CONSUMER PROTECTION LEGISLATION AMENDMENT BILL 2018

Second Reading

Resumed from 8 May.

HON RICK MAZZA (Agricultural) [12.20 pm]: I rise to make a second reading contribution on the Consumer Protection Legislation Amendment Bill 2018. The bill essentially seeks to amend 10 consumer protection acts within the portfolio of the Department of Mines, Industry Regulation and Safety. I will unpack this by speaking about each individual act that is proposed to be amended.

The first act that this bill seeks to amend is the Auction Sales Act 1973. The amendments will basically increase the penalties for certain offences within that act. It might interest members to know that some years ago, I held an auctioneer's licence and conducted auctions under that licence. An auctioneer's licence is not attached to a particular industry, such as real estate, cars or stock; it is a licence to conduct an auction of real estate, cars, stock or whatever else it may be. In the case of real estate, the auctioneer acts under the supervision of a licensed real estate agent and is required to comply with the Real Estate and Business Agents Act. In July 2007, a ministerial report was undertaken by the then Minister for Consumer Protection, Sheila McHale. I recall that, because it was prior to the days when I conducted auctions. At that time, some real estate agents had the habit of taking dummy bids. A dummy bid is when a person in the crowd makes a bid to make the reserve price known, in an effort to kick the auction along. The dummy bidder was often a friend of the vendor, or, in some unscrupulous circumstances, a stooge of the real estate agent.

Hon Simon O'Brien interjected.

Hon RICK MAZZA: That can happen, Hon Simon O'Brien.

That report recommended that dummy bids be prohibited. If my memory serves me correctly, it also recommended that vendor bids had to be disclosed by the auctioneer, and bidders had to be registered. An effort was made at that time to reduce the incidence of unscrupulous activities at auctions.

The report also prohibited what are known as mock auctions. From my understanding, a mock auction is a scam in which a group of people get together and buy the items at a much higher price than they are worth in order to portray that the items are of high value and encourage other people to buy them. The current penalty for conducting a mock auction is $1 000. That is a low penalty, because the people who conduct such a scam would make far more than $1 000. Under this bill, the penalty will be increased to $50 000 to deter people from undertaking that activity. The penalty for misleading advertising, false or misleading representations, and failure to maintain records, is proposed to be increased to $25 000. The penalty for failure to hold a licence will be increased from $500, which is a very low amount, to $50 000. Many of these penalties were set many years ago. The penalty for failure by a stock auctioneer to maintain sales records will be increased from $500 to $1 000, not a substantial increase, really. The penalty for an auctioneer who purchases stock on his own behalf—a very bad thing to do—will be increased from $1 000 to $50 000, or imprisonment for up to 12 months.

It is interesting that applications for the grant or renewal of an auctioneer's licence are still undertaken by the Magistrates Court. At the time I held an auctioneer's licence, an application had to be made to the Magistrates Court each year for the magistrate to approve the renewal. In the last term of government, that was changed to every three years, in order to reduce the time of the court in processing licence applications. The licence was also quite expensive. If my memory serves me correctly, it cost about $300 or $400 a year. Currently, the cost for one year is $187.95, for two years is $375.90 and for three years is $563.85. I am at a bit of a loss about why we have not moved away from the Magistrates Court and why the Department of Mines, Industry Regulation and Safety cannot administer licence applications. It would certainly be more efficient to take responsibility for this simple administrative matter away from the Magistrates Court, which is already a very busy court. However, for some reason, it has persisted to be administered by the Magistrates Court.

Hon Michael Mischin: Will you take an interjection?

Hon RICK MAZZA: Sure.

Hon Michael Mischin: When I was the minister responsible, I instructed the department to look into that, and, indeed, the question of whether auctioneers required a licence at all, as a starting point for an inquiry, because, as you say, there are certain guidelines and requirements under the Real Estate and Business Agents Act in that regard—stock auctioneers may have particular requirements—so it does not appear to me to necessitate auctioneers having a particular licence if they are abiding by other requirements. So, yes, on that area of the Magistrates Court, it seemed to be anomalous that it is involved in that at all.

