

WESTERN AUSTRALIAN MARINE AMENDMENT BILL 2023

Second Reading

Resumed from 9 November.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [3.52 pm]: It is good to deal with the Western Australian Marine Amendment Bill 2023, particularly on behalf of all those recreational boaters out there. I will spend a bit of time during this debate talking about fishing as well as boating. I will do so because in my experience, there are probably more people out there who fish as their recreational boating pastime than simply drive around on the ocean or dive or enjoy any other activities. An enormous number of recreational boats are out there. They are a massive part of the economy. I think most of them are used for fishing. Despite the government's best attempt to restrict that on occasions, the reality is that most of them are out there fishing.

I will start with a statement that I have made a few times in this house. One of the worst jobs a member can get in government is the role of Minister for Fisheries. It is a punishment generally given to people the Premier of the day does not like because basically they are only ever the minister for killjoy. Not many ministers for fisheries announce an increase in quotas, a reduction in size limits or an increase in bag limits. I do not think I have ever seen it.

Hon Darren West: You get the parliamentary secretary to make the good announcements.

Hon Dr STEVE THOMAS: Is that what the Labor Party does? The minister delivers the bad news and the parliamentary secretary delivers the good news. If that were genuinely the case, I would be astounded. We might encourage the Premier to send out the parliamentary secretary and the director general whenever there is bad news, but I expect they will find themselves on urgent government or parliamentary business. When the next major environmental crisis occurs—when the next contamination is found at a waste management site—I suspect Hon Darren West might be out there, as he was, leading the way on the Aboriginal cultural heritage debate. At least he went out and engaged in the debate. He was not backwards in coming forwards; he was not shy. He was not right but he was not shy. I will give him some credit for that.

Much of this bill refers to applying the same sort of regulatory environment to recreational boating as we would find in the Road Traffic Act 1974 for the roads. Obviously, nobody will suggest that people drink driving while fishing is acceptable. I hope the minister is taking copious notes. Actually, the minister is from up north; I might ask about his fishing and boating exploits in a little while. We will come to that in the fullness of time.

Obviously, we do not want open slather on the water any more than we want open slather on the roads. If anything, the boating environment is even more dangerous than the road environment. We will get to the committee stage of the bill, though not today. Sorry; I have caused some disappointment. The minister can write that down if he likes: “committee stage, but not today”. When we get to that stage, we will be looking for some statistics et cetera, particularly injury and potentially death as a result of boating accidents. There have been a couple of quite prominent ones in the last year or two. I am not looking to use specific examples; I am looking for statistics across the board because we are trying to make waterways safer.

As someone who has a recreational skipper's ticket, I am always a bit astounded that we cannot apply the same—I was going to say “regulatory regime”—compliance regime to those on the waterways as we can to those on the motorways. The bill before the house is worthy of support.

One of the things that gets people out on the water is the attraction of going fishing in Western Australia. The restrictions that have been put in place, particularly the extended closure seasons and the bag limits around demersal fish, must be having an impact. During the committee stage, I will try to get some statistics on what the government has seen, both in the number of registrations and the number of licences applied for in that area, to determine whether there has been a visual impact in recreational boating use as a result of its changes. It is very hard to harangue the government for too long about its proposed changes to the fishing rules because, ultimately, it simply has to work off the science as best it has. The science will frequently show that the waterways have been overfished, so therefore bag limits need to be reduced. I think the best example of that would be in Shark Bay in the minister's electorate. Is Shark Bay part of the Mining and Pastoral Region?

Hon Stephen Dawson: Yes.

