

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

Second Reading

Resumed from 17 May.

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [4.09 pm]: I rise to make a contribution to this debate and I—sorry, I did not realise the member for Moore was ready to go. I look forward to his contribution in due course.

Mr R.S. Love: I will listen to yours and I will be instructed!

Mr S.A. MILLMAN: I would not jump to any conclusions just yet.

Firstly, before I start my contribution, I note that the Marine Safety (Domestic Commercial Vessel) National Law Application Bill 2023 is the first piece of legislation for which the member for Balcatta will have carriage as a newly elevated member of the Cook Labor cabinet. I just wanted to put on record my congratulations to the minister on his elevation as the member for Balcatta. He has been a terrific supporter of mine from the moment I was elected in 2017, and given that our electorates are side by side along Wanneroo Road down through Tuart Hill there, he has always been helpful in handling local issues.

One of the experiences that the member for Balcatta and I shared and that pertains to maritime safety was when we were taken, with the member for Forrestfield, across from Perth to Rottnest by our joint predecessor, the former member for Yokine, Hon Bob Kucera. I say in light of that journey, any moves to enhance and improve marine safety are very much welcome. Minister, congratulations on your elevation and I very much look forward to the contribution you make to the cabinet of Western Australia and to the benefit of the people of Western Australia. Thank you for all the support that you have provided me over the course of my time in this place.

I rise to speak on this legislation, reflecting, as I often do, on the fact that this bill once again picks up a national agreement between states and territories to give effect to a national law, and this is an agreement that is from a long time in the past. This is the Council of Australian Governments' Intergovernmental Agreement on Commercial Vessel Safety Reforms, which was signed 19 August 2011. I reflect on the fact that we have progressive governments across Australia from coast to coast and even a progressive government in Tasmania, albeit of a conservative persuasion. I noticed that the conservative Premier of Tasmania was out of the gates very quickly in support of the Voice, which is a good indication of someone's progressive credentials. We have progressive governments across the country and a progressive federal government. When contemplating national COAG intergovernmental agreements like in the late 2000s and early 2010s, now is the time for cooperation and collaboration between the states and the commonwealth.

Under the IGA, each state and territory is required to fulfil its obligations to apply the national law as though it were a law of the commonwealth to fill gaps in the commonwealth Parliament's constitutional powers. The primary purpose of this bill is to fulfil WA's obligation to provide for the seamless national regulation of commercial vessels in our state. I will take members back. Colonial governments were originally responsible for regulating all commercial vessels in Australian waters, including certification of vessels and their crew and controls of equipment and operations. This power was retained in the years prior to Federation, but following Federation in 1901, the responsibilities changed in the early twentieth century with the establishment of the commonwealth Navigation Act. Through this act, the commonwealth Parliament gained control of commercial vessels on overseas and interstate voyages, which are the main vessels in our waters. From that point on, 1912, the commonwealth largely regulated three different types of commercial vessels: trading vessels carrying passengers or cargo for hire or reward; vessels supplying services to those ships like tugs and tenders; and fishing vessels on overseas voyages.

Notwithstanding the passage of the commonwealth legislation and the constitutional impediments, 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 police, emergency services and the Department of Fisheries as well as vessels used purely for recreational purposes. That was the case from 1912, with the passage of the commonwealth Navigation Act, to 2011—so almost 100 years—with the intergovernmental agreement. That does not mean to say that the states and territories aggregated their responsibility to make sure that commercial vessel standards remained high and also, where possible, consistent nationwide. The National Standard for Commercial Vessels developed by the national Maritime Safety Committee is evidence of the successes achieved through cooperative federalism. WA has about 2 900 domestic commercial vessels on our waters and these vary widely in nature and purpose. That is by way of background.

At the moment, the national scheme establishes the national regulator, the Australian Maritime Safety Authority. AMSA creates a system for the issue of national certificates relating to commercial vessel identification, survey,

commercial operations and competencies for seafarers; introduces general safety requirements for individuals who have a role in the operation and production of commercial vessels; creates offences for noncompliance and a system within which to conduct efficient compliance and enforcement activities; and, finally, establishes provisions for the consistent application of nationally agreed standards across Australia. For something as important as the safe regulation of the operation of vessels off our coast, they are important considerations.

To go back to the start, this model legislation has been introduced by the government to discharge our obligations under the IGA and to make sure that our statute book has legislation that is fit for purpose and contemporary. 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 the scheme that allows domestic commercial vessels to operate seamlessly between states and territories, facilitates growth and labour mobility and reduces red tape. A couple of subsidiary amendments will be necessary.

One of the ways in which the mechanism to apply the national law is given effect is in part 2 of the bill, and that is based on that used in the Legal Profession Uniform Law Application Act and the Fair Trading Amendment Act. The decision to use those two powers reflects the recommendations of the Standing Committee on Uniform Legislation and Statutes Review in 2021. But it also preserves the sovereignty of the WA Parliament for providing for the tabling and disallowance of amendments made to that law by the commonwealth Parliament after the specified date to be applied in Western Australia. This legislation has achieved a great balance, consistent with previous McGowan government legislative amendments and now, again, the tradition continues under the Cook Labor government. That is by way of background and information.

Let me go through what the legislation will do. I just want to turn next to the application mechanism. This is what I was just discussing. The mechanism to apply the national law in part 2 of the bill is based on, as I said, the Legal Profession Uniform Law Application Act and the Fair Trading Amendment Act. This bill will apply the national law as a law of WA as it exists on a specified date and the bill provides for the amending act—that is the 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 amending act receives assent. The automatic application of amendments to the subsidiary legislation is critical to the national scheme and ensures that the small proportion of gap vessels to which this bill will apply will not be disadvantaged by having to meet different requirements from the rest of the Australian commercial fleet.

In the next part of my contribution, I turn to the constitutional issues that are raised by virtue of the separate powers held by the federal government as opposed to those held by state governments. The commonwealth National Law Act, which is already in operation, largely provides for the national regulation of commercial vessels. This act relies mainly on the corporations power—that is section 51(xx) of the Constitution—and the external affairs power. Those two powers—the corporations power and the external affairs power—within the commonwealth Constitution will cover about 90 per cent of WA's domestic commercial vessels, but they are insufficient to support a national regime for regulated vessels that are either not owned by constitutional corporations and therefore not subject to section 51(xx), or do not operate pursuant to the external affairs powers; that is, they operate within inland waters. I am advised that the gap accounts for between eight to 10 per cent of all commercial vehicles, and a lot of those are owned by WA state government departments like Fisheries, Police and so forth.

Mr D.A.E. Scaife: Member, will you take an interjection?

Mr S.A. MILLMAN: Yes; sure.

Mr D.A.E. Scaife: Could this not just be fixed by changing the Constitution to give the commonwealth the power over all maritime regulations?

Ms C.M. Tonkin: That's a brave statement!

Mr S.A. MILLMAN: Member, there is one constitutional amendment that I am looking forward to voting on this year.

Mr D.A.E. Scaife: What's that, member?

Mr S.A. MILLMAN: That is the amendment that will recognise 65 000 years of traditional custodians in this country and give them a voice to Parliament. That is the constitutional amendment that I am in favour of. Other constitutional amendments are important, and they are worth discussing and debating, but not this year and not today. Thank you for the interjection, member for Cockburn; I very much appreciate it. I am very proud and honoured to be able to lend my support to the Indigenous Voice to Parliament.

Coming back to this bill, this legislation is needed to ensure that those domestic and commercial vessels operating primarily in WA that the commonwealth Parliament does not have power to capture are regulated by the national law. That is all designed to give effect to the agreement that was reached in 2011.

I will talk about subsequent amendments that will take place. The WA Department of Transport will continue to regulate those vessels that are not regulated by the Australian Maritime Safety Authority, which is the national regulator, and the Western Australian Marine Act will ensure that those craft are consistently and safely regulated in WA. 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 the fees for commercial services in Western Australia. 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.

I refer to updates to the Western Australian Marine Act. Given that the 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 review, which has been subject to wide public and industry consultation, will require life jacket carriage, life jacket wearing beyond 400 metres from the shore, and GPS-enabled emergency position indicating radio beacon or personal locator beacon carriage beyond 400 metres. The review will also introduce an option for electronic night signalling devices in lieu of flares and reduce some mandatory safety equipment.

I want to focus on the particular point of safety provisions. I am giving this contribution at relatively short notice, so I did not get a chance to speak to my constituents who got in contact with me during the process of this review, but a number of my constituents contacted me and made suggestions about the way in which the safety provisions in this review should operate. The consultative process engaged in by the government before it introduced this legislation was well endorsed by all those constituents who contacted my office with their concerns about marine safety. To that end, I express my gratitude to the minister who introduced the legislation, who is now the Deputy Premier; Treasurer. I thank her department and agencies for the way they went about the consultation process, because, at least insofar as the constituents in the electorate of Mount Lawley are concerned, that was an exemplary process. They felt as though their concerns were heard and addressed in the formulation of this legislation. I give credit to the current minister and gratitude to the former minister.

Some members might look askance at me, the member for Mount Lawley, as we do not have any Indian Ocean coastline in our electorate.

Ms R. Saffioti: You have superyachts, don't you?

Mr S.A. MILLMAN: We might own them; I do not know that we have them in the electorate! We have a great bit of Swan River frontage that stretches from just south of the Maylands Yacht Club to just north of Claisebrook Cove.

Ms J.J. Shaw: I'll see you on yours and raise you mine!

Mr S.A. MILLMAN: Yes!

Mr D.A.E. Scaife: Dog Swamp is in your area.

Mr S.A. MILLMAN: Dog Swamp is.

Mr D.A.E. Scaife: There you go!

Mr S.A. MILLMAN: There is the little lake in Ron Stone Reserve, but I do not know that one can operate any commercial vessels on that spot. People love and enjoy using the Swan River—Derbarl Yerrigan—with their recreational vessels.

[Member's time extended.]

