

**FAIR TRADING AMENDMENT BILL 2018**

*Introduction and First Reading*

Bill introduced, on motion by **Hon Alannah MacTiernan (Minister for Regional Development)**, and read a first time.

*Second Reading*

**HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development)** [2.31 pm]:  
I move —

That the bill be now read a second time.

The purpose of the Fair Trading Amendment Bill 2018 is to improve the operation of the consumer law in Western Australia, update the contents of the Australian Consumer Law as it applies in this state and provide for consistency with the national law going forward. The amendments will enable all businesses and consumers in Western Australia to better understand their rights and obligations and to enjoy the full range of protections currently available under the national law. I will now provide some details about the key reforms included in this bill.

The Fair Trading Act 2010 currently applies the Australian Consumer Law as in force on 1 January 2013 as the consumer law of Western Australia. A number of amendments have been made to the ACL since 2013 that are yet to be incorporated into the ACL WA, including the extension of the unfair contract terms protections to small businesses and a new regime for country-of-origin labelling requirements for food. The intention of the interaction of commonwealth and state laws is that the commonwealth amendments apply directly to constitutional corporations trading in Western Australia, which is around 80 per cent of traders, but not to other forms of enterprise such as sole traders or business partnerships. Lack of consistency between the ACL and ACL WA is confusing for traders and for consumers, with small businesses particularly disadvantaged. Although updating the Fair Trading Act to incorporate a more recent version of the ACL addresses the current inconsistencies, it does not address the ongoing issue of there being a time lag between the application of ACL amendments to constitutional corporations and the application of ACL WA to other kinds of businesses. It is also expected that the inconsistencies and resulting confusion that arise from this issue will increase, particularly as a raft of amendments recommended by the 2017 review of the ACL gradually work their way through the commonwealth Parliament in coming years. For this reason, the bill will replace the current ACL application provisions with a new application provision, which applies the commonwealth ACL as in force from time to time as the consumer law of Western Australia. Importantly, it also includes a mechanism to preserve the sovereignty of the WA Parliament by providing that all future commonwealth amendments must be gazetted and tabled in the Parliament so that they are subject to disallowance by the Western Australian Parliament. The bill will also implement a recommendation of the 2017 ACL review for easing evidentiary requirements. Provisions relating to the conduct of civil proceedings will be amended to permit private litigants to rely on admitted facts from earlier proceedings.

Finally, the bill will amend the act to permit the Commissioner for Consumer Protection to be appointed as chairperson of the advisory committees. The Property Industry Advisory Committee, the Motor Vehicle Industry Advisory Committee and the Consumer Advisory Committee were established in 2011 to provide a mechanism for ongoing industry and consumer consultation in the transition from licensing and registration under a board structure to a scheme administered by the Commissioner for Consumer Protection. The commissioner is an ex officio member of the committees, but is not currently able to be appointed as chairperson. When the Fair Trading Act was introduced, the director general of the then Department of Commerce was appointed chair of the Property Industry Advisory Committee and the Motor Vehicle Industry Advisory Committee, but as a result of machinery-of-government reforms now that these committees are well established, it is considered that there is no ongoing need for that arrangement. The proposed amendments will improve the operation of the Australian Consumer Law and the administration of the Fair Trading Act to the benefit of all stakeholders.

Parliamentary Counsel's Office has advised the Department of Mines, Industry Regulation and Safety that in its view the bill would not, pursuant to standing order 126, be considered to be a uniform legislation bill as it does not in itself give effect to a national agreement or introduce a uniform laws scheme. Nevertheless, the bill may be referred to the Standing Committee on Uniform Legislation and Statutes Review and it is my intention to move a motion without notice to refer the bill to the committee pursuant to standing order 128(1) on the basis that it proposes amendments to a uniform legislation scheme that may have implications for parliamentary sovereignty and it is appropriate for the committee to consider that issue. In accordance with ministerial office memorandum 2007/01, the following information has been forwarded to the committee: a copy of the "Intergovernmental Agreement for the Australian Consumer Law"; a statement of the proposed timetable for implementation; a copy of the explanatory memorandum; a public statement of the government's policy on the bill; a summary of the bill's advantages and disadvantages to the state; details of constitutional issues; and an explanation of mechanisms for amendment of the ACL and for the state to opt out of the scheme.

I commend the bill to the house and table the explanatory memorandum.

[See paper 1501.]

Debate adjourned, pursuant to standing orders.

*Discharge of Order and Referral to Standing Committee on Uniform Legislation and Statutes Review — Motion*

On motion without notice by **Hon Alannah MacTiernan (Minister for Regional Development)**, resolved —

That, pursuant to standing order 128, the Fair Trading Amendment Bill 2018 be discharged and referred to the Standing Committee on Uniform Legislation and Statutes Review for consideration and report in accordance with that committee's terms of reference not later than 45 days after the referral.