

**ACTS AMENDMENT (FAIR TRADING) BILL 2010**

*Introduction and First Reading*

Bill introduced, on motion by **Mr W.R. Marmion (Minister for Commerce)**, and read a first time.

Explanatory memorandum presented by the minister.

*Second Reading*

**MR W.R. MARMION (Nedlands — Minister for Commerce)** [12.36 pm]: I move —

That the bill be now read a second time.

The Acts Amendment (Fair Trading) Bill 2010 is intended to be dealt with as a cognate bill to the Fair Trading Bill 2010, which I dealt with earlier today. This bill will make amendments to the Fair Trading Bill 2010 and minor consequential amendments to a number of other acts. The primary purpose of this bill is to simplify occupational licensing and regulation of certain occupational industries in Western Australia. In particular, it will abolish four separate government licensing boards and transfer their functions to the Commissioner for Consumer Protection and the Department of Commerce.

Specifically, the bill will —

- abolish the Land Valuers Licensing Board, established under the Land Valuers Licensing Act 1978;
- abolish the Motor Vehicle Industry Board, established under the Motor Vehicle Dealers Act 1973 and the Motor Vehicle Repairers Act 2003;
- abolish the Real Estate and Business Agents Supervisory Board, established under the Real Estate and Business Agents Act 1978;
- abolish the Settlement Agents Supervisory Board, established under the Settlement Agents Act 1981;
- vest the boards' licensing functions in the Commissioner for Consumer Protection;
- vest the boards' employing authority and financial controls in the Director General of the Department of Commerce as chief executive officer; and
- vest the boards' industry advisory functions in two new advisory committees—the Motor Vehicle Industry Advisory Committee and the Property Industry Advisory Committee.

In addition, the bill will establish a new Consumer Advisory Committee to provide general advice to the minister and the Commissioner for Consumer Protection from a consumer perspective.

The overarching consumer protection framework in this state is administered by the Consumer Protection Division of the Department of Commerce. However, licensing and supervision of participants in some specific occupational industries within the consumer protection portfolio are administered by independent statutory boards. Currently, licensing and regulation of land valuation, real estate, settlement, and motor vehicle dealer and repairer industries in Western Australia are regulated under a board structure through separate acts. Each act establishes a separate board for each different industry. These acts, introduced as they were over numerous years, are not consistent in the way in which they establish the relevant boards. The division of responsibility between these licensing and regulatory boards and the Commissioner for Consumer Protection produces a number of inefficiencies and disadvantages. The Acts Amendment (Fair Trading) Bill fulfils the government's policy objectives of reducing the number of government boards and improving the consumer protection framework by improving accountability arrangements, efficiency, and regulatory oversight in the consumer protection portfolio.

The bill's reforms will also facilitate Western Australia's transition to national occupational licensing reforms being progressed by the Council of Australian Governments and due for staged implementation to start on 1 July 2012. The bill will enable the government to fix a fundamental flaw in the approach to occupational licensing in the consumer protection portfolio—too many different agencies trying to act appropriately but without a common strategic overview.

The passage of this bill will give the Commissioner for Consumer Protection the central role in managing licensing and regulation of these important occupational industries. In so doing, the bill will establish a clear line of accountability for the licensing function, avoiding confusion over the relative roles of the various boards and the Department of Commerce; enable a strategic approach to the regulation of the affected occupations; enable greater efficiencies through economies of scale in the allocation of resources to licensing; and establish

consistency in the regulation of the property occupations, which is of significant benefit to those businesses that are licensed in more than one occupation.

One of the advantages of industry licensing boards is that they provide a role for industry in the regulation of their industry and provide the regulator with practical experience about the regulated industry. To deal with these concerns, part 2 of the bill provides for industry input into the regulatory framework to be maintained by the creation of two new industry advisory committees: one for the property industries—land valuation, real estate and settlement; and one for the motor vehicle industry. Membership of each committee will comprise industry specialists, with an independent chairperson and the Commissioner for Consumer Protection as an ex officio member. The details of the membership and operations of the two industry advisory committees is intended to be left to regulations; however, key industry associations will be represented on the committees. The proposed membership will give industry associations the opportunity to provide the minister and Commissioner for Consumer Protection with industry views on all relevant matters.

