

WESTERN AUSTRALIAN MARINE AMENDMENT BILL 2023

Introduction and First Reading

Bill introduced, on motion by **Mr D.R. Michael (Minister assisting the Minister for Transport)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR D.R. MICHAEL (Balcatta — Minister assisting the Minister for Transport) [1.03 pm]: I move —

That the bill be now read a second time.

I am pleased to introduce the Western Australian Marine Amendment Bill 2023. There are approximately 102 250 registered recreational vessels in Western Australia. Department of Transport–appointed marine inspectors intercept approximately 15 000 recreational vessels each year to conduct marine safety–related compliance checks. Through these compliance activities, the frequency of encountering persons operating a vessel while under the influence to the extent that they are incapable of exercising proper control over the vessel is reasonably low. Even so, 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. 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.

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. 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 of these had a blood alcohol content of .15 or above and 10.96 per cent of the 98 fatalities had illicit drugs in their system. In 25.51 per cent of cases, toxicology results were unknown, most likely because no samples were taken.

Excess consumption of alcohol or the use of illicit substances in a marine environment can be particularly hazardous. Factors such as fatigue that affect an individual’s ability to safely control a vessel may be exacerbated due to environmental factors such as glare, temperature and lack of a stable surface. People who are under the influence of alcohol or drugs are less able to take effective lifesaving actions in the event of an emergency. The links between excess alcohol consumption, use of illicit drugs and unsafe driving of motor vehicles have been well established.

[Interruption.]

Mr J.R. Quigley: I am so sorry.

The ACTING SPEAKER (Ms M.M. Quirk): At least it woke you up, Attorney General! Minister, continue.

Mr D.R. MICHAEL: That is strike 2 for the Attorney General today!

Blood alcohol limits for drivers have been in place on Australian roads for over 50 years. Other jurisdictions have since adopted these provisions to apply to marine contexts. Western Australia is the only state in Australia not to set blood alcohol limits for skippers. Over the years, there have been several highly publicised incidents of serious injury or death involving the operation of vessels by people who were later found to have been under the influence of alcohol or drugs. There has been growing public sentiment to support the government taking a stronger stance on excess use of alcohol and illicit substances by skippers.

In Western Australia, the principal legislation that governs the safe operation of vessels on state waterways is the Western Australian Marine Act 1982. The current rules applying to unsafe navigation involving skippers under the influence of alcohol and drugs have been in place and essentially unchanged for 40 years. Section 59 of the WAMA relating to unsafe alcohol-impaired or drug-impaired navigation contains the only offences in the act that deal specifically with the unsafe operation of a vessel or the use of alcohol or drugs. These provisions, although adequate for the time that they were written, are not reflective of approaches adopted by more modern legislation, such as road safety provisions contained in the Road Traffic Act 1974. The differences between the road and maritime schemes are often a source of confusion and consternation among the community.

The significant discrepancies between the two pieces of legislation mean that similar circumstances may lead to disparate outcomes in court that do not align with community expectations for the administration of justice. Section 59(2) contains the current offence that applies specifically to alcohol-impaired and drug-impaired navigation. 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. 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. It is sometimes difficult to prove the charge based only on

a visual sobriety test and on visual evidence alone. Even if a sample is taken, the construction of the provisions means that a prosecution would not benefit from evidentiary presumptions that apply under road laws. Should a person be convicted of a section 59(2) offence, the maximum penalty available under the WAMA is currently a \$1 000 fine. This is manifestly inadequate by today's standards, given the objective seriousness of the offence. 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 whose state of intoxication while driving led to an incident involving death or grievous bodily harm could face up to 20 years' imprisonment.

The lack of appropriate penalties, coupled with the difficulty of enforcing Western Australian Marine Act offences, often means that serious marine incidents are prosecuted under other legislation, such as Criminal Code offences like culpable driving or manslaughter. These offences do not apply 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 masters and crew. Taken collectively, these factors erode the effectiveness of the current legislation in providing general deterrence and limit the specific deterrence for individuals who repeatedly engage in these types of behaviour.

The intent of the Western Australian Marine Amendment Bill 2023 is to amend the WAMA to modernise the offence provisions for unsafe navigation and introduce and expand the laws applying to alcohol and drug-impaired navigation. To support these new laws, the bill will establish an alcohol and drug testing regime to allow maritime inspectors and police officers to undertake breath and oral fluid tests for alcohol and illicit substances for offences under WAMA. The bill will introduce new offences for reckless, dangerous and careless navigation, including specific offences for incidents in which unsafe navigation has resulted in the death, grievous bodily harm or injury to a person. New penalties for these offences will reflect the scheme that applies on the roads. This will mean significantly higher penalties for incidents resulting in injury or death, and for the first time, imprisonment for unsafe navigation offences under WAMA. The new legislation will also introduce new offences applying to people who exceed the prescribed limits for alcohol or drugs. For the first time in Western Australia, a .05 blood alcohol content limit will apply to people who are navigating a recreational or commercial vessel, which is the same as a driver on the road.

