

WESTERN AUSTRALIA

LEGISLATIVE ASSEMBLY

VOTES AND PROCEEDINGS

No. 153

FIRST SESSION OF THE FORTY-FIRST PARLIAMENT

WEDNESDAY, 8 NOVEMBER 2023

1. Meeting of Assembly

The Assembly met at 12.00 noon pursuant to adjournment.

The Speaker took the Chair.

An Acknowledgement of Country and Prayers were read.

2. Paper

The following paper was presented and ordered to lie upon the Table of the House –

By the Clerk –

Auditor General, Office of the – Financial Audit – Electricity Generation and Retail Corporation (Synergy), Report No. 8, 8 November 2023 (2490).

3. Notice of Motion

4. Brief Ministerial Statements

Brief Ministerial Statements were made by –

The Minister for Veterans Issues on the launch of the first Western Australian assistance dog program for veterans.

The Minister for Mines and Petroleum on the successful applicants for round 28 of the Exploration Incentive Scheme.

5. State Superannuation Amendment Bill 2023

The Treasurer, pursuant to notice, moved,

That a bill for “An Act to amend the *State Superannuation Act 2000*.” be introduced and read a first time.

Question put and passed.

The Treasurer presented an explanatory memorandum and bill read a first time.

The Treasurer moved, That the bill be now read a second time.

Ms M.J. Davies moved, That the debate be adjourned.

Question put and passed.

6. Western Australian Marine Amendment Bill 2023

The Order of the Day for the resumption of the debate upon the second reading of the bill was read.

Debate resumed.

Question put and passed.

Bill read a second time.

CONSIDERATION IN DETAIL

Clauses 1 to 4 agreed to.

New Clause 4A.

The Minister assisting the Minister for Transport moved,

Page 5, after line 10 — To insert:

4A. Section 3A amended

- (1) In section 3A(1) delete “masters” and insert:

masters, pilots

- (2) In section 3A(2) delete “is connected with the State if the vessel is —” and insert:

connected with the State includes a vessel that is —

New Clause 4A agreed to.

New Clause 4B.

The Minister assisting the Minister for Transport moved,

Page 5, after line 10 — To insert:

4B. Section 6 amended

In section 6(1) in the definition of *official details* delete paragraph (b) and insert:

- (b) of an inspector — means the inspector’s full name and official title;

New Clause 4B agreed to.

New Clause 4C.

The Minister assisting the Minister for Transport moved,

Page 5, after line 10 — To insert:

4C. Part 2 Division 2 Subdivision 4 inserted

At the end of Part 2 Division 2 insert:

Subdivision 4 — Obtaining business records

18A. Terms used

In this Subdivision —

business means any business, including a business of a governmental body or instrumentality or of a local government, or any occupation, trade or calling;

business record means a record prepared or used in the ordinary course of a business for the purpose of recording any matter related to the business;

order to produce means an order issued under section 18D.

18B. Application of this Subdivision

- (1) An order to produce must not be issued under this Subdivision to a person in relation to a business record that relates or may relate to an offence that the person is suspected of having committed.
- (2) This Subdivision does not prevent an inspector from applying for a warrant in relation to a business record, whether before or after the issue of an order to produce.

18C. Application for order to produce

- (1) An inspector may apply for an order to produce a business record for the purpose of investigating a suspected contravention of this Act.
- (2) An application for an order to produce must be made in person to a JP.
- (3) An application for an order to produce a business record must —
 - (a) state the applicant's official details; and
 - (b) state the suspected contravention of this Act in relation to which the order is required; and
 - (c) state the grounds on which the applicant suspects that the contravention has occurred; and
 - (d) set out the prescribed information (if any); and
 - (e) state the name of the person to whom the order will apply; and
 - (f) state that the person is not suspected of having committed an offence under this Act to which the business record relates; and
 - (g) describe with reasonable particularity the business record or class of business record that the applicant wants the person to produce; and

- (h) state the grounds on which the applicant suspects the business record or class of business record is relevant to the investigation; and
- (i) state whether the original or a copy of the business record or class of business record is required.

