

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

Cognate Debate

Leave granted for the Fair Trading Bill 2010 and the Acts Amendment (Fair Trading) Bill 2010 to be considered cognately, and for the Fair Trading Bill 2010 to be the principal bill.

Second Reading — Cognate Debate

Resumed from 22 September.

MR F.M. LOGAN (Cockburn) [5.05 pm]: I am glad that the Minister for Commerce is dealing cognately with the Fair Trading Bill 2010 and the Acts Amendment (Fair Trading) Bill 2010, because my first question was going to be whether we would deal with them cognately or one after the other, so I thank the minister for clarifying that. At the outset, I thank the minister for providing the staff to give me a briefing on the Fair Trading Bill, which is substantial legislation.

The ACTING SPEAKER (Mr P.B. Watson): Members, if you want to have a meeting or talk, go outside. When members are on their feet, they want Hansard to hear what they are saying, and I am sure the member for Cockburn does too.

Mr F.M. LOGAN: I was in the process of thanking the minister for providing the staff to give some background to this little tome in my hands! That tome is backed up by another little tome called the explanatory memorandum. Unfortunately for me, the explanation given by the minister's staff occurred at the same time as the maiden speech of the member for Armadale; it meant I was unable to listen to the dulcet tones and words of wisdom of the member for Armadale!

Ms J.M. Freeman: It was very good!

Mr F.M. LOGAN: I know; I heard all about it! That was very unfortunate, but more seriously, it did not allow members on this side to be part of that briefing. Nevertheless, I would like to thank his staff for providing us with a comprehensive briefing. We carried on discussing the bill until the room fell into darkness, so we spent a fair amount of time on it. As the minister outlined in his very brief second reading speech on this very large bill, it has come about as the result of a Council of Australian Governments agreement, endorsed in this state by both the previous Labor government and the current Liberal–National government, to move forward and harmonise consumer legislation across the whole of Australia. That, in essence, is what this bill is all about. It brings together a number of pieces of Western Australian legislation, particularly the Consumer Affairs Act, the Door to Door Trading Act and the Fair Trading Act, into one bill. In addition to that, the bill will ensure that consumer legislation can be read in a simplified and appropriate manner in both Western Australia and other states. It means that the overriding authority for consumer legislation will be the commonwealth government through the Australian Consumer Law. The authority of the commonwealth has been backed up by two pieces of legislation that have been passed: firstly, the unfair contract terms legislation, which came into force on 1 July this year; and, secondly, the Australian Consumer Law, which I think has passed the federal parliament.

Mr W.R. Marmion: It stands to come into force from 1 January.

Mr F.M. LOGAN: It is proclaimed to come into force on 1 January 2011. The minister wants this bill to pass through the house as quickly as possible so that the Western Australian legislation can marry up with the commonwealth legislation and the legislation that has been passed by other jurisdictions. An issue that arises from that timetable is the referral of this legislation to the Standing Committee on Uniform Legislation and Statutes Review. Given the structure of the Fair Trading Bill, which consolidates the Western Australian legislation into a harmonised piece of legislation and attaches the Australian Consumer Law by way of note, a number of questions will arise for the Standing Committee on Uniform Legislation and Statutes Review. I would like to know, even by way of interjection from the minister, whether he sees this matter being referred to the Standing Committee on Uniform Legislation and Statutes Review, as I assume it would have to be.

Mr W.R. Marmion: Unfortunately, I think it does—yes, it does.

Mr F.M. LOGAN: That being the case, and given that that committee also has members of the upper house on it, I am advised that it probably will not be able to deal with this legislation in the three remaining parliamentary sitting weeks that the Legislative Council has available. What does that do to the time frame for these two pieces of legislation currently before the house? It would be beneficial to both the house and the opposition if the minister could respond to that question.

I would like to know two further things. Firstly, will there be an impact on the application of this legislation in Western Australia and the timing of the commonwealth legislation, albeit the commonwealth legislation will

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come into force whether or not this bill is available; and are there any implications for the relationship between the two pieces of legislation? Secondly, if the minister shares my view that the Standing Committee on Uniform Legislation and Statutes Review will probably not be able to deal with the bill in the time available to the Legislative Council, is it necessary to push this legislation through in the current time frame? I ask that question because if we had more time, I could have more members of the opposition available for briefing by the minister's staff. If there is no rush for the bill, how about making time available for more members of the opposition to be briefed in the way that I was briefed?

As the Fair Trading Bill was explained to me, it is a very good piece of work, and it is a credit to all the staff at the Consumer Protection Division in Western Australia for their efforts in putting it altogether. It is also a credit to the other bureaucrats around Australia in the commonwealth and in other states that they were able to agree on a piece of legislation that can be shared across the whole of Australia. If the minister thinks about other pieces of uniform legislation being dealt with by other jurisdictions, he can understand why I am quite surprised at the harmony that this document has achieved.

Mr W.R. Marmion: I think I know the legislation the member is referring to.

Mr F.M. LOGAN: In fact, the minister probably knows very well. I am thinking of the Occupational Health and Safety Act, which is another piece of uniform legislation that is struggling to get agreement across all jurisdictions.

Mr W.R. Marmion: That might be the one.

Mr F.M. LOGAN: I say that because this is a complex bill that deals with a wide range of industries and companies across Western Australia. I think it is fantastic to be able to bring that legislation together in one document and have it harmonised with the commonwealth's intent to take over various areas of, in particular, financial legislation. The way in which the bill has been able to pick up other more advanced pieces of legislation that exist in other jurisdictions around Australia whilst protecting Western Australia's interests is a smart way of approaching uniform legislation. As I said, it is a credit to the staff to be able to pull off what is a complex piece of work.

I am certainly very impressed that, as pointed out to me in the briefing, consumer legislation is not only modernised, but also enhanced by this bill. For example, in the area of conditions and warranties, there will now be a single national system of uniformity to implied conditions. That is a great step forward for consumers across Australia, and particularly those in Western Australia.

I am also very pleased that services will now be covered by legislation—my understanding is that they were not before—particularly those services that are components of the purchase price of goods. As members know, many times consumers do not receive the services that they paid for because of an excuse given by the seller of the good. Once this legislation is passed, it will be deemed to be illegal to not provide that service, and consumers will be able to take action to ensure they get what they paid for. Previously, that component of the purchase of a good was unable to be enforced by legislation. I am very pleased that that provision is in the bill.

The bill clarifies warranties, and particularly the need for compliance. Previously, warranties were given, sometimes in name only, and afterwards many excuses were found to not comply with those warranties. Now when warranties are given, the express conditions of those warranties must be complied with; otherwise, it will be a breach of the act. Some of the examples we talked about in the briefing were those extended warranties that people purchase. For example, with car sales, particularly second-hand car sales, or with car part components or electronic goods, extended warranties are part of the sales process of getting more money out of the consumer during the purchase transaction. Many cases have been highlighted in the media in which a company that offers those extended warranties is not exactly the same company that does the sale of the good but a subcontracted company, so the consumer then finds great difficulty getting it to comply with the extended warranty provisions and contract. The legislation now deals with those issues and requires, for those who put forward warranties, that the express conditions of those warranties must be complied with.

Another area that I find is terrific as part of this legislation and that goes further than the provision that currently exists for consumers is the issue of receipting and documentation of purchase. For example, all goods over \$75 must now have receipts provided. That is critically important for when those goods go wrong and there is a return of those goods for either replacement or repair, as long as people have the receipt. I think that is critical. I know that a purchase of \$75 for some people means a lot of money, but it is still deemed to be a minor purchase. Where those sales took place before and no receipt was provided, it was obviously very difficult, if something went wrong with the goods, to be able to get them replaced or repaired. All goods over the value of \$75 must now have receipts.

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The legislation regulates lay-by sales, which I think is critically important. It regulates dual or multiple prices of goods. When someone walks into a shop and there are two prices for a good, under this legislation, if a company has made the mistake of putting the two prices there, the sale of the good must be at the lowest price. That is now enforceable under this piece of legislation, which again is a major step forward for the consumer in being able to know exactly what he or she is buying and also being able to enforce the transaction once it has taken place. The bill now introduces a cooling-off period of 10 days for unsolicited sales, which I think is also another step forward. Many of these benefits that I am referring to were already available in other jurisdictions, but as a result of this harmonisation process, they have been picked up and incorporated into this piece of legislation.

The bill also increases penalties and beefs up the enforcement powers for the Consumer Protection Division. New penalties will apply for breaches of the act. I am advised that those penalties are increased up to \$1.1 million for corporations and \$220 000 at the upper end for individuals. Again, I think those are critically important changes that are needed. If we are going to have consumer legislation, and that legislation is breached, penalties should apply to discipline companies that are in breach of the legislation and show that the government takes the matter very seriously indeed.

The issue of injunctive powers to act against what is effectively the dodgy behaviour of business owners who offer goods for sale and then go bankrupt is dealt with under this legislation. As the minister would know, it does not go as far as I would like it to in respect of the number of issues that I have raised and will continue to raise with the minister.

Mr W.R. Marmion: On many occasions.

Mr F.M. LOGAN: Yes, over incidents that have occurred this year and last year for consumers in Western Australia. The minister's staff briefed me on the issue of injunctive powers. I assume that the matters that I have raised in this house of Kleenmaid and the recent issue with respect to the behaviour of the gym owner who closed the doors after —

Mr W.R. Marmion: And baby boom gym.

Mr F.M. LOGAN: Yes, in the minister's electorate baby boom gym has also done the same thing—taken the money and run. I assumed that this legislation would address the behaviour of those types of companies. I am advised by the minister's staff that this legislation, despite it being changed in a number of other ways to improve the power of the consumer in Australia, does not, unfortunately, pick that up. I am in receipt, however, of a letter that the minister sent to me earlier this week asking for my views on how I think these issues should be resolved through the types of ways that I think consumers' funds handed over for goods to be provided at a later date can be protected. The minister's letter raises a whole series of issues ranging from the working capital of companies that operate that business model through to the regulation and enforcement provisions that would be needed to deal with companies that operate in those types of business models. I know that the minister did not write that letter, but I would just point out to him that the number of questions that his staff asked in the letter would require me to have a staff similar to his in the department to be able to answer the questions that he has raised.

Mr W.R. Marmion: I would just like your opinion on it and perhaps the quantum. You may suggest a trust mechanism for everybody that puts on a deposit of a dollar or two. It is obviously useful for deposits on houses and large sums of money, yes, but I am interested in your views.

Mr F.M. LOGAN: Yes. It is quite a detailed letter, so the extent of the questions that were raised would require me to have —

Mr W.R. Marmion: It will give you a bit of a clue of what things we are looking at.