The ACTING PRESIDENT (Hon Robin Chapple): Members, an interjection should be an interjection, not an addition to the member's contribution. Thank you.

Hon RICK MAZZA: Thank you, member; I appreciate that interjection. I remember that in the last term of government, we discussed whether there should be a requirement for an auctioneer to hold a licence, particularly

considering that there are other acts that control the sale of goods. However, if we are to have a licensing regime for auctioneers, the licensing of that should be moved to the Department of Mines, Industry Regulation and Safety.

The bill also proposes to amend the Charitable Collections Act 1946, predominantly to increase the penalties. The penalty for not holding a licence will be increased from $100 to $20 000. The bill provides for the Commissioner for Consumer Protection to administer the act, rather than the minister, and thereby provides power for the commissioner to deal with the act on a day-to-day basis. The penalty for failure to deliver documents will be increased from $100 to $5 000. There is also a requirement to keep records for seven years. Amendments are also proposed around the authorisation of persons to act on behalf of a licensee. I must admit that when I get harassed in the street when I am in the city by people who are collecting donations, I often wonder whether they are under the guise of a licensee or are backpackers collecting some funds for themselves. It is important that they do wear identification and that there is some control around this.

The bill also amends the Debt Collectors Licensing Act 1964. Again, it is mainly around increases in penalties to be consistent with the other acts—from $100 to $20 000. The bill also includes a fine of $20 000 for the provision of false information. Various penalties in that act will go from $200 or $400 to up to $50 000, which again is a deterrent to people doing the wrong thing.

The amendments to the Fair Trading Act are, again, largely to do with penalties. There is some scope in that act for the entry of and seizure of things from business premises to allow for scrutiny.

There are also amendments to the Home Building Contracts Act. The bill will change the requirement to have home indemnity insurance when works are internal renovation-type works. My understanding is that, at the moment, any works over $20 000 are supposed to be covered by home indemnity insurance. I would hazard a guess that, in some cases, people are not taking out that policy. There is a change in the bill that if it is renovation-type work, apart from prescribed building services, there will not be a requirement to take out a home indemnity insurance policy. It is quite interesting that if the bill of painters and decorators is over $20 000, they will be required to have home indemnity insurance.

The home indemnity insurance scheme has had a bit of a rocky history, to the point that it is now 100 per cent underwritten by the state government. It would appear that commercial interests just cannot make the home indemnity insurance scheme work. One thing to consider with this scheme is that if someone has issues with a builder who goes insolvent partway through a building contract or should remedial works be required if a building has failed in some way within the six-year warranty period, the maximum payout for a claim is $100 000. That is not a lot of money. For instance, a builder may have been providing very cheap quotes in order to get the business. Things then turn on them a bit, to the point that they are not able to complete the building and they become insolvent. If the owners need a new builder to come in to pick up the pieces and restart the building of that property, $100 000 probably will not go a long way, particularly if they had made a progress payment to the original builder just before they became insolvent. Remedial work could also run into substantially more than $100 000. In those cases, the consumer will be left out of pocket, which could run into tens of thousands if not hundreds of thousands of dollars.

There is a fairly glaring exposure for consumers around the deposit on building contracts. It was confirmed in my briefing yesterday that this still exists. I am not quite sure why the government has not moved to close it. The exposure is that when someone signs a new building contract and pays the deposit—there are limitations on how much deposit the builder can take for that contract—the builder does not have to take out a home indemnity insurance policy until such time as the building licence is issued. That could be weeks or months. Should the builder become insolvent and go into liquidation during that time, there will be no insurance cover of the deposit that has been paid. This is particularly hard for young people or people who are just coming into the market, who have saved for a very long time to afford to get into the real estate market and have put their hard-earned money down as a deposit. If the builder becomes insolvent before the building licence is issued and the home indemnity insurance policy cover is taken out, their money is gone. Both the Settlement Agents Act and the Real Estate and Business Agents Act have a fidelity guarantee fund, which mainly protects consumers against fraud in those circumstances, bearing in mind that those two industries have trust accounts into which the money goes. However, money paid as a deposit to a builder can just go into the builder's general account. That money is at risk for some time. I would urge this government to move at some point to try to close that gap of exposure for consumers.