Mr S.A. MILLMAN: I was in two minds about whether I was going to say the next bit, because it does not really speak to my working-class credibility, but I want to give a shout-out to Nick and Eric, the co-owners of the Cole 26 that I enjoy sailing on out of the Royal Perth Yacht Club, and say that I am looking forward to being on *Spray* soon enough. It has been a while since I had a sail. I understand the conditions were lovely last Sunday, and I am really looking forward to it. But if I may go all the way round and come back to why I wanted to raise that point, it is for this reason. This is not something I have shared with the chamber before; it has never come up. No members will know, but between 1994 and 2004, my dad sailed in the Sydney to Hobart Yacht Race five times. He was a member of the Royal Melbourne Yacht Squadron; it used to race out of Royal Melbourne and every couple of years it would sail up to Sydney and race in the Sydney to Hobart Yacht Race. Dad is still alive. I have mentioned him a few times in this chamber, mostly in connection with his plastering and his work as a tradie, which does speak to my working-class credentials, not so much the sailing out of the Royal Perth Yacht Club! I have mentioned dad a few

times, but I have never mentioned the fact that he used to sail in the Sydney to Hobart Yacht Race. Dad kept sailing, actually. He is 81 years old. Dad kept sailing until about eight years ago, when he was about 73 years old, when he had open-heart surgery. He was a surfer and a sailor. His surgeon said to him, “You have to give up the surfing now that you’ve had open-heart surgery.” Dad said, “I don’t want to give up the surfing; is it okay if I give up the sailing instead?” His surgeon said that he should probably give up both, but it would be okay if he gave up the sailing. Dad had to give up sailing in about 2011. He kept surfing; he is still surfing, so he is going okay. He is a lot fitter than I am! He enjoyed the footy last weekend. Anyway, dad raced in the Sydney to Hobart Yacht Race five times between 1994 and 2004.

Most members here will remember only too well the tragedy of the 1998 Sydney to Hobart Yacht Race, which dad participated in. The Sydney to Hobart Yacht Race starts at midday on Boxing Day. It is a great day for sport in Australia, with the Boxing Day Test match being played in Melbourne and the Sydney to Hobart Yacht Race starting in Sydney. It starts at the Cruising Yacht Club of Australia, and the yachts all sail out of the heads. On Boxing Day in 1998, there were about 115 yachts at the start of the race, and they ranged in size from *Berrimilla*, which was about 10 metres long or about 33 feet, which is a bit bigger than the *Spray* I have the benefit of sailing on every now and then. At 33 feet, that yacht was the smallest. From talking to dad, I know that is a very small yacht to be competing in the Sydney to Hobart Yacht Race. The largest yacht was *Sayonara*, which was 24.1 metres or 75 feet. There was a favourable current running south at four knots, with strengthening north to north-easterly winds of generally 25 to 35 knots prevailing off the New South Wales southern coast, and as they headed south, they were setting a record-making time. It was a record-breaking dash down south along what is called the run line—the line down towards Mallacoota on the Victoria–New South Wales border. By early morning on 27 December 1998, the lead yachts entered Bass Strait and began to encounter winds in excess of 40 knots. Of the 115 boats that started, 71 retired and 44 completed the race; that is, almost two-thirds of the yachts that started the race retired. Outright victory went to *Sayonara*, skippered by American Larry Ellison. The 35-foot *AFR Midnight Rambler* skippered by Ed Psaltis won on handicap. Never before had a boat of its size reached the entry to Bass Strait in less than a day, which demonstrated the strength of the winds.

On the second day of the race, 27 December 1998, severe weather conditions struck the fleet off the coast of south eastern Australia. An unusually intense low-pressure depression developed that resulted in unseasonal mid-summer snow across parts of south eastern Australia. The weather system built into an exceptionally strong storm with winds in excess of 65 knots, or 118 kilometres an hour, or 73 miles per hour—force 12—and gusts of up to 80 knots. The rising storm caused the sinking of five yachts, seven were abandoned and 55 sailors had to be rescued from their yachts by ships and helicopters. Overall, the rescue efforts involved 35 military and civilian aircraft and 27 Royal Australian Navy vessels and proved to be Australia’s largest ever peacetime rescue operation.

Tragically, six sailors died during the 1998 Sydney to Hobart yacht race. They were—I will get their names right for the purposes of *Hansard*—Phillip Charles Skeggs and Bruce Raymond Guy, who were on the *Business Post Naiad*; John Dean, James Lawler and Michael Bannister, who were on *Winston Churchill*; and Glyn Charles, who was on *Sword of Orion*.

In the aftermath, the Cruising Yacht Club of Australia, the club based in Sydney Harbour that organises the race, released the report *Findings and recommendations of the 1998 Sydney to Hobart Race Review Committee*. The report listed a multitude of recommendations and resulted in changes for future Sydney to Hobart races and yachting events around the world.

There was also a coroner’s inquiry. The NSW Coroner’s inquest into the deaths was critical of both the race management at the time and the Bureau of Meteorology. The results of the inquest were released on 12 December 2000. Then New South Wales Coroner, John Abernethy, found that the Cruising Yacht Club of Australia had “abdicated its responsibility to manage the race”. He wrote —

From what I have read and what I have heard, it is clear to me that during this crucial time the race management team played the role of observers rather than managers and that was simply not good enough.”

He acknowledged the club’s actions to upgrade safety precautions and sailor qualifications. Coroner Abernethy also criticised the Bureau of Meteorology for making insufficient efforts to inform race officials of a dramatically upgraded weather forecast about the severe storm developing south of Eden, which is a little north of Mallacoota. It is on the New South Wales south coast north of Mallacoota where the rhumb line hits land, from which sailors sail further on and out into Bass Strait. The forecast was common public knowledge when the race was scheduled to begin. As a remedial measure, he required the bureau to add maximum wind gust speed and wave heights to its forecasts.

The day after the coroner’s findings were released, the then club’s race director, Phil Thompson, resigned his position. According to the Coroner’s report —

Mr Thompson’s inability to appreciate the problems when they arose and his inability to appreciate them at the time of giving his evidence causes me concern that he may not appreciate problems if they arise in the future.

That was the inquiry and outcome of the 1998 Sydney to Hobart yacht race.

The yacht that my dad was on did not make it to Hobart that year. It limped into Eden, which, as I said, is on the New South Wales south coast. I was aged about 21 years at the time. Dad flew to Hobart to catch up with other sailors who made it into Hobart, and we as a family flew down to meet up with him. He told us the most incredible stories of those at Eden at the time. A great camaraderie developed amongst the sailors because of what they had experienced. Ocean racing is an exciting sport, and many great stories can be shared.

Most of the boats that pulled out of the race had to pull into Eden as the nearest safe harbour. Dad tells a story of one crew member who watched as one of his crewmates went over the side of the yacht they were on. He grabbed hold of him to try to bring him back onto the boat. He held onto the life jacket, and watched as his crewmate slid out of the life jacket and slipped into the waves. He was absolutely devastated watching his crewmate float away. Miracle upon miracles, the lost crewman was found and reunited with his crewmates in Eden. You think about what would have been going through people's minds at this time.

When I look at this legislation and the then minister's second reading speech, and the emphasis placed on things like life jacket carriage, life jacket wearing beyond 400 metres from shore and GPS-enabled EPIRB or personal locator beacon carriage beyond 400 metres, I am reminded of dad's tales as a competitor in the Sydney to Hobart. These are safety mechanisms and implements put in place so that when people confront such circumstances that were unprecedented and unknown and to a certain extent unforeseeable, the necessary equipment is in place to ensure people's lives can be preserved. Although it may provide discomfort or annoyance to people in checking them regularly and ensuring that they are up to date and compliant with regulations and the code and all of the rest of it, I say to those people: reflect on the tragedy of the 1998 Sydney to Hobart and be thankful that we are fortunate enough to live in a society that places emphasis on ensuring that if people are undertaking dangerous activities, we put in place measures to ensure they take care of their personal safety.

Although I have stood up in this house many times as a former workers compensation and industrial lawyer and talked about how important it is to be safe in the workplace, I take this opportunity to stand up and say that it is equally important to be safe when engaging in recreational activity. Whether that is on a boat with Hon Bob Kucera sailing from Hillarys Boat Harbour to Rottnest or competing in the Sydney to Hobart, these are important reforms and a testament to the work of this government and the former and new minister. I have no hesitation in congratulating both the government and the minister and commending this legislation to the house.

MR D.A.E. SCAIFE (Cockburn) [4.37 pm]: I rise to make a contribution on the Marine Safety (Domestic Commercial Vessel National Law Application) Bill 2023. I think in many ways the member for Mount Lawley and I are ill-suited to lead debate for the government on this bill, as neither of us is known for our sea legs or vast knowledge of maritime industries, although at least my electorate is not landlocked. The member for Mount Lawley probably knows more, having acted for various parties in the maritime industry previously, which is one thing I never did—fortunately or unfortunately, depending on how you look at it.

I start on the same note as the member for Mount Lawley by congratulating the Minister assisting the Minister for Transport on bringing this bill to the chamber. This is the minister's first bill since his elevation to cabinet. I congratulate him on that elevation. It is well deserved. He has been a friend and colleague for some years now, and it is a very wise choice by this government to put him in this role. It is certainly something the people of Western Australia will reap the benefits of.

I listened with interest to the member for Mount Lawley's contribution as he talked us through the constitutional issues that make a bill like this necessary. One thing that makes it appropriate for the member for Mount Lawley and me to contribute to this bill is this bill adopts the method of applying the national law based on the model used in the Legal Profession Uniform Law Application Bill 2021 that we debated last year.

It is basically a mechanism that the state Parliament uses to create legislation that can effectively be automatically updated, bringing it into line with any changes made at a commonwealth level without requiring the Parliament to sit and pass a new bill, which is obviously a fairly cumbersome process. A concern raised about that type of model in the past was that it detracts from the sovereignty of the Western Australian Parliament. Members should not be concerned about that because the capacity remains under legislation such as this for the Legislative Council to move a disallowance motion to disallow changes that have occurred at the commonwealth level from filtering down into state legislation. That is one area in which this bill overlaps with the experiences of the member for Mount Lawley and me.