Mr F.M. LOGAN: It would require me to have the Consumer Protection Division behind me to be able to answer all the questions. I do not have the Consumer Protection Division behind me. Nevertheless, I will do my best to try to answer those questions and give the minister a general view about how I think the matters of cash for goods supplied at a later date should be resolved. I will also take advice from some of my colleagues on how those issues can be resolved. That is the context and the subjects that are contained in the Fair Trading Bill.

For the purposes of questions that were raised with me by members of the opposition, I would like the minister to explain to the house the way in which the Australian Consumer Law, which is part of the Fair Trading Bill, will act in Western Australia, it being attached to the bill by way of a note. I would just let the minister know that we had a fair bit of debate about how that was to work. Obviously, the Standing Committee on Uniform Legislation and Statutes Review will look at it in detail, but I think, given the fact that apart from me, members of the opposition have not had a detailed briefing on the way in which the two pieces of legislation, commonwealth and state, will work together in Western Australia, one being in a note to the other. I would like

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the minister, if he can, to explain to the house how he sees it working, particularly when it comes to Western Australia wanting to bring change to its legislation. I understand from the briefing that was given by the minister's staff that we would then have to go back to the commonwealth to try to get the commonwealth to agree to bringing that change about.

Mr W.R. Marmion: Certainly, that would be our preferred position, but the way we are bringing it in allows the department to make changes. I am hoping that the upper house will like the methodology we have adopted and that the bill will not be held up in the Council.

Mr F.M. LOGAN: In terms of the time frame, I am passing on what I have been advised by members of the upper house who are members of the Labor Party. Could the minister explain once again, for the sake of the house, how the Western Australian component of the legislation could be amended should an issue arise that is unique to Western Australia? If the commonwealth was to object to that amendment, what does the government of the day need to do to pass that piece of legislation? Similarly, given that the note that contains the Australian Consumer Law would change if the commonwealth decided to amend its legislation, then naturally there would be a flow-on change to the note; that is, the Australian Consumer Law which is a component of this legislation. What if there was an amendment made to the Australian Consumer Law that the Western Australian government of the day objected to; how would it stop that amendment being made should it wish to stop it? I would appreciate the minister answering those questions in relation to those two parts of this one piece of legislation.

The Acts Amendment (Fair Trading) Bill 2010 that is being read in conjunction with the Fair Trading Bill 2010 obviously will bring together a series of existing pieces of legislation that had attached to them various statutory committees that had various powers to make decisions that went to consumer law. For example, for elements of the Fair Trading Act that go to property, motor vehicle and consumer legislation, there is the Land Valuers Licensing Act, the Motor Vehicle Dealers Act, the Motor Vehicle Repairers Act, the Real Estate and Business Agents Act and the Settlement Agents Act. All the powers that came under those jurisdictions have now been consolidated into the Acts Amendment (Fair Trading) Bill 2010. It was a decision that the state government made to get rid of significant numbers of committees and bring them all down to powers that reside within the consumer affairs department and also with the Commissioner for Consumer Protection.

The jury will remain out on that decision, minister, and we will see whether the proof of the pudding will be in the eating. We will see whether those powers that existed under, for example, the Motor Vehicle Repairers Act and the motor trades act—albeit I understand that the Motor Trade Association has agreed to this after a significant amount of discussion—achieved greater efficiency. I understand the Settlement Agents Supervisory Board and the Land Valuers Licensing Board have agreed to this, albeit reluctantly; nevertheless, they have agreed to it. The proof of the pudding in this case will be whether any greater efficiency has been achieved by the collapsing of all those boards and all those powers into the powers of the Commissioner for Consumer Protection. We will see whether there will be efficiencies for the consumer in the protection of powers by collapsing all those boards and all those acts into this one act.

Two questions arise out of that action. One is the capacity for consumer affairs to be able to take all these powers and efficiently and effectively apply these powers and all those regulations that fall within the Acts Amendment (Fair Trading) Bill 2010. What extra funding and resources has the minister given to the Consumer Protection Division of the Department of Commerce or will the minister give to the department to ensure that all these powers that are now contained in the offices of the Commissioner for Consumer Protection are able to be effectively applied in the same way as they were applied by those boards that previously existed? The minister's staff advised me, by way of briefing, "It will be really efficient now because we've streamlined the process. It's going to make things far more efficient." I am not convinced. The reason I am not convinced is this is a significant broad-ranging piece of legislation covering a multiplicity of businesses and/or industries that literally have thousands and thousands of businesses within their jurisdiction. If we think about the motor trade industry as an example, and the number of sales, parts, repairers and associated industries to that industry that were covered by the previous legislation that have now all been incorporated into the Acts Amendment (Fair Trading) Bill 2010, I still, for the life of me, cannot understand how the consumer affairs department, with all the very best will in the world and all the streamlining it could possibly ever do, will be able to regulate that industry as efficiently as a standalone board did before. That was a dedicated board and it was much closer to what was happening, literally, on the shop floor.

Mr W.R. Marmion: All the work will be done by the same staff, as the member knows.

Mr F.M. LOGAN: I understand the advisory boards will be established. I am aware that when it comes to regulation of sales in those industries, the same staff will deal with it as before. A complaint that would have occurred in that industry would still come to the Consumer Protection Division of the department as it would

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have done previously. For example, the registration of mechanics, the checking up on backyarders in the motor vehicle industry and all those types of things that the industry was very careful to ensure were complied with when it had a separate board, or council in the case of motor vehicles, will now be effectively done by the Department of Commerce through an advisory board. I am still yet to be convinced. That may well be the case. I am not dissing the department and saying it cannot do it. I am questioning whether it can do it given that all the boards have now been incorporated and all the powers of those boards have been incorporated under the department. It may well be able to do it, but can it do it with its current resources? If it can, I think it would be fairly super human. If it cannot and it needs more resources, the question is: will the minister provide those resources? If so, to what extent does he believe the resources are needed? That is the first question.

The second question on the Acts Amendment (Fair Trading) Bill 2010 goes to the issue of the advisory boards themselves; in particular the motor vehicles area. The motor vehicles area was the subject of extensive debate in this house over many years, going all the way back to the Lawrence government and then the Court government. It revolved around the powers of the Motor Vehicle Industry Repair Council to regulate its own industry and ensure that mechanics were licensed, to protect consumers who had their cars repaired, and to outlaw backyarders who were undertaking repairs, possibly illegally, in competition with regulated repairers. It also oversaw not only the training that was provided for those individuals within the industry but also the type of equipment needed to carry on business as a motor vehicle repairer. That council had representatives from big business, small business and also from the practitioners, that is, the mechanics. For example, the Australian Manufacturing Workers Union, of which I am a member—as the minister knows I was intimately involved in that council in the early days—had representatives on that council. I can tell the minister exactly who they were: they were RAC patrolmen, who were members of the union and, as the minister knows, they are highly qualified technicians who are able to provide sound practical advice on the motor vehicle industry from not only the repair side but also the road side as well. They had representation on that council.

I am seeking an assurance from the minister that that longstanding type of tradition will continue, so that we have on the Motor Vehicle Industry Advisory Committee representatives of those people who carry out the work on the shop floor. Some of the best people I would recommend to the minister are the RAC patrolmen, who come from an industry that was represented on the council. The RAC was represented on the council, but they were senior management. I am sure that the minister will have the RAC on the committee, and I strongly urge the minister that he also have the practitioners, the technicians who have to work with the vehicles and with consumers on a face-to-face basis so that the minister can get a broad perspective of what consumers are going through and what the practitioners in the industry are going through.

I strongly urge the minister to pick that up as a recommendation for those other advisory boards. That same ethos should apply to the other boards as well, whether it is the Land Valuers Licensing Board or the Settlement Agents Supervisory Board. Not only should there be company representation on the Property Industry Advisory Committee, but also the agents should be represented so that the minister can get a broad perspective of what is happening in the industry.

That is my contribution to these two bills. The opposition supports both pieces of legislation. We supported the direction for uniformity of consumer legislation when we were in government as part of the Council of Australian Governments process, and we still support that in opposition. It is good outcome for consumers and for the regulation of consumer law across the whole of Australia. With that, I commend the bill to the house.

MS J.M. FREEMAN (Nollamara) [5.43 pm]: I too rise to speak to this bill. Whilst I agree with the previous speaker, the member for Cockburn, that this is a good bill, it is a large piece of legislation whose scrutiny by members has been limited. I was one of the members in this chamber listening to the inaugural speech of the member for Armadale, rather than attending the briefing from the department, which was appropriate being a new member myself.

I understand this legislation has come about through a long process of negotiation with other states and the commonwealth, and it is appropriate that consumer law be a national law. I suppose, perhaps, I should have listened more closely to the second reading speech, but I would be interested to have some reiteration of why we are having a separate law and not a law that refers to the Australian law, because consumer law is a national issue and goes across the borders of all states and impacts on people, especially as companies are larger, operating on a national, multinational and global basis.

Mr W.R. Marmion: Are you saying we should have a national law rather than a state law?

Ms J.M. FREEMAN: I understand the decision of the state government was that instead of having a short referral law —

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Mr W.R. Marmion: A template law?

Ms J.M. FREEMAN: Yes, rather than a template law, we have gone for something that is specified. I am not sure what the differences are, but I know that when there are differences between a state law and the national law, there are sometimes complexities that occur because of that. I have understood that consumer law—correct me if I am wrong—from the time when Yvonne Henderson was Minister for Consumer Affairs in the early 1980s—

Mr C.J. Barnett: Nineties!

Ms J.M. FREEMAN: In the early 1990s—

Mr C.J. Barnett: She is not that old!

Ms J.M. FREEMAN:—the tendency was for agreements for consistent consumer laws, and we were moving towards national consumer laws. I have been lucky enough to work in the community legal sector with people who worked at Consumer Law, the non-government organisation that assists people when they have difficulties in the area. It is not an area in which I have a great deal of background, but I have had quite a few constituents who have come in to see me about different consumer issues.

We are now coming into Christmas time, when consumer issues rise exponentially. People have a propensity at Christmas time to spend more of their available income, although they have less and less available because of fees and charges—but we will not go there! In fact, I am a bit concerned that we are about to put in place new consumer laws in the lead-up to Christmas. I wonder whether the department gave any thought to the impact that will have if the government is looking at passing this, and, I assume, taking this to the Legislative Council in the next few weeks, and suddenly we will have new consumer laws in one of the most consumer-intense times of the year, and what consideration has been given to ensure that any major differences will be made known to the public.

The ACTING SPEAKER (Mr P.B. Watson): If members want to have a little party, they should go outside.

