

WESTERN AUSTRALIAN MARINE AMENDMENT BILL 2023

Second Reading

Resumed from 16 November.

HON NEIL THOMSON (Mining and Pastoral) [1.12 pm]: I rise on behalf of the opposition as lead speaker and I acknowledge Hon Dr Steve Thomas who provided very good comments at the last sitting of the house. He was enthusiastic and proposed to continue on with those comments, but I am leading this bill today. It is a pleasure to be here to support the Western Australian Marine Amendment Bill 2023.

I note we have had a flurry of activity from the transport portfolio and it is commendable, although probably overdue in terms of the movement of bills into the Parliament of Western Australia, given that as a jurisdiction we are somewhat behind others in a number of areas. This bill is similar to the application of the national law changes in relation to marine safety. Those are matters that we addressed previously. The Western Australian Marine Amendment Bill 2023 will bring in another element, which directly impacts safety on our waters, in particular with alcohol and drug testing, but other matters also relating to the safe navigation of recreational and commercial vessels across our state.

Sadly, we know that there continues to be an ongoing legacy of marine accidents. Many of those are directly related to drugs and alcohol. In fact, that was a point made by the two ministers responsible when they presented their media release. Hon David Michael and Hon Paul Papalia both made comments on the findings of the special working group reviewing local incident statistics and data-based evidence from the United States, where marine drug and alcohol testing is already in place. The group found that the use of drugs and alcohol could have been a contributing factor in many of the 88 deaths, 66 serious injuries and 167 hospital admissions reported in WA marine incidents between July 2021 and February 2022.

That is in keeping with more detailed information, which is older but is relevant to this bill, from *Boating and watercraft drowning deaths: a 10 year analysis*, as published by the Royal Life Saving Society–Australia in 2016. It is important to reflect on some of the factors included, given I do not have access to the special working group’s review. That will no doubt be published in due course. Page 22 of the report shows there were 63 boating and watercraft-related drowning deaths in Western Australia in the decade to 2016. Interestingly and unsurprisingly, 90.5 per cent of those were men, with a large number of those between age 55 and 64. I reflect on that given it is my age group and I am a keen boater. I get out on the water as regularly as I can. The message to my peers and people who I know who share the enjoyment of the marine environment, and notwithstanding people’s considerable experience over a lifetime of being on the water, is that we must be vigilant and careful. We should take note of the safety amendments introduced recently, which have been promoted by the education arm of the Department of Transport. We want to do everything we can to reduce tragic accidents on the water, particularly when the causality factors are reckless navigation or alcohol and drug use.

Another interesting fact from the Royal Life Saving Society report is that 27 per cent of boat and watercraft drowning deaths in Western Australia occurred in Perth. An area I am familiar with, the midwest–Gascoyne area, was responsible for 25.4 per cent over a ten-year period. That is a very high percentage for a sparsely populated region, notwithstanding the high use of vessels in that region. Again, it is important to regional people that the skipper or master of a vessel, including commercial vessels, maintains that level of safety and responsibility. I am, as many members in this place are, aware of those sad cases over time in which a person on a commercial fishing vessel has gone overboard and lost their life. A series of events can lead to those often tragic circumstances, but one of the factors is, of course, alcohol and drugs. It is important to note in the Royal Life Saving Society report that 20.6 per cent of boating and watercraft drowning deaths in Western Australia were alcohol-related, of which 38.4 per cent had a blood alcohol content greater than or equal to 0.5 milligrams a litre. Alcohol played a factor in those 63 drownings, and 38.1 per cent of the deaths involved drugs, 75 per cent of which were illegal substances. In Western Australia it appears that drug taking, at least for that period, was a bigger factor in those deaths than alcohol. It is an interesting comparison. Western Australia seems to have a distortion towards that, and maybe Tasmania and the Northern Territory have similar profiles. That might possibly have something to do with the time that people spend on the water, but I am not sure. I imagine that the vast majority of those deaths—this would have to be confirmed—would have involved a vessel under the control and management of a recreational skipper.

This message is important as we come to the end of the year when people will be spending a lot of time on the water. I am not sure of the timing of the rollout of the educational program as we go forward, but we might find out more about that during the committee stage, which I hope to not take long on. With the passage of the Western Australian Marine Amendment Bill 2023, it is important that on top of those other safety measures, we use the opportunity to get the message out that the person in charge of the vessel is the responsible person. They are ultimately responsible for the lives and wellbeing of other persons on that vessel. It is important that the person in charge of the vessel is not under the influence of drugs or alcohol or acting in a reckless manner that could endanger the lives of other persons on that vessel. That can take a number of forms including the management, awareness and custodianship

of other people on the vessel, particularly during summertime when people often go out on the water to socialise and have fun times on those lovely blue waters that we all enjoy in Western Australia. It is important that the skipper remains aware of the other persons on the vessel and their state of awareness and ability to remain safe, given that things can go wrong on vessels at any time and without warning. I suggest that even persons who are not in charge of a vessel should at all times be sober and not under the influence of drugs, particularly illegal drugs. That should not be occurring because, at any time, circumstances can go beyond the control of the master or the skipper of that vessel. A vessel could get into trouble and a person may find that they need to enter the water. For example, a vessel might catch on fire, which can be very frightening and terrifying, or it might overturn or collide with another vessel. A whole range of factors might mean that the people on a vessel find themselves in the water and in a life threatening and very dangerous situation. Notwithstanding our culture in Western Australia, thousands of recreational fishers will be out on the water over the summer period, or even now, partaking in maybe a few cans of beer or some wine. This bill certainly focuses on those who are responsible for the vessel by making sure that there is a way to test and penalise. Most importantly, this bill provides a process by which we can educate our community on the vital importance of safety and sobriety on the water to keep our waters safe so that people can come home back to their loved ones having enjoyed their day and created some wonderful memories.

