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

Third Reading

MR D.R. MICHAEL (Balcatta — Minister assisting the Minister for Transport) [10.52 am]: I move —

That the bill be now read a third time.

MR M.J. FOLKARD (Burns Beach) [10.52 am]: I rise to speak to the Marine Safety (Domestic Commercial Vessel National Law Application) Bill 2023 at its third reading. Marine safety is of paramount importance for any state with a significant coastline, and WA is no exception with its vast coastal areas and maritime activities. The Western Australian government has taken proactive measures over the years to improve marine safety and implement crucial reforms to safeguard both human lives and the marine environment. Those reforms include regulations, technology advances and training programs.

The relationship between the state and federal governments in marine safety is based on the principle of cooperative federalism. Although the federal government has overarching authority, it recognises the expertise of local knowledge of the state governments. This cooperation allows for the collaboration and consultation between levels of government to ensure that the interests of individual states are taken into account in the development and implementation of marine safety policies. This bill will do exactly that.

Coordination between the states is a crucial aspect of the Australian maritime safety reforms. Although the Australian Maritime Safety Authority operates at a national level and plays a significant role in setting and enforcing marine safety standards, the responsibility for implementing those standards often lies within the individual states and territories. Effective coordination between the state and federal governments is essential to ensure consistent implementation of enforcement of marine safety measures across the country and to ensure enhancement of emergency responses.

To facilitate this coordination, the federal government developed national standards and guidelines through AMSA to serve as a framework for marine safety across the country. Those standards cover varying aspects of vessel safety, navigation, crew training and emergency responses. This bill will enhance that. The state can align its regulations to national frameworks, promoting consistency and clarity in the marine safety requirements and environment by enforcing uniform standards. Efforts have been made to harmonise state regulations and legislation concerning marine safety to enhance coordination. State governments will work together to ensure that the laws and regulations align with national standards set by AMSA. This harmonisation will help to avoid inconsistencies or gaps within safety measures to create a more cohesive and effective marine safety network. The national standards for life jackets is the best example of this.

Information sharing is a vital aspect of the relationship between state and federal governments in marine safety. Timely and accurate exchange of information between the levels of government is critical for effective decision-making, policy development and coordinated responses to maritime incidents. Information shared may include vessel registrations, safety inspections, instant reports, enforcement actions and emerging safety threats. Robust information-sharing mechanisms, such as databases, communication networks and reporting systems facilitate the relevant data between the state and federal authorities. This is critical, particularly when dealing with marine incidents, and I have dealt with several over many years.

Coordination between the states involves collaboration between multiple agencies responsible for marine safety in these states. Those agencies include maritime and port authorities, environmental agencies, emergency response organisations and law enforcement. Regular communication and collaboration amongst those agencies facilitate exchanges of information and joint planning and coordinated response efforts in case of emergency incidents. The Western Australia Police Force is the lead agency in response to maritime search and rescue in this state. States conduct joint exercises and training programs to strengthen coordination and enhance their collective capabilities in response to maritime incidents. Those exercises simulate real-life scenarios involving multiple agencies from different states, fostering inter-agency collaboration, improving coordination during emergency situations. Agencies can identify areas of improvement, refine response strategies and enhance the ability to work seamlessly through joint exercises. Oil spill exercises are a good example. The relationship between AMSA, the Western Australia water police and local police is critical to search and rescue incidents that occur at a local level. I have used the databases of Western Australia Police Force and AMSA in a previous lifetime.

Information sharing plays a critical role in coordination between the states. Timely and accurate exchange of information about vessel movements and safety inspections is critical. Information sharing needs to be instant. The only way that can occur is through networking with AMSA, and having systems for it to reach out at a local level. The relationship and information sharing between the state and federal governments are critical to the effective implementation of marine safety measures throughout Australia.