Ms J.M. FREEMAN: When the member for Cockburn was discussing the bill, I got the impression that there is no diminution of rights, and because I have not had an opportunity to have a briefing I want to be assured that there is no diminution of consumers' rights and consumers' capacity to proceed with action under this law.

I would like to give an analogy with my own experience of consumer law. I got my car fixed when I was a lowly paid union official and had a new radiator put in, because that was the problem. The radiator was not fitted properly and it blew up the whole engine. What did I do when my car engine blew up? I said, "Oh my God! This is a bit more expensive now than just having the radiator fixed, and the problem was the radiator in the first instance." So my engine suddenly had cracked heads. The minister may know that when that happens the heads all look terrible and nothing works anymore and smoke comes out the back.

Mr W.R. Marmion: Did you do it yourself?

Ms J.M. FREEMAN: No, but I know what it looks like because I have a father who dabbled in cars. People cannot dabble in cars anymore because they are too electronic.

In any event, the upshot was that my partner and I, my partner primarily, pursued the company that installed the radiator. At that time we were able to take it to the small claims tribunal. As I understand, that is now done through the State Administrative Tribunal. If I had an instance now in which my faultily installed new radiator blew up my whole engine, would I be able to pursue that same course of action under these new laws? Because that is in effect what happened; we pursued the company for the complete cost of a new engine—basically, the heads—and we were able to maintain our vehicle. When looking through the Fair Trading Bill, I noticed that claims go to SAT, but it looked to me as though only the department could prosecute. Currently, individuals can prosecute those things. That is one area.

Taking into account that I did not get the briefing, so I am a bit in the dark about this very large piece of legislation—

Mr W.R. Marmion: I will let you know what the statutory guarantees are when I respond.

Ms J.M. FREEMAN: Yes, that would be good, but they are not guarantees. The guarantee was that the radiator would work. The company could have turned around and said, "Yes, the radiator worked." We had to pursue the company for its faulty installation, so it was beyond the guarantee for the radiator. The company's faulty installation of the radiator caused further injurious harm to us in terms of the whole motor vehicle; therefore, we had to pursue the company for the whole cost. That is beyond that sort of guarantee.

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Mr W.R. Marmion: There are two new statutory guarantees.

Ms J.M. FREEMAN: The minister can also tell me about that.

One of my constituent issues and the issue that I had about Christmas was that a constituent went to a large department store and put three items on lay-by. The constituent picked up two items because she had subsequently paid for the cost of two of the items and still had one item partially on lay-by. When the constituent went to get the third item, she was told it had already been taken and was suddenly faced with the situation of having paid half the purchase price and the store telling her that she had already picked the item up, that it had been taken. When she rang consumer affairs, very little could be done at that point in terms of proof. Thankfully, it was a large department store and two days before Christmas, so the store looked at the tapes and we were able to go into negotiations for this constituent. However, it was very difficult at the time and I suppose it relied on some good practice. What I am saying is that consumer laws really affect people; they need to be easy to access and easy to understand.

I now come to codes of practice, which I have looked at in the bill. Again, the minister might want to tell me whether we have previously implemented codes of practice in consumer law or by regulation. Part 4 of the legislation provides for the making of regulations prescribing a code of practice for fair dealing between a particular class of suppliers and consumers. I have a number of questions. First, will the codes of practice be subject to disallowance in Parliament or will we simply get a regulation that refers to a code of practice and how do we go about looking at that code of practice? Second, will the codes of practice look at the Australia – New Zealand standards; and, if so, given that the Australia – New Zealand standards are now controlled by a private company and it costs anyone to access them, how will the government ensure that people have free access to Australia – New Zealand standards? Third, will the formation of the codes of practice be conducted in a bipartisan way, and will non-government organisations, such as the consumer law centre, and other sectors of the community be included in how those codes of practice are established? Therefore, I am quite interested in the codes of practice and how they will apply.

I am interested in how this legislation applies to unfair contract terms on the internet and how we would pursue that. I am interested to know whether finance broker laws fall within this legislation. Perhaps the minister can answer that by way of interjection?

Mr W.R. Marmion: I will deal with that when —

Ms J.M. FREEMAN: Or the minister's advisers in the gallery can just shake their heads if they want to! One of the big issues that people have come into my office about on a couple of occasions is finance brokers giving people very poor advice about lending against equity. My concern is not only the contracts that people enter into and then end up in greater debt, but also the responsibility of finance brokers for the advice they give. It really does concern me that as time goes on superannuants will be the next people facing those problems, so I would have thought that, given this bill deals with commonwealth legislation, those things need to be taken into account. I think that it probably does not pertain to this, but it is worth the ask. Again, because I was not able to ask any of these questions in a briefing, I will stand in this place and ask them; therefore, the minister will be answering questions that may have been able to be dealt with in a briefing if we had not had to stand and talk about this legislation today. I understand that a briefing was offered to us, just at a very bad time.

Proposed section 31 of the Australian Consumer Law (WA) deals with misleading conduct relating to employment. As I understand from my very quick read of the huge explanatory memorandum that came with this legislation, "misleading conduct relating to employment" is a term that will not be defined under the act. Can the minister explain to me what that means in the context of this bill? Does it deal with advertising? How does that play out with the industrial relations legislation in both Western Australia and the commonwealth? Does it mean that people cannot be placed in a situation whereby they do trial work for someone for three days and then not get paid? Does it have some aspects of the old truck act in it? The consumer people will understand what I am talking about, hopefully.

I also noticed that some of the definitions about misleading or unfair contract terms will not be defined in the act. I understand that is because —

Mr W.R. Marmion: Sorry, I was interrupted; I missed your first point. Misleading —

Ms J.M. FREEMAN: When I was looking at the unfair contract terms and the aspects of what makes a contract void, the meaning of "unfair" was given. It seems to me that other sorts of terms are not defined and the purpose of not defining them is because there is case law around many of the terms. The term "false or misleading representations" is a point and I suppose a good example of what I am trying to say. I understand there is no intention to define the term "false or misleading representations" within the act, which is something that would

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normally be done, but that we defer to interpretations and applications of common law, which is in the part of the act called “Interpretation and application”, and other Australian consumer law. I suppose I am interested to know why that has been done in that way. What is the purpose of that? Does that not mean that we are actually abdicating our role as a Parliament to establish what is “false or misleading representations” or “unfair contracts” or any of those terms? Because, effectively, we are saying, “We’re not good enough to put a definition of what that means in here.”

Sitting suspended from 6.00 to 7.00 pm

The DEPUTY SPEAKER: The member for West Swan.

Ms J.M. FREEMAN: No, the member for Nollamara—just next door to the Deputy Speaker’s illustrious electorate of Mount Lawley, but much nicer, I think, than Mount Lawley. We are just up the road. The Deputy Speaker should visit some time. Actually, he does visit; he comes to St Andrews. The Deputy Speaker knows where —

The DEPUTY SPEAKER: — Nollamara is! The member for Nollamara.

Ms J.M. FREEMAN: Thank you, Mr Deputy Speaker.

I will quickly try to get back to what I was saying before the dinner break. I refer to part 3, “The Australian Consumer Law”, and to division 1, “Object and interpretation”. How does that interplay with part 2, “Interpretation and application”, and division 1, “General interpretation”? I ask that because clause 17(1) contains a definition of “Australian Consumer Law”, which means the Australian Consumer Law text, but it does not tell me whether the CCH or the other one, which starts with an “M”—I can never remember it—is the best one to read, or whether we should go to AustLII—the Australasian Legal Information Institute. One wonders whether that includes AustLII for the text, but I suppose AustLII is just for the actual laws. It seems that we almost have a way of making definitions by adopting a legal interpretation of it. For example, as I was saying previously —

Mr W.R. Marmion: Are you asking for a definition of consumer law?

Ms J.M. FREEMAN: No; I am not asking the minister for a definition of consumer law. I am saying that I am concerned that a definition of inappropriate conduct or—what was the one I found before?

Mr W.R. Marmion: Misleading conduct in relation to employment?

Ms J.M. FREEMAN: No; that is a separate question. I want the minister to explain what misleading conduct relating to employment means in this legislation, and how it interacts with the Industrial Relations Act. Clause 31 of the Australian Consumer Law (WA) test states —

A person must not, ... engage in conduct that is liable to mislead persons seeking the employment as to:

- (a) the availability, nature, terms or conditions of the employment; or
- (b) any other matter relating to the employment.

How does that interact with other acts that apply in Western Australia?

[Member’s time extended.]

Ms J.M. FREEMAN: Does this legislation take into account trial work? Does it stop trial work? Does it mean —

Mr W.R. Marmion: I am sorry; what work?

Ms J.M. FREEMAN: Trial work. Does the minister have kids?

Mr W.R. Marmion: Yes, five.

Ms J.M. FREEMAN: Five. The minister was busy!

When kids work at the local pizza place —

Mr W.R. Marmion: Red Rooster.

Ms J.M. FREEMAN: Actually, Nedlands pizza bar is a very good example for the minister. Years ago, a pizza bar near Steve’s, not that Steve’s is there anymore, used to put a bunch of students on trial—actually, the prosecution was for something else—work them for three or four days and then say, “Sorry; you’re not good”,

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and the students were not paid. My questions are: How does this legislation interact with trial work? How does it interact with other conditions of employment to do with the Industrial Relations Act?

Mr W.R. Marmion: That is an extension of your ninth question.

Ms J.M. FREEMAN: No; that is the question.

Mr W.R. Marmion: This is the one you are asking now.

Ms J.M. FREEMAN: No; that was the question that I asked before.

Mr W.R. Marmion: I know; I thought so.

Ms J.M. FREEMAN: I go back to the question that I am asking now. I apologise that this is not as erudite as it possibly should be —

Mr W.R. Marmion: But you have a specific issue in terms of trial periods of work.

Ms J.M. FREEMAN: No; I used that as an example. I have a specific question about what clause 31 of the Australian Consumer Law (WA) text means in terms of misleading conduct relating to employment. I want to know: What are the parameters of the clause? How does it interact with other acts? How does it interact with consumer law? Those are my questions.

Mr W.R. Marmion: If you are advertising a position, the advertisement can't be misleading. That is basically what the clause pertains to.

Ms J.M. FREEMAN: Okay. That brings me to my next question: what is the definition of “misleading”?

Mr W.R. Marmion: If you say —

Ms J.M. FREEMAN: No; the legislation has to contain a definition.

Mr W.R. Marmion: Why?

Ms J.M. FREEMAN: There is no definition of “misleading” in the legislation. The legislation does not define the terms “misleading” or “unfair”, but part 3, division 1, “Object and interpretation”, sets out how people will look at those definitions. That is a very complex way of doing something for a public that requires clarity and transparency in its legislation.