I want to briefly touch on the commercial sector as well. This bill makes a number of important changes to the commercial sector. I know that any reputable company will already have in place very strict internal policies in respect of the management of alcohol and drugs on its vessels. Those companies that operate across our waters will already have in place codes of practice and codes of conduct. Right across our state we have commercially operating vessels that play a key role in ensuring that our industry continues to thrive. I am thinking of, for example, those pilots who operate out of Port Hedland who play such a key role in maintaining our seamless and safe dispatch of that amazing resource wealth of the Pilbara. It is vital that those companies maintain those strict policies and disciplines internally. There has been a delay in making these changes to the law, but at the end of the day it would appear that our authorities might not have been fully equipped to deal with someone who has operated outside of the organisation's policies, organisations that ordinarily do a very good job. I do not know whether there are such companies—I hope there are not—that do not have those codes of practice or the management control over those vessels such that their masters might operate in a way that is reckless or endangers their lives or the lives of others on the water. In the commercial environment, this change is vital to ensure clarity in respect of the responsibility of the masters on those vessels. That is top of mind for someone who has family working in that industry. I certainly believe it is a provision that means these laws will be welcomed across the sector because, for any company that is doing the right thing already, it will provide additional support in order to ensure the force of the laws behind these matters.

We have seen some rather spectacular situations and, over history, one or two have been in Western Australia. There have been spectacular situations where recklessness plays out and the dire consequences of that recklessness can be quite long lasting. The one that comes to mind is the rather bizarre situation in Italy when the *Costa Concordia* cruise ship sailed too close to the rocks. I watched a very good documentary on YouTube only about a month ago on the amount of effort that went into bringing that vessel back to the surface and taking it away to be scrapped. Billions of dollars were involved in addressing that issue. In that case, my understanding is it was a reckless action by the captain or the master of that vessel. Certainly, some of the subsequent actions of the master of that vessel related to the loss of life that occurred. This sort of example serves as a salutary warning of the incredible consequences that can happen when things go wrong. Things go wrong for our commercial vessels and in the shipping sector. I mentioned Port Hedland as an example. We know that if something happened in Port Hedland, for example a grounding or a mishap of any kind, it could have very severe economic impacts along with safety impacts. Furthermore, there could be environmental impacts when a vessel sinks, is holed, or leaks into the environment, particularly with oil and so forth. These changes are going to provide further backing to the important safety policies that are managed by the mariners who operate through our state. There are a whole range of them throughout our state—for example, in the tourism sector. There was a very unfortunate incident at Horizontal Falls, which is another matter I believe is still under review. I seem to recall that the final deliberation on that has not yet been finalised. There are a whole range of consequences and knock-on effects when things go wrong on our waters.

I would like to step through just a few points on these changes from the explanatory memorandum. I would like to make comments and provide some indication for the rather short—I hope—deliberation that will occur in our Committee of the Whole stage. I have some questions and I think they are worthy of airing in the context of our Committee of the Whole. Some questions need to be aired and I want to step through them.

The Western Australian Marine Amendment Bill 2023 amends the Western Australian Marine Act to introduce a marine alcohol and drug testing regime that enables persons navigating a vessel to be tested following a vessel incident and as a preventive measure. This provision is something we fully support. We have to have a testing regime for alcohol and drugs when there is an incident. We have already established a process through the Marine Safety (Domestic Commercial Vessel) National Law Act on reporting incidents through this bill. This bill will provide the mechanism for testing in line with matters in the normal road traffic arrangements. If there is an accident, testing

would always occur. In this case, we now have the ability to test after an event. Some preventive testing could also occur. I assume there will be some rollout of testing capacity by the state, which can be done, for example, in the recreational sector. This sort of testing may occur when a vessel is coming to a boat ramp after being on the water, or comes to tie-up, or it might randomly be tested. I am not sure to what extent that might occur but it appears that this bill will allow that capacity under the law in order to provide for those sorts of tests that are necessary for prevention or to provide a level of incentive for persons who might otherwise seek to flout the regime. They will know that they could be tested. In road transport, the introduction of alcohol testing has been a major factor in reducing our road trauma. In the dark old days when I was a child and my father was in the police force —

Hon Dr Steve Thomas: Did you say the Dark Ages?

Hon NEIL THOMSON: The Dark Ages, yes. I recall a particular event, Hon Dr Steve Thomas, when my father was off duty. He saw someone had driven their car off the road. In those days, of course, without the testing kits we have now, he had to walk down the white line—it literally did occur. That person was inebriated. Things have moved on a lot since those dark old days when that was the only real test available to hardworking police, like my now-departed father. The important matter is that this testing regime will be put in place. There are some elements within this bill, obviously, around how that testing will operate and the finer points and details. We may ask one or two questions on them to clarify a couple of things.

The bill will modernise the existing offence for navigating under the influence of alcohol and drugs. This is basically to introduce new alcohol or drug navigation offences. Obviously, with the testing, we need to have offences in place. It will also modernise existing safe navigation offences by providing separately for reckless, dangerous and careless navigation. It will also introduce new offences where the unsafe navigation is occasioned by death or bodily harm. I have no doubt this will clarify those unfortunate circumstances in which a matter has to be brought before the courts. I assume up until now there has probably been some shoehorning of other powers that may exist. Obviously, shoehorning powers that might exist in other legislation is not always the most ideal arrangement. Going forward, clarifying these provisions within the Western Australian Marine Amendment Bill is going to provide more certainty and a clarified approach to dealing with incidents in the wake of very sad and difficult circumstances when someone has been either harmed or killed due to unsafe navigation.

