



Speech By  
**Hon. Mark Bailey**  
MEMBER FOR YEERONGPILLY

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**TRANSPORT OPERATIONS (MARINE SAFETY-DOMESTIC COMMERCIAL VESSEL NATIONAL LAW APPLICATION) BILL; TRANSPORT OPERATIONS (MARINE SAFETY) AND OTHER LEGISLATION AMENDMENT BILL**

**Second Reading (Cognate Debate)**

 **Hon. MC BAILEY** (Yeerongpilly—ALP) (Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply) (7.57 pm): I move—

That the bills be now read a second time.

I thank the Utilities, Science and Innovation Committee for its consideration of the Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Bill 2015 and the Transport Operations (Marine Safety) and Other Legislation Amendment Bill 2015. The committee recommended a statement clarifying that the application bill and its contents apply only to constitutional gap vessel owners and operators and not to those already operating under the national law and system. I am pleased to table the response to the committee's recommendations.

*Tabled paper:* Utilities, Science and Innovation Committee: Report No. 11—Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Bill 2015, government response [\[159\]](#).

A key to the successful management of the domestic commercial vessel national reform is for both levels of government to adopt a true partnership. This is to ensure that the interests of owners and operators are safeguarded and the Australian Marine Safety Authority's interest is fully acknowledged. These two related bills will amend Queensland's marine safety legislation to reflect the national law and system for the regulation of domestic commercial vessels. The bills will preserve and amend Queensland's existing maritime laws to continue to effectively manage the state's remaining marine fleet and associated waterways' interests.

The Commonwealth's Marine Safety (Domestic Commercial Vessel) National Law Act 2012, known as the national law, commenced on 1 July 2013 and introduced a national system for the administration and regulation of all domestic commercial vessels, or DCVs as they are known. In effect, the general legislative framework of the national law previously enacted by the Commonwealth overrides state based provisions for those same matters.

Some of the changes in the bills will remove discrepancies and provisions that are no longer valid. A DCV is any vessel that is used in connection with a commercial, governmental or research activity and includes vessels used for fishing and trade, passenger carrying and tourist boats, and a range of other vessels working in ports and around the Australian coastline.

DCVs contribute to the prosperity of Queensland's economy through fishing and trading vessels, passenger and tourism, and hire and drive ships. To better facilitate trade across state boundaries and to provide greater consistency in regulation, it was agreed that one piece of legislation should be created and administered by a Commonwealth agency. The national law reflects a Council of Australian

Governments intergovernmental agreement signed in 2011. The intergovernmental agreement documents the joint decision of the Commonwealth and states and territories that the Commonwealth take over the safety regulation of all DCVs. Previously, each state and territory had regulated DCVs in their own jurisdiction.

The national law does not apply to international or foreign vessels. These vessels continue to be regulated under the Commonwealth's Navigation Act 2012. Recreational vessels and those vessels explicitly excluded by the national law will continue to be regulated by state legislation. The national system for DCVs is about setting consistent safety standards for vessel construction, safety equipment and operations. It is also about setting seafarer and crew qualification requirements and reducing complexities.

A national approach is helping to give greater certainty for industry, particularly tourism and fisheries, that operates across jurisdictions and promotes a more efficient national maritime sector. The national law also established the Australian Maritime Safety Authority, or AMSA, as the national regulator for DCVs. State and territories currently act as service delivery agents on AMSA's behalf. There are more than 27,000 DCVs in Australia and around 74,000 seafarers and crew across the country. The majority of DCVs have been operating under the national law and system since it commenced in 2013. Prior to the commencement of the national system, Queensland had approximately 5,500 registered commercial vessels and around 20,000 licensed seafarers. These bills will have no impact on vessel owners and operators that are already captured and operating under the national law and system.

A domestic commercial vessel, as defined under the national law, is a vessel used in connection with a commercial, governmental or research activity. Under Australia's constitutional arrangements, the states, the Northern Territory and the Commonwealth have overlapping power to make laws governing Australia's domestic commercial vessels. However, pursuant to Australian constitutional practice, once the national law commenced it assumed precedence over Queensland's laws to the extent of any inconsistency.

There is, however, a constitutional gap where only the states and the Northern Territory can regulate commercial vessels operating only within the limits of the state—on a river, creek, lake or dam, for example—and not owned by a constitutional corporation, for example, by a state government department, an individual or a partnership. Such vessels were intended to be captured by the national system but, due to constitutional limits, they are not. Under the terms of the intergovernmental agreement, state and territory jurisdictions agreed to apply the national law as a law of the state.