The bill also makes a small change to the Land Valuers Licensing Act. Apparently, a drafting error was made some time ago. The act states that the renewal has to be done within 28 days, rather than giving people 28 days. This error reduced the time given by one day to 27 days, which created some confusion when people were trying to make a renewal on the last day. We saw with the Revenue Laws Amendment Bill that drafting mistakes can be very costly sometimes. In this case, the government has moved to change the period for renewal to 28 days, rather than within 28 days. There are also changes to cover the provision of information. Should someone provide incorrect information at any time, and not just when they apply for a licence and have to make a declaration, the

commissioner will be able to take them to task. As it was explained to me, false declarations are pretty small fry for the Director of Public Prosecutions at the moment. False information might be given at some point and nobody really takes them to task with the penalties, other than giving them a stiff talking to about giving false information. This amendment will enable the department to pursue people who provide false or misleading information with their licensing. The bill also includes an increase in fees. Should someone fail to meet the requirement to hold a licence, the penalty will increase from $50 000 to $100 000, which is quite a deterrent. The penalty for falsely claiming to be a licensed valuer will increase from $50 000 to $100 000 as well.

There will be some changes to the Real Estate and Business Agents Act as well. Under the Real Estate and Business Agents Act and the Settlement Agents Act, a person holds a licence, but to actually be able to operate, they need a triennial certificate. Even though someone may be the holder of a real estate and business agents licence or a settlement agents licence—we will get to those a bit later—they need a triennial certificate to actually conduct business. When real estate agents or settlement agents cease business for a period of time—they may close the doors to go on holiday; who knows what it might be—they will put their licence on hold. There is a holding fee. There have been some changes around that holding fee. One interesting thing to me is that if someone fails to renew the holding fee on time—my understanding is that it is 60 days after the renewal date—there is no scope for the commissioner to grant them that licence; that is, they lose the ability to renew that licence. What they can do is reapply. If they have spent two years in the last five conducting their business, that will satisfy the educational requirements. As it was explained to me, oddly enough that was okay for mutual recognition for applicants from other states, but not for those in Western Australia. It has now been included that if someone has conducted business in Western Australia for two years out of five, that will go towards the requirements to renew the licence. There is some scope there for people who may not have renewed their licence within that time. I note that the Real Estate Institute of Western Australia does not have a lot of problems with the amendments to the Real Estate and Business Agents Act.

The bill proposes to insert a section in the Real Estate and Business Agents Act that stipulates that agents must meet prescribed educational requirements as determined. Failure to do that carries a fine of $5 000. In more recent times, real estate agents, like people in many industries, have had to achieve continuing professional development points every year to maintain their licence, or their registration if they are a sales representative. In the past, that was undertaken with seminars and all sorts of things but now most of that is online and pretty much live into the department so that when someone completes a module, the department knows about it. My understanding to date is that there has not really been a fine around that but now there could be if one fails to achieve the continuing professional development points. Something similar exists for sales representatives as well.

The increased penalty for the failure of a financial institution to credit interest on a trust account from $10 000 to $50 000 is quite an interesting one. When people pay their deposit, or have rental moneys held in the real estate agent's trust account, people think that the real estate agent is getting the interest on that money, and they have a grievance against that. The fact is that some years ago that was changed and the interest on funds that are held in those trust accounts goes to the administration of the department. Financial institutions are required to pay that money to the department. Obviously, there are increased penalties there. I do not know whether there have been any issues with those financial institutions paying that money, but should they fail to do so, they are now up for a penalty of $50 000.

The general penalties for offences in the administration of a trust account increase from $3 000 to $25 000. Trust accounts are a very important function of businesses, like real estate agents and settlement agents. Sometimes they can carry substantial amounts of money, even though bonds are no longer held in real estate agents' trust accounts; that is now held by the bond administrator. Large real estate agents can still hold a substantial amount of money. There are increased fines if that is not being administered properly.