The functions of the industry advisory committees are set out in the bill. These include advising the minister and the commissioner on a wide range of matters relating to regulation of the industries, education, information and advice services provided by the commissioner to the industries and consumers. Advising on regulation of the relevant industry is meant in its widest form. For example, it is intended to include providing advice on current and emerging industries, and, when relevant funds are administered, it includes providing advice on the maintenance and use of those funds. The minister or the commissioner also may refer any matter to the committee for advice.

The third advisory committee to be established under the bill, the Consumer Advisory Committee, will have a role that covers the consumer protection portfolio generally. Members will include people able to represent consumers' interests and those with expertise in consumer law, policy and practice. The Consumer Advisory Committee will provide the opportunity for consumer input into the broad range of matters in the consumer protection portfolio. It will also assist in ensuring that local issues are adequately represented in national policy development. The bill provides that the Consumer Advisory Committee's functions will be to advise the minister and commissioner on the various activities, policies, and research and education projects of the department as they affect consumers. Its functions will also include advising on current and emerging consumer issues. The minister or the commissioner also may refer any matter to the committee for advice.

Part 2 of the bill also contains amendments to the functions and enforcement powers of the Commissioner for Consumer Protection to ensure that the commissioner has the necessary authority to take over responsibility for licensing the occupations covered by the bill's reforms. In particular, clause 8 of the bill will, amongst other things, insert proposed new section 89E into the Fair Trading Act to provide a power for authorised persons—that is, investigators—to enter the business premises of a licensed person during normal business hours without a warrant. This power of entry will be able to be used only to determine whether the licensed person is complying with any conditions on his or her licence, the requirements of the act under which he or she is licensed or any relevant code of conduct. The purpose of this amendment is to ensure that the commissioner can put in place a proactive compliance program for each of the licensed occupations that does not depend on the agreement of the licence holder to undertake the proactive compliance check. Although the vast majority of licence holders do the right thing, it is clear that if someone is doing the wrong thing, that person is unlikely to agree to a proactive compliance visit. Alternatively, receiving notice of such a visit and agreeing to a time for such a visit gives plenty of opportunity for matters to be covered up. An effective proactive compliance program is an excellent way of assisting licensed industries to identify problems before they get out of hand. It is understood that the commissioner will need to use this power appropriately and sensibly so as to cause minimum disruption to the legitimate business of licensees. I have absolute confidence that this will occur. The two new advisory committees will give industry a specific forum in which to discuss proactive compliance programs with the commissioner and to raise any concerns with the commissioner or the minister.

Part 3 of the bill amends the Land Valuers Licensing Act 1978. This act established a licensing and regulatory regime for the land valuation industry in Western Australia. This act is not being repealed; it is being amended to abolish the Land Valuers Licensing Board and to transfer its functions to the Commissioner for Consumer Protection. The bulk of the act will be retained; however, its day-to-day administration will rest with the commissioner rather than the board.

The bill also amends section 22 of the Land Valuers Licensing Act 1978 to provide that the commissioner will have a discretion whether to renew a land valuer's licence. The section currently provides that a licence must be renewed when a person applies and pays the prescribed fee, even when the holder is considered unsuitable to continue to hold a licence. In such circumstances, the renewal must be granted and then formal disciplinary proceedings taken with a view to cancelling the licence. The current provision is inconsistent with community expectations and is out of step with other equivalent occupational licensing legislation. Including discretion not

to renew a licence will give the commissioner the ability to exclude from the industry someone who is not fit and proper to have his or her licence renewed. Any person whose application for renewal is refused will have a right of review of that decision by the State Administrative Tribunal.