Mr W.R. Marmion: You must remember that this legislation is uniform across Australia; we are adopting rules that will be the same right across Australia, so we have to be uniform.

Ms J.M. FREEMAN: I understand that, but this is not even uniform. This is subject to change in a court. The minister and I can discuss tonight what we think misleading is; we can have an interpretive discussion and I could probably pull out of the deep recesses of my memory the definition of “unfair” from some case law. The minister is saying that all that is needed is some case law change. As I understand it, that would then change the definition of misleading conduct as per this legislation. Therefore, we are removing definitions of “misleading” and “unfair” that we would normally have from the parameter of this legislation and placing them into consumer law. The minister nods at me knowingly, confident that I am wrong. I look forward to the possibility that I might be —

Mr W.R. Marmion: We are not changing anything; we are just making the legislation stronger.

Ms J.M. FREEMAN: Making the legislation stronger! How does deferring a section of the act to the Australian Consumer Law make the act stronger? I want to know. This is something that I have never seen before. Was part 3, “The Australian Consumer Law”, division 1, “Object and interpretation”, a previous provision of the act?

I have only seven minutes left and I have 20 questions to go.

Mr W.R. Marmion: Off you go!

Ms J.M. FREEMAN: I do not really have 20 more questions!

I refer to advertising and complaints. Would the minister be able to outline how, in this new ritzy-ditzy, better, upmarket bill before the house this evening, that will assist in advertising and complaints about advertising? For example, as a good feminist, I still do not like the “No Birds” advertisement. I believe it is sexist; I am a bit over it now. It was a debate for the 1970s for a rent-a-car company, the name of which escapes me —

Mr W.R. Marmion: Bayswater.

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Ms J.M. FREEMAN: We do not need to say that, and we never use them, do we, because we would never do that?

Clearly, there is a federal advertising board, but how does this legislation deal with that type of advertising and those sorts of complaints?

Like the member for Cockburn, I congratulate the government on including a 10-day cooling-off period in this legislation. However, is the 10-day cooling-off period only for really large items such as cars? Does it pertain in the case of one of my less than wholly operating constituents—that is probably the wrong way or not a very nice way to put it—who does not have the same negotiating skills as the minister and I have? Does the Minister for Commerce know that some mattresses cost \$10 000 or \$25 000? This poor woman ended up purchasing a mattress for around \$7 000. That is a lot for a pensioner to pay for a mattress. Would such a purchase be subject to a 10-day cooling-off period? What does the legislation pertain to? Where will it come in and how far will it go? What about the capacity of people to understand the contracts they are signing? People come into our offices with these problems. The minister would know about this, or maybe it is not a problem in his part of the world. He is welcome to come to my part of the world where I could introduce him to some of these situations. People come into my office for advice on contracts they have signed. These people do not always have the literacy, negotiating or even some of the cognitive skills necessary to understand the contracts they are entering into. How does that situation pertain to this legislation?

The bill contains a section about labelling and country of origin representations. Labelling is a very big issue that goes beyond this bill, but I would like the minister to explain how the department will see this aspect of the legislation operating. The explanatory memorandum to the Fair Trading Bill 2010 states —

The concept of a ‘representation’ is not defined in the ACL. A representation of origin includes, but is not limited to, oral or pictorial representations ...

If I buy something that is labelled as having been made in Australia and it turns out that it was not, will there be any recourse under this legislation? Another example is free-range eggs. Eggs should not be packaged as being free range if the chickens that laid them were given free range for only 20 minutes a day. Bleeding heart lefties need to be able to buy them. People make informed choices based on labelling. I want to know how I can be sure that my informed choice will have some basis; and, if I do find out that the labelling is wrong, whether I will have any recourse under this legislation.

Mr W.R. Marmion: You will have.

Ms J.M. FREEMAN: Good. I am looking forward to the answer to that.

My final query was taken up by the member for Cockburn. I refer to the Consumer Protection Division’s information line, its advocacy on behalf of consumers and, in particular, its education for non-English speakers. The minister will have heard me say before in this place that I represent a very large and diverse community of people who are not all English speakers. One of the most interesting things I found from the 2006 census was that the most represented ethnic group in Nollamara is Vietnamese. Lots of people get the impression when they come to the part of the world that includes Mirrabooka, Nollamara, Westminster, Koondoola and Alexander Heights that the greater percentage of people living in those areas are African, but that is not actually the case. The interesting thing about the Vietnamese community is that it has a large proportion of non-English speakers who trade with and buy from each other. There is a quite large number of Vietnamese shops, and not just in that community. Different communities are opening shops. Those shops are often the first port of call for newly arrived Australians. If members ever need their hair African-braided, we have a number of places where that can be done in our part of the world. Sorry, I got a little distracted. I am asking the minister how the Consumer Protection Division ensures that both the people who run those shops and the people who access those services, often because they speak the same language, can gain knowledge of how the consumer laws apply to them. Does the information line offer translating services? I have always taken off my hat to the Consumer Protection Division.

MS R. SAFFIOTI (West Swan) [7.14 pm]: I will speak briefly on these bills, but in particular on the Acts Amendment (Fair Trading) Bill 2010. My comments follow on from those of the shadow spokesperson for commerce, the member for Cockburn, and those of the member for Nollamara. I have some concerns about the abolition of industry-specific boards. The Motor Vehicle Industry Board was established in 2003 following a 2001 election commitment by the then Gallop opposition. The creation of the board was in response to significant complaints about, and queries from, the motor vehicle industry. The Acts Amendment (Fair Trading) Bill 2010 will abolish the Motor Vehicle Industry Board and other boards. The member for Cockburn said that the Motor Trades Association of Australia supports the abolition of this board, but I would like the Minister for Commerce to confirm that these professions will not be downgraded as a result of this change. I also want the

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minister to confirm that there will be the same level of scrutiny of these industries and necessary processes in place to ensure that there are good people in the business and that people are not being ripped off. One reason the board was established was that there was a huge number of complaints from both consumers and the industry itself about people entering the industry without having specific qualifications.

I will refer to the roles and objectives of the Motor Vehicle Industry Board and I will talk specifically about its current functions. The minister stated in his second reading speech that the licensing functions will be transferred directly to the Commissioner for Consumer Protection. The functions and objectives of the board include not only licensing but also the approval of training courses for industry participants, and of the trainers who provide those courses; the approval of certification applications for motor vehicle repairers; and overseeing the conciliation of disputes between licensees and consumers. I am talking specifically about the Motor Vehicle Industry Board. I ask the minister to outline in his response whether those functions will be undertaken by the department or will be lost more generally. One issue that has been raised with me as the member for West Swan arose following the significant hail damage that occurred, I think last year —

Mr W.R. Marmion: On 22 March this year.

Ms R. SAFFIOTI: It was this year.

Mr W.R. Marmion: It went through Nedlands.

Ms R. SAFFIOTI: Yes. Significant hail damage occurred in March this year. Issues relating to the repair of vehicles post that hail damage have been raised with me. One complaint from constituents in West Swan related to the number of repairers who were entering the market but who did not have appropriate qualifications. I wrote to the minister about this, but I cannot remember what happened with the response. The whole issue is about making sure that there are well-qualified people in the industry. That is very important. Members only need watch *Today Tonight* or similar shows to know that there will always be people in this industry who are keen to make a quick buck but who may not deliver the service that consumers would like ensured. The minister needs to confirm for us whether the roles and functions currently undertaken by the boards will be undertaken by the Consumer Protection Division of the Department of Commerce. As I said, the Motor Vehicle Industry Board was set up because of complaints by both industry participants and consumers about the motor vehicle industry. The commitment was given in 2001 and was delivered in 2003. It will be interesting to see whether all the roles and functions have been transferred across.

I would like to talk about some of the comments I received after the debate on the Hairdressers Registration (Amendment and Expiry) Bill and it went through this house. One of the key issues that was raised with me, unfortunately after the bill had been debated, was whether the abolition of boards will downgrade professions, and whether traineeships and apprenticeships within those industries will be somehow devalued because the barriers to entry will be abolished, or the entrance qualifications downgraded. That is something that I do not want to see happen.

Everyone likes to talk about cutting red tape. We can cut red tape, but at the end of the day, we want to ensure that businesses do the right thing by customers. We need to make sure that we have these boards in place and that we have appropriate controls and processes in place to ensure that things do not go wrong. As we saw with the finance brokers' scandal in the 1990s, when things go wrong, they go horribly wrong and people's lives are affected in a dramatic way.

Mr W.R. Marmion: Can I make a comment there? There was a board in place then that made no difference, and since the board was abolished in the early 2000s, there has been no problem.

Ms R. SAFFIOTI: It is also about making the boards function properly; that is one of the other issues. Some of the comments made about the Hairdressers Registration Board after the debate in Parliament were that the board had not been effective. However, it should have been effective. It is not just about abolishing something because it is not acting in an optimal way; it is about ensuring that the boards and the processes run properly. Just abolishing something is not ultimately the answer. We need to make sure that the processes work.

I would not mind hearing in the minister's reply to the second reading debate his ideas on how we can ensure that people within the industry do not feel as though their industry and qualifications are being downgraded and that maybe the work they have done to achieve their qualifications are somehow being downgraded. More generally, with regard to the other parts of the bill, there seems to be a uniform approach to consumer law across Australia. The issue of consumer protection and consumer law is becoming increasingly complex, as things such as the internet pose significant problems for people who fall victim to foul play. Issues have been raised with me about things that are done on the internet. There are many internet scams and now there is also abuse of mobile

phone technology by companies. It is becoming an increasingly complex issue. I know that the minister will ensure that his department has the resources to devote to this increasingly complex area of government to make sure that people out there are protected and that consumers have the right information to make informed judgments.

I turn now to some of the other boards. A board that plays a particularly significant role in society is the Real Estate and Business Agents Supervisory Board. The real estate industry is an industry in which millions of dollars are transacted in the purchase of homes. It is an industry that is prone to—I will not say abuse—practices that may not be entirely fair. It would be a good thing if the minister could give some reassurance that all the roles currently played by the Real Estate and Business Agents Supervisory Board will be transferred to his department, and that his department has the knowledge and resources to manage these areas.

