

FAIR TRADING AMENDMENT BILL 2018

Receipt and First Reading

Bill received from the Council; and, on motion by **Mr J.R. Quigley (Minister for Commerce)**, read a first time.
Explanatory memorandum presented by the minister.

Second Reading

MR J.R. QUIGLEY (Butler — Minister for Commerce) [4.14 pm] — by leave: I move —

That the bill be now read a second time.

The purpose of the Fair Trading Amendment Bill 2018 is to improve the operation of the consumer law in Western Australia by updating the contents of the Australian Consumer Law as it applies in this state. The amendments will enable all businesses and consumers in Western Australia to better understand their rights and obligations and to enjoy the full range of protections currently available under the national law. The bill reflects undertakings made by the government in the Legislative Council to incorporate the Australian Consumer Law from 26 October 2018 and to introduce a second bill for committee review. The separate bill, due to be introduced to the Legislative Council this week, proposes to establish a mechanism for parliamentary scrutiny of future amendments to Australian Consumer Law before they take effect in Western Australia. I will now provide some details about the key reforms included in this bill.

The Fair Trading Act 2010 currently applies the Australian Consumer Law as in force on 1 January 2013 as the consumer law of Western Australia. A number of amendments have been made to the Australian Consumer Law since 2013 that are yet to be incorporated into the Australian Consumer Law in Western Australia, including the extension of the unfair contract terms protections to small businesses and a new regime for country-of-origin labelling requirements for food. The result of the interaction of commonwealth and state laws is that the commonwealth amendments apply directly to constitutional corporations trading in Western Australia, which is about 80 per cent of traders, but not to other forms of enterprise such as sole traders or business partnerships. Lack of consistency between the Australian Consumer Law and Australian Consumer Law Western Australia is confusing for traders and consumers, with small businesses with limited resources particularly disadvantaged. The bill will update the Australian Consumer Law Western Australia to incorporate all amendments to the commonwealth Australian Consumer Law from January 2013 to 26 October 2018. This will effectively incorporate the current version of the Australian Consumer Law, as the commonwealth act has not been amended since 25 October 2018. Although updating the Fair Trading Act to incorporate a more recent version of the Australian Consumer Law addresses current inconsistencies, it does not address the ongoing issue of there being a significant time lag between the application of Australian Consumer Law amendments to constitutional corporations and the application of Australian Consumer Law Western Australia to other kinds of businesses. If this ongoing issue is not addressed, it can be expected that the inconsistencies and resulting confusion will increase over the next few years, as a raft of amendments recommended by the 2017 review of the Australian Consumer Law gradually work their way through the commonwealth Parliament. For this reason, the government intends to introduce a second bill shortly to address that issue.

The most significant changes to the commonwealth Australian Consumer Law that will be incorporated into the Australian Consumer Law Western Australia as a result of the passage of this bill are: amendments that permit a restaurant or cafe to provide information about holiday surcharges on a menu without being required to re-print different menus in order to comply with component pricing requirements in the Australian Consumer Law; extension of unfair contract terms provisions to small businesses entering into standard form consumer contracts; provision of safe harbour defences for traders making country-of-origin claims; significant increases in penalties for noncompliance; the introduction of a national scheme to regulate conditions on gift cards; and the extension of unconscionable conduct protections of consumer law to publicly listed companies. The bill will also implement a recommendation of the 2017 Australian Consumer Law review for easing evidentiary requirements. Provisions relating to the conduct of civil proceedings will be amended to permit private litigants to rely on admitted facts from earlier proceedings.

Finally, the bill will amend the act to permit the Commissioner for Consumer Protection to be appointed as chairperson of the advisory committees. The Property Industry Advisory Committee, the Motor Vehicle Industry Advisory Committee and the Consumer Advisory Committee were established in 2011 to provide a mechanism for ongoing industry and consumer consultation in the transition from licensing and registration under a board structure to a scheme administered by the Commissioner for Consumer Protection. The commissioner is an ex officio member of the committees, but is not currently able to be appointed as chairperson. When the Fair Trading Act was introduced, the director general of the then Department of Commerce was appointed chair of the Property Industry Advisory Committee and the Motor Vehicle Industry Advisory Committee, but as

a result of machinery-of-government reforms now that these committees are well established, it is considered that there is no ongoing need for that arrangement. The proposed amendments will improve the operation of the Australian Consumer Law and the administration of the Fair Trading Act to the benefit of all stakeholders. They are supported by consumer advocates and the Small Business Development Corporation. Small businesses particularly welcome access to provisions in respect of unfair contract terms.

I commend the bill to the house.

Debate adjourned, on motion by **Ms L. Mettam**.