Another point, which I have touched on briefly, relates to the consistency with road law. I raised a question and I got an answer that may not have been as fully fleshed out as possible. I know, for example, that provisions in the Road Traffic Act are similar or the same. I understand that Queensland's marine act, which contains similar provisions and controls, takes an administratively different approach and references its road traffic act. I asked why we did not take that approach. The only reason I asked that was to make sure that we have ongoing efficiency so that our legislation reflects community expectations—a contemporary community environment, one could say. In the briefing, I was assured that the most efficient way to do that was to have these provisions in this bill. That might be so, but it is important that we keep our fine regime up to date. I give this message by way of some possibly gratuitous advice to the government, which I am sometimes in the habit of giving. I make the point that maybe there is a case for someone in our justice area to review fines in all legislation and come up with some sort of omnibus bill to update those fines to reflect changing community expectations and also the very high inflation rate, which has impacted the value of those fines over time. That is just some gratuitous advice as an aside. I am sure that the government will not take my gratuitous advice and I will not be offended if it does not, but there is an issue of consistency with the Road Traffic Act. That might possibly have been worked on so that those changes will flow through. I was assured that, in fact, that was not the easiest way to do that, so I accept that, but I make that point in my second reading contribution.

There is an issue around the testing and liability of skippers. I flag that I will raise some commentary and questions on this, because there is a matter in one of the clauses, which I will get to in due course, in relation to minors under the age of 18 years in charge of a vessel who are in the presence of someone who is over the age of 18. There is a lot more to their responsibilities. Certainly, we know that, on a vessel, ultimately the master or the skipper is the person in charge. This bill has been drafted in a way that reflects that, but it has this quirk, you could say, in that provision. In my briefing, the term used was “rebuttable situation”. For example, if a person over the age of 18 years is on a vessel, but the skipper of that vessel is only 17 years old, and something occurs, will the person who is over the age of 18 be culpable? I think that can be discussed further in Committee of the Whole House before we finalise this bill. We need to make it very clear because it is important that people who go out on the water know what their responsibilities are. Although we hope that these situations will not arise, it is vitally important that people understand their roles and responsibilities on the water, particularly if they are in charge of a vessel.

I now have the title of the legislation that I paraphrased, so for the sake of *Hansard*, it was the Marine Safety (Domestic Commercial Vessel National Law Application) Act. This bill is important and timely. I commend the department and the minister for getting this legislation into the house at this time. As the lead speaker on this bill, I note that we support this legislation. We want to get a bit of clarity on a few matters before we finalise the

bill, but the sooner this matter becomes law, the better. I thank those who have taken the time today to contribute to this debate.

HON SUE ELLERY (South Metropolitan — Leader of the House) [1.44 pm] — in reply: I thank members for their contributions. I thank Hon Dr Steve Thomas for what might be described as a lengthy and wideranging contribution that sometimes even touched on the bill before us. One issue he raised in that wideranging and lengthy contribution was disqualification from holding WA qualifications. He made the point that although the new legislation will apply to both recreational and commercial vessels, if a person commits an offence and becomes disqualified, that disqualification will be from holding or obtaining a marine qualification issued under the Western Australian Marine Act only. Commercial qualifications are regulated by national law and granted by the commonwealth Australian Maritime Safety Authority. Members will recall the recent passage just last month of the Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023, which applied the national law as a law of WA. Consequently, recreational skippers' tickets will be the only remaining marine qualification issued under the Western Australian Marine Act. Most recreational vessels require a recreational skipper's ticket to navigate.

For commercial masters who commit an unsafe navigation or an alcohol or drug navigation offence, the Department of Transport will put administrative arrangements in place to notify AMSA of the offence and the outcome of the case. AMSA may then take appropriate action with the commercial marine qualification. However, that person will still be disqualified from navigating most recreational vessels in WA. That approach is consistent with other jurisdictions that have disqualification penalties attached to marine alcohol and drug offences.

Hon Neil Thomson asked when the legislation will commence. The unsafe navigation offences for reckless, dangerous or careless navigation, including those occasioning death or injury, are intended to commence in December this year. That means that anyone who dangerously navigates a vessel during this summer's boating season will be liable for the new unsafe navigation offences in the bill with increased penalties. The alcohol and drug testing regime will commence in April next year, when police will be able to commence post-incident testing, and the Department of Transport will commence preventive testing later in 2024 in time for next year's boating season.

I refer to the issues around commercial skippers and company policies. The unsafe navigation offences and the alcohol and drug testing regime will apply to commercial vessel masters and pilots. Domestic commercial vessels are required to have safety management systems, which we understand may have drug and alcohol policies with their own drug and alcohol limits. However, that is separate from the testing regime proposed in this bill. The safety management system aspect is administered by the Australian Maritime Safety Authority.

Hon Neil Thomson asked why we did not just adopt the road laws, as Queensland did. This approach is not suitable within a marine context, which is different from that of a road. On the road, there is usually one driver behind the wheel. On the water, there can be more than one person navigating a vessel. Under the marine regime we will be able to test everyone who is navigating a vessel. The vessel master will also commit an offence if they suspect that someone is under the influence but still permits them to operate the vessel.