I want to pick up on a point that the member for Mount Lawley spoke about at some length—that is, the way in which marine industries and recreation are really part of the social fabric of Western Australia. There are lots of different ways in which that is the case, whether it comes from the fact that we are a trade-dependent economy that relies on international shipping of iron or wheat through to recreational pursuits on water. I have several clubs in my electorate that reflect our love of being on water. The Jervoise Bay Sailing Club is one and the Cockburn Power Boats Association is another.

As the member for Mount Lawley said, this bill will essentially account for the regulatory gap caused by the constitutional split of powers between the states and the commonwealth. The commonwealth relies on the corporations power and the external affairs power to make legislation and regulations in respect of vessels that are operated and owned by corporations and vessels that are transiting national and international waters but they do not allow it to make laws in respect of vessels that are owned and operated by someone other than a corporation, which might be a natural person, a partnership or an unincorporated association, and those vessels that are operating only in Western Australia's domestic waters. This bill will help to close that gap. It would not be sensible for Western Australia to operate legislation in that gap because, as the member for Mount Lawley said, it comprises only about eight to 10 per cent of all commercial vessels and they are mainly owned by Western Australian government departments.

I note that some smaller commercial vessels and vessels used for recreation only are deliberately excluded from the commonwealth law. This includes vessels that are operated by organisations such as clubs and schools, and inflatable craft that are hired out for whitewater rafting. That is important because, as I have said, I have a number of clubs in my electorate that might own and use vessels but operate them close to shore only. I want to reassure those clubs that the WA Department of Transport will continue to regulate those vessels. If the vessel is used by, say, Marine Rescue Cockburn, it may continue to be regulated by the WA Department of Transport. Obviously those clubs have long-established relationships with people at the Department of Transport and it is important for them to have certainty that they will continue to deal with the same people.

I also want to speak about the way that this bill will enable the government to move forward with reforms on the safety of on-water activities. 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. That review has been subject to wide public and industry consultation. It will require 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 will also introduce an option for electronic night signalling devices in lieu of the traditional use of pyrotechnic flares.

The two areas I have just touched on—that is, the law as it relates to clubs that own and operate vessels in our nearshore waters and ensuring everybody's safety when they are on water or participating in water-based activities—are really important. They are really important to people in my electorate because, as I have spoken about before, Deputy Speaker, Cockburn is one of the best coastal precincts in Western Australia, certainly in the Perth metropolitan area. Members will have heard me say that many times before and I will keep saying it because it is true. I know that under the former Premier there was a suggestion that Rockingham was the best foreshore in the metropolitan area. I can say that that is absolutely untrue. Coogee Beach is the place to be and that was validated in a list of Australia's top beaches just a year or two ago. I think a beach in the electorate of the member for Albany was also listed as a top beach. It was Misery Beach, was it not?

Ms R.S. Stephens: Yes.

Mr D.A.E. SCAIFE: The unfortunately named Misery Beach.

Ms R.S. Stephens: It's so the tourists don't go there.

Mr D.A.E. SCAIFE: It is a clever scheme by the residents of Albany to name one of the top beaches in Australia Misery Beach. I will not make any comments about why my electorate is called Cockburn to try to keep people away from it! At least that got a laugh out of a couple of people.

Ms H.M. Beazley: You're terrible, Muriel.

Mr D.A.E. SCAIFE: I am terrible, Muriel.

Cockburn is such a good recreational and maritime precinct, from Coogee Beach to Woodman Point to Jervoise Bay, because it hosts several excellent marine and coastal-based organisations. They are largely volunteer based and do a lot for the Cockburn community. I have had a lot to do with them since I was elected in 2021 and I want to acknowledge the work that they have done. These organisations do important work keeping us safe while we are enjoying the beach, water sports, fishing and other marine recreational activities.

The first organisation I want to mention is the Coogee Beach Surf Life Saving Club. It is one of the great organisations that I have just mentioned that operates on the Cockburn coast. I was very pleased to be with the club last year celebrating its twentieth birthday. It was founded in 2002 under the direction of founding members Daryll Smith, Ken Hodgkinson, John Bate, Scott and Michelle McKee, and Sandra Winter. About 10 years ago, the club moved into a brand new facility with funding from various tiers of government including the state government. Even though the club is only 20 years old and the facility is about 10 years old, people would not know it is such a young club because it is large and very well established. It has grown so much and is easily one of the best surf lifesaving clubs in the state. The club operated out of what was effectively a tin shed on Coogee Beach for its first 10 years, and it is a real credit to the founding members of the club who drove the campaign for a new facility. They got buy-in from

local and state governments, and, I think, also the federal government to get that facility over the line. It is a facility that the club now enjoys. People can be a social club member and enjoy the facility as well.

On 20 May this year, I attended the club's annual awards night. It was another great night down at the club. There are great views of the Indian Ocean from the function area. We were there to celebrate the end of yet another successful season with the passionate members of the club. I was particularly pleased. I put on record my appreciation for the members of the club, Simone Blom and Jim Coubrough, who received distinguished service medals at that event and were recognised for their service to the club. Simone helps run the Starfish Nippers program at the club that ensures that children with a disability can participate in surf live saving as capably as any other kids. In fact, Simone was the first person from the club whom I met. I met her while I was doorknocking during the election campaign. She introduced me to the club, and I am indebted to her for her friendship and the support that she has given me at the club. Congratulations to Simone on receiving her distinguished service medal.

Jim Coubrough is a former Navy diver. He is known to the member for Warnbro; the Minister for Police. I understand that Jim is called "Snakes" by his old Navy mates and the Minister for Police. Jim has carried out a range of roles over the years at the club, from age group manager to trainer. The Coubrough family are well known to me and much appreciated by me for their support in the community. I very much appreciate Jim and the role he plays at the club, and congratulate him also on receiving the distinguished service medal.

I also congratulate some of Coogee Beach's younger members who were recognised at the Surf Live Saving WA Nipper and Youth awards. I give big congratulations to Maya Coleman, Tadhg Brian and Lachlan Olive. I thank them for their hard work and for representing Cockburn and Coogee Beach Surf Life Saving Club so well.

As I said earlier, the club has grown enormously and it is very successful. The Nippers and other programs are hugely popular, and are almost always at capacity. That is thanks to the hard work of the club executive, and I acknowledge them. I give a big thank you to the officers of the Coogee Beach Surf Life Saving Club, and in particular president, Aaron Patton; vice-president of club operations, Darren Spencer; director of finance, Meiling Sparrow; director of administration, Jackie Snelgar; director of member development, Elise Stallard; director of life saving, Patrick Rivers; and director of club development, Dave Lanfear.

I will tell a quick story about Patrick Rivers, who is the director of life saving at the club and a great bloke. As proof of our method of doorknocking, either last year or the year before, I knocked on the door of this lovely family and spoke to a woman called Kath, and had a great conversation with her. Only a few hours later, I went to that year's Coogee Beach Surf Life Saving Club awards. I was sitting in my chair and I turned around, and sitting in the chair behind me was the woman I spoke to that night. She turned out to be Kath Rivers, Patrick's wife. I properly met Patrick and Kath at those awards. There you go: doorknocking works! I met Kath on the doors that afternoon. I had not put it together, and then met her again about six hours later in a capacity supporting Patrick through the club—so a special mention to Patrick and Kath Rivers.

The second organisation that I want to speak about for its commitment to marine safety is the Cockburn Power Boats Club, which was one of the first community groups to reach out to me after I was elected as member for Cockburn. It is a not-for-profit organisation that encourages recreational boating in Cockburn. It is a very old organisation founded in 1961. In 1981, it moved to its current site at the Jervoise Bay marina. It offers members a variety of different supports and activities, including fishing, cruising, sailing and social events. Members of the club have access to club launching ramps, secure parking, dedicated boat-washing facilities, a fish cleaning station and annual or temporary boat pens. The club also aims to ensure its members understand and comply with regulations and laws for boating safety. I know that this bill will be of interest to the club, given the role it plays in that respect. Interestingly enough, the club also participates in something I am told is called a "Pirate Raid". Maybe this is relevant to safety on water. I am not sure that we should be encouraging pirate raids in our near shore waters, but it is a social tradition within the club, in which they dress up as pirates and storm other clubs to steal a treasure chest. It sounds like big kids' activity to me, and it sounds like a lot of fun.

[Member's time extended.]

Mr D.A.E. SCAIFE: The club has been very proactive in the space of regulations of our maritime recreational activities and safety. It is always proactive in educating its members about the latest regulations, whether those are boating or fishing regulations. I was very pleased to host the Minister for Fisheries with the club's executive to discuss the government's consultation about the commercial fishing ban. I also hosted the club's executive to discuss with the Minister for Fisheries the development over time of Westport and how to make sure that we minimise impacts on the social and environmental values of Cockburn Sound. This is a great club with a strong membership base, and it has always taken a keen interest in the local community, whether that is providing recreational opportunities, educating people about safety or preserving our precious Cockburn Sound. I acknowledge the club's executive—Stephen Knight, the commodore; the vice-commodore, Brent Fletcher; first rear commodore, Don Beisley; the second rear commodore, Tim Carson; and treasurer Rhyss Whittred. I also acknowledge committee members

Peter Montague, Malcolm Tull, Paul Chatterley and Mark Glew. Finally, I acknowledge the general manager and Yangebup local, John Tissott. Thank you very much to the club and the club's executive for the work that they do.