A consistent regime sends the uniform message that irresponsible alcohol and drug consumption is not tolerated on Western Australian roads and waterways. In the same manner as the road laws, escalating penalties will apply to people who exceed the limit by a greater amount. Repeat offenders will face significantly higher penalties, up to and including permanent disqualification of a marine qualification and potentially even imprisonment.

The new laws will enable the enforcement of the blood alcohol content limits for both vessel operators and masters. The limits and other offences under the bill will apply to both operators and masters. This is consistent with how the law is applied in other contexts under maritime law, and in other Australian jurisdictions under maritime alcohol laws.

Finally, the bill will introduce new provisions that will deal with the suspension and disqualification of marine qualifications. This will again be based on the system that applies to drivers' licences under road law. Specific offences under the new provisions will impose mandatory periods of disqualification from holding or obtaining a recreational skippers ticket. Enhanced penalties will apply to people who operate vessels that require marine qualifications while their RST is disqualified. The new legislation will apply to recreational and commercial vessels. Disqualification penalties under WAMA will affect only marine qualifications issued under WAMA.

For commercial marine qualifications issued under the commonwealth Marine Safety (Domestic Commercial Vessel) National Law Act 2012, the department will notify the CEO of the Australian Maritime Safety Authority of any instances in which a commercial vessel master has been convicted of an offence under these new laws. It will ultimately be at the discretion of AMSA to take action on the suspension or cancellation of those qualifications.

To support and enable the enforcement of the new provisions, the bill will establish a marine alcohol and drug testing regime. This will be modelled on the scheme that applies on our roads, with certain modifications as necessary to take into account difficulties of operating in a marine environment.

Alcohol and drug testing operations on the water present many challenges that do not arise in land-based operations. With a lower density of traffic, operations will need to take place over a wider area and testing may take additional time. Weather and environmental conditions will also have a greater influence, as intercepting or boarding a vessel in adverse sea conditions can raise safety concerns. To reflect the operational complexities of on-water testing, the maritime alcohol and drug testing regime supplements officers' powers to give directions and requirements. The most significant of these are additional direction and requirement powers to facilitate testing operations on water. To safely undertake a test on the water, an enforcement officer may first be required to direct a vessel to a safe location. This may mean directing the vessel to a nearby jetty or mooring, directing that another person assume control over the vessel, or boarding the vessel. Penalties for failure to comply with these requirements will be higher than road equivalents, to serve as a further disincentive to people attempting to evade testing.

Another key distinction between the maritime alcohol and drug testing regime and road laws will be the operational approach underpinning the scheme. Under the new legislation, the Department of Transport will assume primary responsibility in enforcing the new legislation and testing regimes, supported by the Western Australia Police Force. This proposal seeks to provide officers with the necessary authority to effectively and appropriately respond to individuals who they believe are incapable of safely navigating a vessel while performing their normal marine safety compliance duties, or to provide officers with the necessary powers to test after an incident. It is not the intention of the government to use these powers to undertake random breath test-style testing on our waterways.

The Marine Amendment Bill also contains consequential amendments to other acts. These are necessary to ensure that new offences and penalties introduced by the bill are treated consistently with the equivalent offences under the Road Traffic Act that involve death or grievous bodily harm. Members will be aware of the recent passage of the Marine Safety (Domestic Commercial Vessel National Law Application) Bill 2023. The Marine Amendment Bill and the application bill have been concurrently under development for some time. The two bills are closely linked; however, the Marine Amendment Bill has been drafted so that it will not be reliant on the provisions of the application bill in order to commence. The government will be moving amendments during the consideration in detail stage to capture several outstanding matters caused by the concurrent passage of the two bills.

This bill represents the WA government's commitment to improving marine safety on the state's waterways. The new laws contained in this bill will serve as a more effective deterrent to unsafe or dangerous behaviour, particularly in cases involving the excessive use of alcohol or the consumption of illicit substances. The bill will also ensure that offenders who regularly engage in this type of activity will face consequences that align more closely with community expectations.

The marine alcohol and drug testing regime will greatly expand the powers of marine officers and the WA Police Force. This will serve as a further deterrent against these types of behaviours and provide officers with the tools they need to respond more effectively in situations when public safety may be at risk because of those behaviours. Taken as a whole, the new laws will continue to reinforce the clear message that the WA government and the community do not tolerate unsafe behaviour involving alcohol and drugs.

I commend the bill to the house.

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