Part 4 of the bill amends the Motor Vehicle Dealers Act 1973. This act established a licensing and regulatory regime for the motor vehicle dealer industry in Western Australia. This act is not being repealed; it is being amended to abolish the Motor Vehicle Industry Board and to transfer the functions to the Commissioner for Consumer Protection. The bulk of the act will be retained; however, its day-to-day administration will rest with the Commissioner for Consumer Protection. The amendments to the Motor Vehicle Dealers Act 1973 are similar to the amendments to the Land Valuers Licensing Act 1978 in part 3 of the bill.

In addition to amendments relating to the abolition of the Motor Vehicle Industry Board, the bill will insert a new deeming provision in proposed section 5B. This provision will provide a rebuttable statutory presumption that a person who sells or exchanges four or more motor vehicles in a 12-month period is carrying on the business of dealing in motor vehicles and, therefore, is required to be a licensed motor vehicle dealer. The deeming provision is based on section 7A of the Victorian Motor Car Traders Act 1986. Similar provisions also exist in New South Wales, South Australia and the Northern Territory. Tasmania and the Australian Capital Territory also have these deeming provisions, although in these jurisdictions the number of motor vehicle sales at which a person is deemed to be carrying on business is set at six rather than four. The provision is intended to address difficulties encountered in prosecuting persons for unlicensed motor vehicle dealing. It has been included in this bill as a result of repeated direct requests by the Motor Trade Association of Western Australia, and it is consistent with a recommendation of the government's Red Tape Reduction Group. The Motor Trade Association of WA has long sought the implementation of such a deeming provision in Western Australia. The association holds significant concerns about the level of unlicensed dealing in Western Australia and the capacity to obtain convictions under the current legislative arrangements. The provision will allow a person who sells or exchanges more than four motor vehicles in a 12-month period to rebut the presumption that he or she is carrying on business. In addition, the provision will enable the prosecution of persons who sell or exchange fewer than four vehicles in a 12-month period if they are, nonetheless, actually carrying on the business of selling motor vehicles. A range of exemptions will be prescribed by regulations to avoid capturing persons such as legitimate collectors. These exemptions will be developed in close consultation with the motor vehicle industry representative bodies.

Part 5 of the bill amends the Motor Vehicle Repairers Act 2003. This act established a licensing and regulatory regime for the motor vehicle repairer industry. This act is being amended to repeal provisions applying to the former board and to transfer the functions to the Commissioner for Consumer Protection. The bulk of the act will be retained; however, its day-to-day administration will rest with the Commissioner for Consumer Protection.

In addition to amendments relating to the abolition of the Motor Vehicle Industry Board, the bill includes an additional amendment to correct an oversight in the original legislation establishing the State Administrative Tribunal. The bill will transfer the disciplinary powers of the Motor Vehicle Industry Board under the Motor Vehicle Repairers Act 2003 to the State Administrative Tribunal. This amendment will bring motor vehicle repairers into line with other licensed occupations, including motor vehicle dealers. The amendments to the Motor Vehicle Repairers Act 2003 are otherwise similar to the amendments to the Land Valuers Licensing Act 1978 in part 3 of the bill and to the Motor Vehicle Dealers Act 1973 in part 4 of the bill.

Part 6 of the bill amends the Real Estate and Business Agents Act 1978. That act establishes a licensing and regulatory regime for the real estate industry. It is being amended to abolish the Real Estate and Business Agents Supervisory Board and to transfer its functions to the Commissioner for Consumer Protection and the chief executive officer of the Department of Commerce, the director general. The bulk of the act will be retained; however, its day-to-day administration will rest with the Commissioner for Consumer Protection and the Director General of the Department of Commerce.

The Real Estate and Business Agents Supervisory Board differs from the boards I have referred to so far. This board, like the Settlement Agents Supervisory Board, which I will refer to next, is an employing authority and is independently funded. It is subject to the Financial Management Act 2006 as a schedule 1 statutory authority. Both the Real Estate and Business Agents Supervisory Board and the Settlement Agents Supervisory Board receive funds from the interest paid on the balance of money held in trust accounts of agents, licence fees, and interest paid on investments in Treasury. The winding up of these two boards necessarily differs from the others, and the bill provides for transferring their employing authority and financial controls. The bill vests these responsibilities in the Director General of the Department of Commerce as its chief executive officer.