The Australian Constitution grants the federal government specific powers in relation to maritime matters while state governments retain the jurisdiction over certain aspects of marine safety. The Australian Maritime Safety Authority is the overall umbrella body, whereas the states do the physical on-the-ground work. Therefore, coordination and collaboration between these levels of government are essential to ensure consistent, comprehensive marine safety practices across country. Coordination between the states to the policy development and review processes is critical. States collaborate with the federal government and each develop and review marine safety policies, regulations and guidelines. This legislation will create that consistency from the national level to the state level to on the ground. The collaborative approach ensures that policies address the diverse needs and circumstances of different states while maintaining a consistent approach to safety standards. Regular reviews allow for adjustments and improvements based on lessons learned and emerging technologies and changing safety standards. The best example of that is satellite location devices, which are now mandatory. Bringing these things together also means that state can engage industry stakeholders and the local community. States collaborate to develop industry guidelines, codes of practice and safety campaigns that are applicable nationwide. The best example of this is, again, personal flotation devices, or lifejackets in plain language. By working together, the states can pool resources, share best practices and deliver consistent safety messages to the public—if you go out on a boat, wear a lifejacket; it ain't rocket science. The collaboration fosters a sense of collective responsibility for marine safety and ensures that industry practice is aligned to a national safety framework. If a commercial boat taking tourists crosses the border, and the best example is up north where tour boats go from Darwin to Broome, there is a consistency in the safety requirements for those vessels.

State and federal governments collaborate on various aspects of marine safety. This includes joint planning and policy development and the harmonisation of regulations. That is important because if things are consistent across the country, we will achieve the best outcomes on the water. Best practices are shared by conducting joint exercises and training programs. Collaboration takes place through formal channels such as intergovernmental meetings, working groups and committees focused on marine safety, but the best collaborations are on the ground with people talking to another. Regular communication and consultation foster a collaborative approach allowing for the sharing of knowledge, experiences and resources. State and federal governments will share responsibility for compliance with and enforcement of the marine safety regulations, while AMSA will oversee the overall compliance framework at a national level. State governments are responsible for the day-to-day enforcement activities within the jurisdiction. In WA it will be our water transport inspectors and our police. This will improve conducting safety inspections, issuing licences and permits, and taking enforcement actions against noncompliant operators.

Easter is probably the time of the highest recreational and commercial boat usage in this state. I remember when I was in Kalbarri, we used to carry out safety inspections. It was a little tick-and-flick exercise, but we were looking for flares that were in date and complied with the national standard, which is what we are referring to, and that the vessels all had personal flotation devices, lifejackets, and they were in date and up to standard.

This piece of regulation will allow for national conformity so when people experience recreation time out on the waterways, they do so in a safe manner. Regular coordination and information sharing between the state and federal authorities will ensure a consistent and effective enforcement regime. Effective coordination between the states is essential for the successful implementation of marine safety reforms in Australia. Harmonisation is a key of this bill. I have spoken about joint exercises. By working together, the states can enhance their collaborative approaches and capabilities, ensuring consistent safety standards to provide a safe and secure maritime environment for all water users in WA.

In conclusion, the relationship and information sharing between the state and federal governments on marine safety is essential for the development and implementation of effective marine safety practices in Australia. Through cooperative federalism, regulative coordination, information exchange and collaboration, the resource allocation to these levels of government will work to ensure a comprehensive marine safety standard, protect the lives of mariners and preserve the marine environment. This supports sustainable maritime activity in our community. I hope this bill will be an impetus for the enforcement of zero blood alcohol content for all skippers of maritime craft in this state. We are currently not in that environment, but I hope in time we will be. This bill will ensure that there are national standards for lifejackets; for example, what is consistent in Western Australia will be consistent in South Australia and a recreational boat user will know that the lifejackets they use comply with the national standard and are safe.

It is my opinion that any person who goes out on a maritime craft should be wearing a personal flotation device, particularly in small craft. If we look back, the number of fatalities that have occurred on our coastline because people have not been wearing those safety devices is staggering. In a past life, I did several investigations into fatal boat rollovers, and on a couple of occasions, had people been wearing the proper flotation devices, they would be alive today. I did an investigation when I was the officer in charge in Kalbarri. Four gentlemen went out in a boat on Father's Day about 15 years ago. On their way back, they went fishing and the boat rolled over. We managed to save two of them fairly quickly, but I ran a major search-and-rescue operation for the other two. Using