Vessels owned by individuals, by a partnership or by the state government that operate in open waters—for example, off the coast—are already covered by the national law as the Constitution provides the Commonwealth with the constitutional powers to make laws to govern those vessels. Transport and Main Roads has determined that there are currently nine of those vessels.

Most of the commercial and fishing ships that were regulated under TOMSA are domestic commercial vessels and have been since 1 July 2013. The remaining previously registered commercial ships regulated under Queensland maritime safety legislation have been expressly excluded by the national law. These vessels have been recategorised as 'other Queensland regulated ships'—that is, school or community group or surf lifesaver ships. A very small number of vessels within this category may require additional conditions placed on their registration. For example, limiting the area of their operation. As I said, there are currently nine constitutional gap vessels registered as commercial ships recorded by the department. Transport and Main Roads has been in contact with these owners and operators about their transition to the national system since introduction of the bills.

In addition, the national law will also apply to any human powered or low powered vessels—that is, less than three-kilowatt propulsion—owned by sole traders, such as mum and dad hire and drive vessels operating on the Noosa River or partnerships, which are unincorporated entities. These watercraft, while regulated by state law, were not required to have a registration certificate in Queensland. Transport and Main Roads believes there are a small number of these types of vessel owner structures that are operating in Queensland that may not be aware of the national law and system. On commencement of the Queensland application bill, these types of vessel owners and operators will be required to comply with the national law requirements. To minimise the impact for non-corporate owners and operators of unpowered or low powered vessels and under-10-metre fishing vessels, there will be a zero registration fee for these vessels. This reflects the cost structure prior to the commencement of the national law. Transitional provisions contained in the application bill also ensures that those constitutional gap vessels will have 12 months to comply with any new requirements, with the exact time frame dependent on the nature of the requirement.

As a delegate of the national regulator, Transport and Main Roads continues to advocate on behalf of Queensland's vessel fleet operating under the national law and system until AMSA, as national regulator, takes over certificate service delivery in 2017. To not progress these amendments would be inconsistent with the strategic intent of the intergovernmental agreement and may lead to confusion within the industry. It would also require Queensland to establish and retain a separate state based regulatory regime for a small percentage of the commercial fleet.

There are a very small number of Queensland vessels that are commercial in nature that cannot be regulated under the national law due to constitutional limitations. These are vessels that are owned by non-corporate entities operating solely on inland waters—for example, an individual or sole trader owned sightseeing ferry operating on an inland lake.

The first bill, the application bill 2015, deals with this small number of vessels that are beyond the constitutional reach of the Commonwealth. The bill reflects the intergovernmental agreement for the national system signed in 2011 that states pass legislation so that these vessels can be regulated by the national law. The bill applies the Commonwealth's national law as a law of Queensland and the practical effect of the bill is that those few vessels operating in Queensland that are beyond the constitutional reach of the Commonwealth will become subject to the national law. The application bill will not impact on those vessel owners and operators already operating under the national law and system since its commencement.

During the committee process AMSA queried whether the transitional provisions in the bill could be misconstrued as applying to vessels already operating under the national law. Those transitional provisions have been included in the bill to assist the small number of constitutional gap vessels to transition across to the national law. In response to AMSA's query and to address recommendation 2 of the committee's report on the Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Bill 2015, I can state that the transitional provisions in the bill will not apply to those Queensland ships that are already operating under the national law. The explanatory notes to this bill, when introduced to the House, indicated that Transport and Main Roads had written to operators transitioning to the national system. However, at the time of the introduction of the bill that contact had not been made. Contact by TMR occurred subsequently with these owners and operators by telephone and letters were sent to them. These operators expressed their awareness of these reforms from previous conversations with either Transport and Main Roads or the Australian Marine Safety Authority.

An erratum on this matter was tabled in the House on 24 November 2015. The contents of the bill are based on nationally agreed provisions. The bill does not attempt to legislatively identify the vessels that fall within the constitutional gap. Rather, it simply applies the Commonwealth law as a law of Queensland. This is the nationally agreed way the states and territories will ensure that the national law will apply seamlessly to all DCVs. Most of the provisions in the bill are required to give effect to ensure that the legislation is applied as if it were Commonwealth legislation and administered and enforced by Commonwealth officials or delegates. In relation to contact and consultation, on 30 October 2015 Transport and Main Roads officers contacted owners, operators and masters of recorded constitutional gap vessels by telephone to discuss the introduction of the application bill, explain its impact on them and address any questions they raised. These calls were followed up by a letter providing more information, which was sent on 5 November 2015.