MR C.J. TALLENTIRE (Gosnells) [7.25 pm]: I rise to speak to these bills and to focus my comments on the issue touched on by the member for West Swan about the future of the Real Estate and Business Agents Supervisory Board, which the government is proposing to abolish. I think we need to consider the situation in Western Australia today when it comes to real estate. We know that we have a real estate industry that is exceptionally well paid for the amount of work it does. Real estate agents receive a level of payment that is absolutely amazing when we look at the skill that is involved in showing people around a house. I think the commissions that are received by real estate agents are absolutely disproportionate to the quality or level of professionalism in the industry. The reality is that we have a real estate industry in Western Australia that is exceptionally well paid. Do we have a real estate industry that is full of professionals who know what they are doing? I quite often hear of cases where it is very plain that real estate agents are barely competent. We often hear of cases, particularly in rural areas, in which real estate agents are showing people around properties that are not even for sale, or getting people to sign contracts of offer and acceptance in which the wrong vendor is named. We also hear of deceased estate cases in which the agent is so eager to get in on a sale that he has not even waited for the process of probate to be completed before trying to sell a property, and the correct vendor is not named. These are real-life problems that Western Australians are facing, and I think it suggests that we have a problem in our real estate industry.

I am very concerned that this legislation will not help matters. Our real estate is governed by a system of property title, the Torrens title system, that is built around a register through which the state guarantees the indefeasibility of title. It is a good system, but I worry that if we abolish the Real Estate and Business Agents Supervisory Board and hand its responsibilities over to the Commissioner for Consumer Protection, we might lose some of the expertise that the board has developed, and we will miss the opportunity to build up the board's capacity. In fact, given the sorts of stories that one hears, we probably should be doing a lot more to bolster the capacity of a real estate supervisory board; bundling it in with the Commissioner for Consumer Protection's very broad set of responsibilities could well prove to be dangerous and it could well mean that people will face all sorts of problems.

There was a case in the media quite recently relating to a property title scam. Somebody's certificate of title was transferred into another name and the scammer—according to the Real Estate Institute of Western Australia, a Nigerian scammer—was able to sell the property once the certificate of title had been issued in another name. It is very worrying that we can have that situation, and I remain to be convinced that transferring this set of responsibilities over to the Commissioner for Consumer Protection will make our system any more robust and protected against such scams in the future. The Real Estate Institute of Western Australia seems to be able to get away with washing its hands of any responsibility here. In fact, some recent media releases from the Real Estate Institute of Western Australia said of the scam that occurred on the Karrinyup property, that it would be working closely with the Real Estate and Business Agents Supervisory Board to review current protocols but it doubted that identity checks on sellers would have prevented this case from occurring. I therefore think that we have a problem and that the peak body for real estate agents in Western Australia is not prepared to assume the responsibilities that one would have thought that a professional body would have been prepared to deal with. At the same time we are transferring the supervisory board into another arm of government where its responsibilities could be lost, especially when the overwhelming body of the Commissioner for Consumer Protection's work will be of a very different order. It will not be about a system like the Torrens system; it will be about the normal course of events that we see when it comes to commercial transactions. That is quite different from the system when it relates to property.

Mr W.R. Marmion: Are you suggesting that the Torrens system is going to be changed?

Mr C.J. TALLENTIRE: No, not at all, but what I am saying is that we are bundling into the responsibilities of the Commissioner for Consumer Protection something that is quite different. We could arguably say that the other bodies that the minister is bundling into the Commissioner's roles deal with systems that are consistent

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with the normal procedures when it comes to the sale of goods and services. But the way we deal with property is different, which is why I have reservations about this bundling of the supervisory board.

Mr W.R. Marmion: The staff who deal with it will be the same staff who will deal with it after this legislation has gone through, except they will be under the umbrella of one person, so there will be cross-fertilisation between employees.

Mr C.J. TALLENTIRE: Unfortunately, I think we have seen a decline in real estate standards in Western Australia.

Mr W.R. Marmion: Under the current board system?

Mr C.J. TALLENTIRE: Under the current board system. I do not see any evidence to show how that is going to be bolstered and that the situation is going to be improved with this shifting into the Commissioner for Consumer Protection's responsibilities. I think the member for West Swan touched on a similar situation. We have boards that are not functioning to the standards that Western Australians would require, but that is not a reason to get rid of them and bundle them into some super agency or some larger body such as the Commissioner for Consumer Protection. That is the essence of my concern.

Just to provide another example of how shoddy the state of play is when it comes to real estate transactions in Western Australia at the moment, the typical contract document that is issued when someone enters into a selling arrangement with a real estate agent, which is the selling agency agreement, contains some very poor wording. I think it is virtually incomprehensible. It is worded badly, especially when it relates to the exclusive rights period. This is the sort of stuff that I would have expected the supervisory board to have dealt with and to have come down on the Real Estate Institute of Western Australia, which issues these documents. Probably thousands and thousands of them get issued every month. I will read to the house the wording that relates to the exclusive rights period. This is when people hand over the right to the commission on the sale of a property to one particular real estate agent. I ask why the board has not tackled this, and can I believe what the minister is telling me, that the Commissioner for Consumer Protection is somehow going to have the power to tackle poorly worded documents such as this? Section 13 of the standard selling agency agreement document reads —

... Exclusive Rights Period

The seller AGREES/DOES NOT AGREE (cross out whichever does not apply) to pay to the Agent the Agent's Selling Fee in circumstances where the sale of the Property to a buyer introduced to the Property by the Agent during the Exclusive Rights Period does not take place until after the expiration of the Exclusive Rights Period provided that the sale takes place prior to midnight on —

A given date. To me that actually reads the opposite of what I think is intended. People would expect that if they sign a contract with someone giving that person exclusive rights, the person would get the commission if the sale happened with a particular buyer, until a given point. But because of the way this is worded, people reading that would believe that in fact it does not expire but goes on after the expiration. It states that the exclusive rights period does not take place until the expiration of the exclusive rights period. We are talking about an exclusive rights period, but we are saying that it does not come into effect until after the expiration of the exclusive rights period. This is a level of detail that is obviously beyond the scope of this legislation, but I use it as an example to show the shoddiness of a lot of the work going on in the real estate industry. I have already mentioned cases that I have heard of in which people are being shown properties that are not even on the market or in which properties were sold six months previously but real estate agents are still wandering around thinking that they are for sale. That applies especially with some rural properties of which I have been aware. Sometimes, and I think it applies especially with deceased estates, real estate agents are trying to sell properties when the actual vendor has not been correctly determined. People put offers on properties, thinking that a settlement date is coming up, and then find that it all falls away once the settlement agents and other people have done their work and it turns out that there is no possibility of the transaction proceeding because they do not know who the vendor is. I use those examples to show that there are many problems with the real estate sector. I remain to be reassured that the new responsibilities of the Commissioner for Consumer Protection will resolve this situation.

I hope that the minister can assure me that there will be an improvement in the standards, that we will not just have the same one or two people trying to take on this mammoth task of supervising real estate and business agents in Western Australia, and that we will have an increase in resources so that standards can be improved.

DR A.D. BUTI (Armadale) [7.37 pm]: I rise to make just a few general comments and some specific comments on the provisions of the bill that deal with unconscionable conduct and the unfair contract provision. If I may talk a little about the history, a lot of this is based on the great additions during the federal Labor administration in the 1970s when the Lionel Murphy – Gough Whitlam partnership brought us the Trade Practices Act. I think that section 52 of that act is the most litigated section of any act in Australia. Section 52 deals with misleading and deceptive conduct, so it is litigated to a great extent in the Australian judicial system. Often that litigation is

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very expensive. The whole premise of the TPA and the various other fair trading acts around Australia is based on principles of equity and fairness. As anyone who has done a law degree knows, equity is the dominant jurisdiction that one should ensure one supports because it is much fairer than common law. I used to teach equity, so I am a bit biased in that respect.

If one turns to the unfair contract terms and also to misleading and deceptive conduct, I do not have any great concerns, except there is one provision that I will talk about shortly. I am not necessarily saying that the legislation should mention this, but I do wonder about the education of the general public. A lot of the general public must understand misleading and deceptive conduct, because it is litigated, but the problem is that that litigation is expensive. I think it would be commendable if the minister and his department could be proactive in educating the general public. For instance, people who go to a health club will receive a standard form contract. Many people who go to health clubs do not necessarily understand the law and do not necessarily understand their consumer rights. They would not understand unfair contract terms or misleading or deceptive conduct. I wonder whether the minister can give some assurance that, with this legislation, he will have a parallel educational program to educate the general public. I think that is very important. Although there are some very good provisions in this bill that have come about from the original Trade Practices Act put in place many years ago, the problem is that often it is reactive in that consumers might have incurred a financial penalty and they try to recoup that through litigation, which is very expensive. Often, if they do not have the capability, they just will not worry about it.

I refer to proposed section 23 of the Australian Consumer Law (WA) text, “Unfair terms of consumer contracts”. I put this issue forward for the minister to think about. It is a bit unusual. In part 2–3 of the text, proposed section 23 refers to unfair terms of consumer contracts. Proposed subsection (1) states —

A term of a consumer contract is void if:

- (a) the term is unfair; and
- (b) the contract is a standard form contract.

That is pretty standard. There are no problems there. Proposed subsection (2) states —

The contract continues to bind the parties if it is capable of operating without the unfair term.

That is orthodox contractual law. There are no problems there. I wonder whether it is possible to consider giving the party that has been offended in this case the option of discontinuing the contract.

Mr W.R. Marmion: I do not believe that it does at the moment, but I will get advice on that.

Dr A.D. BUTI: There is an issue of good faith between the parties. Arguably, if a party has been offended by an unfair term, the relationship between the parties may have soured or irrevocably broken down, so it may be unfair as a specific performance of a contract. That is all I want to say. One hopes that we can ensure that we have proper protection of consumers in Western Australia.

MR W.J. JOHNSTON (Cunnington) [7.41 pm]: I want to speak briefly on the Fair Trading Bill 2010. Very few issues come to my office more often than questions of consumer protection. People constantly come to see me to complain about —

Mr W.R. Marmion: Except for housing.

Mr W.J. JOHNSTON: Housing is obviously an issue, particularly in the area that I represent. The minister and I have lots of contact with each other on that issue. One of the issues on which I do not have so much contact with the minister is the matter of consumer protection. At the outset, I want to ask a general question, and the minister can respond in his reply. Will the government implement with this legislation the recommendation of the Red Tape Reduction Group that all acts have a fixed expiry date or at least a fixed review date? Will this legislation cease to operate on a particular date, or will there be a fixed opportunity for review of the legislation? What does the minister intend to do about the Red Tape Reduction Group’s recommendation on that issue?

I want to turn to a couple of issues. Issues with mobile phone contracts are brought to me all the time. People complain about the mobile phone contracts that they enter into. There is of course the Telecommunications Industry Ombudsman, whom I constantly refer people to, but I wonder whether there is a role for the new complaint structure that is being set up under this bill. What opportunity will I have to refer people to somebody locally who can help them with their mobile phone plans? They think that they are buying a phone, but, really, what they are buying is a service contract. They often end up with lots of problems and it can cost them a lot of money. I would be interested to know whether the minister can give us advice on whether we will have a simplified system so that members can help constituents resolve those types of problems.