18D. Issue of order to produce

- (1) On an application made under section 18C, a JP may issue an order to produce a business record if satisfied, by information on oath and in respect of each of the matters in section 18C(3) that the applicant suspects, that there are reasonable grounds for the applicant to have that suspicion.
- (2) However, the JP must not issue the order to produce unless the applicant or some other person has given the JP, either orally or by affidavit, any further information that the JP may require concerning the grounds on which the issue of the order to produce is sought.
- (3) An order to produce must contain the following information —
 - (a) the applicant’s official details;
 - (b) the name of the person to whom the order applies;
 - (c) a reasonably particular description of the business record or class of business record to be produced by the person;
 - (d) an order that the person produce the record or records;
 - (e) whether the original or a copy of the record or records is required;
 - (f) whether a paper, electronic or other version of the record or records is required;
 - (g) the place where the record or records are to be produced;
 - (h) the date on or before which the order must be obeyed, which must allow a reasonable period for the person to obey the order;
 - (i) the name of the JP who issued the order;
 - (j) the date and time when the order was issued.
- (4) An order to produce must be in the prescribed form.
- (5) If a JP refuses to issue an order to produce, the JP must record on the application the fact of, the date and time of, and the reasons for, the refusal.

18E. Order to produce applied for remotely

- (1) An inspector may apply, by remote communication, to a JP for an order to produce under section 18C —
 - (a) in an urgent case; or
 - (b) if the inspector believes on reasonable grounds that a JP is not available within a reasonable distance of the inspector.
- (2) The JP must not issue the order to produce unless satisfied as to the matter in subsection (1)(a) or (b) (whichever is relevant).
- (3) The *Criminal Investigation Act 2006* section 13(5) to (8) apply in relation to an application under this section.

18F. Service of order to produce

- (1) An order to produce must be served on the person to whom it applies as soon as practicable after it is issued.
- (2) An order to produce may be served —
 - (a) by personal service or by post; or
 - (b) with the consent of the person to be served, by email or fax or in another agreed way.

18G. Effect of order to produce

- (1) An order to produce has effect according to its contents.
- (2) A person who is served with an order to produce and who, without reasonable excuse, fails to comply with it commits an offence.
Penalty for this subsection: a fine of \$5 000.

18H. Powers in relation to order to produce

- (1) An inspector to whom a business record is produced under an order to produce may retain it for a reasonable time to determine its evidentiary value.
- (2) An inspector to whom a business record is produced may, if necessary to preserve the evidentiary value of the document or to subject it to forensic analysis —
 - (a) seize the document; and
 - (b) whether or not the document is seized, inspect, examine, take measurements of or conduct tests on it; and
 - (c) make and retain a copy of it.
- (3) Section 40(1)(c) does not apply in relation to a thing seized under subsection (2)(a).
- (4) A person who produces a business record in compliance with an order to produce is not liable to any action or remedy by any person at common law for producing that document.

New Clause 4C agreed to.

New Clause 4D.

The Minister assisting the Minister for Transport moved,

Page 5, after line 10 — To insert:

4D. Section 38 amended

- (1) Delete section 38(2) and insert:
- (2) The following persons may request the inspector to give a copy of the thing or the information to that person —

- (a) if the inspector seized the thing or information under section 18H(2)(a) — the person who produced the thing or the information to the inspector;
- (b) otherwise — the occupier of the premises.

(2) In section 38(4) after “by the” insert:

person or

New Clause 4D agreed to.

Clause 5 agreed to.

New Clause 5A.

The Minister assisting the Minister for Transport moved,

Page 5, after line 12 — To insert:

5A. Section 64 amended

(1) In section 64 delete “64A and 64B —” and insert:

64A, 64B and 64D —

(2) In section 64 in the definition of *marine incident* paragraph (a) delete “pleasure vessel or a prescribed”.