In summary, most constitutional gap owners indicated an awareness of what was happening from discussions they had had with AMSA and with Maritime Safety Queensland. Their inquiries were mainly about the continuation of licensing and this was the information emphasised in Transport and Main Roads' follow-up letters. Transport and Main Roads will continue to advocate on behalf of Queensland vessel owners and operators as part of its service delivery arrangements with the national regulator.

The Department of Transport and Main Roads had met with some key stakeholders in relation to specific impacts of the amendments contained in the bills so as to ensure that stakeholders are aware and understand the nature of the changes. This primarily relates to safety management systems for other government departments and organisations such as the Department of Education and Training and Surf Life Saving Queensland. Both of these organisations acknowledge the nature of the legislative changes and potential impact that this may have on their ships and regulatory frameworks and indicated a willingness to work with the Department of Transport and Main Roads through these changes.

The Department of Transport and Main Roads also consulted with key stakeholders in relation to specific impacts of the amendments contained in the bill to ensure that stakeholders are aware and understand the nature of the changes. Some changes to safety management systems for other government departments and organisations, such as the Department of Education and Training and

Surf Life Saving Queensland, will be required. Both organisations acknowledged the nature of the legislative changes and potential impacts that this may have on their ships and regulatory frameworks and indicated a willingness to work with TMR.

Following the introduction of the bills, Transport and Main Roads worked with constitutional gap vessel owners, as I previously indicated. As a national initiative, the Commonwealth was responsible for the majority of consultation on the national reforms. Since the commencement of the national system AMSA, in partnership with the state, has continued to liaise and consult with industry and communities across Queensland, providing information and education regarding the national law and assisting with compliance.

Specific consultation on the national law prior to its commencement and implementation was undertaken in 2012. The draft Commonwealth bill was released for public consultation between 2 and 29 February 2012. AMSA hosted 19 public consultation workshops across Australia. The Department of Transport and Main Roads had been in contact with those recorded constitutional gap vessel owners and operators to explain their transition to the national law and system. Based on an identification of the most affected stakeholders, the Department of Transport and Main Roads has undertaken some targeted community consultation in relation to the marine safety bill and its impacts. Specifically, consultation was undertaken with groups like DET and Surf Life Saving about how they will continue to be regulated under state legislation. Some changes to safety management systems will be made in the regulation. Both organisations acknowledged the nature of the legislative changes. Both entities indicated that they will work cooperatively with the department.

The second bill, the Transport Operations (Marine Safety) and Other Legislation Amendment Bill 2015—the marine safety bill—contains amendments mainly required because of the national law. This bill will ensure that there is no overlap between state and federal legislation in the regulation of domestic commercial vessels. In addition, the marine safety bill restructures the Transport Operations (Marine Safety) Act 1994 and introduces a new defined term, 'Queensland regulated ship'. This refers to recreational ships and those ships that have been excluded from the definition of domestic commercial vessel under the national law, for example, surf-lifesaving vessels and those vessels owned by schools.

Provisions that deal with registration, licensing and general safety obligations are now drafted to apply only to Queensland regulated ships. This legislation will not impact matters such as speeding, alcohol and drug restrictions, and harbour management, which remain drafted to apply to all ships including DCVs. This reflects the national agreement of marine safety authorities and AMSA that these matters continue to be regulated under state and territory based legislation.

This restructuring of the Transport Operations (Marine Safety) Act 1994 assists in the current process of rewriting the Transport Operations (Marine Safety) Regulation 2004, a significant component of maritime regulation in Queensland. This regulation is being reviewed and rewritten due to its staged expiry under the Statutory Instruments Act 1992. It is important to note, however, that the changes in the bill and those proposed in the statutory remake of the marine safety regulation will not impose any increased obligations on those involved in the operation of Queensland regulated ships. A status quo approach has been adopted to apply to Queensland's regulated ships.