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Will this move by the commonwealth and the Council of Australian Governments to improve consumer protection legislation and beef up the rights of consumers extend those opportunities to small business? I would be interested in any comments that the minister would like to make about unfair contracts in relation to small business, because there are a lot of different services and purchases that small businesses make. I would be happy for the minister to let us know whether this will improve the protections available to small business.

In particular, I want to raise issues in relation to real estate agents. I note that the minister is reforming the Real Estate and Business Agents Supervisory Board and replacing it with the real estate industry advisory committee.

Mr W.R. Marmion: It is a package. The licensing and regulations will be made by the commissioner, but there will be an advisory board.

Mr W.J. JOHNSTON: Effectively, rather than the powers of enforcement belonging to the board, they will be transferred to the commissioner and then the commissioner will have an advisory group to —

Mr W.R. Marmion: And the advisory group can also advise me.

Mr W.J. JOHNSTON: The minister can say what he likes, but I imagine that the advice that will come to him will be about policy and strategic issues, whereas the advice that will go to the commissioner will be more about enforcement, regulation and the day-to-day activity. I just want to emphasise that issue about the day-to-day activity. I know that the shadow minister has already raised this issue with the minister, but I hope that there is significant consumer representation on that advisory board, because —

Mr W.R. Marmion: Some of the current boards have consumer representatives. The way we are setting it up means that we will have a motor industry board, a real estate industry board and a separate advisory board of consumers. I think the consumer aspect will have a greater role than it does now.

Mr W.J. JOHNSTON: That will be fabulous. Real estate agents in Western Australia operate differently from many real estate agents in other states. It has been a long time since I was involved in private rental, but I get plenty of complaints about private rental from people coming to my office. I have written to the minister about one of those issues—that is, people renting out ordinary homes as student accommodation—and he has indicated that it will come up in review next year. I think I specifically referred to Wilson. I know that the member for Victoria Park has a similar issue in the suburb of Bentley. A house might get knocked over and three or four units might go up, so instead of having one family living in the house, suddenly 18 students are living where one family used to live. So long as there are no more than six unrelated people in the house, individual rooms can be rented out. People have a right to the reasonable enjoyment of their property, and I do not have any problem with that. It is probably pretty fundamental to people's democratic rights. But there is an issue. I do not know how we can get around this. I look forward to the minister following through on the letter he sent back. I know that the member for Victoria Park has exactly the same problem, because there is a huge overspill of students from Curtin University who have filled up Bentley and now they are going into the suburb of Wilson. I think that this issue of student housing and how it is dealt with is very important. It is not just a side issue, because if one house is knocked over and three three-bedroom units go up, suddenly it goes from three cars to 18 cars and there is whatever amount of waste that four or five people in a house produce. I am talking about solid waste, not other types of waste. I am talking about furniture being thrown out. It is a real problem. We have to think about how we handle that issue.

I have written to the Minister for Planning, and I understand his response. But there is also the genuine question about what real estate agents are doing. They know what they are doing. They are making a lot of money out of this because they are changing their percentages. These houses can be rented for significantly more than they would be to a family. Let us say that a house in Wilson was being rented for \$400 a week, which is a very large amount of money for rental. Suddenly they are renting the three units at \$100 per person, so it is \$1 800 out of the same footprint that used to earn \$400. If the real estate agent charges, let us say, 10 per cent, his income from that property will increase from \$40 to \$180 a week.

Mr W.R. Marmion: Is your question a general planning question?

Mr W.J. JOHNSTON: No, no; I am not asking the minister to respond during his reply to the second reading debate. This second reading debate is an opportunity to talk about policy issues. As the minister knows, we do not have much opportunity to talk about issues in our electorate, so I am making the point that this is a very important issue. I am not asking for a response.

I will go on to another issue; namely, rental contracts. Real estate agents in Western Australia—it is an unusual issue; it does not happen in the rest of the country—charge the prospective tenant. When I rented a house in Canberra, before I moved here all those years ago, I had to pay a bond and four weeks' rent in advance. But in Western Australia, prospective tenants also have to pay another fee to the real estate agent, yet the real estate

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agent does not work for the person renting, he works for the landlord. That to me is a clear conflict of interest. How can the real estate agent charge a fee to the tenant when the tenant is not the real estate agent's client? The real estate agent's duty is not to the tenant; it is to the landlord. That is a serious issue that I hope the advisory committees will take up. Charges should not be levied on a tenant by a real estate agent because the agent does not work for the tenant; he works for the landlord. It can be clearly seen that those real estate agents are extorting money from tenants, particularly in Western Australia where the rental market is tight and getting tighter every day. There is less and less private rental available now, and we need to have a look at that.

I raise also this question of landlords adjusting rents during the period of a lease. A person can be renting a house for 12 months and the rent is adjusted at the halfway mark of the contract. Again, I understand that it is not a practice that occurs in other states, so it is an issue that I think should be clearly examined.

Finally, the practice of rental auctions, again, in my view, is unconscionable. Rental auctions occur when a real estate agent gets a group of people to inspect a property at the same time and then gets them, in public, to start bidding for the rent they will pay for the place. Clearly, that is not a fair or reasonable approach to take. It is a free market particularly in a tight rental market. We have an increasing population and the state government is not building houses to take up the rental market. Unless people want to go a very long way from the city and end up in the suburbs, they are being pushed into rental accommodation, such as exists in the electorate of the member for Victoria Park, the Cannington electorate, or the electorate of the member for Nollamara, where the prices are going up and agents act unconscionably by having people stand around saying, "No, not \$320, I will pay \$322" or whatever. That is not fair on the tenants. I am happy for landlords to make a proper return on their investment; private investment in rental accommodation is very important, but I am talking about the practice of these agents who are clearly acting unfairly towards the potential tenants.

I will finish on one other issue related to real estate agents and that is when they operate as managers of strata titles. People in a number of suburbs in my electorate have complained about the way real estate agents operate there. As I understand it, at the moment, they do not have to open a trust account for the moneys that are paid as strata fees. I am not aware of real estate agents who use one property's strata fees on another property. But the fact they are not necessarily paid into a trust account gives an opportunity for real estate agents to act improperly in respect of these moneys. Some agents, of course, act entirely properly, but it gives real estate agents an opportunity to play around with the interest on the strata fees.

I think many people in strata properties do not have a proper appreciation of their obligations to the strata company. I am not saying the strata manager; I mean the strata company, so it would be good for the commissioner to work to ensure that strata owners have a higher level of understanding of their obligations for the ongoing maintenance and upgrading of their strata. One particular example that people came and spoke to me about happens to be in Langford. The strata company did not have a sinking fund, so when it needed to replace all the guttering and roofing, the people, who had been in the place for only six or eight months, were presented with a very large bill. The work needed to be done but they had purchased the strata only six months earlier and there had been no disclosure of their future obligations. I think the commissioner is ideally placed to look at these issues. They are serious issues arising from genuine complaints that come to my office and are, in my view, gaps in the regulatory regime. The Acts Amendment (Fair Trading) Bill 2010 comprises 127 pages, and the principal bill comprises 351 pages, so we are dealing with a lot of new law. It is therefore inevitable that we will need to consider some things as we go through. There is no way the government can get 500-odd pages of words 100 per cent right at the first go. That is not a criticism of the minister; that is true of any large amending legislation. Nonetheless, this is an opportunity for the minister, and the new structure he seeks to create through these amendments, to deal with these genuine and serious issues that come to my electorate and electorates similar to Cannington such as Victoria Park, Armadale and Nollamara—working-class areas that members on this side in particular represent.

I raise those issues with the minister and, even if he does not specifically respond to most of them, I hope he takes them on board because they are very important for my constituents.

MR B.S. WYATT (Victoria Park) [7.57 pm]: I want to make a very brief contribution to the debate tonight on the Fair Trading Bill 2010, simply to endorse the comments made by the member for Cannington in respect of the increase in housing density in Bentley in my electorate near Curtin University. Curtin University is a significant asset for not just Western Australia but obviously my own electorate in which it is based. Tens of thousands of students come through Bentley. Obviously, there is not enough accommodation on-site at Curtin University to accommodate all those students. As a result, we are seeing a spillover into Bentley in particular because it has either large older blocks that have been subdivided, as indicated by the member for Cannington, or houses that are renovated, with garages or areas above garages often being renovated illegally, to accommodate large numbers of students. This is usually organised by a landlord investor, who, in some cases, is the owner-occupier of the premises, or by agents themselves. As the member for Cannington knows—we have had many a

meeting with the Mayor of the City of Canning, Joe Delle Donne and councillors, and Graham Barry in particular, about the implication that has for long-term residents—Bentley has a lot of long-term residents who will be impacted on by these student numbers.

Most of the students who are sardined into these areas are foreign students, and I think that to some degree they are probably being taken advantage of. But basically the situation is that unless the construction or renovation is illegal, there is nothing the City of Canning can do about it. There is also very little under the current laws that the state can do about it. This is a very difficult area, as the member for Cannington has pointed out. Governments are, quite rightly, very reluctant to stick their nose into how owners and investors deal with their own property. People who invest in property are entitled to make a fair return. One of the problems is that if six students—in some cases, as the member for Cannington knows, up to 10 students—are living in very small premises in Bentley, that forces a lot more cars onto the roads. That is the case particularly if the house has simply been renovated, because there is then no requirement that extra parking be installed. As we know, because we have all been students, so we know what students are like, that means that cars are coming and going at all hours of the night. Another problem—members may not appreciate this, but this is one of the biggest complaints that I get in my office—is that each house is given one Sulo bin and one recycling bin. If up to 10 students are living in a house, what tends to happen is the bins are overfilled, because students tend to generate a fair bit of trash, and they may not be picked up on garbage day —

Mr T.K. Waldron: They may even forget to put them out, which is even worse!

Mr B.S. WYATT: That is right; the minister knows exactly what I am talking about. It may even mean that people are scurrying up and down the street at night, putting their rubbish in other people's bins. Perhaps we have all been guilty of that to one extent or another. But when it happens week after week, it causes angst among people who have lived in the street for many years. This is taking place in an environment in which there is no regulation. Therefore, when my frustrated constituents come to me, we end up having to stalk the streets to find out how many people may be living in a house. If we then find that the owner does not live in Western Australia, it becomes more difficult to even manage unofficially. I therefore endorse strongly the comments made by the member for Canning. As I have said, Mayor Joe Delle Donne has been very active on this issue, but he is continually frustrated by the inability to take action under the current system.