The third group I want to mention, and perhaps most relevantly to this bill, is Cockburn Marine Rescue. Cockburn is very fortunate to have a dedicated volunteer marine rescue organisation. It was formerly known as the Cockburn Volunteer Sea Search and Rescue Group, but it now operates as Marine Rescue Cockburn. It was formed out of members of the Cockburn Power Boats Club, when it realised in 1975 that there was a need to provide dedicated assistance to boaters in Cockburn Sound who might have run into trouble. The power boat club started a roster using its own boats, and over time that matured and developed into the former Cockburn Sea Search and Rescue Group, now Marine Rescue Cockburn. It is almost 50 years since the marine rescue began operating. I am very pleased to let the house know that last year, the vessel *Assure* was handed back to Marine Rescue Cockburn after receiving \$300 000 worth of refurbishments from the Department of Fire and Emergency Services. Its headquarters are in Henderson, next door to the Cockburn Power Boats Club, demonstrating the long relationship between the two clubs. It has the crew facility and boatshed at Woodman Point to attend to vessel issues in Cockburn Sound and beyond. The area that it covers is roughly from the Kwinana grain terminal through to the South Fremantle power station. It is a big, busy area for recreational boaters and fishers. It attends jobs such as capsized vessels and vessels that have run aground. I was actually out with the organisation when it got a call-out from a vessel with the wrong fuel in the engine, and had run into some trouble as a result. It deals with all sorts of things. It is entirely volunteer based and really dedicated, because it is available 24/7 all year round. It works very closely with water police and other marine rescue groups, such as the Fremantle Marine Rescue Group. I really appreciate the efforts that they put in to keep people who live and recreate in Cockburn safe. I thank Commander Brett Barbarich, and members Don Boshoff, Josh Carson, Colin Holmes and Bradley Marston. I also acknowledge that Cockburn Marine Rescue was awarded at the City of Cockburn's Cockburn Volunteer Organisation of the Year awards last year. I was there on the night and I congratulated them then, but I want to formally congratulate them again in Parliament for their efforts.

The final club that I want to pay tribute to is the Jervoise Bay Sailing Club. This is a great club. It is quite distinctive compared with sailing clubs around Australia. It is essentially an old workers' club. It was formed in 1977 by workers at the Jervoise Bay shipyards. Whereas a lot of sailing clubs are usually formed by the upper crust of society, this was an old workers' sailing club that came out of the shipbuilding yards. Obviously, shipbuilding has been a large part of the Cockburn economy for a long time. I certainly welcomed the state government's \$87.6 million worth of upgrades to the Australian Marine Complex, which included the new vessel transfer path, intersection upgrades and a major extension to the wharf. Those are all great things for our community. They complement that long history of shipbuilding in Cockburn that led to the founding of the Jervoise Bay Sailing Club. The club sails in Owen Anchorage, which is protected by Woodman Point, so it has unobstructed breezes and flat water. I was very pleased to attend the season opening day. I helped launch the season in October last year, and I am looking forward to doing the same this year. I might have a bub in tow when launching the season this year.

Winter racing kicks off this Sunday, 25 June. I wish the club the very best for its winter racing season. I want to acknowledge the club for hosting Seeds for Snapper events. Seeds for Snapper is a seagrass restoration program, which involves divers collecting fruit from seagrass. They bring it ashore and place it in tanks that are located at the sailing club. Once the fruit is ready to drop seeds, the divers distribute them in Cockburn Sound as part of efforts to rehabilitate the seagrass meadows. Real credit goes to the sailing club for being involved in those activities. I also want to recognise Councillor Kevin Allen, a current councillor for the City of Cockburn. He was a committee member of the club from 1975 to 1986. Between the 1970s and 1990s, Kevin won a number of state championships—the Hobie 16 class in 1977 and 1979; the Nacra 5.2 metre class in 1980, 1982, 1984 and 1986; and the Space Sailor 22 class in 1994. Kevin went on to represent Western Australia at five Australian national title events, finishing in the top three in four events. He was the national winner of the Nacra 5.2 metre class in 1985. In 1982, the Western Australian Minister for Recreation presented Kevin with a state representative sports award. In 2004, he was one of the inaugural inductees in the City of Cockburn's Sports Hall of Fame. I am really pleased to recognise Councillor Kevin Allen on the parliamentary record.

Turning back to the sailing club, it obviously relies on volunteers during the summer and winter seasons to facilitate its activities. In that respect, I want to acknowledge the work done by Commodore Kim Lindsay; Vice Commodore Ben Maslen; Treasurer Geoff Deacon; Flag Officer Sail, Bevan Chrimes; Flag Officer House, John Sawin; secretary Arnold Kaars; and also committee members Ash Rowley, Grant McIntosh, Stephen Goodlet and Nilson Correa.

That gives members a bit of a tour of the various clubs that are active in the marine space in Cockburn and the various clubs that will have a great understanding of the issues that this bill raises and will really support the government in taking a sensible approach to regulating our marine safety for commercial domestic vessels. As a large nation, a nation with a great history of seafaring and trade, both domestically and internationally, it is clear that we need proper and effective national regulation of our commercial domestic vessels. This bill really does the job by essentially allowing a mechanism to fill that regulatory gap that the commonwealth cannot fill by virtue of the

separation of powers between the states and the commonwealth. It is also part of that harmonising objective across the various states and territories and the commonwealth where we can make sure that we have a consistent approach. That means that commercial operators can anticipate the same regulatory approach regardless of which jurisdiction they might be travelling to or from or from where they might be operating.

This is really the state government delivering on a commitment that it made as part of the COAG process, which has now been replaced by the national cabinet process. It is important that Western Australia delivers on those types of agreements that have been reached at a national level. I would hate to see Australia go down the path of the United States where states are doing all sorts of different, weird and whacky things. There is no consistency between jurisdictions. We are fortunate to have a much smaller number of states and territories in Australia. One of the things we have been quite successful at is harmonising our various laws, whether that is in things like work health and safety, national uniform legislation for the legal profession, as I mentioned at the outset, or commercial and domestic vessel national laws. As I said, that has benefits to industry in anticipating and dealing with a consistent set of regulations. It also has benefits to government because, as I said, the state government and the state Parliament would have to make laws in respect of eight to 10 per cent of commercial vessels, most of which are operated by the WA government. In this case, rather than managing that standalone scheme for a relatively small number of vessels, the state government can use that harmonised national law, which will automatically be updated where it is updated at the commonwealth level while still preserving the ability of the WA Parliament to intercede and disallow part of that national law if it chooses to do so.

This is a very important bill and something that my community in Cockburn will appreciate, even if it might not know the technical details of the bill. I congratulate the minister again on his efforts and on his first bill to be brought to the chamber. On that note, I am very pleased to commend the bill to the house, commend the minister for his work and commend the government.

MR R.S. LOVE (Moore — Leader of the Opposition) [5.07 pm]: I rise on behalf of the opposition to respond to the Marine Safety (Domestic Commercial Vessel National Law Application) Bill 2023 and indicate that the opposition will be supporting the legislation that has been proposed. I would also like to join with others who have noted that the minister who introduced this bill was the Treasurer; Minister for Transport but the new Minister for Ports is apparently now taking carriage of this. I congratulate the minister on his first appearance as a minister guiding legislation through the house. Well done and congratulations to you.

As we have heard from other members, the main purpose of the bill is to bring a national approach to the regulation of marine safety in relation to domestic commercial vessels. A COAG agreement was signed off in 2011, which was the genesis of much of this. I note that, in fact, New South Wales passed its relevant legislation way back in 2012; Victoria, Tasmania and South Australia in 2013; and even the Northern Territory in 2013; whereas Queensland passed its legislation in 2016. Western Australia is about 10 years later than most other jurisdictions. The minister will no doubt be able to shed some light on why that was. I think Western Australia generally is quite jealous of its prerogative and perhaps there was a little bit of state pride in not wanting to be involved until now. I wonder whether the safety issues involved in the Horizontal Falls situation played into some of the discussions about the need to harmonise and to get on and get this law passed so that we can take that responsibility away from Western Australian regulators and prevent any future dispute around jurisdiction. I note from the briefings that we received and information in the explanatory memorandum that only five or 10 per cent of commercial vessels will be affected by this bill, so it makes sense to harmonise and allow one regulatory body to have control over all those areas.

We know that the bill will repeal provisions of the Western Australian Marine Act 1982 that are no longer required due to the commencement of the commonwealth national law and make consequential amendments to affected Western Australian statutes, including by removing references to the commonwealth Navigation Act 1912, which was repealed at the same time that the commonwealth national law was put in place. We have heard that the bill will also modernise part of the Western Australian Marine Act to ensure that compliance and enforcement provisions are as consistent as practicable for both recreational and commercial vessels, update standards and penalties, and close 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. This will enable the completion of the government-initiated regulatory inquiry, the recreational vessel safety equipment review. As a boat owner, I was aware that changes had been mooted and discussions had taken place between various groups, but with the introduction of this bill we have learnt that regulatory hurdles had to be overcome before the matters outlined in the review's *Final position paper*, dated October 2021, could be implemented. The minister could perhaps outline some detail around what that hurdle was and how it will be overcome by this change. The *Final position paper* has a handy chart on page 17 showing what is required on different vessels when in protected or unprotected waters—that depends on how far they operate offshore et cetera. There are size differences, differences for adults and children and some differences around the type of waters and the distance vessels operate outside certain areas. I raise that in particular because the member for Cockburn talked about some activities of his local volunteer

marine rescue service. These matters are very important to the work of volunteer marine rescue services because they mean that the appropriate equipment will be on board vessels. For example, it makes it easier to find someone if an EPIRB is operated or the person has checked in by radio. I note the work of volunteer marine rescue services right across the state. Many people have returned safely from misadventure on the seas because of the brave actions of those organisations and the people within them. In my own electorate, services at Dongara, Leeman, Jurien Bay and Lancelin all contribute greatly to ensuring the safety of the boating community. Voluntary marine rescue services mainly support recreational boaters, who are kept safe because of their activities. This legislation will apparently enable the recommendations of the review to be implemented.

This bill is a uniform legislation bill. The mechanism to apply the national law in part 2 of the bill is based on what is used in the Legal Profession Uniform Law Application Act 2022 and the Fair Trading Amendment Act 2022. As I noted, all other states and territories have passed similar legislation, many over a decade or so ago, so we are now catching up.

Late notice of some amendments was transmitted to me yesterday from the minister's office. These amendments relate mainly to publication of information in the *Government Gazette* or on the Western Australian legislation website; that seems to be the issue. The minister was kind enough to provide some instruction to some of my staff today; I could not attend myself because I had other duties. My staff were assured in that briefing that there is nothing too serious within those changes, so I cannot see any issue with us supporting those late amendments. I question the effect of that notification and whether that will make it less likely that people will know of changes if they are published on the website and not in the *Gazette*, but the minister will no doubt be able to enlighten me a little bit on those matters.