The following matters prescribed by the national law will still be regulated by Queensland. Section 6(2)(b) of the national law prescribes certain matters that are to be regulated by the states and territories in relation to domestic commercial vessels. For example, the following are some of the matters that remain regulated under Queensland legislation: management of ports, harbours and moorings; environmental management including pollution, impact assessments and sanctuaries; pilotage; management of dangerous goods; appointment and powers or functions of harbourmasters; actions of persons under the influence of alcohol or other drugs; workplace health and safety; speed limits, navigation aids, traffic management plans, rules for prevention of collisions, no-wash zones, the management of events on waterways, wrecks, salvage, passing dredges, towing objects, bar crossings and local knowledge requirements; fisheries management, removing obstructions including abandoned, sinking and derelict vessels from navigable waters; and emergency management and response.

The national law recognises existing fee arrangements across respective jurisdictions for the certification, registration and licensing of domestic commercial vessels. It does not prescribe fees. Pricing arrangements will remain a state responsibility until 2017, at which time AMSA will assume pricing and cost recovery arrangements under the national law. It is likely that AMSA will introduce a revised pricing framework independent of the states and territories; however, AMSA is still determining its final strategy on this matter and the state will have no direct role in setting prices post July 2017.

Since the commencement of the national law, Transport and Main Roads has been acting as a service delivery agent of the national regulator under an administrative arrangement. The national

regulator is already responsible for the certification of vessels via registration and of masters and crew members' competency and safety. The Department of Transport and Main Roads will continue to act as a service delivery agent with respect to registration and licensing matters until 2017. Until then domestic commercial vessel owners and operators will be able to do business through the Department of Transport and Main Roads. The national regulator's intentions are unclear with respect to the delivery of broader compliance and enforcement activities. Queensland will work with AMSA to develop a sustainable transition model, but Queensland cannot commit until it is aware of the details of AMSA's future plans.

In relation to non-national law related amendments, part 2 as it exists of the Transport Operations (Marine Safety) Act 1994, TOMSA, dealing with the development and approval of marine safety strategies is being removed to reflect Maritime Safety Queensland's further integration into the Department of Transport and Main Roads' organisational structure and reporting requirements. As a mature organisation the Department of Transport and Main Roads does not need to impose legislative obligations upon itself to do something that it does as a matter of normal organisational business. This change contemporises the legislation which was originally enacted nearly 20 years ago.

A board of inquiry is an independent board which is able to be convened by the minister to conduct a review into serious marine incidents and examine the likely causal factors leading to the incident. Boards of inquiry of marine instances are in addition to the investigation of the state's maritime safety regulator, Maritime Safety Queensland; AMSA, as the regulator of domestic commercial vessels; and/or any Australian Transport Safety Bureau's investigations. The Australian Transport Safety Bureau is an independent Commonwealth statutory body with the responsibility to, among other things, independently investigate transport accidents and other safety matters across road, rail and maritime modes of transport.

Part 12 of TOMSA as it exists enables the minister to convene an independent board to conduct a review into serious maritime incidents and examine the likely causal factors leading to the incident. Any review by a board of inquiry into a maritime incident is in addition to Marine Safety Queensland's investigation. Marine Safety Queensland, as the state marine safety regulator, is charged with the power and function to handle all investigations in relation to incidents and safety matters. In addition, the National Australian Transport Safety Bureau may also choose to conduct an investigation. The ATSB is an independent Commonwealth statutory body with the responsibility to, among other things, independently investigate transport accidents and other safety matters across road, rail and maritime.

Since the commencement of the national law, incidents involving commercial vessels are being investigated by the Australian Maritime Safety Authority as the national regulator of domestic commercial vessels. The ATSB may also decide to launch its own separate independent investigation into an incident. Given that there are multiple avenues available for investigations to be conducted into marine incidents, the provisions relating to boards of inquiry are being removed. Since the provision was introduced in 1994 the board of inquiry has been activated twice, and both times matters would have been subject to both state and federal investigations.

In addition to Maritime Safety Queensland's regulatory powers to investigate under TOMSA, Queensland's marine pollution legislation provisions also provide shipping inspectors with investigative powers. Queensland's workplace health and safety legislation also confers powers on shipping inspectors to investigate contraventions under the Work, Health and Safety Act 2011. Those maritime incidents involving a reportable death may be investigated by the Coroner under the Coroner's Act 2003. Investigations may also be undertaken by the Queensland Police Service into the circumstances surrounding a marine incident. Queensland Police Service officers may also be appointed as shipping inspectors under TOMSA, which provides an interagency cooperative approach to investigating marine matters. Under the Commissions of Inquiry Act 1950, the state government is able to convene an inquiry into incidents or safety matters. The Governor may issue a commission of inquiry by and with the advice of the executive council; for example, the recent Queensland Floods Commission of Inquiry.