Hon Dr STEVE THOMAS: It is in the minister's electorate, where overfishing was obvious to observe by those who have been around for a long time. People—many from the south west—would go to Shark Bay, take up a chest freezer and a generator and pillage the ocean for a long period to a point where there were genuine concerns about the viability of that area. Restrictions were put in place. It would appear that those restrictions have been relatively successful. For example, we have seen the recovery of some of those species. We have seen an improvement in numbers—also, to some degree, in size. Most people fish in Shark Bay for pink snapper. There is a bit of variety out there but most people go to Shark Bay for pink snapper. They reaped the ocean many years ago. I think the

limits are now slightly more relaxed than they were at the peak of restrictions. Obviously, that is an incentive. One issue is that a significant change to the fishing rules changes the incentive for people to both own and use boats recreationally. The changed fishing rules have had a significant impact on various parts of the economy. One of the first of those is the bait and tackle shops. They have seen a significant impact both in Perth and in areas where the recreational fishing industry is centred. I suspect that Shark Bay has probably escaped that more than most, but some of the restrictions are fiercest for demersal catches between Augusta and Geraldton. We are probably seeing the worst and most significant impacts in the south west demersal zone. When we get to the committee stage of the bill, I will be interested to see the sorts of numbers that were looked at to work out the impact that might have had on the number of boats out there.

There were some statistics about injuries in the minister's second reading speech, which I will quote from. It states —

... statistics show that in Western Australia from July 2017 to July 2023, there were approximately 257 reports of injury and 46 fatalities on the state's waterways.

This next part makes it difficult, though —

Although it is not possible to say for certain, given the current lack of alcohol and drug testing on the water, evidence suggests that it is highly likely that alcohol and drugs may have played a role in many of these cases.

That statement in itself is remarkably difficult to measure. In effect, it is legislation that is operating on anecdotal evidence. It may well be true, but it is difficult to make that assessment. We have to watch the statistics when we are dealing with land-based road statistics. For example, a statistic states that alcohol was involved in X number of accidents across Western Australia. We go, "Okay". The hardest thing is then asking the questions: What does "involved" mean? Was it the cause? Was it a contributing factor? Was there an assumption that it was a contributing factor or was it simply that alcohol was in the person's system? That probably depends on the measure of the alcohol in that person's system.

[Interruption.]

Hon Dr STEVE THOMAS: Will somebody get the phone?

Hon Darren West: Hello. Yes. It is for you.

Hon Dr STEVE THOMAS: Nothing would surprise us, Hon Darren West. If alcohol was involved in a road statistic, did the person have .001 per cent alcohol in their breath, for example, but it was still listed as a factor in a road incident, injury or death? How we measure the causation of that is one of the really difficult questions. Obviously, the bill is intended to try to answer some of those questions because the bill will try to get some averaged-out statistics on the ground. Allowing random breath tests for boat drivers might produce statistics. Minister, I would be interested in the measurement of the intended random breath testing of boats. Inland waterways and ocean waterways are different. In inland waterways, it is probably reasonably efficient and economic to have a boat, like we would have a police vehicle on a road. There are probably spots in which authorities could put —

Hon Sue Ellery: There are not going to be booze boats.

Hon Dr STEVE THOMAS: No, so are we talking about tests at ramps?

Hon Sue Ellery: In the normal course of their duties, and we can talk about this in committee, if they see or have reason to believe that alcohol is involved, they can stop and test. They can direct a person to a safe place to do the test, but we are not going to be having big booze —

Hon Dr STEVE THOMAS: A big booze boat.

Hon Sue Ellery: No.

Hon Dr STEVE THOMAS: Okay. That would be very difficult to do. As we do with fishing laws, for example, the most obvious place to apply these laws efficiently is at boat ramps. It is obvious that the difficulty with an alcohol test versus applying fishing laws is that they have to identify who on the boat is driving as it comes in. If everybody is drunk on a boat, it is pretty simple, someone takes the fall for it. If there are four people in the boat and there are 16 sized demersal fish coming out of the Geographe Bay area, ultimately the skipper of the boat takes responsibility, so it is fairly simple to do. That cannot be done automatically. I would be interested to know about the range of activities proposed in this bill and what might be possible.

I understood that, in this case, a water police officer who suspected that the driver of the boat was driving or controlling the boat under the influence of drugs or alcohol already had some capacity to pull the boat over, stop it and arrest that person if required. I was under the impression that they could currently test for alcohol and drug levels but only under certain circumstances, and the bill before the house broadens that. Perhaps in the second reading reply, the minister could give us a much broader aspect of what they do.