If we were to just adopt the road laws, it could risk confusion for enforcement and the courts in applying the law. The Department of Transport already works closely with the Road Safety Commission and the Western Australia Police Force. Any new alcohol or drug amendments to road laws will be considered in the context of the marine environment.

With respect to a review of the act, as we implement the new regime, further data will be collected and potential enhancements to the scheme will be considered. Given that the policy of the bill is underpinned by road laws, as those are updated, it will provide the opportunity to consider whether making similar changes to the marine provisions is appropriate.

Hon Neil Thomson raised a couple of other issues and indicated that he will ask some questions in Committee of the Whole. I am happy to provide the response then.

With those comments, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Hon NEIL THOMSON: I thank the Leader of the House for her responses to those points; I thought she provided quite a good synopsis of the matters that I had raised. It is encouraging to hear that the provisions for reckless and

dangerous acts will be in place for summer. That is good to know. Of course, by way of comment, the rolling out of alcohol and drug testing early next year for the following summer will obviously provide an opportunity for some further awareness raising. I am sure the department has been thinking about that and will take the opportunity to provide a little bit of extra awareness as we go into summer 2023–24, when we know a lot of people will be on the water. That leads me to my question. There will be additional testing opportunities, not just after events but also in a proactive way in order to do some effective policing on the water. What additional resources will be applied and when will they be applied, within the context of either the marine safety officers of the Department of Transport, the water police or other policing bodies that operate in our marine environment?

Hon SUE ELLERY: Funding to support the new regime will be sourced from within the existing budget of the Department of Transport. At this point, we anticipate that only one additional FTE will be required.

Hon NEIL THOMSON: Does the Leader of the House think that is adequate? Clearly, she does. Maybe I can rephrase the question, because the minister will clearly say that it is adequate and I am questioning whether it is. Once this bill is passed and we get to April, when the testing comes online, or later in 2024 when I think the Leader of the House said that post-incident testing will come online, who will be responsible and have powers under this legislation for that direct interface with boaties, for want of a better term, particularly of recreational vessels?

Hon SUE ELLERY: Both the WA Police Force and the Department of Transport will have powers under this bill. With respect to the split, the Department of Transport will be the lead agency for maritime testing. The Department of Transport already has a greater presence of marine inspectors statewide versus the WA Police Force. However, the WA Police Force will take the lead on any testing that needs to be undertaken following incidents involving, for instance, serious injury or death. That is essentially the split between the two.

Hon NEIL THOMSON: It makes sense to have the police involved in post-incident events. From my previous experience in the department of fisheries, my understanding was that there were some joint patrols with fisheries officers. That may not be correct now, but I know that the Department of Biodiversity, Conservation and Attractions, for example, also has vessels on the water. We could say that they provide some eyes on the water. I am wondering whether there will be any scope, under this bill, for those officers to be engaged if something occurs when they are on the water in a professional way.

Hon SUE ELLERY: There is no intention or plan to extend the powers to those other agencies—for example, fisheries or DBCA. However, if they come across something on the water, they will be expected to contact the Department of Transport, which will then deal with the situation using its powers under this legislation.

Hon NEIL THOMSON: I thank the Leader of the House; that is an interesting point.

I would also like to talk about the awareness issue as we go into summer. We talked a little about that and the terrific work being done through the Department of Transport's marine safety group—I cannot remember the proper title. I met Laurie, from recollection, at the Kalgoorlie show. I am thinking about what the state and the department will do in the coming weeks and months to get the message out to the various groups across the community about these changes.

Hon SUE ELLERY: A communications plan is being developed that will be rolled out to respective regional communities using social media as well as the existing stakeholder groups, which are well aware that this is coming. We will use the existing relationships between the Department of Transport and the boating community.

Hon NEIL THOMSON: Who are the stakeholder groups?

Hon SUE ELLERY: The name of the committee I think the member was looking for is the WA Safety Committee. That includes representatives from commercial and recreational boating groups, but the peak boating group—the key stakeholders—comprises Boating Western Australia, the Boating Industry Association of Western Australia, Yachting WA and the Marine Tourism Association of Western Australia, which have been kept informed throughout the development of the bill.

Hon NEIL THOMSON: I wish the minister the best with that. I hope we can get the message out. I want to reference a comment made in a joint press release by Hon David Michael and Hon Paul Papalia on 18 October. I am finding the exact spot. It mentioned the long-awaited staged reforms. It is in the third paragraph. I am happy to give this to Hansard so that it has the exact dot points. The press release states —

Amendments to the *Western Australian Marine Act 1982* allowing drug and alcohol testing on Western Australian waterways have been introduced to State Parliament ahead of the staged implementation of the long-awaited reforms.

We mentioned some of those stages. Are there any reforms other than the rollout of the drug testing? Maybe the minister could give me a clean version of what the staged reforms are that the members referred to, in anticipation, so that we will know what they are and when they will be rolled out.

Hon SUE ELLERY: I gave the member a clear line of sight on the implementation stages in my second reading reply. If I need to do it again for the honourable member, I will.

Hon Neil Thomson: If they were the points and there were no other matters, I am happy not to proceed.

Hon SUE ELLERY: There is nothing to add to what I have already said.

Hon Neil Thomson: Are they are the staged reforms?

Hon SUE ELLERY: Correct.

Hon Neil Thomson: Thank you for clarifying that.

Clause put and passed.

Clauses 2 to 4 put and passed.

