

FAIR TRADING AMENDMENT BILL 2019

Second Reading

Resumed from an earlier stage of the sitting.

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development) [5.08 pm]: Although updating the Fair Trading Act to incorporate a more recent version of the Australian Consumer Law addresses the current inconsistencies, it does not address the ongoing issue of there being a significant time lag between the application of ACL amendments to constitutional corporations and the enactment of amendments to the ACL WA. Unless the Parliament agrees to address this issue by supporting the proposed mechanism in this bill, the number of inconsistencies and problems with unenforceability will increase because a raft of amendments recommended by the 2017 review of the ACL will, over the next few years, work their way through the commonwealth Parliament. These will potentially include the insertion of a general safety provision into the consumer law to compel manufacturers and traders to assess the safety of a product prior to offering it for sale; a strengthening of the consumer guarantees regime, particularly with regard to high-value goods that fail shortly after purchase; and ensuring that manufacturers, not just traders, have a responsibility to repair or replace defective products.

For this reason, the bill will replace the current ACL application provisions with a new application provision that provides for the timely insertion of changes to the commonwealth ACL into the consumer law of Western Australia. As agreed, the bill includes a mechanism to preserve the sovereignty of the WA Parliament that is consistent with recommendation 2 in the report by the Standing Committee on Uniform Legislation and Statutes Review. The proposed mechanism provides that all future commonwealth amendments must be tabled in Parliament and may be disallowed by either house prior to coming into effect in Western Australia. The proposed mechanism incorporates all features described by the committee at recommendation 2, with the exception of the requirement for commonwealth amendments to be published in the *Government Gazette*. This requirement has not been included based on recommendations by Parliamentary Counsel and the State Solicitor's Office that gazettal would be inconsistent with current practice for publication of principal legislation, could give rise to unnecessary expense, and could potentially cause confusion about the content of state laws. Confusion is likely, for example, if commonwealth legislation is published prior to scrutiny by Parliament, such that it is in the public domain for an extended period before coming into effect as part of the ACL WA. In terms of expense, some commonwealth ACL amendments are in omnibus bills that have hundreds of pages. In such circumstances, gazettal would be very expensive. For example, a recent regulation amendment with 68 pages cost \$7 659.56 to publish in the *Government Gazette*.

We also note that the committee recommended amendments to the standing orders. As an interim measure to ensure that any disallowance motions are accorded sufficient priority until amendments to the standing orders can be considered, the bill provides for disallowance motions under the Fair Trading Act to be accorded the same priority as disallowance motions for regulations. The proposed amendments will improve the operation of the Australian Consumer Law and the administration of the Fair Trading Act to the benefit of all stakeholders.

On the basis of advice from the Parliamentary Counsel's Office, the Fair Trading Amendment Bill 2018 was not referred to the Standing Committee on Uniform Legislation and Statutes Review pursuant to standing order 126. Nevertheless, the government elected to move a motion for referral pursuant to standing order 128 on the basis that the bill proposed amendments to a uniform legislation scheme that may have had implications for parliamentary sovereignty, and it was therefore appropriate for the committee to consider that issue. The committee was, however, of the view that the bill did, through its proposal of a mechanism for automatic adoption of commonwealth law, propose to introduce a uniform scheme or uniform laws within the meaning of standing order 126(2)(b). On that basis, I inform the house that the government is of the view that this bill is a uniform legislation bill that stands referred to the Standing Committee on Uniform Legislation and Statutes Review pursuant to standing order 126.

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

[See paper 2557.]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.