As I have said, a lot of these students are foreign students. Curtin University must take some responsibility for providing accommodation for these international students. Curtin University has provided a lot of accommodation either on campus or near campus. However, it is clear that that accommodation is insufficient. The provision of more accommodation by Curtin is not going to solve all the problems. But we do need to share that burden perhaps a bit more fairly than we are doing at the moment. The people of Bentley are having to take on the extra burden of providing accommodation services and facilities to a population that has expanded below the radar, minister. When a population expands below the radar, it does not appear in government statistics, government analysis or government reports; therefore, we do not get a government response to the extra public transport, the extra police presence and the other services that are required to manage this significant increase in population. I reiterate again that Curtin University in my electorate is a wonderful asset. I am very proud of it. Not many electorates have a university within their boundaries. However, I must also acknowledge that it does have an impact on the surrounding suburbs, in this case the suburb of Bentley.

MR W.R. MARMION (Nedlands — Minister for Commerce) [8.03 pm] — in reply: I begin by thanking the many members on the other side of the house who spoke on the Fair Trading Bill 2010 and the Acts Amendment (Fair Trading) Bill 2010. A large number of questions have been asked by members; therefore, rather than sum up with what these bills are about, I will answer some of those questions. I will begin with the member for Cockburn. The member's first question was about the time frame for the bill, and his concern about what might happen to this bill in the Legislative Council. Hopefully, the Standing Committee on Uniform Legislation and Statutes Review will look favourably on the bill and will not spend too much time on it. If the bill does not pass through the Parliament this year, there will be an issue about whether the Australian Consumer Law will be able to commence uniformly in Australia on 1 January 2011. Our primary intention is that the Australian Consumer Law commence in every state on that date. If the Western Australian bill is not passed this year, we will need to negotiate with other jurisdictions to see whether we can get a later start date. If Western Australia is left behind, we will be at a significant disadvantage, because there will be laws in Western Australia and laws in the commonwealth that will not be exactly the same. That is the answer to the first question.

The member for Cockburn also raised the issue that the bill does not go far enough in dealing with insolvent traders by setting up trust funds for large deposits. This is an issue that has been raised previously. It is not our intention at this time to propose any changes to the bill to implement trust funds for deposits. However, as I pointed out to the member in my letter, I am interested in his views, and that is a matter that I am happy to

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discuss with my ministerial colleagues. Indeed, if such an amendment were to come through, it should be implemented uniformly across Australia.

The member's next question was about whether the new consumer legislation could be amended in Western Australia, and what would happen if the commonwealth were to object to our amendment. That is a very good question. Indeed, if Western Australia wanted to make an amendment to our law, it would be up to me as the minister to take it to the ministerial council. It would then be voted on by the ministerial council; and, if adopted, the Australian Consumer Law would be changed. Even if the Australian Consumer Law was changed, Western Australia would have the option of either agreeing or disagreeing with that change, because both the Legislative Council and the Legislative Assembly would be able to disallow any change that might be adopted by the ministerial council. That change could have been initiated by Western Australia, or it could have been initiated by another state. The member's next question was what if we —

Mr F.M. Logan: Wanted to do it ourselves.

Mr W.R. MARMION: Yes. If we wanted to do it ourselves, our first choice would be to ask the ministerial council whether it would adopt it, because then there would be uniformity across Australia. If we were to decide that a matter was important to Western Australia, then, because of the way we have brought our legislation through, we would be able to amend our act. That covers that question.

The member also had some questions about the Acts Amendment (Fair Trading) Bill. The member asked whether the department would have the capacity to abolish boards. As I have mentioned, the actual work is already being conducted by the people in the department. Two of the boards have their own staff. The staff of those two boards will be moved into the department. All the other boards are run by staff who are in the department anyway. So, there will be no changes to the staffing or to the people who have the skills. The benefit will be that those staff who were formerly not in the department will be able to cross-fertilise ideas with the staff who are in the department. I am hoping that will lead to some efficiencies, and that people will become double skilled and triple skilled in their knowledge of other areas, not just the Settlement Agents Supervisory Board, for instance.

Mr F.M. Logan: The question was about representation on advisory boards, such as the Automobile Advisory Panel.

Mr W.R. MARMION: They will be set up by the regulations. The regulations themselves will be disallowed in relation to the composition. I take the member's point: the RAC is on a board. However, the member's point is to make sure that we get some people who are actually a bit lower down.

Mr F.M. Logan: On the ground.

Mr W.R. MARMION: That is a good point to raise, because we obviously want the board to have the right expertise.

Mr F.M. Logan: I mean, for example, there is a consumer on the Consumer Advisory Panel.

Mr W.R. MARMION: Yes. But the way the boards will be set up, there will be a property board and a motor board—they will be industry boards—and then a bonus of this legislation is that there will actually be a separate consumer board made up of consumers. At the moment some of the boards have one or two consumer representatives, but they can be outvoted or overwhelmed by the industry members. I think this will be a better mechanism.

It will be an achievement to get through the member for Nollamara's many questions, and I will endeavour to.

Ms J.M. Freeman: You've answered one of them; you've answered the Christmas question. It does not come in until 1 January.

Mr W.R. MARMION: Have I? Thanks. I did not know I had answered one already. The member had a concern over the timing of the briefing.

Ms J.M. Freeman: Yes.

Mr W.R. MARMION: Is the member happy with that answer?

Ms J.M. Freeman: Yes.

Mr W.R. MARMION: That can go away.

The member also had a question about—this was the Christmas one. The member asked about template legislation.

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Ms J.M. Freeman: Yes.

Mr W.R. MARMION: The reason that we are not bringing in template legislation, which would have been easy for me because we would have just adopted the legislation introduced by another state, or indeed the commonwealth, is that the Legislative Council in Western Australia is quite particular about this Parliament having the ability, as the member for Cockburn mentioned, to amend its own legislation. Indeed, transmitting legislation from the Assembly to the Council in a template form is not usually received favourably by the other house. The Fair Trading Bill 2010 and the Acts Amendment (Fair Trading) Bill 2010 have been structured in a way to attach the complete commonwealth Australian Consumer Law legislation. Therefore, it will be possible for us, if we have a concern with the uniform legislation across Australia, to make our own specific Western Australian amendments.

Ms J.M. Freeman: But there are no specific Western Australian provisions in this particular bill at this time.

Mr W.R. MARMION: These two bills actually pick up on Western Australian legislation combined with the Australian Consumer Law.

Ms J.M. Freeman: But how does that then make sure that they are all consistent with one another? You can't have the same Western Australian laws transferred across to a national system; you have to have uniform laws.

Mr W.R. MARMION: I will give the member one example: we are abolishing the door-to-door sales regulations. In Western Australia people can actually knock on doors until eight o'clock, whereas, according to Australian Consumer Law, in other states and territories that can happen until six o'clock. There are some little differences.

Ms J.M. Freeman: With daylight saving, it is the same thing in any event, isn't it? When you say that—joking apart—did we keep the eight o'clock limit and they kept the six o'clock limit?

Mr W.R. MARMION: Yes; correct.

Ms J.M. Freeman: But then that's not uniform, is it?

Mr W.R. MARMION: Not everything is uniform.

Ms J.M. Freeman: Which other parts are not uniform?

Mr W.R. MARMION: I have not got the time to go through that; I have to answer the member's other 14 questions.

Ms J.M. Freeman: It's a huge bill; you have to have time to go through it. These are the things that you put on *Hansard* for the record, so that we know in the future.

Mr W.R. MARMION: I can tell the member, but then I will be deviating away from the member's and other members' questions.

Ms J.M. Freeman: I'm up for that, minister; we've got all night.

Mr W.R. MARMION: Does the member want to know the variations from our current law?

Ms J.M. Freeman: No; I want the variations from the uniform law where we have kept our current law.

Mr W.R. MARMION: I will answer in terms of the new provisions of the Australian Consumer Law. The new national unfair contract terms law—I will start probably answering some of the other questions when I talk about this—as defined in the Australian Consumer Law now makes it clear that a term will be regarded as unfair if it causes a significant imbalance in the party's rights and obligations arising under the contract; it is not reasonably necessary to protect the legitimate interests of the supplier; and it causes a detriment, or there is a substantial likelihood of detriment, to the consumer. The definition of a standard term in a contract has now been specified.

The member for Armadale raised some very good points, one of which was that a contract would not necessarily be void just because it contains an unfair contract term. If a term is found to be unfair, the term itself would be void but the rest of the contract would still be binding on the parties. That is the advice I have at the moment, but I take the member's point about whether there should be the opportunity for the consumer to opt out; I get that point.

In terms of product safety law, the new uniform legislation means that the commonwealth will be responsible for banning unsafe products, but, under the act, a state or territory can still ban a product for 60 days, and then get a 30-day extension. One would hope that in that time the state or territory would have had the opportunity to get the commonwealth to come on board and make it a blanket ban right across Australia. That is a new product safety law.

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Probably the more important new laws are the national laws guaranteeing consumer rights when buying goods and services, which replace existing laws on conditions warranties, which were, I guess, implied laws. The ACL act introduces specified statutory guarantees, which are that the supplier has a right to sell the goods; the goods will be of acceptable quality; the goods will match their description; the goods will be fit for the purpose that the consumer makes known to the supplier; repairs and spare parts will be reasonably available—that is quite a good one—and the manufacture and supply will comply with all express warranties given. There are also two new ones to do with services: services will be carried out with reasonable care and skill, and the service will be completed within a reasonable time. The remedies available will depend on the severity of the failure to comply. The two statutory guarantees relating to express warranties and the supply of services within a reasonable time are the new ones.

In terms of best practice reforms, as raised by the member for Cockburn, receipts will now be required for payments of \$75 or more. Consumers will have to be given a receipt, and a consumer can still request a receipt for below \$75.

Mr W.J. Johnston: You need a receipt of \$50 or more to claim a goods and services tax input credit for a business. Is there any reason that it is \$75, not \$50?

Mr W.R. MARMION: I have not been given a reason for it being \$75, but it will actually be contrary to the act if consumers are not given a receipt for \$75 or more.

Mr W.J. Johnston: It is just that you can't—you need a GST receipt.

Mr W.R. MARMION: Consumers can demand a receipt for anything they like; that is an important point.

Another good point is that consumers can actually request an itemised bill; so if people get their car serviced, they can actually demand an itemised bill and they have to itemise all the costs.

Ms J.M. Freeman: That is new, minister.

Mr W.R. MARMION: Sorry?

Ms J.M. Freeman: Is that new or is that an existing law?

Mr W.R. MARMION: We are not in consideration in detail, but my understanding is that it may not be a requirement to do that at the moment, even though my garage does it.