AMSA and its formulas, we did a fairly significant search to try to locate the fourth person. I managed to get the water police and their divers to Kalbarri for the coroner's inquiry. Terry Ash, one of the local cray fishermen, took them out, and we recovered every piece of kit that was in the boat that rolled over. We brought it all back to station and utilising the witnesses and the surviving people from the incident, I was able to put the boat back together; it was like a jigsaw puzzle. We then weighed the boat. A contributing factor causing the boat to roll over was that it was overloaded with safety features. It had two lots of anchor chain, which weighed over 100 kilograms, and there were varying other safety material in the boat. There were two batteries. By the time four people got in it, the boat was overloaded, carrying too much weight. Those were national safety standards. The skipper was a lovely fellow, but he just put too much in the boat, and a small wave flipped it over, and the story is what it is.

Anyway, I commend the bill to the house and it hope will bring about these changes further on.

MR D.A.E. SCAIFE (Cockburn) [11.09 am]: It is my pleasure to rise today and make a contribution to the third reading debate on the Marine Safety (Domestic Commercial Vessel National Law Application) Bill 2023. I already made a fairly fulsome contribution to the second reading debate. Today, I will try to limit my comments to some of the discussions that we had during consideration in detail and adhere closely to the clauses of the bill. I was chatting with the Minister for Mines and Petroleum a little earlier about the boundaries of debate in a third reading debate. He and I are of the same view that, generally speaking, debate is limited to the clauses of the bill and matters raised during consideration in detail. Having said that, if members go through *Hansard*, they will see a variety of different views about what is acceptable in a third reading debate. I even found that in the House of Representatives, a Speaker made a ruling that members cannot even raise matters that were dealt with during consideration in detail during a third reading debate, because those were dealt with at that stage and debate would otherwise go on and on. That would essentially leave fairly little latitude for any debate to happen in a third reading. I will adhere to what I think is the orthodox approach and discuss some of the matters debated between the Leader of the Opposition and the Minister assisting the Minister for Transport during consideration in detail.

In that respect, the first issue I want to deal with is the use in this bill of what are colloquially known as Henry VIII clauses. This issue was raised by the Leader of the Opposition and I think it is a reasonable question to ask. The minister provided a fulsome answer on that, but I thought it was worth exploring in a little more detail, because, as the minister pointed out, clauses like the ones in this bill have been previously used in bills such as the Fair Trading Amendment Bill 2021 and we are likely to see these clauses used into the future, because they are becoming the preferred approach when dealing with national uniform laws. As members have mentioned before, it is important when it comes to issues such as fair trading and consumer law, marine vessel regulations and safety, and work health and safety that frameworks across the country used by industry, workers and unions have some level of predictability and that when moving from one jurisdiction to the next, they know they will be dealing with what is essentially the same law. For that reason, we are likely to see Henry VIII clauses used more often. I thought I would discuss the Henry VIII clause, why these clauses are used and why there is some concern about the use of these clauses.

A Henry VIII clause effectively allows the executive, via its regulation-making power, to modify the operation of legislation. It is called a Henry VIII clause because under the Reformation Parliament, Henry VIII was famously given the power to make proclamations that had the same force as legislation. The Reformation Parliament was seen as extremely deferential to the King. Parliament appointed him supreme head of the church, which he needed to move on to his second marriage, and it passed the Statute of Proclamations of 1539. That act of Parliament essentially gave parliamentary power to the executive. It gave the King the power to make laws that had the same effect as the Parliament's laws. That Reformation Parliament was seen as being highly deferential to the executive. Many people see that as a low point in the development of Westminster parliamentary democracy, because the King essentially usurped the power of Parliament to make laws. I will give some examples of why that can be a bad thing.

Obviously, one of the reasons it can be a bad thing is that it can give the executive the power to change laws, but that is only a contingent reason it can be bad, because the executive could be using Henry VIII clauses for legislative purposes. In the case of this bill, the Henry VIII clause is being used for a legitimate purpose—to ensure the speedy translation of a commonwealth amending law into state amending law. As we know, without an effective mechanism like that, we could end up with a very long delay between the commonwealth law taking effect and the Western Australian law being updated. It could take five or 10 years to happen if there are elections or other business knocks it off the agenda. That would result in the laws of the various states becoming unharmonious, and it would essentially defeat the purpose of having a national law. There is a legitimate purpose here, but members can see how it could be a problem to give the executive the power to overwrite primary legislation if that power is given too broadly. There is an example from the Australian Capital Territory whereby its Liquor Act 2010 was amended via the Liquor Amendment Regulation 2011. Section 258 of the Liquor Act 2010 in the ACT was a typical Henry VIII clause. Subsection (2) stated —

> A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.