In practice, Marine Safety Queensland works collaboratively with other state and national agencies to ensure that, wherever possible, areas identified for improvement and/or recommendations from safety investigations can be implemented to improve marine safety outcomes. Since the boards of inquiry provisions were introduced into state legislation back in 1994, there have been two boards of inquiry, both of which involved commercial vessels: firstly, the investigation into the marine incident involving the vessel *Sun Paradise* and the vessel *Pride of Airlie*, a collision incident which occurred in 2001; and the investigation into the marine incident involving the vessel *Wunma*, a cyclone related event which occurred in 2007.

In both cases Marine Safety Queensland conducted investigations as the state safety regulator for the marine industry. Marine Safety Queensland's investigation resulted in identifiable areas for

improvement which were similar to those that the board of inquiry identified at the time. In the event of a collision between a domestic commercial vessel and a Queensland regulated ship, it is likely that Marine Safety Queensland would investigate in relation to its responsibilities as the marine safety regulator under the Marine Safety Queensland Act 2002; however, AMSA would be able to conduct its own investigation. If the domestic commercial vessel expelled any pollutants, Marine Safety Queensland would use its powers under the Transport Operations (Marine Pollution) Act 1995.

In relation to regulation of commercial vessels outside the national law, the national law excluded these vessels because they are not of a commercial nature and are relatively lower in risk. Consequently, these groups of ships are currently regulated under Queensland's marine safety legislation. As I mentioned earlier, surf lifesaving and school ships operate under a range of exemptions for fees, licensing, registration or safety equipment under existing provisions in the Transport Operations (Marine Safety) Act 1994 and the Transport Operations (Marine Safety) Regulation 2004. The existing exemption conditions will be preserved under the remade marine safety regulation.

In terms of how Queensland regulates these vessels, they are to be regulated in a similar way to recreational ships and, where necessary, additional conditions will be placed on the ship's registration to deal with its particular operations to ensure marine safety. For example, the vessel may have additional safety equipment requirements when operating beyond 15 nautical miles. In addition, all ships registered as 'other Queensland regulated ships'—that is, non-recreational vessels—will be required under the remade regulation to have a safety management system in place. The Department of Transport and Main Roads maintains a register of school and surf lifesaving ships. As at 31 December 2015, approximately 547 Queensland registered vessels other than recreational vessels were maintained by the Department of Transport and Main Roads.

In relation to coastal shipping, changes to the administration of domestic commercial vessels have no connection to these legislative reforms and the Queensland government has no role in the commercial regulation of the vessels that the Commonwealth legislation is targeting. At some time this year the Commonwealth parliament will potentially again consider a number of amendments to maritime based legislation; namely, the Shipping Legislation Amendment Bill 2015, which will seek to amend the Coastal Trading (Revitalising Australian Shipping) Act 2012 and the Shipping Registration Act 1981. Essentially, these pieces of legislation regulate the commercial activity of vessels engaged in international trade with a particular emphasis on the commercial regulation of foreign registered vessels seeking to operate within Australian waters.

The proposed amendments to the Coastal Trading (Revitalising Australian Shipping) Act 2012, known as the coastal trading act, will seek to replace the existing three-tier licensing system with a single permit system. The proposed amendments to the Shipping Registration Act 1981 will replace the requirement to be predominantly engaged in international trading to be registered on the Australian International Shipping Register, with a requirement to undertake 90 days of international trading per year.

I am pleased to report that, in relation to Queensland regulated ships, there have been no fatalities over the past six years. That is in contrast, unfortunately, to a range of fatalities involving recreational and commercial ships. Finally, the bill removes redundant provisions which have no ongoing application because they only applied to domestic commercial vessels. In closing—

**Opposition members:** Hear, hear!

**Mr BAILEY:** I have never had so much support from the opposition—never before, and maybe never again!

In closing, I would just like to emphasise that industry and those involved in enforcement activities will benefit from the changes made in the bill as they clarify legislative obligations applying to both Queensland regulated ships and domestic commercial vessels. I sincerely thank our hardworking Department of Transport and Main Roads for their hard work on these bills.