Mr F.M. Logan: Most of them do.

Mr W.R. MARMION: Although, it is hard to know the hours they really put in for what they did.

Also, the actual documentation for lay-bys will be strengthened under the new act. The member used the example of a person who had three items on lay-by and had picked up two items but not the third and it was alleged that the person had picked up the third item. Under this legislation, the documentation should strengthen those provisions.

Mr F.M. Logan: Under the example you gave of a motor vehicle, the difference is that mechanic is not allowed to make changes to your car that you have not authorised. Before they do it and bill you for it, they have to seek your approval. Most garages do that, but not all.

Mr W.R. MARMION: Mine does. Usually people feel that they have to do it.

Mr F.M. Logan: They are the new provisions in the bill. With regard to the example you gave of door-to-door sales, how many areas are unique to Western Australia and are not uniform with the ACL?

Mr W.R. MARMION: I cannot give the member that information in the second reading debate.

Mr F.M. Logan: They are the sorts of answers you will have to come up with for the Standing Committee on Uniform Legislation and Statutes Review, because they will ask you.

Mr W.R. MARMION: That is right. I will get back to answering the member for Nollamara's other questions, because I want to try to answer as many questions as I can in the time I have available to me. I probably should jump to other members' questions, but I will continue with the member for Nollamara's questions, which were excellent. The member's third question was about consultation with consumers. The laws will not come into effect until 1 January 2011. Therefore, there will be time to talk to consumers. There are some important aspects to it, and there will be consultation.

Ms J.M. Freeman: I meant whether there had been any consultation with consumers, such as consumer organisations, when drafting the legislation.

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Mr W.R. MARMION: There has been considerable consultation with consumers. I have just been advised that the door-to-door hours provision is the only variation with the national law.

Ms J.M. Freeman: Really? That is the only one. That is now on *Hansard*, which is very important.

Mr W.R. MARMION: That is amazing; that was the only one that I was aware of, and it was the only one!

The member for Nollamara's fourth question was about a radiator. The answer is that the bill does not change the right of individuals to take private action in the Magistrates Court. There is no problem with that. The member's sixth question was about the codes of practice. They are made by regulation. All regulations have to lie in both houses of Parliament.

Ms J.M. Freeman: Are they regulations, though? They are core codes of practice, but are they regulations? In the occupational health and safety jurisdiction you have the act, regulations and codes of practice. The way you have it written is that the codes of practice are almost regulations. Will the whole code lie so that it can be disallowed, or will the regulation adopt the code and the code will be a separate document?

Mr W.R. MARMION: The codes will be set up for particular industries, but they will be part of the regulations and both houses will have the opportunity to disallow those regulations. That is how they will be implemented.

The member's seventh question—there are only eight more to go—was about the internet. Any contract, including those entered into via the internet, will be covered by the act. This act will apply to Western Australian consumers. Obviously there is an issue regarding the remedy if a product was purchased from another country.

Ms J.M. Freeman: What about if it was purchased from another state?

Mr W.R. MARMION: That is a good question. That is the benefit of the Australian Consumer Law. If a product is purchased in another state, we will be able to follow it through.

Ms J.M. Freeman: Will they be able to individually prosecute it in the Magistrates Court?

Mr W.R. MARMION: Yes.

The next matter regarded finance brokers. Finance brokers fall under consumer credit. That has been passed on to the commonwealth government, which is now looking after that.

I turn now to misleading conduct relating to employment. The provision in the Australian Consumer Law is essentially the same as that in the current Fair Trading Act. This provision has been used successfully in the past to prosecute traders, such as the well-known bikini case. I am advised that if misleading conduct were defined, it would narrow the scope of the provision and run the risk of not capturing conduct that would otherwise be caught. Historically, misleading conduct has never been defined in legislation. It is not appropriate to define unfair contract terms because as soon as they are defined, contracts could be rewritten to circumvent any such definition. It is in the interests of consumers to have flexibility to capture all forms of unacceptable conduct.

Ms J.M. Freeman: They are good answers, minister.

Mr W.R. MARMION: That was a good answer, was it not?

I turn now to specific representation. If an employer advertises that there are four positions available, there must be four positions available. Similarly, if trial work is offered, there must be a sincere intention to offer work if the applicant is suitable. This is complementary to labour laws. It covers the representations made in relation to the availability and conditions et cetera of employment. Other labour laws cover wages et cetera.

I turn now to advertising complaints. Unfortunately, the example of Bayswater Car Rental Pty Ltd is not relevant to consumer law. Consumer law is concerned with misleading and deceptive advertising.

Ms J.M. Freeman: It is misleading and deceptive.

Mr W.R. MARMION: That might be an opinion. Issues about sexism or unsavoury advertising are dealt with by antidiscrimination laws and advertising standards.

Ms J.M. Freeman: So is there nothing we can do?

Mr W.R. MARMION: It is probably a grey area regarding misleading conduct.

The 10-day cooling off period applies to all unsolicited consumer agreements that result from door-to-door trading, including telemarketing, which is a new addition. If a telemarketer rings someone up, the person who bought the product has a 10-day cooling off period.

Ms J.M. Freeman: There is a 10-day cooling off period for motor vehicles. Is that not under this bill?

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Mr W.R. MARMION: No. The cooling-off period applies to someone who has been cornered by a door-to-door salesman and makes an impulse purchase.

The country of origin provisions are not to do with the labelling of products generally. Although food will be captured by the country of origin provisions, I point out that the provisions are about where the goods are grown or produced. Any false or misleading representations to do with goods generally are dealt with in other parts of the bill. Again, it depends on whether the representations are misleading.

The member referred to non-English speaking people. Consumer Protection has direct access to translation services for people to seek advice. Consumer Protection also uses translators, when relevant, when speaking to consumers and consumer groups. People from culturally and linguistically diverse backgrounds are a target group for consumer protection.

The member for West Swan's first question was about whether the functions of the boards would deteriorate when they are abolished. No; we are not downgrading any of the boards or their functions. All that will change is who will license and regulate the industry, and that will be the commissioner. All the boards' functions are being transferred. The licensing framework is not changing.

Her next question was about the downgrading of standards. The bill does not at all change the licensing framework; it changes who will do the various functions, but it does not change the functions. The industry associations have been fully consulted on the changes, and support them.

The member's fourth question was about the allocation of resources and the real estate board and industry being prone to unfair practices, and a request for reassurance they will be covered. All functions of the Real Estate and Business Agents Supervisory Board will be transferred to the commissioner and the Director General of Commerce. The funds available to the board will be transferred to the department for use in the same manner; that is, there are no changes to the act. The operational staff are already departmental staff and therefore there will be no loss of corporate knowledge.

The member for Gosnells, who is not here, had several questions.

Ms J.M. Freeman: It is okay; I will tell him.

Mr W.R. MARMION: The member for Nollamara will pass on the answer, which he will be able to read in *Hansard*.

Mr T.G. Stephens: He is listening to you.

Mr W.R. MARMION: He will be. The member's first point of concern about the abolition of the Real Estate and Business Agents Supervisory Board was that the industry would not function as well as it currently does. If the member has a conversation with the member for Balcatta, who I think is very much in favour of the abolition of boards, he might see that he has a strong ally in me, in terms of the member for Balcatta, on that point. However, the abolition of the Real Estate and Business Agents Supervisory Board will not weaken supervision of the industry. All staff members, and therefore their expertise, will be retained. Giving the board functions to the commissioner will enable the commission to function more effectively and efficiently because it will have all the resources and skills necessary to manage boards under the one roof. The other answer to the member's question is that the boards will function better.

The member for Armadale made a very good contribution. I do not know if it was his first contribution in debate on the bill, but I found it easy to understand. I am not a lawyer, but the member's contribution made it easy for me to understand what he was saying. In answer to his first question—a serious question—about education, I can say that there will be a parallel education. Consumer affairs does reasonably well, but there will be a parallel education program on this massive bill and the points that I have made about the new and stronger rules that will apply. I have already answered the member's other question.

I thank the member for Cannington, who is in the house, for his contribution. He always likes to make a contribution when I am on my feet, and I appreciate that.

Mr W.J. Johnston: I don't pick on you!

Mr W.R. MARMION: His first question was about expiry dates. A provision for the review or expiry of the legislation is not contained in this bill; however, the intergovernmental agreement between the commonwealth and the state provides that the Australian Consumer Law will be reviewed after seven years. The next question was about mobile phones and the member was, in fact, on the money. I am advised that the contracts are regulated by the Telecommunications Industry Ombudsman and that Consumer Protection will continue to refer any general complaints about mobile phones to the ombudsman. It is, however, important to note that the unfair

Extract from Hansard

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Mr Fran Logan; Acting Speaker; Ms Janine Freeman; Ms Rita Saffioti; Mr Chris Tallentire; Dr Tony Buti; Mr Bill Johnston; Mr Ben Wyatt; Mr Bill Marmion

contract terms provisions will apply to mobile phone contracts and that Consumer Protection will hear consumer complaints on that issue.

Mr W.J. Johnston: Thank you.

Mr W.R. MARMION: I refer now to small business; the unfair contract terms provisions will apply only to business-to-consumer transactions. However, with the advent of the small business commissioner, I see a greater interplay between the small business commissioner and the department. Indeed, the new legislation makes provision for the department or the commissioner to take a business-to-business issue to the courts if the commissioner feels there is an interest to the state or a general broader interest that would flow through to consumer transactions. In special circumstances, even a business-to-business issue could easily be initiated by the small business commissioner. It was quite a good question.

Mr W.J. Johnston: I know that you have very little time, minister, but I want to ask you: is the government contemplating trying to extend through the COAG processes any of these arrangements to business-to-business transactions?

Mr W.R. MARMION: Business-to-business transactions are very expensive.

Mr W.J. Johnston: Some are.

Mr W.R. MARMION: The commissioner would have to decide that it was such an important issue to industry and to consumers that a decision was needed. There would have to be a benefit to both industry and consumers for the commissioner to take on those transactions. I see them as isolated instances; that is my view.

Mr W.J. Johnston: Okay.

Mr W.R. MARMION: The member's next question was about the real estate board, but I think I answered it when going through the questions about the two industry boards and the consumer board.

I refer now to strata company issues. Strata legislation is administered by Landgate, but not under this bill. I was very interested to hear the member's comments on strata titles, because I know they are an issue. The member also raised the issue of urban renewal and subdivision, which the member for Victoria Park also spoke about. As members know, these matters are not regulated through consumer affairs.

I think that I have dealt with all the members' questions. I thank everybody for their contribution and I commend the bill to the house.

Question put and passed.

Bill (Fair Trading Bill 2010) read a second time.