As members can tell, that section of the legislation was extremely broad. It gave the executive the power to make provision in relation to anything that in its opinion was not adequately or appropriately dealt with. That was then used by the government of the day to delay the commencement of the various provisions of the Liquor Act. It was further used to amend another section of the Liquor Act, and so it ended up in a situation in which the actual intent of the legislature was effectively hijacked by the government. The legislature had set out a commencement date for the act and that had been changed by the executive, and the legislature had also set out how certain provisions were supposed to operate, and that was modified as well. That meant that those amendments that were made through the Henry VIII clause were not subject to detailed scrutiny by the Parliament. There was no opportunity to go into consideration in detail about those changes to the act, because it was effectively subverted via the executive process. We can see how that can create unpredictability. It can lead to a position whereby things can be inserted into the act that maybe do not reflect the initial intention of the Parliament and, as parliamentarians, we should want to avoid that when possible.

In the current case, as I said, the Henry VIII clause in this bill is being used for a particular purpose—to translate changes to the commonwealth law to the state law to ensure a harmonious national uniform law around marine vessel regulation and safety. The Leader of the Opposition raised the use of that Henry VIII clause in the consideration in detail stage, and particularly asked some questions that came out of consideration of the Fair Trading Amendment Bill 2021. This bill was referred to the Legislative Council's Standing Committee on Uniform Legislation and Statutes Review. The committee looked at a similar clause in the Fair Trading Amendment Bill 2021 and made findings that these clauses eroded the Western Australian Parliament's sovereignty and lawmaking powers.

Expanding on that, the committee explained that it eroded parliamentary sovereignty for the reason that debates on disallowances in the upper house are held under standing order 67, and that standing order refers to statutory instruments as being instruments that can be subject to disallowance motions. Because a commonwealth law is not an instrument made under a statute—for example, it is not a regulation made by a minister—there was concern that a commonwealth law would not be able to attract a disallowance motion under standing order 67. Although a member could move a disallowance motion separately, there would be no guarantee that that motion would ever come on for debate, whereas standing order 67 contains safeguards to provide that once a disallowance motion has been moved under standing order 67, it has to be debated within a certain number of days; I think it is something like 17 days. That means that a disallowance motion will be given priority on the notice paper and it will come to a vote, so the chamber is guaranteed an opportunity to debate the disallowance and either pass or reject it.

As the minister outlined, that issue was subsequently dealt with by the Legislative Council amending its standing orders, and I want to dive into why that was the case. The amendment made by the Legislative Council was to remove the word "statutory" from the standing orders, so that the standing orders now refer to an "instrument" rather than a "statutory instrument". That term was considered to be sufficiently wide to encompass both regulations made by the executive and laws passed by the commonwealth Parliament. That meant that standing order 67 of the Legislative Council could then attract a change made via a commonwealth law, which in turn meant that under standing order 67, a disallowance motion would have to come on for debate. That was a very good step taken by the Legislative Council; it meant that the criticisms made of the Fair Trading Amendment Bill 2021 would not be made of the Marine Safety (Domestic Commercial Vessel National Law Application) Bill 2023.

The Standing Committee on Uniform Legislation and Statutes Review was also concerned that a piece of legislation like this should have a standing referral to a committee. My understanding is that that issue was also fixed by the change to the standing orders in the Legislative Council, because any change by an instrument can now be scrutinised by the Standing Committee on Uniform Legislation and Statutes Review. By just tweaking the standing orders, changes to the commonwealth law that filter down into Western Australian law can now be subject to scrutiny by the committee. That removes the potential for the sort of criticism that was levelled at the Fair Trading Amendment Bill 2021.