New Clause 5A agreed to.

New Clause 5B.

The Minister assisting the Minister for Transport moved,

Page 5, after line 12 — To insert:

5B. Section 64A amended

(1) In section 64A(1):

- (a) delete “pleasure vessel or a prescribed vessel is involved in a marine incident, the master of the vessel must,” and insert:

vessel is involved in a marine incident, the master of the vessel must do each of the following,

- (b) in paragraph (a) delete “assistance; and” and insert:

assistance;

- (c) in paragraph (b) delete “incident; and” and insert:

incident;

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

- (2) The master of a vessel commits a crime if —
- (a) the vessel is involved in a marine incident that occasions the death of, or grievous bodily harm or bodily harm to, a person; and
 - (b) the master, without reasonable excuse, fails to comply with subsection (1)(a) or (b) in relation to the incident.

Penalty for this subsection:

- (a) if the marine incident occasions the death of a person — imprisonment for 20 years;
- (b) if the marine incident occasions grievous bodily harm to a person — imprisonment for 14 years;
- (c) if the marine incident occasions bodily harm to a person — imprisonment for 10 years.

Summary conviction penalty for this subsection in a case in which the marine incident does not occasion the death of, or grievous bodily harm to, a person: imprisonment for 3 years.

- (2A) A court sentencing a person for an offence against subsection (2) must order that the person is disqualified from holding or obtaining a WA marine qualification as follows —
- (a) if the marine incident occasions the death of, or grievous bodily harm to, a person — for a period of not less than 2 years;
 - (b) if the marine incident occasions bodily harm to a person — for a period of not less than 12 months.
- (3) The master of a vessel commits an offence if the master, without reasonable excuse, fails to comply with subsection (1)(a), (b) or (c).
Penalty for this subsection: a fine of \$5 000.

New Clause 5B agreed to.

New Clause 5C.

The Minister assisting the Minister for Transport moved,

Page 5, after line 12 — To insert:

5C. Section 64B amended

- (1) In section 64B(1) delete “pleasure vessel or a prescribed”.
- (2) In section 64B(2):
 - (a) after “includes” insert:

each of

- (b) delete the Penalty
- (3) After section 64B(3) insert:
 - (3A) A person commits a crime if —
 - (a) the person is the master or owner of a vessel; and
 - (b) the vessel is involved in a marine incident that occasions the death of, or grievous bodily harm or bodily harm to, another person; and
 - (c) the person, without reasonable excuse, fails to comply with subsection (2) in relation to the incident.

Penalty for this subsection:

- (a) if the marine incident occasions the death of, or grievous bodily harm to, a person — imprisonment for 10 years;
- (b) if the marine incident occasions bodily harm to a person — imprisonment for 12 months.

Summary conviction penalty for this subsection in a case in which the marine incident occasions the death of, or grievous bodily harm to, a person: imprisonment for 12 months.

- (3B) A court sentencing a person for an offence against subsection (3A) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 12 months.
- (3C) A person commits an offence if —
 - (a) the person is the master or owner of a vessel; and
 - (b) the person, without reasonable excuse, fails to comply with subsection (2).

Penalty for this subsection: a fine of \$2 000.

New Clause 5C agreed to.

New Clause 5D.

The Minister assisting the Minister for Transport moved,

Page 5, after line 12 — To insert:

5D. Section 64D inserted

After section 64C insert:

64D. Marine incidents: power to require responsible person to give information

- (1) In this section —

responsible person, in relation to a vessel, means —

- (a) the master or owner of the vessel; or
 - (b) another person who appears to be in possession or control of the vessel.
- (2) This section applies if a vessel is involved in a marine incident.
- (3) An inspector or police officer may require a responsible person for the vessel to give the inspector or police officer any information that —
- (a) is in the responsible person’s power to give; and
 - (b) may assist in identifying a person who was the master of the vessel, or operating or attempting to operate the vessel (as defined in section 75AA(1)), when the marine incident occurred.
- (4) A person who, without reasonable excuse, fails to comply with a requirement under subsection (3) commits an offence.