I note that the explanatory memorandum refers to Henry VIII provisions. On page 5, the explanatory memorandum states —

As the WA Marine Act has not had a significant review in 40 years, the Bill contains numerous amendments to reflect changes in drafting style and to correct minor typographical errors.

Some provisions which might be described as 'Henry VIII clauses' are present in the Commonwealth National Law. For example, section 165(2) of that Act provides that transitional regulations may have effect despite anything else in Commonwealth National Law. This clause was necessary to allow for transitioning for vessel owners and operators, particularly during the first few years after the Commonwealth National Law commenced.

Under the heading "Definition of 'vessel'" it states —

The proposed definition of 'vessel' in section 3 of the WA Marine Act could be characterised as a 'Henry VIII clause' as it allows regulations to specify that a prescribed class of thing is or is not a class of vessel for the purposes of the definition of vessel.

There are a few issues, but I have been assured by the minister's office that this bill will go to the Standing Committee on Uniform Legislation and Statutes Review to be examined. The committee will no doubt look at those issues, such as the Henry VIII clauses. The fact that the bill will go to a committee provides some assurance that the 123 clauses of the bill will be appropriate and can be supported. It is very important that it goes through that committee process, and I understand that it will do so.

I also note what was said when other states introduced this law. There are some interesting similarities between what we are doing and what was done in other states. The second reading speech of the then Victorian Minister for Ports seems to be very similar to the second reading speech given here. I will pay tribute to Mr Hodgett, the former Victorian Minister for Ports, because extensive parts of his speech were reproduced verbatim in the Minister for Transport's second reading speech. He certainly must have crafted a very good speech because there are many, many similarities, especially in the early part of the speech. I will quote from his commentary about regulatory control on all commercial vessels in Australian waters, including the certification of vessels and crew and controls and equipment operations. The paragraphs that follow are pretty much verbatim to what has been laid out in the second reading speech here in Parliament, even to the point that halfway through the first page of the Western Australian second reading speech, it says —

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.

So said our minister. It is very interesting that in the Victorian speech 10 years ago that minister said —

Today Victoria has around 1465 domestic commercial vessels on our waters.

The vessels are found in various parts of Victoria. He goes on to say —

The vessels 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 to members of the public.

Instead of saying “happily”, he said “pleasingly”. He continues —

Pleasingly, the safety performance of this commercial fleet is generally good and I note that incidents, including those involving deaths and injuries and other serious consequences like major property damage and environmental impacts, are thankfully rare.

It is good that we have legislation that so closely mirrors the legislation that was introduced in Victoria 10 years ago and that we have a speech that so closely mirrors the introductory speech of that legislation 10 years ago. I suppose that if something is pretty good, it does not necessarily need to be changed. Perhaps we could have some further instruction in the minister’s second reading reply regarding just how effective the Victorian legislation has been seeing that our minister quoted so widely from that speech and obviously has an understanding of how effective that legislation has been. Have any issues been identified over the 10 or so year journey of the Victorian legislation that might instruct us for our purposes to ensure that this will be a smooth introduction, or were matters highlighted that we will need to do differently than was done 10 years ago in Victoria, 11 years ago in New South Wales and 10 years ago in all other states bar Queensland?

With that, I reiterate that the opposition will support the legislation, especially some of the matters around ensuring the update of the safety regulations for boat operators and pleasure craft within Western Australia. That is very important and needs to be undertaken. I look forward to the minister’s response.

MR D.R. MICHAEL (Balcatta — Minister assisting the Minister for Transport) [5.23 pm] — in reply: It is a pleasure to rise to round out the second reading of the Marine Safety (Domestic Commercial Vessel National Law Application) Bill 2023. I thank members for their kind words, given that it is the first piece of legislation I have done this for, albeit that I did not introduce the bill into this house. I thank the members who spoke today. The member for Mount Lawley spoke first. I thank him for his kind words. He talked about the national law and the agreement that happened in 2011, and about Western Australia’s obligations under that agreement, especially to deal with those gaps to resolve the constitutional issue between the state and federal governments. That will enable vessels to operate seamlessly between the states and territories under the commercial vessel law. He also talked about the mechanism that will be used to implement the national law in Western Australia, which is based upon his experience with the legal profession uniform law and the fair trading bills that have gone through this place in recent years. He then went through his extensive nautical experience. He talked about being on the water to Rottnest Island with Hon Bob Kucera, the member for Forrestfield, Hon Matthew Swinbourn and me a couple of years ago. He also spoke of his experience with the odd trip out of Royal Perth Yacht Club. He then talked about the serious matter of the 1998 Sydney to Hobart Yacht Race in which his dad was involved. The member recognised those who lost their lives in that race and spoke about the severe conditions they had to go through. The aftermath of that race included some safety recommendations. He also highlighted the need for our state to ensure that all craft on our waters have modern and maintained safety equipment, which obviously this bill will do.

I thank the member for Cockburn for his kind words. He talked about the method of applying the national law. He also talked about the mechanism that allows the amendments to the national law to be reflected in Western Australia’s law while still retaining parliamentary sovereignty and allowing the Legislative Council to disallow those laws. He talked about the gap vessels, which we think is somewhere between eight and 10 per cent of the vessels in Western Australia, and that they will be captured by this bill. Primarily, they are vessels that operate on inland waters and are owned by either unincorporated entities or the Western Australian government. Obviously, the Department of Transport and the police are the main owners of those vessels. He spoke also about the importance of having consistent safety regulations across that last eight or 10 per cent of vessels that the federal government’s laws will not cover. We know that the member for Cockburn very much loves his electorate, like most members in this place. He talked about his seat and having the best foreshore and the best beach—Coogee Beach—and the good work the Coogee Beach Surf Life Saving Club does. As someone from the northern suburbs, I am sure those beaches are on par with Scarborough Beach and Trigg Beach in the City of Stirling and some of the other northern suburbs beaches. The member talked about the excellent work they do and the need to update the Marine Act, which this bill will do, having not been updated significantly in 40 years, especially in regard to safety. He talked about some other clubs, including the Cockburn Power Boats club, and about the important work done by Marine Rescue Cockburn in his electorate and on the coast, which is a group that has existed for 50 years in Henderson. He also mentioned the seagrass program run by Jervoise Bay Sailing Club. That sailing club gives back to the community by helping the environment. He also talked about the benefits of having national uniform legislation to industry and the commercial

sector, obviously, and the commercial benefits to the government by not having a dual system of safety legislation, and he also mentioned the safety benefits to the community.

I thank the opposition for its support for this important bill and I thank opposition members for their kind words. The Leader of the Opposition talked about the importance of having a national approach to marine safety. He mentioned the 2011 Council of Australian Governments meeting at which this all started. He spoke about the other states. I think New South Wales introduced its legislation in 2012, which was pretty soon after the COAG meeting. We are introducing our legislation a little bit after that. I think we are the last state to introduce this legislation. The reason for the delay is that the bill had been on the government's legislative agenda since 2017 and its drafting was well underway when the COVID pandemic caused other legislation on the government's agenda to be prioritised. It was then necessary to change the drafting of the bill from mirror legislation to applied legislation following the consideration and passage of the Legal Profession Uniform Law Application Act 2022, which applied a national law for the first time in Western Australia using the same mechanism as is in this bill. Although it was impossible to foresee the problems that would arise as a result of the gap coverage of the commonwealth national law, these problems have increased over time, and it may not be possible to determine whether a vessel is in the gap until an incident occurs or a court determines it as such as the required data on legal ownership and areas of operation may not be known by the department. The inefficiencies, risks and inequalities for operators have become increasingly clear as more gap vessels become known to the department, so the need to apply the national law in WA has accordingly become more urgent. Due to the outdated and complex nature of WA's marine legislation, significant consequential amendments and drafting resources were required.

On the delay and Western Australia being the last state, another explanation probably could be that to be prudent our state has waited to see how this has operated in other states; the Leader of the Opposition mentioned Victoria. My understanding is that the federal Parliament has made amendments to the national law several times since 2011, which will be captured in what we are doing here today. The member may want to be kind to Western Australia, because I understand drafting on this occurred during even the Barnett government under the former model of how we did national laws. But it is great to have the legislation come to Parliament today so we can get going on it.

The member talked about the gap vessels I mentioned. It very much makes sense to harmonise regulations. It is important for us to modernise the Western Australian Marine Act for both recreational and commercial vessels to close loopholes, especially with the second phase of the safety and equipment review. The Leader of the Opposition wanted some information on regulatory hurdles and the impact of a possible Henry VIII clause. The ability in proposed section 3(2) to specify via regulations that a class of craft is a vessel or, alternatively, is not a vessel will be crucial to the operation of the amended WA Marine Act. One reason it is needed is to put beyond doubt that the government can quickly regulate various types of novel craft that appear in state waters. It is very similar to the national law's definition of "vessel" in section 8(3). If regulation 12 of the national law regulations specifies that a particular type of craft is not a vessel, it will be outside the scope of the national law. If WA cannot specify that it is a vessel in its own regulations, it will be in a regulatory gap between the two regimes. High-risk craft such as those with high-powered engines and of high speed should be regulated to reduce the risk to themselves and other water users.

Craft that may be specified as vessels include, but are not be limited to, amphibious craft—when they are used as vessels on water, they should be subject to the laws applying to vessels—canoes and other paddle craft to align with the national law; electric hydrofoil boards, which can be high powered, high speed and high risk; and types of personal watercraft such as motorised surfboards, motorised body boards and those with an aerial device or a ducking hull attached, to put it beyond doubt. It is not possible to list every type of vessel in a section 3 definition of "vessel". Even if it were possible, it is not possible to amend the act each time a new type of high-risk craft emerges. New types of novel craft are emerging more and more frequently and by the time the act could be amended, one may have already been involved in a serious incident due to the lack of application of speeding, closed waters or safety equipment provisions. For instance, the lack of specificity in the current definition of "vessel" requires consideration of the UK common-law definition, which excludes craft smaller than rowboats and which are not of a traditional concave shape. For instance, UK courts do not consider craft such as submersibles and personal watercraft with aerial-attached propulsion systems to be vessels. There needs to be consistency between the operation of this act and the national law; otherwise, some high-risk craft in WA waters will not be regulated at all.