I return to a point I made earlier: there needs to be some sort of compromise here, because we do not want to end up in a situation in which Western Australian legislation becomes completely out of sync with national legislation. That is entirely what we are trying to avoid here; it is the reason for this bill: we want to harmonise various pieces of legislation across the commonwealth and the states. We need a compromise under which we can have a mechanism by which there is an automatic update of legislation. A law passed by the commonwealth Parliament is, I think, different in character from a regulation made by a minister. At the very least, a law passed by the commonwealth Parliament has been subject to scrutiny by the commonwealth Parliament; it is not something that has just been created by the executive. It has had the involvement of the commonwealth Parliament; I accept that it has not had the involvement of the Western Australian Parliament, but it has been subjected to some scrutiny by

parliamentarians, so I do not think it should be treated in the same way as a regulation made by a minister or a proclamation made by the King, as in the case of the original Henry VIII clauses.

I will briefly touch on a second issue. A lot of the amendments the minister moved during consideration in detail were to do with the publication of legislative instruments. It was previously provided that changes would be published in the *Government Gazette*. The minister's amendments generally meant that changes to legislative instruments would simply be "published". The minister's reason for that change was that, as at 1 July, the government's practice will be to publish any changes to instruments and regulations on the Western Australian Legislation website. I will briefly comment on that to say that I think it is a really great change. It might seem like something of interest only to those of us in the chamber or to lawyers, but a foundational principle of our justice system is access to justice; people should be able to easily access the materials they need to defend themselves in court or to understand their legal obligations so they do not end up in a legal dispute. One of the things that principle requires is for the government to be open and transparent about the laws it is making. That is one of the reasons legislation in Australia is freely available on various government websites, but having been a lawyer in a previous life, I know that digging through the *Government Gazette* is not the easiest thing to do; there are all sorts of weird and wonderful things in it, including appointments to boards, regulations made by ministers and various other prescribed matters. I have gone through *Government Gazettes* in my previous life and I found it very difficult to find exactly what I needed. The *Government Gazette* is important, but it is something that really has its origins in, I suspect, the UK hundreds of years ago when the King's men hammered notices on a noticeboard outside the Palace of Westminster, or something. It is a bit of an archaic thing, so it is good that we are moving to providing these updates on the Western Australian Legislation website. That can become a sort of one-stop shop for people who want to look at legislation, regulations and other types of proclamations that are prescribed. I think that is really good. It is much more accessible. Long gone are the days when people had to go to the Supreme Court library or the Parliamentary Library to interrogate copies of legislation. I suspect many Western Australian lawyers made their living, at least in their junior years, being sent to the various libraries and having to flick through legislation. It is a great development for access to justice that things are now freely available online. I recognise that although publication on the website may seem like a fairly minor, technical thing, it is actually a small step forward when it comes to access to justice, and something that I welcome.

On that note, I reiterate the comments I made during my contribution to the second reading when I said that this is an excellent bill. It will do the important job of harmonising jurisdictions when it comes to marine vessels, regulation and safety. I would like to thank the advisers, particularly for sitting through the 50 minutes in which I contributed on this bill—a particular form of torture that nobody should be subjected to! I appreciate the work that they have done over a long time and I appreciate their work in the chamber. I congratulate the minister again for passing his first bill through this house. I commend the bill to the house.

MR R.S. LOVE (Moore — Leader of the Opposition) [11.30 am]: I want to make a brief contribution to the third reading of the Marine Safety (Domestic Commercial Vessel National Law Application) Bill 2023 and join in congratulating the minister on his carriage of his first piece of business in his capacity as Minister assisting the Minister for Transport.

I also wish to acknowledge the fine words of the member for Cockburn and his remarks on Henry VIII clauses. That means I do not have to go through those matters in any great detail. The numerous amendments made by the government reflected the member's discussion on whether matters had to be published in the *Government Gazette*. I point those who want to hear about the Henry VIII clauses that we discussed and the amendments in this area to the member for Cockburn, who gave a much more fulsome account than I probably would have. They were some of the key discussion points, but it was also pleasing to hear confirmation that this bill will be referred to the Standing Committee on Uniform Legislation and Statutes Review in the other place. We are confident that those matters will be addressed by that committee, apart from the brief discussion we had during consideration in detail on Tuesday.