Penalty for this subsection:

- (a) if the marine incident occasions the death of, or grievous bodily harm or bodily harm to, a person — imprisonment for 12 months or a fine of \$3 000;
- (b) otherwise — a fine of \$3 000.

New Clause 5D agreed to.

Clause 6.

Debate interrupted by the Chair and adjourned until a later stage of the sitting.

7. Questions

Questions without Notice were taken.

Questions on Notice Nos 903 to 905, 909, 911 and 912 were answered.

Paper tabled by the Minister for Health –

Question on Notice No. 911 – Data of how many children presented with mental health conditions at emergency departments by month (2491).

8. Variation to the Order of Business

Ordered, That consideration of Government Business Order of the Day No. 1 be resumed.

9. Western Australian Marine Amendment Bill 2023

The Order of the Day for the further consideration in detail of the bill was read.

CONSIDERATION IN DETAIL

Clauses 6 and 7 agreed to.

New Clause 7A.

The Minister assisting the Minister for Transport moved,

Page 106, after line 14 — To insert:

7A. Section 79 amended

After section 79(2) insert:

- (3) The regulations referred to in subsection (1) may make provision for applying, adopting or incorporating, with or without modification, the Prevention of Collisions Convention.

New Clause 7A agreed to.

New Clause 7B.

The Minister assisting the Minister for Transport moved,

Page 106, after line 14 — To insert:

7B. Section 99 amended

- (1) Delete section 99(1)(k) and insert:

- (k) providing for the licensing of owners, masters, operators and crew of pleasure vessels and prescribed vessels, including —
 - (i) issuing licences; and
 - (ii) authorising the chief executive officer to grant exemptions in relation to licences; and
 - (iii) assessing the competency of people to hold licences;
- (ka) providing for schemes for assessing the competency of people to hold licences in relation to owners, masters, operators and crew of pleasure vessels and prescribed vessels;

- (2) After section 99(2) insert:

- (3) *The Interpretation Act 1984* section 43(8)(d) does not limit subsection (1)(k) or (ka).

New Clause 7B agreed to.

New Clause 7C.

The Minister assisting the Minister for Transport moved,

Page 106, after line 14 — To insert:

7C. Section 100 amended

In section 100(2)(b) after “64C,” insert:

64D,

New Clause 7C agreed to.

New Clause 7D.

The Minister assisting the Minister for Transport moved,

Page 106, after line 14 — To insert:

7D. Section 107 amended

In section 107 delete the definition of *marine qualification*.

New Clause 7D agreed to.

New Clause 7E.

The Minister assisting the Minister for Transport moved,

Page 106, after line 14 — To insert:

7E. Section 114 amended

Delete section 114(3)(b) and insert:

- (b) must not exceed —
 - (i) in relation to an offence under Part 3A or Part 3B or section 124GS(2) — \$2 000; or
 - (ii) in relation to any other offence — 20% of the penalty specified for the offence.

New Clause 7E agreed to.

New Clause 7F.

The Minister assisting the Minister for Transport moved,

Page 106, after line 14 — To insert:

7F. Section 123 amended

Delete section 123(3) and insert:

- (3) The Minister, the chief executive officer, the Commissioner of Police, and the State are also relieved of any liability that any of them might otherwise have had for another person having done anything as described in subsection (1).

New Clause 7F agreed to.

Clause 8 agreed to.

Clause 9.

The Minister assisting the Minister for Transport moved,

Page 108, after line 12, the Table the 4th row — To delete the row and substitute:

s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm

Page 109, lines 2 and 3 — To delete “75CA(1) or 75DA(1)” and substitute:

75CA(1), 75DA(1) or 75DD(1)

Amendments put and passed.