I suspect it is probably more complicated when we get to the section in the minister's second reading speech about Surf Life Saving Australia and drowning deaths in Western Australia. I go to that area of the speech, which states —

Research conducted by Surf Life Saving Australia between 2012 and 2022 shows that alcohol and drugs were causal factors in 21 per cent of drowning deaths in Western Australia.

I presume that that is not necessarily restricted to drowning deaths from boats but drowning death more generally, so when we get to the second reading reply, we will potentially chase that down. The speech continues —

Data from Royal Life Saving WA found that of the 98 boating and watercraft fatalities that occurred in Western Australia between 2002 and 2019, 12.33 per cent had an alcohol content above the legal driving limit, 6.85 per cent ... had a blood alcohol content of .15 or above —

Which, I have to say, is more than I think I could manage these days. Perhaps in my youth I could have got to that level. The speech continues —

and 10.96 per cent of the 98 fatalities had illicit drugs in their system.

The speech does not break down whether those drugs were causative or incidental to what went on. In debate on clause 1 we can start to break those numbers down into those that were initially drowning deaths. I will presume that that is drowning deaths across the board. Taking the boat out of the argument for a minute, people who have been drinking around water, particularly drinking significantly, are far more likely to drown than someone who has not. I understand that they lose a bit of direction. I remember a very good study many years ago in which it appeared—because the dead person cannot be asked exactly what they were thinking—from interviews with people who had nearly drowned that many of them became disorientated and thought they were swimming to the top of the water when they were swimming to the bottom. I thought that was quite interesting. This is where this research came from. Imagine someone near a reasonably deep dam with a reasonable amount of alcohol in their system. They are at a barbecue on a dam somewhere; they have had a few drinks and they go for a swim. Hon Dr Brian Walker, is not here otherwise he would tell us—no there he is.

Hon Sue Ellery: That is not him.

Hon Dr STEVE THOMAS: No, that is not him; that is the Acting President. Hon Dr Brian Walker would perhaps tell us that that is not done with cannabinoids but it is done with alcohol. I will be interested to see whether he makes a contribution later in the day. It is not uncommon for people to become disorientated and drown or nearly drown. The assumption is that if people are near to drowning, particularly from becoming disorientated due to a significant amount of alcohol in their system, a fair proportion of those people go the whole way—they do not figure it out in the end, particularly in those deeper sections of waterways. A person does not always bump the bottom and think, “Hang on, there's the bottom. I've gone in completely the wrong direction.” The assumption is that they quite frequently hit the bottom and do not realise exactly what they are doing, which is probably more of an issue for inland waterways than ocean waterways. There are probably exceptions. For those with large enough boats to hold a party on et cetera and carry people who are significantly engaged in a drinking culture and jumping into the ocean—I suspect that ever since the movie *Jaws*, less of that has happened. The ocean is not necessarily where we see most of this activity happening.

We have been told that drugs were a causal factor in 21 per cent of drowning deaths. When we get to that point in committee, can the minister clarify how that figure relates to boating versus non-boating fatalities? I am also interested in alcohol in the same circumstances—boating versus non-boating fatalities—to work out the level.

The minister said that in a quarter of cases, the toxicology results were unknown. I find that to be an unusual statement. In her second reading speech, the minister talked about boating and watercraft fatalities. I would have thought it unusual that in the case of a fatality due to misadventure, be it a boat crash or a drowning, samples were not taken. When the death has a question mark over it, or it is even an accidental death, the normal post-mortem autopsy process is usually investigated in a reasonably detailed manner. It just surprises me that in 25 per cent of cases resulting in a fatality related to a watercraft, no-one has taken samples in a quarter of those. Perhaps I am wrong. Perhaps there are occasions when the certifying doctor says that the cause of death was completely obvious, so sampling was not required, but I would have thought it would be standard operating procedure for that to occur.