Proposed section 84(1)(a) inserts a new provision to allow for an alternative penalty of two years' imprisonment for an offence against section 68(4) of the Real Estate and Business Agents Act. Again, it beefs up the penalties to do with any breaches of a trust account. New provisions allow claims on the fidelity guarantee fund. Real estate agents contribute to the fidelity guarantee fund in the first three years every time they pay their real estate agent's licence. An amount is added to that for the fidelity guarantee fund, and the same thing happens for sales representatives. Contributions to the fund have happened for many years. The fidelity guarantee fund protects consumers against fraudulent activities by real estate agents and sales representatives. Some members may remember the quite high profile situation in which some scammers intercepted an email and conducted identity theft and sold someone's home who was overseas. I think they might have been in South Africa. The real estate agent thought they were dealing with the vendor of the property, when in fact it was someone else. When the property settled, the funds went to the scammer, never to be seen again. The person who bought the home had legal title of the home. The transfer had occurred and so they had indefeasibility of title. As has been explained to me, the fidelity guarantee fund did not respond to that situation because it was not a fraud by the real estate agent; it was a fraud through identity theft. My understanding is that the Landgate processes allowed it to compensate the seller of that property for the losses. But should a real estate agent withdraw the funds from the trust account and go for an extended holiday in South America somewhere, the fidelity guarantee fund would respond to protect the consumer from that loss.

The next act is the Residential Tenancies Act 1987. The changes to that act surrounded the coroner's report in relation to the death of a child in Western Australia. Sadly, since 2001, 22 Australian children under the age of nine years were killed by falling furniture. That is a substantial number of children. I was unaware of that until I did a bit of research on it.

Hon Alannah MacTiernan: What number was that?

Hon RICK MAZZA: Twenty-two Australian children under the age of nine years since 2001. It is quite a number of people. I am very supportive of tenants being able to secure furniture to make sure it does not fall on a child. I would like the minister to try to define for me a "child" for these purposes. Is it someone who is under the age of 18 years or is it someone who is under the age of 10 years? Is there a definition of that?

Hon Alannah MacTiernan: So, member, just what turns on that? We are giving, generally, the tenant the right, subject to meeting the various conditions, to bolting the furniture on. You don't have to prove that you've got a child living with you, because obviously many people will visit households and will have children. So I am not sure of the relevance of the definition of "child", because we're not limiting it to a tenancy where the person actually has a child. So we're not quite sure how that will change.

Hon RICK MAZZA: All right. Could the minister cover that off in her reply, if she would not mind. It would be interesting to see if there is actually a definition of that. I take on board that it is not just people who are on a lease who have children; it could be grandchildren or people who do not have any children at all but have friends with children who visit on regular occasions. The idea of tethering furniture to secure it from falling over is a good move, even though anybody, really, could apply to the landlord to be able to tether furniture and say that they have people with children who visit. I think consideration should also be given to people with disabilities, whether that be physical or intellectual, where there are heavy bookcases or TVs—even though those people are adults, some of those bookcases can weigh a lot when they are full of books.

Hon Alison Xamon: Well, they can fall.

Hon RICK MAZZA: Absolutely. I have a bookcase at home that I would not want to have fall on me. There could also be scope to require to have furniture tethered or affixed for anybody with disabilities, or the elderly.

There are exemptions, though, in this bill in relation to a fixture that could disturb asbestos, heritage-listed properties or premises in strata complexes with bylaws that prohibit affixing items to internal walls. To the first point of asbestos, unfortunately, asbestos is in thousands and thousands of homes within Western Australia, particularly old State Housing Commission houses. I imagine there are many homes within the State Housing Commission portfolio that contain asbestos in one form or another. What worries me is if an exemption is given to a home that contains asbestos, are the children in more danger in those homes than they would be somewhere else? There may be scope in the future to provide a qualified tradesperson to attach items to walls that contain asbestos material in a safe way if they are able to do it. There are not a lot of heritage-listed premises, but, again, the people in charge of heritage may be able to find a way to secure furniture. I heard there are other ways to secure furniture besides tethering, so I would like to hear a little bit more about that at a later stage.