Clause 9, as amended, agreed to.

Clauses 10 and 11 agreed to.

New Clause 11A.

The Minister assisting the Minister for Transport moved,

Page 146, after line 5 — To insert:

11A. Section 133 amended

In section 133(5) delete the definition of *authorised person* and insert:

authorised person includes —

- (a) an inspector; and
- (b) in relation to a suspected offence under Part 3A or Part 3B or section 124GS(2) — a police officer;

New Clause 11A agreed to.

Clauses 12 and 13 agreed to.

Clause 14.

The Minister assisting the Minister for Transport moved,

Page 150, line 2 — To delete “(a)” and substitute:

(a)(ii)

Page 150, lines 5 and 6 — To delete “75BA(1), 75BA(2), 75BB(1) or 75BB(3); or” and substitute:

75BA(1) or 75BA(2); or

Amendments put and passed.

Clause 14, as amended, agreed to.

Clauses 15 to 18 agreed to.

Clause 19.

The Minister assisting the Minister for Transport moved,

Page 153, after line 7, before the row relating to s. 75B(1) — To insert:

s. 64A(2)	Failure of master to comply with render assistance duties in relation to marine incident occasioning death, grievous bodily harm or bodily harm
s. 64A(3)	Failure of master to comply with duties in relation to marine incident
s. 64B(3A)	Failure of master or owner to give report in relation to certain marine incidents occasioning death, grievous bodily harm or bodily harm
s. 64B(3C)	Failure of master or owner to give report in relation to certain marine incidents
s. 64D(4)	Failure of responsible person to give information in relation to marine incident

Amendment put and passed.

Clause 19, as amended, agreed to.

Clause 20 agreed to.

Clause 21.

The Minister assisting the Minister for Transport moved,

Page 154, after line 12 — To insert:

- (1A) In Schedule 1 under the heading *The Criminal Code* in the rows relating to s. 284(3)(c) and s. 284(3)(d) delete “vehicle)” and insert:

vehicle or vessel)

Page 155, after line 3 — To insert:

- (2A) In Schedule 2 under the heading *The Criminal Code* in the rows relating to s. 284(3)(c) and s. 284(3)(d) delete “vehicle)” and insert:

vehicle or vessel)

Amendments put and passed.

Clause 21, as amended, agreed to.

Clauses 22 and 23 agreed to.

Clause 24.

The Minister assisting the Minister for Transport moved,

Page 160, after line 3, before the row relating to s. 75B(1) — To insert:

s. 64A(2)	Failure of master to comply with render assistance duties in relation to marine incident occasioning death, grievous bodily harm or bodily harm
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Amendment put and passed.

Clause 24, as amended, agreed to.

Title agreed to.

Consideration in detail concluded.

Ordered, That the third reading of the bill be made an Order of the Day for the next sitting of the Assembly.

10. Variation to the Order of Business

Ordered, That Private Members’ Business Notice of Motion No. 1 be next considered.

11. Western Australian Housing

Mr R.S. Love, pursuant to notice, moved,

That this House condemns the WA Labor Government for failing to prevent the worsening housing crisis, with record numbers of builders and construction businesses folding each week, and West Australians struggling to keep a roof over their heads, despite having seven years to take action.

Debate ensued.

Debate interrupted by the Chair (Mrs J.M.C. Stojkovski speaking) and adjourned until a later stage of the sitting.

12. Adjournment

The Minister for Ports moved, That the House do now adjourn.

Question put and passed.

The Assembly adjourned accordingly at 7.00 pm until Thursday, 9 November at 9.00 am.

Members present during any part of the day's proceedings – All the members except Mr T.J. Healy, Mr D.A. Templeman and Ms S.E. Winton.

KIRSTEN M. ROBINSON
Clerk of the Legislative Assembly

HON. MICHELLE H. ROBERTS
Speaker of the Legislative Assembly