Other matters discussed included the ability for the state to still make regulations in this area. There is no intention to use those regulations, but we can rely upon the regulations that the commonwealth would have imposed, particularly those relating to the ability to charge fees. Normally, the national regulator would be charged with that responsibility, but should arrangements change, the state will have the capacity to continue to raise the necessary fees. Again, we do not expect that matter to arise.

There was discussion around the definition of a vessel, the operation of the common law situation and the fact that the changes made through this bill will enable a speedier means of determining whether a new mode of marine transport is a vessel. As we know, everything is moving apace, even in other forms of transport, with the development of scooters and different means of getting about, and there are also novel forms of transport in the marine field. That is a worthwhile change and one that we discussed a little, along with the interaction about seaplanes during consideration of the bill. When I first picked up the bill, I did not expect to be reading about seaplanes. As the assistant minister pointed out, seaplanes need to take off and land, and at some point we have to determine whether

that is a marine issue, based upon the likelihood of a collision, which was one of the circumstances outlined by the minister. By the sound of it, that will not be a hard-and-fast rule.

Mr P. Papalia: That's where their lights come from—the red and green lights. They have the same lighting as a ship.

Mr R.S. LOVE: Very good.

We also discussed some of the safeguards around the gathering of information, the identification of inspectors who would be appointed and also, importantly, how this change will allow for issues that arose as part of the safety review into marine matters and have not been able to be implemented. I am talking about things like carrying emergency position indicating radio beacons, when radios and the like are needed, and closing any loopholes around the state's ability to make sure that marine markings, speed limits et cetera are all catered for. We had an interesting and worthwhile discussion during consideration in detail, when some of those matters were explained more fully than could be done in the second reading speech.

I would like to conclude my remarks by thanking both the assistant minister and the advisers who helped him during consideration in detail. I thank them for their contribution to the state in enabling this legislation to go forward. With that, I reiterate that the opposition supports the legislation. I commend the bill to the house.

MR D.R. MICHAEL (Balcatta — Minister assisting the Minister for Transport) [11.36 am] — in reply: In finalising the debate, I would like to again acknowledge the work of the Minister for Transport for bringing the Marine Safety (Domestic Commercial Vessel National Law Application) Bill 2023 to the house. As we know, the bill will bring WA into line with the other states and will give effect to the transfer of responsibility for commercial vessel safety to the commonwealth. This will provide for a seamless national regulation of commercial vessels in our state.

The bill will also modernise the Western Australian Marine Act 1982 and will ensure that the compliance and enforcement powers and penalties are consistent for both recreational and commercial vessels. It will also formalise the requirements for the use and carriage of appropriate safety equipment on recreational vessels.

I appreciate that the bill was a long time in the making but, as I mentioned in my speech on Tuesday, the delay has been somewhat prudent in that not only have we benefited from the development and passage of the application mechanism in the Legal Profession Uniform Law Application Bill 2021 and the Fair Trading Amendment Bill 2021, but also our legislation captures the amendments that have been made to the national law since 2011.

A number of people have put a great deal of effort into the drafting of this bill, and I thank all involved. I would like to again thank the speakers who contributed to the debate on this bill: the member for Mount Lawley, who spoke about our obligations under the Intergovernmental Agreement on Commercial Vessel Safety Reform signed in 2011 and also highlighted the importance of marine safety; the member for Cockburn, who spoke about the importance of having consistent safety regulations between those vessels not captured in the federal government laws and highlighted the work of Marine Rescue Cockburn, the Cockburn Power Boats Club and the Jervoise Bay Sailing Club in his electorate; and today the member for Burns Beach, who again talked about the importance of coordination of the states on marine safety. Finally, I would like to thank the Leader of the Opposition for his contribution to the debate and for the opposition's support of this bill. I am pleased to have been able to take this bill through its final steps in this house.

The ACTING SPEAKER (Ms A.E. Kent): May I add my congratulations to the minister for getting this bill through this house. Thank you very much.

Question put and passed.

Bill read a third time and transmitted to the Council.