I will move on a little further. We are basically focused on recreational boating. By the time we get to commercial vessels, the rules for someone with a commercial skipper's ticket are different again, certainly in terms of employment. Most companies that employ particularly commercial skipper's, but for the most part any on-boat staff have a zero alcohol tolerance. My understanding is that that applies to commercial water passenger vehicles as well. Again, when we get to the clause 1 debate, the minister might be able to tell us what the commercial laws are around the provision of passenger services, and potentially the provision of freight transport services. My understanding is that the companies themselves have zero alcohol tolerance policies.

Interestingly, I noted on the news this morning that the Royal Australian Navy has taken a stern approach to alcohol on board one of its ships.

Hon Kyle McGinn: No. It used to be two cans per day per man.

Hon Dr STEVE THOMAS: In the Navy?

Hon Kyle McGinn: Yes.

Hon Dr STEVE THOMAS: Was the member in the Navy?

Hon Kyle McGinn: I was in the merchant navy and they had the customs guys and it was two cans per day.

Hon Dr STEVE THOMAS: Okay.

Hon Sue Ellery interjected.

Hon Dr STEVE THOMAS: Relax, Leader of the House. It is not actually going to make any difference to progress.

Hon Sue Ellery: He doesn't need to help you!

Several members interjected.

Hon Dr STEVE THOMAS: Hon Louise Kingston is here.

Hon Dan Caddy: The navy is not that far from whaling —

Several members interjected.

The ACTING PRESIDENT (Hon Dr Brian Walker): Members, I draw your attention to the primary debate here.

Hon Dr STEVE THOMAS: Thank you for your direction, Acting President. It is easy to get distracted by Hon Kyle McGinn: the man, the myth, the mullet.

It was interesting to see the Navy come out with that today. Apparently, the story today was that officers in the Navy are prohibited from consuming alcohol because they are theoretically in charge of the ship. I think Hon Kyle McGinn might be roughly right about the consumption levels. What are the ranks in the navy called? Non-commissioned officers or non-commissioned ranks in the Navy are allowed a couple of drinks a day, but the officers, being the decision-makers, are prohibited from doing so. I am sure that is very different from the Navy historically. We have all seen the long-held stories of the rations of rum that were handed out over a long period. We find ourselves in a very different world. It was interesting that the Navy released this information today. It was holding a very senior officer to account for flouting the rules around alcohol consumption in the Navy. It will be interesting to see what the punishment is these days. It was interesting that as we hit this debate, that happened to be on the news this morning.

One of the things that intrigued me in the minister's second reading speech was the examination of section 59(2) of the Western Australian Marine Act 1982. The current offence specifically applies to alcohol or drug-impaired navigation. The minister stated —

This prohibits persons from navigating a vessel while under the influence of alcohol or drugs to such an extent as to be incapable of having proper control of the vessel.

That is obviously a fairly difficult test to set. That is probably why the next line of his speech states —

Although prosecutions under this section have been successful, the provision is infrequently used. In part, this is due to the absence of statutory powers to permit alcohol or drug testing outside cases involving serious injury or death.

This has become the intent of the bill. I presume that as we go through the bill, we will extend the powers beyond the case in which the operation of a vessel has caused serious injury or death. It is probably worth looking at the definition of "serious injury". My question is whether the word "navigating" effectively means being in control of a boat. Could it be argued on a legal precedent that the person was not navigating even if they were driving the boat? It is just one of those little quirks of the law that says that someone is navigating. I can understand if someone is going from Perth to Jakarta, but are they really navigating if they are going across the river, for example? In that case, if they were affected by alcohol or drugs, they would probably be more dangerous than the person who was doing a long trip on the open ocean where there is not much traffic. I wonder whether the term "navigating" needs to be looked at and changed.

Currently, a person convicted of a section 59(2) offence can be given a maximum penalty of a \$1 000 fine. The government says that that is, in its words, manifestly inadequate. It is pretty hard to argue with that, particularly if someone has the wherewithal to own a boat in the first place. Currently, under section 59(2), for a person to go through the process of being charged, they must have caused serious injury or death. At that point, having caused serious injury or death, they would have had a drug and alcohol test, and I do not know whether there are any

exemptions for the medical use of marijuana. That is something that other members of the house can raise in the fullness of time. At that point, the person would have caused considerable damage, so a \$1 000 fine would be completely inadequate. It is not the case that the person would have effectively been picked up while driving with alcohol in their system but would have posed no risk or caused no damage to anybody. I do not remember the current fines. I have never gone through the process of a drink-driving conviction, so I do not know what the fines are off the top of my head, but I imagine that they are significantly higher than \$1 000.