Clause 5: Section 3A amended —

Hon NEIL THOMSON: This clause will amend section 3A. It will apply to relevant vessel pilots. I assume it means pilot vessels. I am reading from the explanatory memorandum. A vessel pilot will be liable for safe navigation offences. The explanatory memorandum refers to a vessel connected to the state, which will be made an inclusive term. What is meant by that? The explanatory memorandum states —

Subsection (2) amends section 3A(2) of the WAMA to make the ‘vessel connected to the State’ an inclusive term.

What is the purpose of that, please?

Hon Sue Ellery: Which bit do you want clarification on?

Hon NEIL THOMSON: On the bit that says —

Subsection (2) amends section 3A(2) of the WAMA to make the ‘vessel connected to the State’ an inclusive term.

Hon Sue Ellery: Do you want to understand what we mean by a vessel connected with the state?

Hon NEIL THOMSON: That is correct.

Hon SUE ELLERY: Thank you. This clause will amend section 3A to ensure that the list of what constitutes a vessel to WA is inclusive instead of exhaustive, meaning that we are trying to use language that can capture it in as broad a range as possible without being prescriptive. The current list in section 3A(2) generally lists vessels that are registered to, or owned by, a person living in WA. This clause will ensure that the alcohol and drug-testing regime and dangerous navigation and similar offences will apply to the fullest extent to capture vehicles connected to the state. The inclusive definition will ensure that vehicles that have a nexus to the state, whether it is by location, ownership or registration, will be subject to the laws proposed in the bill. For example, an interstate vessel that disembarks from WA will be considered a vessel connected to the state.

Hon NEIL THOMSON: At the risk of labouring this point a little, are we saying that it will basically be all vessels that are operating within state waters? Will this law not apply to some vessels? Which vessels are not connected to the state and would not be included in this amendment?

Hon SUE ELLERY: It will depend on the particular circumstances. The definition written in the bill before us will ensure that we capture the broadest range of vessels. They are connected to the state because they are either physically here or their ownership or registration is connected to the state. Instead of trying to be prescriptive and come up with an exhaustive list that might miss something, we are trying to capture the broadest group. If they have a connection either by location—where they are at a particular point in time—by their ownership or by registration, they will be subject to these laws. If it helps, generally, we expect that the vessels will be registered to or owned by people in WA, but by writing it in the way that it is written, it could also capture a vessel by its location.

Hon NEIL THOMSON: Again, at the risk of sounding pedantic, I am trying to seek clarification. Is it possible that a vessel not within Western Australia at the time of an offence but connected to the state by registration might be subject to this law? An incident might occur in New South Wales, for example. Will this still be subject to the Western Australian Marine Act?

Hon SUE ELLERY: Perhaps I will do it a different way, honourable member. If the vessel is registered in New South Wales but the location of the offence is in Western Australia, it will be dealt with under the Western Australian regime that we will be introducing. If a Western Australian vessel is in Botany Bay and an offence that fits the New South Wales regulatory regime is committed, it will be dealt with under that regime. Just because the boat is not registered here does not mean that the offence will not be captured if the vessel is here when the incident occurs.

Hon NEIL THOMSON: Would I be right in saying, in summary and in layman's terms, that any offence that occurs in the Western Australian jurisdiction will be covered by the act?

Hon Sue Ellery: Yes, honourable member.

Hon NEIL THOMSON: That is probably the extent of it; it is just a fancy way of saying all that. Is that correct?

Hon Sue Ellery: You could describe it that way.

Hon NEIL THOMSON: Lawyers are very fancy people, as we know, and I am sure that the reason that occurs is to withstand the cross-examination within a court of law. Look, I think that is fine. I will just leave it as a comment at that point.

Clause put and passed.

Clauses 6 to 10 put and passed.

Clause 11: Section 64A amended —

Hon NEIL THOMSON: This clause is talking about the penalties. Clause 11(2) will create a crime when the master of the vessel is involved in a marine incident that occasions death, grievous bodily harm, or bodily harm to a person, and the master fails to comply, without reasonable excuse, to stand by to render assistance, or render assistance to persons involved in the incident, for example. There is a maximum penalty. The offender will be disqualified from holding or obtaining a marine qualification for at least two years if death or grievous bodily harm is occasioned, or at least 12 months if bodily harm is occasioned.

It struck me that, given the circumstances that might occur, the maximum penalties seem to be relatively lenient, given the consequences of such an action might be significant. I wonder whether the minister could comment on why those penalties were applied. There was also a further comment about this matter. Subclause (3) sets the maximum penalty at \$5 000 for a master's failure to render assistance for marine incidents not occasioning death or injury, or when a master fails to provide their contact and vessel identification details to an injured person or other master or vessel owner involved in an incident. I thought that that seemed low, given these are maximum penalties. I am not somebody who normally argues for increased penalties when there might be mitigating circumstances.

We know that the courts will obviously be in a position to exercise a lesser penalty, but I wonder whether there was any reason the penalty was set at that figure?

Hon Sue Ellery: Could you take me to where you think the maximum penalty is written?

Hon Neil Thomson: It is proposed section 64A(2). I would have to go through the bill. I am using the explanatory memorandum at the moment. That is what it says here, so I am assuming it is correct. I could dig through the bill if the minister likes. We may as well try to keep both open at the same point. That is what it says on page 9 of the explanatory memorandum, about two-thirds of the way down the page.

Hon SUE ELLERY: I have got to try to work this through. As I understand the bit the member is describing—does he have a marked-up copy of the bill?

Hon Neil Thomson: No.

Hon SUE ELLERY: Will you bear with me?

Hon Neil Thomson: Minister, I was going to print it out this morning.

Hon SUE ELLERY: It is big.

Hon Neil Thomson: It's really big.

