations under the IGA to apply the national law as if it was a law of the commonwealth, to fill gaps in the commonwealth Parliament's constitutional powers. This bill's primary purpose is to fulfil WA's obligation to provide for the seamless national regulation of commercial vessels in our state.

Colonial governments were originally responsible for regulating all commercial vessels in Australian waters, including certification of vessels and their crew and controls on equipment and operations. Following Federation in 1901, this became the province of the states and territories. These responsibilities changed in the early twentieth century with the establishment of the commonwealth Navigation Act 1912, which gave the commonwealth government control over commercial vessels on overseas or interstate voyages—effectively, the largest vessels on our waters. From that point, the commonwealth largely regulated three different types of commercial vessels: trading vessels carrying passengers or cargo for hire or reward on overseas and interstate voyages; vessels supplying services to those ships, like tugs and tenders; and fishing vessels on overseas voyages. The states and territories kept responsibility for smaller and mostly local commercial vessels operating within their boundaries or relatively close to the shore or coast, including small passenger and trading vessels as well as fishing vessels on domestic voyages.

The states and territories also retained control of vessels operated by government agencies such as police and emergency services and fisheries, as well as vessels used for purely recreational purposes. This has been the case in Australia until the passage of the national law. However, since Federation, all states and territories have been active in ensuring that commercial vessel standards remain high and, when possible, consistent nationwide. The National Standard for Commercial Vessels developed by the national maritime safety committee, for example, is evidence of successes achieved through cooperative federalism.

Western Australia has about 2 910 domestic commercial vessels on our waters. These vary widely in nature and purpose and include fishing craft, passenger and trading boats, houseboats and a wide range of other small and medium-sized vessels. Many of the vessels are operated by their owners, while others are hired by members of the public. Happily, the safety performance of this commercial fleet is generally good and incidents, including those involving deaths and injuries and other serious consequences such as major property damage and environmental impacts, are rare. However, concerns remained that individual state and territory regulatory regimes impeded national efficiency and held back improvements in regulatory outcomes.

The national scheme established the Australian Maritime Safety Authority as the national regulator; created a system for the issue of national certificates relating to commercial vessel identification, survey, commercial operation and competencies of seafarers; introduced general safety requirements for individuals who have a role in the production and operation of commercial vessels; created offences for noncompliance and a system within which to conduct efficient compliance and enforcement activities; and established provisions for the consistent application of nationally agreed standards across Australia.

This bill will enable a truly national scheme for the safe operation, design, construction and equipping of domestic commercial vessels in Australia. It is the final part of a scheme that allows domestic commercial vessels to operate seamlessly between states and territories, facilitates growth and labour mobility, and reduces red tape. The mechanism to apply the national law in part 2 of the bill is based on that used in the Legal Profession Uniform Law Application Act 2022 and the Fair Trading Amendment Act 2022, approved recently in this house. This approach reflects recommendations of the Standing Committee on Uniform Legislation and Statutes Review made in 2021. It will also preserve the sovereignty of the WA Parliament by providing for tabling and disallowance of amendments made to that law by the commonwealth Parliament after the specified date that are to be applied in Western Australia.

The bill will apply the national law as a law of WA as it exists on a specified date, rather than as amended from time to time. The bill provides for an amending act—that is, a commonwealth act that subsequently amends the national law—to be laid before each house of Parliament within 18 sitting days of the house after the day on which the amending act receives royal assent. This will not apply to subsidiary legislation made under the commonwealth national law that applies in WA automatically.

Marine standards and technical requirements are made in marine orders under the commonwealth national law. There are seven marine orders focusing on certificates of survey, operation and competency requirements, load line certificates and similar matters. There is also one set of regulations focused primarily on accreditation of private marine surveyors, transitional matters relevant to the commencement of that law, and definitions for the purpose of the national law, such as specifying things that are not domestic commercial vessels. The automatic application of amendments to this subsidiary legislation is critical to the national scheme and will ensure that the small proportion of “gap” vessels to which this bill will apply the national law are not disadvantaged by having to meet different requirements from those met by the rest of the Australian commercial fleet.

The commonwealth national law act, which is already in operation, largely provides for the national regulation of commercial vessels. This act relies mainly on corporations and external affairs powers within the commonwealth Constitution. Although these powers facilitate the transfer of approximately 90 per cent of Western Australia’s domestic commercial vessels, they are insufficient to support a national regime for regulating vessels which are not owned by corporations and which operate only on inland waters. This regulatory gap accounts for approximately eight to 10 per cent of all commercial vessels—mainly vessels owned by WA government departments. Retaining a separate state-based regulatory regime for such a small proportion of domestic commercial vessels is not tenable. This bill is needed to ensure that those domestic commercial vessels operating primarily in WA that the commonwealth Parliament does not have the power to capture are regulated by the national law. Some smaller commercial vessels and vessels used for recreation only, such as craft owned by clubs and schools or inflatable craft hired out for whitewater rafting, will be deliberately excluded from the commonwealth law. The WA Department of Transport will continue to regulate these vessels. Various amendments are proposed to the Western Australian Marine Act to ensure that these craft are consistently and safely regulated in WA.

Because fees for commercial certification and services varied significantly between states and territories before the national law commenced, the national scheme continues to allow fees to be set by individual states. This bill will make no change to fees for commercial services in WA.

The Western Australian Marine Act will continue to apply to all vessels in key regulatory areas, such as waterway management, which includes the setting of speed limits; pilotage of large ships, which requires local area knowledge; moorings; port operations; hazard and wreck removal; and emergency response.

Given that the Western Australian Marine Act has not been substantially amended in 40 years, various additional amendments are required to modernise the act, update standards and penalties, and ensure that compliance and enforcement provisions are as consistent as practicable for both recreational and commercial vessels. These updates will also fix loopholes in regulation-making powers that prevent certain marine craft from being required to carry safety equipment and limit the government’s ability to efficiently remove safety hazards from the water. The bill will enable the second stage of the government’s recreational safety equipment review to commence by modernising the definition of “vessel” and ensuring appropriate regulation of all marine craft. This stage of the review, which has been subject to wide public and industry consultation, requires life jacket carriage, life jacket wearing beyond 400 metres from shore, and GPS-enabled EPIRB or personal locator beacon carriage beyond 400 metres. The review also introduced an option to carry electronic night-signalling devices in lieu of pyrotechnic flares and reduced the requirement for some mandatory safety equipment.

The WA government is committed to maintaining high marine safety standards that are continually improved, while ensuring that marine safety regulation for both commercial and recreational vessel users is as efficient as possible. This bill represents the most significant overhaul of vessel safety regulation in WA’s history, and will significantly update our 40-year-old Western Australian Marine Act. It will apply the national law for commercial vessel safety as a law of WA, address a key regulatory gap and ensure that operators can transition seamlessly between WA and the rest of Australia.

I commend the bill to the house.

Debate adjourned, on motion by **Mr P.J. Rundle**.