The penalties for someone who drives a motor vehicle while they are over .05 and crashes and causes serious injury or death are significant. I finally got used to .05 versus .08. It was .08 when I first started driving all those years ago when I was a young fellow, which was probably a reasonable amount of alcohol for someone who is young and does not drink much, so I get the argument to go down to .05. Dangerous driving causing death not infrequently results in a term of incarceration. It is a prison term offence. I suspect that if the person does not go to prison, the fine would be significant and they could expect to lose the privilege of driving for a significant period. I am not sure whether the intent of the bill is to make the time period that someone loses their recreational skipper's ticket for equivalent to the time period that someone loses their licence for if they commit that type of offence, but it will probably take that level of penalty to have a significant impact on people's behaviour. I agree with the government; the difference is quite stark, and perhaps that is because everybody is pretty much involved in risk on the road, while a smaller percentage of the population takes that risk when they go boating. I think there are 300 000 or 400 000 boat owners in Western Australia out of a population of 2.5 million. A huge slab of the population owns a boat so there is a significant risk out there. The penalties should probably much better reflect that. The government comes into some of these things. The second reading speech includes the contrast, which is useful. I quote —

By contrast, the equivalent offence under section 63 of the Road Traffic Act imposes a minimum penalty of \$1 750 for a first offence. A person who drives while intoxicated and crashes into another vehicle killing another person or causing them grievous bodily harm could face up to 20 years' imprisonment.

I remember a case—it was the son of someone I shared a seat with on the backbench in the other place, the place that shall not be named here. The driver of the boat caused significant damage to a passenger. It was fairly famous. It ended up in the courts. I think it ended up in the civil courts because the criminal courts could not process it to the satisfaction of the injured party. Sometimes people have to get justice in whatever form they can find it. After all, they got Al Capone on tax evasion not for the multiple murders he committed. In this case, it was a speedboat. From memory, it was an inshore river episode; the accident occurred on the river. I am pretty confident excessive speed and poor behaviour were involved. I suspect that beyond issues of what might have been in the person's bloodstream, there were some significant contributing factors beyond that. I suspect if they had been obeying the boat traffic laws of the day, the accident would not have occurred. Even if it did, it would have been fairly mild. Running into somebody at five kilometres an hour is a very different episode from running into them at 50 kilometres an hour, which is very different from running into them at 150 kilometres an hour. The penalties are incredibly disparate so I think it was only a matter of time before we came to the point where we would catch-up. The minister goes on to explain the second component of that. I quote again from the second reading —

These offences do not apply to many of the evidentiary presumptions and rules around the level of intoxication that are available under road laws, nor do they overtly capture many factors relating to vessel operations, specifically the duties and responsibilities of the vessel master, otherwise known as the skipper.

This is an area of significant confusion; what are the functions, powers and responsibilities of the skipper? They go through a skipper's training course. I did mine in Manjimup, which seems a bit weird because we did the practical component on a dam in Manjimup. There is a fairly big water component down there. Actually, Hon Louise Kingston, it was on the north side, just out of town, on a dam up behind the roadhouse. After going through that training course about the roles and responsibility of the skipper, the hard part is that people can be given all the power and responsibility but the enforcement of that is somewhat more difficult. I think we need to have a discussion in clause 1 around the absolute authorities and powers that will be applied to the skipper of a boat, versus those that we think we have. It is a bit like, in theory, the driver of a car is responsible for minors who might not be wearing a seatbelt, for example. It sounds easy to say but it is rather more problematic trying to convince a hulking 17-year-old to put on a seatbelt when they do not want to. It is not as simple as people would think to maintain that level of control. It is not as simple as we think.

Debate interrupted, pursuant to standing orders.

[Continued on page 6502.]