It is important for the state to have a statutory framework to regulate such craft when desirable. The ability to specify in regulations that a class of crafts is or is not a vessel will not be used carelessly or without consideration. The department regularly consults its stakeholders and peak bodies, such as the Boating Industry Association of WA, Boating Western Australia, Yachting WA and the Western Australia Police Force, to ensure its compliance and enforcement tools are adequate, targeted and do not overreach. In addition, the Minister for Transport will need to provide approval to specify in the regulations that any particular classes of craft are vessels, and these regulations will be tabled in Parliament and subject to normal disallowance provisions. It is not intended to specify that all craft that are capable of navigation of water are vessels under the regulations. For instance, surfboards, aquatic

toys and stand-up paddleboards are considered to be low risk and may not be specified as vessels unless they have a motor attached.

The only other comment the Leader of the Opposition made was to do with the introduction and debate of the bill in the Victorian Parliament. I am very glad that he has worked out how to use Google from time to time! I thank the Leader of the Opposition for his support generally on this bill and the opposition's support. It is obviously an important bill for the state and those thousands of Western Australians who get out on our rivers and oceans every weekend. It is very important to have a seamless experience and safety regulations for our commercial vessel sector.

I thank the Minister for Transport for introducing this bill and the amazing work that she does in the transport portfolio. I thank the Department of Transport staff and the staff in both my office and the Minister for Transport's ministerial office. I am told that the Department of Transport staff have probably had some sort of draft of this bill going since 2011, so I am glad those who have worked on it for so long are here to see it, hopefully, pass this chamber today.

As I said, it is a very important bill for our state and I commend it 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: Short title —

Mr R.S. LOVE: Minister, I will just make a brief point at clause 1 that, as I said, I understand that this bill will go through the Standing Committee on Uniform Legislation and Statutes Review. Can the minister confirm that will be the case? I think that will lead to some consideration of how in-depth we need to go to tonight.

Mr D.R. MICHAEL: That is correct.

Clause put and passed.

Clauses 2 to 6 put and passed.

Clause 7: Tabling amending Acts —

Mr R.S. LOVE: This provision is around the tabling of amending acts and the fact that they can then be scrutinised by the other place. Clause 7 requires an amending act to be laid before each house of Parliament within 18 sitting days of the day on which the act receives royal assent. At the end of the explanatory memorandum it says —

It will be the responsibility of the Department of Transport to ensure that amending Acts are tabled in the Western Australian Parliament. Parliamentary Counsel's Office is not proposed to monitor amendments to the Commonwealth National Law.

How can the government ensure, and what process will be in place in the department to ensure, that there will be constant monitoring of these matters and appropriate tabling?

Mr D.R. MICHAEL: Before going to federal Parliament, all amendments would go to an infrastructure and transport ministers' meeting, so there would be some heads up and it would be up to the department to make recommendations to the minister to have them tabled in Parliament.

Clause put and passed.

Clause 8 put and passed.

Clause 9: Commencement of provisions of amending Acts —

Mr D.R. MICHAEL: I move —

Page 7, lines 29 and 30 — To delete “published in the *Gazette* —” and substitute —
published —

I can speak to that if the member would like me to.

Mr R.S. LOVE: This is one of a series of amendments to do with the matter of publication and how we will publish. If we just work through this one a little bit, we will probably not have to interrogate much else. Could the minister explain what the amendment and the form of publication will be, and whether there will be any effect on the ability of the Parliament and the community to understand that the change has been made?

Mr D.R. MICHAEL: I will move a number of amendments in consideration of this bill, including this one, in response to the impending commencement of the Legislation Act 2021 on 1 July 2023. That act will relevantly

provide that the Interpretation Act 1984 be amended at section 41 to provide that when a written law confers power to make subsidiary legislation, all subsidiary legislation made under that power may be published on the WA Legislation website as an alternative to publication in the *Government Gazette*. Accordingly, this amendment replaces reference to proclamation being “published in the *Gazette*” with “published”, as it may alternatively be published on the WA Legislation website.

In practice, Parliamentary Counsel’s Office will publish all proclamations on the WA Legislation website from 1 July.

Mr R.S. LOVE: To be clear, they will not be published in the *Gazette*, but only on the website. Is that what we are hearing?

Mr D.R. MICHAEL: That is correct. I understand that it will happen for every piece of legislation from 1 July onwards.

Amendment put and passed.

Mr D.R. MICHAEL: I move —

Page 8, lines 6 and 7 — To delete “published in the *Gazette*,” and substitute —
published,

Amendment put and passed.

Clause, as amended, put and passed.

Clause 10 put and passed.

Clause 11: Tabling of amending Act taken to be publication for Standing Orders —

Mr R.S. LOVE: This clause clarifies that commonwealth amendments tabled in each house of Parliament under clause 7 will be taken to be published for the purposes of any standing orders that provide for the referral of instruments to a committee established by either house of Parliament. Can the minister tell me whether there would be a standard referral to a committee under the standing orders of both our houses today?

Mr D.R. MICHAEL: The Standing Committee on Uniform Legislation and Statutes Review delivered its 133rd report in August 2021 on the Fair Trading Amendment Bill, which has been assented to. That bill contained the identical application provisions in relation to the commonwealth Australian Consumer Law. That report identified that the disallowance mechanism proposed in the bill would impact upon the parliamentary sovereignty and lawmaking powers of the WA Parliament because once a disallowance motion was moved, there was nothing in the bill to trigger a debate on the disallowance motion and the commonwealth amending law does not come within the terms of reference of any Legislative Council standing committee and would not be automatically scrutinised by a committee. This would also apply to the bill before us; however, like with the Fair Trading Amendment Bill 2021, the government considers that the application mechanism proposed by this bill is a necessary compromise between upholding parliamentary sovereignty and the efficacy of the national law as applied to all domestic commercial vessels.

Following the committee’s report on the legal practice and fair trading bills, standing order 67(1) was changed in February 2022 to remove the word “statutory” so that commonwealth amending acts and regulations can be scrutinised by the committee. Clause 34 of the bill provides for a review of the act five years from commencement. The effectiveness of the national law is reviewed on an ongoing basis by the Maritime Agencies Forum, a subcommittee of the Infrastructure and Transport Senior Officials’ Committee. The Maritime Agencies Forum comprises government representatives from each state and territory and was established to ensure that the national law continues to reflect best practice and deliver intended outcomes.

Clause put and passed.

Clauses 12 and 13 put and passed.

Clause 14: Publication of legislative instruments made under Scheduled Law —

Mr D.R. MICHAEL: I move —

Page 10, line 9 — To insert after “in the *Gazette*” —
or on the WA legislation website

Amendment put and passed.

Mr R.S. LOVE: I have a question about the timeliness of publication on the website as opposed to in the *Government Gazette*. How will that change? Will it be more instantaneous when it is put on the website, and is that seen as being less ridden with process? Will it be quicker?

Mr D.R. MICHAEL: My understanding is that it will be more expedient and easier to find.

Clause, as amended, put and passed.

Clause 15: Tabling and disallowance of legislative instruments under Scheduled Law —

Mr D.R. MICHAEL — by leave: I move —

Page 10, line 18 — To delete “in the *Gazette*”.

Page 10, line 24 — To delete “in the *Gazette*”.

Page 11, line 9 — To insert after “in the *Gazette*” —

or on the WA legislation website

Mr R.S. LOVE: Clause 15 refers to disallowances. Will it have a practical effect on the disallowance procedures in the other house?

Mr D.R. MICHAEL: No. There will be no change to the disallowance procedure. It is just the gazettal.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 16 to 24 put and passed.

Clause 25: Functions and powers conferred on Commonwealth officers and authorities —

Mr R.S. LOVE: Clause 25 is one of a number of clauses that deal with commonwealth officers and authorities. I use this clause as a discussion point on that handover or sharing of authority because the explanatory memorandum states —

Subclause 25(2) requires a Commonwealth officer or authority to act, in performing a function or power conferred by this section, as nearly as practicable as the officer or authority would act in performing the same function or power in relation to the corresponding provisions of the Commonwealth administrative law.

Can the minister explain in general terms what would be judged as nearly as practicable as the officer or authority operating under a different law or regime?

Mr D.R. MICHAEL: If I have this right, proposed section 24 refers to the application of commonwealth administrative laws and the training of officers has to be done under those administrative laws.

Clause put and passed.

Clause 26: Fees payable to officers or employees of State acting as delegates —

Mr R.S. LOVE: This clause relates to fees and fines. I note that, again, the explanatory memorandum explains that although there is no need for this power at the moment because of the changes to how service delivery will be charged, it is believed it is required in case there is a change to the current service delivery arrangements, as I think it is referred to. Can the minister outline the changes that would need to take place for those service delivery arrangements to be changed? Would that be by regulation or a statutory change or is it simply a policy matter?

Mr D.R. MICHAEL: It would be done in the unlikely scenario of those powers being taken back by the state by agreement between state and federal ministers. This clause would allow for that unlikely scenario.

Clause put and passed.

Clause 27 put and passed.

Clause 28: Fines, fees, other money not otherwise payable to State —

Mr R.S. LOVE: This clause states —

(1) All fees, penalties, fines and other money that, under the applied provisions, are authorised or directed to be payable by or imposed on any person (but not including an amount ordered to be refunded to another person) must be paid to the National Regulator.

(2) Subsection (1) does not apply to any fees referred to in section 26.

These are the fees that we just discussed that may be charged in the event of a change. Will they always be completely discrete fees, or would there be a point at which a percentage is paid to the state and a percentage is paid to the national regulator? How would that be apportioned?