The provision for premises in strata complexes that are prohibited to fix items on internal walls seems very unlikely. Generally, the person who owns a strata title owns the internal walls within that strata title, and then there are common areas that are controlled by the strata company. The instances in which a strata company would have control over what a person attaches to a wall inside a strata title property would be minute, if it exists at all. I am not quite sure why that prohibition has been put in place. I would not like to see a strata company being in control of whether someone can tether something inside their own home, but that is quite an interesting exclusion. There are provisions for the tenant on vacating the premises to return the premises to original condition at their cost.

On the supplementary notice paper, I have a couple of small amendments that members would be aware of. One amendment is that affixing and removing an item be undertaken by a qualified tradesperson. I would like to talk to the minister some more about that and maybe find a way through, because the concern I have is not so much the damage to the property if it is done by a do-it-yourself person. My concern is that not everybody is particularly skilled at DIY. What if someone has used the wrong sized drill bit for the rawlplug that goes into a masonry wall and they think they have secured it well, and it fails? What if the tethering mechanism they have used fails? What if it is a stud wall and they have just gone straight through the plasterboard and not found the stud? There is no security from a falling piece of furniture. There are also issues, particular to stud walls, of drilling into electrical wiring or whatever the case may be. I would like to be able to talk to the minister a bit more later about whether we are able to work out something around that or whether there are other methods of securing furniture in homes.

Another amendment to the act I mentioned before is when the utility is connected in the lessor's name, the supply cannot be charged to the tenant. I think the supply charge in my last utility bill was $59 or thereabouts. For some people, that is a fair bit of money. I asked the department why a lessor would want to keep the utility in their name, given that generally when a tenant moves out and a new one comes in, it is put into the new tenant's name and they have to pay the supply charge. It was explained to me that a lot of people have solar panels on the roof and

they want to keep the utility in their name to get some financial benefits from concessions to do with solar panels. If a lessor wants to keep the utility bill in their name for some benefit, I understand why the department has moved down this path. I note that the Real Estate Institute of Western Australia has asked that that provision be deferred until it does a full review of the legislation later, so it has some input. In a letter REIWA wrote—I think a submission—it was very pointed about the lack of consultation it feels it has had about the bill. It has asked that that provision be delayed. Maybe that is something we can talk about a bit later. Apparently, that also relates to a strata company that may have a quadruplex and there is only one meter. A formula is used to read the meter and adjust charges to tenants. In those cases, supply cannot be charged either.

There is a new provision that will allow the court to terminate residential tenancy agreements when a tenant has intentionally or recklessly caused or permitted damage to common areas within a strata complex. Currently, when the owner of a strata unit leases it to a tenant, the tenant under the lease is obviously responsible for what is inside the strata unit, and if they damage it, the lease agreement and the Residential Tenancies Act will be used to respond. But there is a bit of a hole when there is a common area within a strata complex and the tenant damages the common area. There is no way that the landlord can recover any costs to repair the damage within the common areas. It would then be up to the strata company to try to recover the damage costs. This amendment would allow, within the tenancy agreement, for the tenant to be responsible for any damage that occurs to the common area, which I think is a good move.

The next act to be amended by this bill is the Settlement Agents Act 1981. A few changes are proposed, and I covered some of them in my comments on the Real Estate and Business Agents Act. They are to do with the surrender of the triennial certificate. If there is a desire to fall back to a holding fee, there is no requirement to wait until the end of the triennial certificate term, which could be three years. It can be terminated earlier and a holding fee can be placed on it. Again, there are some penalty increases. There is a new section that refers to compliance with educational requirements, with a fine of $5 000 if there is a failure to do that. Again, financial institutions are required to pay the interests on deposits and there is a hefty fine for failing to do that. There is also a provision that affects trust accounts, with a penalty of up to two years' imprisonment for unauthorised withdrawals on a trust account. Some people might remember the very high profile case some years ago when a settlement agent had a gambling habit that got out of control and over time had emptied the trust account of a considerable amount of money. It is very important that we have strict guidelines around trust accounts. Again, there is the ability for the department rather than the Director of Public Prosecutions to prosecute.