The amendments to the Real Estate and Business Agents Act 1978 are otherwise similar to the amendments to the other acts to which I have already referred. The bill transfers administration of the home buyers assistance account to the chief executive officer. Money held in that account is used to provide first home buyers with

financial support. The scheme provides a grant of up to \$2 000 for the incidental expenses of first home buyers when they purchase an established or partially built home through a licensed real estate agent for a purchase price of \$400 000 or less. The home buyers assistance program will continue unaffected and the program itself is not affected by this bill.

The bill abolishes the Home Buyers Assistance Advisory Committee. The committee was established to provide advice to the Real Estate and Business Agents Supervisory Board on the administration of the home buyers assistance program. However, in practice, the committee has rarely been called on to provide assistance. Any future advice needed may be provided by the Property Industry Advisory Committee established in part 2 of the bill. Section 23A of the Real Estate and Business Agents Act 1978, as amended by the bill, will also enable the minister to appoint specialist committees to provide advice to the commissioner if required.

Part 7 of the bill amends the Settlement Agents Act 1981. That act establishes a licensing and regulatory regime for the settlement industry. It is being amended to abolish the Settlement Agents Supervisory Board and to transfer its functions to the Commissioner for Consumer Protection and the chief executive officer of the Department of Commerce, the director general. The bulk of the act will be retained; however, its day-to-day administration will rest with the Commissioner for Consumer Protection and the Director General of the Department of Commerce.

The Real Estate and Business Agents Supervisory Board is also subject to the Financial Management Act 2006 and has employing authority and financial controls that need to be transferred. The bill vests these responsibilities in the Director General of the Department of Commerce as chief executive officer. The amendments to the Settlement Agents Act 1981 are otherwise similar to amendments to the other acts to which I have already referred.

Part 8 of the bill makes provision for amendments to references to “Commissioner” and the creation of the new advisory committees resulting from this bill and the Fair Trading Bill 2010. Importantly, the Fair Trading Bill 2010 makes provision for standardised investigation powers, and part 8 of this bill applies those powers to numerous other acts. The proposals contained in this bill have been the subject of detailed consultation with the affected industries. When initiating these reforms, the former Minister for Commerce, Troy Buswell, put in place two interim advisory committees for the purpose of consultation on these reforms and, where relevant, national occupational licensing reforms. An interim property advisory committee was established with members including the president and CEO of each of the Australian Institute of Conveyancers WA Division Inc; the Australian Property Institute (Inc) Western Australian Division; and the Real Estate Institute of WA, together with a representative of the Business Brokers Association of WA. Similarly, an interim motor vehicle industry advisory committee was established with five members from the Motor Trade Association of Western Australia, including the CEO, and representatives of the Institute of Automotive Mechanical Engineers WA and the Royal Automobile Club of Western Australia. Both committees were chaired by the Director General of the Department of Commerce and both included a senior representative from the Department of Consumer and Employment Protection and my office, the Department of Commerce. I consider that through this process we have developed an excellent legislative and administrative outcome and one that, I believe, has the support of key industry stakeholder groups. The Commissioner for Consumer Protection has also met with key consumer groups, including the Consumers’ Association of Western Australia and the Western Australian Council of Social Service, to discuss the reforms in this bill.

The Acts Amendment (Fair Trading) Bill 2010 facilitates the transition of licensing and regulation of the land valuation, real estate, settlement, and motor vehicle industries in Western Australia from the existing boards’ structure to a broader, more strategically focused and flexible departmental model. Further, with this model in place in Western Australia, I believe our local industries will be well positioned to transfer into the national occupational licensing regime with a minimum of disruption. I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.