Hon SUE ELLERY: If we go to the bill before us, clause 11, "Section 64A amended", and we go over the page, subclause (2) says —

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

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

...

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;

Hon NEIL THOMSON: By way of clarification, this is not related to those penalties; this is about the failure to render assistance. The relevant proposed section of the bill is actually at clause 11(2). Proposed section (2A) states —

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 ...

- (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;

My reading is that it is to do with the rendering of assistance.

Hon SUE ELLERY: I have got you, honourable member. The member needs to read the two things together. If the member reads the bit that I referred to earlier, the new bit will be that the master of a vessel commits a crime if the vessel is involved in an incident that occasions death or grievous bodily harm. If the master is convicted of that, the penalty will be imprisonment for 20 years for death or imprisonment for 14 years for grievous bodily harm. That is what they will be getting. Then, they will get the provisions that the honourable member read out at proposed section 64(2A), which a court sentencing a person must order. They are already in jail for doing all that, but the court must disqualify the person as follows. If the marine incident occasions death or grievous bodily harm, it is a period of not less than two years. That is a minimum; it is not a maximum. But they will already be in jail for up to 20 years. The second bit is that if there is bodily harm to a person, it will be a period of not less than 12 months. Those disqualifications are minimums and have to be read alongside the fact that the penalty for committing the offence in the first place is jail time for 20 or 14 years, during which people will not be on a boat.

Hon NEIL THOMSON: Thank you. I will do my best to keep both the explanatory memorandum and relevant section in the bill open. It is a rather lengthy bill. I did not have a lot of questions, hence my abbreviation. I may stand to be corrected, but there might have been a mistake, because it says here a maximum penalty is dependent on what the incident occasions. If reading it correctly, maybe it does align. It may be a bit of shorthand, so it highlights the need to think about how it follows from both the bill and EM. I point I make, though, to finish the questioning on that —

Hon SUE ELLERY: I want to make sure we are absolutely clear, because the honourable member is suggesting there is a mistake in the EM; there is not. The EM refers to the imprisonment penalties of 14 and 20 years that I talked about. Those are the maximums, not the disqualification for no less than two years or no less than 12 months.

Clause put and passed.

Clauses 12 and 13 put and passed.

Clause 14: Part 3A inserted —

Hon NEIL THOMSON: Proposed section 75A in clause 14 refers to terms used, being “*0.08+ and illicit drug offence* means an offence against section 75DD(1);”. I assume that is consistent with the Road Traffic Act, or is that less nuanced than the Road Traffic Act?

Hon SUE ELLERY: It is the same, honourable member.

Hon NEIL THOMSON: It is identical. Thank you, I appreciate that.

I am making sure I have both the EM and the bill open —

Hon Sue Ellery: Hang on while we get there.

Hon NEIL THOMSON: — at the same time, because it is a bit of a tome. I understand the complexity of all this. I assume a fair bit was lifted from the Road Traffic Act to get to this point. Proposed section 75CA refers to the navigation of vessels while under the influence of both alcohol and drugs. It has a table with alternative offences. Can the minister clarify whether the offences of over .05 or .08, and the definitions of “impaired by drugs” or “under the influence of drugs” will be entirely consistent with the Road Traffic Act? Is that correct?

Hon SUE ELLERY: Yes, they are.

Hon NEIL THOMSON: I go back to proposed section 75CA in the EM. It refers to prior offences for other serious alcohol or drug navigation offences being counted, in particular the applicable penalty for the first offence. I assume this can only be offences committed from the day this bill comes into effect, but are we saying that when somebody fronts the court, those penalties start to accumulate and provide a history? Is this like motor vehicle driving offences, in which if a person has a prior offence, a more strenuous penalty can be exercised going forward? Hence those other sections outlined in relation to that—the minister is nodding.

Hon Sue Ellery: That is correct, by interjection, honourable member.

Clause put and passed.

Clauses 15 to 22 put and passed.

Clause 23: Part 8A inserted —

Hon NEIL THOMSON: I may be duplicating, because I had this listed before I came into this place. I think it might have been answered already, but we will look at it anyhow. In respect of commonwealth marine qualifications, there is a requirement to notify Australian Maritime Safety Authority, the national regulator, of a mariner's conviction of any certain navigational or alcohol-related navigation offence. Could the minister outline how that process would work, and how it will be managed to make sure it occurs in a timely way and also ensures a valid verification from the state that AMSA has addressed it, given the impacts on the state.

Hon SUE ELLERY: The Department of Transport will put administrative arrangements in place so that AMSA can be notified of the offence and the outcome of the case. It is AMSA's responsibility to take appropriate action in its own investigations or any administrative action in regard to a commercial marine qualification. That approach is consistent with other jurisdictions that have a disqualification attached to marine alcohol or drug offending.

Hon NEIL THOMSON: Is there any national register in which the Department of Transport has access to AMSA disqualifications?

Hon SUE ELLERY: No.

Hon NEIL THOMSON: Was there any anticipation within this bill around the sharing of information from other jurisdictions, including the commonwealth?

Hon SUE ELLERY: In the bill we did before, the Marine Safety (Domestic Commercial Vessel National Law Application) Bill, that is where it is accurate to say data sharing is captured.

Hon NEIL THOMSON: I know this digresses a little bit from this clause, but it is relevant to notifications. That would mean, in tandem with those other changes, there will be an ability for the department to assess AMSA disqualifications that might occur. Or is it not necessary?

Hon SUE ELLERY: It is AMSA's jurisdiction to manage that. It holds the data. We do not need it. We just make sure it gets data from us.