The last act to be amended by the bill is the Street Collections (Regulation) Act. It is a very small change to my mind, with the definition of "metropolitan area" to be replaced by one for "metropolitan region".

I look forward to being in Committee of the Whole House to go through some of the issues surrounding the bill and the various acts it amends. As I say, I would like to discuss things with the minister a little further, maybe behind the Chair, to see whether we can work out a couple of things I have on the supplementary notice paper.

Hon Alison Xamon: What were REIWA's concerns?

Hon RICK MAZZA: Would the member like me to read out some of the letter outlining REIWA's concerns?

Hon Alison Xamon: Yes, I would, actually.

Hon RICK MAZZA: Okay.

Hon Alison Xamon interjected.

Hon RICK MAZZA: Righto.

The Real Estate Institute of Western Australia stated in a letter about the Consumer Protection Amendment Bill 2018 —

> While it is disappointing REIWA was not given prior notification of the proposed changes to key pieces of legislation to our industry, with the draft Bill now publicly available we welcome the opportunity to provide an industry perspective.
>
> **Residential Tenancies Act—Affixing Furniture**
>
> REIWA supports changes to allow tenants to affix furniture to better protect child safety in the home.

Hon Alison Xamon: Good on them.

Hon RICK MAZZA: I think so, too —

> REIWA also supports exemptions in cases such as strata properties and where asbestos is present.

I think we probably need to have a good hard look at that, because asbestos is present in a lot of homes. Some of those homes would probably be low-rent homes, being old State Housing Commission homes or homes from the 1950s.

Hon Alison Xamon: Or extensions.

Hon RICK MAZZA: Or they could be extensions; the member is quite right. Children would be present in those as well. The letter continues —

> However, REIWA members raised concerns over stipulations for tenants to rectify or cover the cost to rectify any damage as a result of affixing furniture. REIWA members believe that 'damage' would not necessarily cover the holes left in walls once the furniture is removed at the end of a tenancy.

That is something I have covered in my proposed amendments in the supplementary notice paper, so we will see how that plays out when we get to the committee stage —

> REIWA would therefore recommend the Bill dictates that tenants restore the wall to its original condition, unless told otherwise by the lessor.
>
> **Residential Tenancies Act—Utilities Charges**
>
> REIWA members do not support changes that places the tenants' obligation to pay for usage only and not the utility connection fees, —

I think what is meant there is the supply charge, not the connection fee; we know there is a one-off fee for connection —

> when the invoice is issued from the supplier to the property owner. As this is a significant policy shift, REIWA members would like an opportunity for adequate consultation on this matter, and therefore REIWA recommends this issue be deferred until the upcoming review of the Residential Tenancies Act.

I do not know when the review of that act may take place. Maybe the minister can inform us a little later what the time line is for a review of the Residential Tenancies Act. This would be the second amendment we would have made to this act. The first time around was in relation to domestic violence and we had quite a lengthy debate before that was finalised. Now there is this issue of the tethering of furniture and heavy items, along with the supply charge. The letter continues —

> **Real Estate Business Agents Act**
>
> REIWA is generally supportive of the increases in penalties to maintain a high standard of professionalism from the industry. However, the increases are almost ten-fold in some cases and prior consultation would have been appreciated to give industry an opportunity to provide feedback.
>
> There are many in the industry who feel the large increases are excessive but REIWA does acknowledge the increases are in line with other legislation.

Even though REIWA is complaining that there is a tenfold increase in the penalties, it acknowledges that the increase is in line with other legislation. I think REIWA is probably going to live with that okay. Further on in the letter, REIWA says —

> Overall REIWA supports these changes that aim to maintain the highest possible standard of real estate professionalism. However, there are significant changes presented in the Consumer Protection Amendment Bill 2018 on which the industry would have appreciated prior consultation to the Draft being put to Government.

In about three or four areas in that letter the Real Estate Institute of Western Australia has complained that it was not given adequate consultation about this bill.

Debate adjourned until a later stage of the sitting, on motion by **Hon Ken Baston**.

[Continued on page 3040.]

Sitting suspended from 1.00 to 2.00 pm