Mr D.R. MICHAEL: As this is an applied law, the fines will be paid directly to the regulator.

Clause put and passed.

Clauses 29 to 32 put and passed.

Clause 33: State regulations —

Mr R.S. LOVE: Clause 33 will enable the government to make regulations about any matter required or permitted by this bill. Does this refer to safety regulations for recreational vessels or regulations for something completely unrelated or not foreseen at the moment by the bill?

Mr D.R. MICHAEL: It is included as it was part of the model law, but the state has no intention to make any regulations in the foreseeable future.

Clause put and passed.

Clause 34 put and passed.

Clause 35: Transitional regulations —

Mr D.R. MICHAEL — by leave: I move —

Page 22, line 4 — To delete “*gazettal*” and substitute —

publication

Page 22, lines 5 and 6 — To delete “in the *Gazette*,” and substitute —

on the WA legislation website;

Page 22, line 16 — To delete “*gazettal*” and substitute —

publication

Page 22, line 23 — To delete “*gazettal*” and substitute —

publication

Page 22, line 26 — To delete “*gazettal*” and substitute —

publication

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 36 to 38 put and passed.

Clause 39: Section 3 amended —

Mr R.S. LOVE: This particular clause has a lot of definitions and the like. The second reading speech outlined the definitions of “vessel” and mentioned a United Kingdom common-law matter, which is also mentioned in the explanatory memorandum. I want to understand the implications of the current situation and get a bit more information around how this will improve upon the current situation.

Mr D.R. MICHAEL: It will allow Western Australia to appropriately regulate what the state believes needs to be regulated, or, if it is a vessel, based on its safety profile. In the current day, this means we will be able to keep on top of emerging technologies.

Mr R.S. LOVE: I am interested in the common-law situation. Will this provision replace that so that common law will no longer have any implications for deciding whether a thing is a vessel?

Mr D.R. MICHAEL: The common law will remain, but this will allow the state to override it, especially on those current matters for things that we think are vessels that are not covered by the common-law definition.

Mr R.S. LOVE: Until that is actually specified, would it be covered? The government would have to constantly review the definitions and redefine the definitions on a periodic basis, but in the meantime, would the common law apply?

Mr D.R. MICHAEL: To put it beyond doubt, the basic definition of “vessel” is clarified in this clause. As the need arises, to override the common-law definition, the state can make regulations and include new definitions relating to technology. Given new technology and so forth, we do not know what the next motorised vessel may be, so the regulations can be changed.

Mr R.S. LOVE: Would this be done in a uniform way with other jurisdictions or is it purely a matter for Western Australia to consider?

Mr D.R. MICHAEL: I am told that the state is working with the other states. We are leading the way in doing this consistently through the novel craft working group as part of the Australian Recreational Safety Committee.

Mr R.S. LOVE: Can the minister tell me more about the novel craft working group?

Mr D.R. MICHAEL: The novel craft working group assesses emerging craft and the definitions surrounding them to get consistent regulations across all the states.

Mr R.S. LOVE: Does the novel craft working group meet regularly and does it meet anywhere near the central coast of Western Australia?

Mr D.R. MICHAEL: The novel craft working group meets online via Teams. Because all states are involved, it meets quarterly at the moment.

Clause put and passed.

Clause 40: Sections 3A and 3B inserted —

Mr R.S. LOVE: I read clause 40 as closing a bit of a loophole. The explanatory memorandum states —

Section 6 of the National Law permits the continued operation of a range of State ‘waterways management’ and related laws, including laws such as those adopting the International Convention for Prevention of Collisions at Sea, speed limits and closure of waters. It is necessary to ensure that vessels subject to the National Law’s construction, crewing and operational requirements remained subject to State waterways management laws.

Can the minister explain how the interaction between those two regimes will work and why this will be an effective way to ensure that that potential loophole is closed?

Mr D.R. MICHAEL: Clause 40 obviously takes into account not only the application of the national law, but also allows the state to retain waterway safety matters at the same time for the same vessels.

Clause put and passed.

Clause 41 put and passed.

Clause 42: Part II replaced —

Mr R.S. LOVE: Clause 42 is quite a large section that includes most of the powers that will be granted under this legislation. It probably warrants a little discussion, although I think the committee will probably go into it in more detail to ensure there is nothing untoward in it.

Proposed section 8, “Requiring master of vessel to answer questions about vessel’s nature or operations”, states —

- (1) An inspector may require the master of a vessel —
 - (a) to answer questions put by the inspector ...
 - (b) to produce for inspection any books, records ...

There is a penalty for that proposed subsection. By way of discussion, as a number of other clauses include penalties, can the minister outline why that penalty is in the legislation? Will it be set at the commonwealth level from now on? How will that penalty be changed et cetera?

Mr D.R. MICHAEL: Clause 42 is the other part of the bill that amends the Western Australian Marine Act 1982. It is a modernisation of the act. This is not from the national law. Any changes to these penalties would require a further amendment to the Western Australian Marine Act.

Mr R.S. LOVE: I am aware that it related to the Western Australian Marine Act. Will the penalty be considered at a uniform level? Is the government looking at what other states are doing or is it uniquely Western Australian? How will the government set these penalties? What is the time period in which the government expects it might look at its appropriateness again?

Mr D.R. MICHAEL: The department conducts regular reviews of enforcement provisions, which includes looking at fines and fees in other jurisdictions. Again, when a change is needed, those changes will be brought in as an amendment to the Western Australian Marine Act, making sure that the penalties are changed across the entire act, not just in one provision or to one fine. The department checks other jurisdictions when reviews are undertaken.

Mr R.S. LOVE: Do the powers that are being granted loosely or exactly mirror the ones that are available under the national regulations? Are they uniquely Western Australian or are they similar to those in other states but not identical to those of the commonwealth?

Mr D.R. MICHAEL: They align loosely with the national act, but it is a Western Australian model. I am told that it has been structured to align with the Criminal Investigation Act.

Mr R.S. LOVE: Will the powers of the inspector apply to all vessels, whether they be commercial or non-commercial, in the same way as they would if they were national operating laws; and, if so, will the provision requiring a master of a commercial vessel to provide information, for instance, be the same as that for someone taking a 10-foot tinnie down the Swan River?

Mr D.R. MICHAEL: Yes; it will apply to both, unless otherwise specified in the Western Australian Marine Act.

Mr R.S. LOVE: I am looking at proposed section 7 of the Western Australian Marine Act on page 32 of the bill. Will the power to board a vessel apply even if the vessel is someone’s home, such as a houseboat or yacht or some

other vessel that the person lives on? Will it be treated differently if it is a person's house as opposed to a boat that is occasionally used?

Mr D.R. MICHAEL: It will apply to all vessels, whether or not someone is living on it.

Mr R.S. LOVE: Proposed section 13 on page 38 refers to the powers of inspectors in relation to premises. Can the minister explain what sorts of premises they will be? Will there have to be some connection between the premises and a boat or cargo? What restrictions will stop an inspector from going onto any premises in Western Australia?

Mr D.R. MICHAEL: It is important to note that under proposed section 12, "Entering premises", an inspector may enter premises only if they have reasonable grounds for suspecting there may be evidential material on the premises. Under proposed subsection (3), an inspector cannot do that unless it is with the consent of the occupier or it is done under a warrant.

Clause put and passed.

Clause 43 put and passed.

Clause 44: Sections 57 and 58 replaced —

Mr R.S. LOVE: Clause 44 will delete sections 57 and 58 and insert a definition of "unsafe vessel". It states —

unsafe vessel means a pleasure vessel or prescribed vessel that is likely to endanger any person for any reason, including because of —

- (a) the condition ...
- (b) the manner ... in which ... the vessel is stowed ...
- (c) the nature or condition of anything on the vessel ...
- (d) the overloading of the vessel; or
- (e) the number of its crew or the qualifications of its crew or master.

This would, by nature, involve stopping or boarding the vessel. How would this matter proceed? The sections that are being replaced relate to the matter of stopping and boarding et cetera. Can the minister explain how this will be different from the current situation?

Mr D.R. MICHAEL: Clause 46 seeks to insert proposed section 58B, which provides that it is an offence if a person operates an unsafe vessel. Clause 49 seeks to insert proposed section 61, which provides that the chief executive officer may detain a pleasure vessel or prescribed vessel and bring it, or cause it to be brought, to a port or another place if they believe on reasonable grounds that the vessel is an unsafe vessel.

Clause put and passed.

Clauses 45 to 47 put and passed.

Clause 48: Section 60 amended —

Mr R.S. LOVE: This clause seeks to delete "person in charge" and insert "master" and to delete the penalty and insert a penalty of a fine of \$5 000. Again, we are looking at \$5 000 fines in this provision. Can the minister explain to me why the penalties are \$5 000? It also pertains to clause 46, so we could have talked about the same thing on that clause. Why is this considered to be a sufficient penalty at this time? I would have thought that overloading and the like are quite serious matters.

Mr D.R. MICHAEL: All the penalties within the act were reassessed. This is one that will be changed; it will go from \$1 000 to \$5 000. The assessment was done based on risk.

Clause put and passed.

Clause 49: Sections 61 to 64 replaced —

Mr R.S. LOVE: Clause 49 will delete sections 61 to 64 and insert new sections. I will not go through the whole lot of what the bill says there. On proposed section 61, the explanatory memorandum states —

As detention of domestic commercial vessels is regulated by section 101 of the National Law, section 61 applies to pleasure and prescribed vessels only.

There is a bit of divergence between the two pieces of legislation. The explanatory memorandum goes on to say —

Unlike the National Law, the grounds for detention are limited to where the chief executive officer has reason to believe the vessel is unsafe.

Can the minister explain the divergence between the two regimes in this case?

Mr D.R. MICHAEL: From a state point of view, the department thought it was necessary for the CEO to determine whether to detain a pleasure or prescribed vessel, again based on risk, whereas under the national law, a prescribed officer can detain. Obviously, commercial vessels can have more risk attached to them, so that was the divergence.