Clause put and passed.

Clause 24: Part IX Divisions 1 and 2 inserted —

Hon NEIL THOMSON: Earlier, in clause 1, I asked about the collection of breath-testing evidence and who might be able to do that. The minister clarified that it would be either the police or the Department of Transport. Proposed section 124HE refers to evidence of an authorised operator of breath analysing equipment.

We are getting near to the end of the year, minister, so bear with me. It relates to the equipment and the authorisation of the operator. As part of that theme at proposed section 124HF, "Certificate of authorised operator of breath analysing equipment", is this consistent with the requirements under the Road Traffic Act?

Hon SUE ELLERY: Yes, it is.

Hon NEIL THOMSON: I am asking because there may be transport operators who might be on the water doing this work to the extent that they might otherwise be able or qualified. I assume the Department of Transport along with Western Australia Police Force can do that work on the road. Is that correct? No?

Hon SUE ELLERY: The answer to that is no.

Hon NEIL THOMSON: That is a relatively important point, then, in so far as this will be the first time that the Department of Transport will step into this space.

Hon Sue Ellery: By way of interjection, that's correct.

Hon NEIL THOMSON: That is correct. I note the minister's very helpful explanation of the sequence of things that will happen in the level of training and certification of those officers. In terms of the rollout of this legislation, will a process be put in place to ensure that those officers will have that responsibility? The minister mentioned one FTE, but I assume a lot more than that will be certified to do this work because there are officers already in play. Can the minister give me a brief outline of the sorts of officers who might operate across our state in this role? I would certainly like to know how that might apply across the regions as well, given the minister mentioned the rather modest increase of one FTE. Can the minister give me an outline of how those officers will do the job and how many will be involved in that process and where it will happen?

Hon SUE ELLERY: It will be one additional FTE, and that additional FTE will be the trainer. The Department of Transport already has people across the state. The member is quite right: these are new powers, and the officers will need to be trained in them. The training will mirror the training that police officers go through to exercise the same powers. It is the same training because they will be using the same equipment et cetera, albeit in a different environment, which is a marine environment.

Hon NEIL THOMSON: Has any internal work been done on those staff duties, given this will be—I would have thought—to quite a large extent, an extension of their duties in not only the classification, but also the workload?

Hon SUE ELLERY: A full assessment of the job description forms for the relevant officers is now underway to make sure the extension of powers is reflected in the duties that will be carried out once this bill comes into effect.

Hon NEIL THOMSON: The minister mentioned the review of the job description forms. How many officers will be able to do this work with the testing?

Hon SUE ELLERY: It might differ at various times, but it will be about 40 officers across the state.

Hon NEIL THOMSON: Given this will be quite an extension of transport staff duties, notwithstanding their role in marine safety, I assume these will be the same people who manage the equipment side of things; therefore, we are talking about the same staff on the water who go and check our flares. The minister is nodding, so I assume that is right. Has there been any engagement with police, given they are used to managing this space in their transport sector, to give some capacity-building within the department to achieve the results we hope to achieve from this?

Hon SUE ELLERY: There has been extensive work with police to make sure that we adapt what they use on the road to what we will need to use in the marine environment. I am advised it has been a very good, strong, cooperative and collaborative relationship. The member would appreciate that police are often at the wrong end of when something goes wrong, so they are absolutely 100 per cent on board with this process and have been very helpful with training and all the elements that need to be put into place.

Hon NEIL THOMSON: Are all those 40 officers uniformed officers?

Hon SUE ELLERY: Yes, they are.

Hon NEIL THOMSON: Another component of clause 24 refers to the proof of a person's blood alcohol content for certain offences. Obviously, there will be a requirement to make sure that that evidence is taken in a very professional way. I note that there is a level of discretion in so far as it is not like driving a car, where one is on the road and one gets an alcohol offence; instead, one might be sitting on a boat at a mooring, having a glass of wine. I read in the bill the commentary around—I cannot recall the words—evidence of the vessel being navigated while the operator is drinking. It is a slightly trickier environment to manage in that sometimes it is not absolutely clear cut, so a level of discretion will be applied. That will be important going forward, along with the issue that I just mentioned around the evidentiary side, in making sure that when somebody is brought before the court, they will not end up with a bunch of prosecutions that are not upheld because of insufficient evidence.

In terms of proposed section 124HH, “Proof of person's BAC ...”, I assume there will be the same requirement for drugs—in fact, I think it is in proposed section 124HI. Proposed section 124HH(2) will insert the rebuttable presumption from the Road Traffic Act section 71(2) and states —

In the absence of proof to the contrary, the accused is taken to have a particular BAC at the time the accused navigated, or attempted to operate, a vessel if it is proved the person had that BAC —

That is blood alcohol content—I think that is what BAC stands for. I read these things and I try to understand what they actually mean. Can the minister put it into layman's terms what this actually means?

Hon Sue Ellery: Plain English, is that what you would like?

Hon NEIL THOMSON: Plain English! What does that actually mean?

Hon SUE ELLERY: I will give it my best shot. The first thing that Hon Neil Thomson can stick in his head is that “rebuttable presumption” means that a person is allowed to lead evidence: “No, this could not be the case because of X, Y and Z.” Proposed section 124HH(2) inserts the rebuttable presumption from section 71(2) of the Road Traffic Act and provides that in the absence of proof to the contrary—it is up to the person to provide proof to the contrary—the accused will be taken to have a particular blood alcohol content at the time they navigated or attempted to operate a vessel. If it is proved that the accused had that blood alcohol content within four hours after the time of navigation or attempted operation of the vessel, or if the proof of their blood alcohol content relates to a sample of their blood taken in accordance with the requirements made under proposed section 75EO—that is the specific provision laid out—within 12 hours after the time of navigation. It can be confusing to read. There are probably a couple of double negatives in the provision, but “rebuttable presumption” means that if a person has been charged, they can lead evidence and say, “Here is why you should not reach that conclusion, because of these circumstances.”