Mr R.S. LOVE: Proposed section 61(1) states —

The chief executive officer may detain a pleasure vessel or prescribed vessel and bring it, or cause it to be brought, to a port or to another place that the chief executive officer considers appropriate, if the chief executive officer believes on reasonable grounds that the vessel is an unsafe vessel.

For the benefit of all those people who have a boat that is being repaired or rebuilt and is sitting in a boat lifter somewhere, can the minister give an assurance that the CEO will not be marching up and down the slipyards picking any vessel that might not be seaworthy at the moment but could conceivably be put in the water at some point in the future?

Mr D.R. MICHAEL: Obviously, the intention is that this proposed section will apply only to operating vessels. I take the Leader of the Opposition back to the definition of “unsafe vessel”, being a vessel that is likely to endanger any person for any reason. Obviously, if a vessel is being repaired or rebuilt, it is probably less likely to endanger a person for any reason.

Clause put and passed.

Clause 50: Section 66 amended —

Mr R.S. LOVE: Clause 50(5) is of interest because of the heading “Closure of waters”. The explanatory memorandum states —

Clause 50 amends section 66, which allows waters to be closed in an emergency or for safety reasons, is amended. The title is now simply ‘Closure of waters’, as the term ‘navigable waters’ is not necessary and not defined.

Why is this clause needed? Surely, if it is not navigable, it is not really an issue that would affect anything within this legislation. Why has the government decided to make that specific change?

Mr D.R. MICHAEL: I am told that the term “navigable” is not defined, so this is part of modernising the language so that everyone can understand it.

Clause put and passed.

Clauses 51 to 68 put and passed.

Clause 69: Part VI replaced —

Mr R.S. LOVE: The minister can correct me if I am wrong, but I think this is the clause that will close the regulatory loophole that existed around equipment, vessel descriptions and the like. For the benefit of the chamber, could the minister explain exactly how this will benefit the situation? It is something that I support so I will not interrogate it in any great depth, but for the benefit of the chamber, I ask the minister to explain what it means and why it needs to be in this bill.

The ACTING SPEAKER (Ms M.M. Quirk): You have hit an iceberg, minister!

Mr D.R. MICHAEL: Proposed section 99 deals with the regulations required for pleasure vessels and prescribed vessels that are not captured within the national law. I think the member might have been referring to improvements or regulation powers around safety. That will be in amended section 114.

Clause put and passed.

Clause 70: Part VII replaced —

Mr R.S. LOVE: I must admit that I was a bit surprised to see this clause when I was reading through the bill. Seaplanes —

Mr D.R. Michael: The Catalinas!

Mr R.S. LOVE: Yes.

Can the minister explain the interaction between the national marine regulator and the regulator for air safety? Where will the exact level of responsibility begin and end for seaplanes under this legislation?

Mr D.R. MICHAEL: It is likely that the provisions listed in section 102(b) of the Western Australian Marine Act would cover a seaplane about to land on, but is not yet on, the water, as the act of flying a seaplane includes the process of landing on water until it comes to rest. The jurisdiction of these provisions would cover the seaplane at

some point before it hits the water; this will probably be determined by the purpose of the provision. For example, if the provision was about avoiding collisions between vessels, that purpose would require the regulation of the seaplane before it hits the water. However, the exact point may be determined only by a court. The national law excludes seaplanes.

Clause put and passed.

Clause 71 put and passed.

Clause 72: Part VIII Division 1 inserted —

Mr R.S. LOVE: Clause 72 has quite an extensive provision dealing with the protection of information and the like. There are probably a few questions there to assure people about how this information will be stored and why, and what protections will apply to people's information, given that the Department of Transport has had some issues with inquiries into matters such as the transport executive and licensing information system used for drivers' licence information. What assurance can the minister provide that information collected will be stored appropriately? Will there be a regular check on the appropriateness of that storage and who may access that information? A number of named people can call for that information. How regularly will the minister be updating and ensuring that the information is kept secure?

Mr D.R. MICHAEL: Information protection and disclosure provisions are an essential feature of road laws in Western Australia, but marine laws have been silent on this important issue. This bill will introduce information protection insurance provisions for the first time. Authorised Department of Transport staff will be able to access information held by the Western Australia Police Force and authorised WA police staff would likewise be permitted to access Department of Transport information. I am told that there will be continual improvements to the department's very strong systems of holding information, and continual audits into the use of those systems. Improvements to other processes relating to TRELIS information are ongoing.

Mr R.S. LOVE: Does the legislation provide authority for the CEO or others to share information with overseas organisations and authorities?

Mr D.R. MICHAEL: Proposed section 110 refers to the definition of a relevant authority in terms of the exchange of information. Proposed section 110(1)(a) refers to —

a Commonwealth or interstate authority or an overseas authority with the function of granting marine qualifications;

It refers to an overseas authority, but it is a very limited class of authority. Proposed section 110(2) on page 95 refers to the limitations of what information can be shared.

Mr R.S. LOVE: Proposed section 111 is entitled "Disclosure of information to prescribed persons for authorised purposes". Is there a list of prescribed persons to whom this will apply or will that list be developed in the future? If there is a list, can the minister give example of some persons who might be prescribed under that proposed section?

Mr D.R. MICHAEL: They will be developed in the regulation-making process. As some of these provisions are modelled on WA's road laws, there will probably be a provision similar to what already exists in WA's road laws.

Mr R.S. LOVE: I am thinking of organisations such as the department of fisheries and the Department of Primary Industries and Regional Development and the like. Would the expectation be that they would be granted that information? That would seem to be logical.

Mr D.R. MICHAEL: That is correct, member.

Clause put and passed.

Clause 73 put and passed.

Clause 74: Section 114 amended —

Mr D.R. MICHAEL: I move —

Page 102, lines 4 and 5 — To delete "in the *Gazette*." and substitute —
on the WA legislation website.

Amendment put and passed.

Mr R.S. LOVE: This is the clause through which the recommendations from the safety review that was undertaken will be enacted. Is this a blank canvas? Is there an existing range of regulations that had some status before the legislation changed that made it difficult to amend the regulations, as I understand it? Can the minister explain what the hurdle was to making those regulations before? What will the effect of this be to enable those regulations?

If there are residual regulations, will they be set aside? Is there a completely rewritten suite of regulations around this area?

Mr D.R. MICHAEL: The change is to include proposed section 114(1A)(b), which will —

regulate or prohibit water-related activities of any kind on or in all or specified State waters;

Previously, those powers to make regulations were about a vessel. This change will allow some safety improvements to be made for things like kitesurfing. That is the main change here.

Clause, as amended, put and passed.

Clauses 75 and 76 put and passed.

Clause 77: Section 115A amended —

Mr D.R. MICHAEL: I move —

Page 107, line 17 — To delete “\$1 500.” and substitute —
\$5 000.

I am happy to speak to that if the member would like me to.

Mr R.S. Love: Yes.

Mr D.R. MICHAEL: This amendment to clause 77 will change the maximum penalty from \$1 500 to \$5 000. It is required to remedy an inconsistency in the bill whereby the maximum penalty allowable for a breach of a condition of exemption to a provision of the WA Maritime Act 1982 is \$1 500 under section 115A, yet the maximum penalty for a breach of a condition of an exemption to a provision of the regulations made under that act will be \$3 000 under proposed section 114(2)(aa). It is a fundamental principle of statutory construction that delegated legislation cannot reach beyond the powers of the enabling act. As both the section and proposed section also have other functions, the simplest way to remedy this inconsistency has been agreed to with the Parliamentary Counsel’s Office, which is to increase the maximum penalty allowable under the act for such a breach. The increase to \$5 000 is consistent with the other maximum penalties in the legislation.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 78 put and passed.

Clause 79: Sections 116 to 118 replaced —

Mr R.S. LOVE: Clause 79 deals with inspectors and authorised persons. Proposed subsection 117(1) states —

The chief executive officer may, by instrument in writing, designate an officer of the Department or any other person to be an inspector or authorised person for the purposes of specified provisions of this Act.

Is it envisaged that those other persons would all be public officers of some sort or could a designated person be a private contractor or some other individual?

Mr D.R. MICHAEL: There will be no change to the current situation. Officers could be, as is done now, officers from the Department of Primary Industries and Regional Development, police, fisheries and the like.

The ACTING SPEAKER (Ms M.M. Quirk): The minister—member for Moore!

Mr R.S. LOVE: I am getting there!

The answer is that they would all be officials of some sort from another government agency. Is that guaranteed or is it just past practice?

Mr D.R. MICHAEL: For many reasons, including governance, that is the agency’s intention.

Mr R.S. LOVE: It is not a guarantee but an intention. That is fine.

I move to proposed section 118, “Identity cards”. Proposed section 118(2) states —

An identity card must —

(a) be in a form approved by the chief executive officer;

It also refers to the digital image of the person. Will there be public information about what an identity card will look like so that people will know whether or not the person is a genuinely authorised person? If someone is unsure, could they seek information about whether it is an inspector with the powers that will be granted under this legislation?

Mr D.R. MICHAEL: There will be no change to what happens currently as there will be no new identity cards. Currently, identity cards are used. I note that is an offence under the Criminal Code to impersonate a public officer.

Mr R.S. LOVE: Will there be nowhere that a person can go if someone knocks on the door and says, “I want to inspect your vessel?” to ensure that the credentials that have been presented are genuine?

Mr D.R. MICHAEL: Each card has an individual code on it and a person could ring the department to verify that code.

Clause put and passed.

Clauses 80 to 98 put and passed.

Clause 99: Part X Division 2 inserted —

Mr D.R. MICHAEL — by leave: I move —

Page 124, line 18 — To delete “*gazettal*” and substitute —

publication

Page 124, line 20 — To delete “in the *Gazette*,” and substitute —

on the WA legislation website;

Page 125, line 3 — To delete “*gazettal*” and substitute —

publication

Page 125, line 12 — To delete “*gazettal*” and substitute —

publication

Page 125, line 16 — To delete “*gazettal*” and substitute —

publication

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 100 to 123 put and passed.

Title put and passed.

House adjourned at 7.04 pm