Hon NEIL THOMSON: The only reason I asked about that is because a range of evidence could be used. Most modern vessels have a digital log, for example, of when the vessel was used. I do not think too many vessels do not have the ability to assess when they were or were not being navigated. I guess it is a question of whether, after having navigated a vessel, the person sat down and had a few quiet drinks and were picked up by an overzealous operator. Notwithstanding that, I understand that those 40 officers will operate with a level of professionalism and discretion. I suppose that

is important in the sense of someone choosing to park up and have a drink on Christmas Day. They should make sure that they have the ability to outline their defence for that point. I think that is what the minister means.

Clause put and passed.

Clauses 25 to 38 put and passed.

Clause 39: *Young Offenders Act 1994* amended —

Hon NEIL THOMSON: In my passing through the bill, I seemed to have missed one. I will touch on this and ask for a little discretion as this will be my almost final question, minister. I know I have said “final” before.

Hon Sue Ellery: You have, honourable member. You’ve got form! Give it your best shot.

Hon NEIL THOMSON: I will give it my best shot without prejudice as my final question, with possible deniability.

There is a provision about the culpability of minors, which I referred to in my second reading contribution, and it is a matter to which the minister did not respond. I refer to the issue of a minor who is a skipper with a skipper’s ticket. I am thinking of a scenario—I ask the minister to indulge me a little bit as we finish the Committee of the Whole—involving a 17-year-old and it is 364 days before their birthday and a person on the vessel who is 18 years and one day of age. I understand why the bill includes that particular provision. Clause 39 seeks to amend the Young Offenders Act 1994 and there might be some connection with that. The question was asked within the context of the briefings we had. Why was that approach taken? If someone is licensed to be in charge of a vessel, regardless of their age I would have thought that they would be required to meet all the expectations of the provisions of their licence. Can the minister indulge me just a little bit? I promise that this is the last question if the minister can give me an adequate answer. There is an incentive for the minister!

Hon SUE ELLERY: It is the same provision that we apply in any other circumstance in which a person is under 18. Whether the person is under 18 by one day or five years, it goes to the sentencing, not whether or not they are culpable or whether or not they committed a crime. It is about the sentencing regime that applies to them. If a person is under 18, they are captured, no matter the offence, by the regime in the Young Offenders Act; if they are over 18, they are not. That is the difference. It is not about whether they did or did not and how old they were at the time. Once it is established that they did commit an offence, it is about how the court deals with sentencing, which is captured differently from how it deals with adults.

Hon NEIL THOMSON: The minister touched on sentencing. With her indulgence—I have somehow missed that step—it is to do with who is deemed to be in charge of the vessel. I understand the sentencing—that is fine. But if a 17-year-old has their driver’s licence—I assume a person can still get their licence when they are 17—and they have an accident, the person sitting in the back of the car, who is 18 years of age, is not held responsible for the driving activity of the 17-year-old. That is the issue.

Hon SUE ELLERY: In a circumstance in which there is a 17-year-old skipper and an adult is on board the vessel—and they are the only adult on the vessel—then, yes, under the provisions before us now, there will be a presumption that that adult is the master of the vessel. However, this presumption is, again, rebuttable. The precise wording is “in the absence of proof to the contrary”. The adult can bring proof to show that they were not the master at the time. The standard of proof is the balance of probabilities; in other words, that it is more likely than not that they were not master of the vessel.

Hon NEIL THOMSON: I thank the minister for indulging me on that one. This is my final question. In terms of the balance of probabilities, there is the opportunity for a scenario—I know that we do not like using scenarios in Committee of the Whole—in which someone does something reckless and their mate happens to be a few weeks older. They could be the adult on the vessel in terms of the law, but they were not really in control of the vessel. For the sake of *Hansard* and any unfortunate soul who might find themselves in that situation, under the balance of probability, that person, who might only just be 18 years of age, would not be regarded as the person who was responsible for that vessel.

Hon SUE ELLERY: Depending on the circumstances, honourable member, they would be. The point is that there is a rebuttable presumption. The person who is accused of being in charge of the vessel, just by virtue of their age, has the opportunity to provide evidence to the court that says, “This is why you should not find me to be the person in charge of the vessel” and then the court, giving regard to the evidence provided, needs to make a determination based on the balance of probabilities.

Hon NEIL THOMSON: My last, last question! We did it. That is not the case with road traffic licences.

Hon SUE ELLERY: The honourable member is correct. That is because there is a difference and we have already talked about it in a number of circumstances, which we have canvassed in today’s committee stage. It is not the same, because someone is sitting behind the wheel of a vehicle. There are cases of people quickly trying to swap seats between when they get pulled over and when the police officer steps around, but in the boating environment, in which there may be a group of people sitting around in close proximity and, in fact, sharing responsibility for navigation —

Hon Neil Thomson: By way of interjection, minister, there may be a 17-year-old who has a skipper's ticket and it might be their vessel and that other person may not have a clue about it.

Hon SUE ELLERY: That is right. It is not mandatory. That is why there is a rebuttable presumption, because we can lead the evidence to demonstrate that it was not the case.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)**, and passed.