

**FAIR TRADING BILL 2010**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Norman Moore (Leader of the House)**, read a first time.

*Second Reading*

**HON NORMAN MOORE (Mining and Pastoral — Leader of the House)** [8.23 pm]: I move —

That the bill be now read a second time.

The primary object of the Fair Trading Bill 2010 is to implement a decision made in 2008 by the Council of Australian Governments to introduce a single national consumer law—the Australian Consumer Law. As part of the process of enacting the new Australian Consumer Law in Western Australia, the bill also amalgamates three existing state acts into one act, and provides for the expiry of those acts, which are: the Consumer Affairs Act 1971, the Door to Door Trading Act 1987 and the Fair Trading Act 1987. The bill provides for the continuation of the office of commissioner and all related administration and enforcement matters and, importantly, also provides for the standardisation of investigation and enforcement powers that currently sit across a range of acts in the consumer protection portfolio.

The introduction of the Australian Consumer Law represents the most significant reform of consumer laws in Australia since the introduction of state and territory fair trading acts in the late 1980s. Nationally, this reform will replace a complex array of 17 commonwealth, state and territory generic consumer laws. The single greatest benefit of the Australian Consumer Law is that it will result in the uniformity of the foundation consumer law in Australia at commonwealth, state and territory levels. This will mean certainty and lower compliance costs for businesses that operate in more than one jurisdiction in Australia, and it will ensure that all Australian consumers will have the same rights and protections wherever they live in Australia.

The development of the Australian Consumer Law came about as a result of an agreement by COAG in October 2008 to introduce a single national consumer law. At this time, it was agreed that the Australian Consumer Law would be a commonwealth law, and that it would be applied as a law of each state and territory. The Australian Consumer Law has already been introduced nationally through two commonwealth acts. The first act took effect on 1 July 2010 and the second act is currently intended to take effect on 1 January 2011.

Each state and territory is introducing the Australian Consumer Law separately, as a law of their own state or territory. All state and territory versions of the Australian Consumer Law are intended to come into operation on 1 January 2011. In order to meet Western Australia's commitment under COAG's intergovernmental agreement for the Australian Consumer Law, the bill applies the Australian Consumer Law as at 1 January 2011, or such other date as the commonwealth version of the Australian Consumer Law comes into effect as a law of Western Australia. To assist Parliament to assess the consequences of the bill applying the commonwealth Australian Consumer Law, its full text is set out as a note to the bill.

Although it is in the interests of all Australian consumers and businesses to ensure that the Australian Consumer Law remains uniform, this bill reserves the right of the Western Australian Parliament to reject future amendments made by the commonwealth government. The legislative mechanism the government has adopted is similar to that that applied in the past to the regulation of consumer credit in this state until that responsibility was transferred to the commonwealth earlier this year. The process is as follows: when the commonwealth version of the Australian Consumer Law is amended, in order for those amendments to take effect in Western Australia, the amendments will require an order of the Governor; however, before the Governor can make such an order, a draft of that order will need to be approved by both houses of the Western Australian Parliament. The bill further provides that any regulations or legislative instruments that are made under the commonwealth version of the Australian Consumer Law will apply in Western Australia, but will be subject to disallowance by the state Parliament in the ordinary way.

Once the Australian Consumer Law is in place throughout Australia, the administration and enforcement of the Australian Consumer Law will continue to be a joint commonwealth, state and territory responsibility. In Western Australia, the day-to-day administration of the Australian Consumer Law will be the responsibility of the Commissioner for Consumer Protection.

Mr Deputy President, I now turn to the key provisions of the bill, looking first at those that relate to the Australian Consumer Law. It was agreed at COAG that the Australian Consumer Law should be firmly based on existing consumer protection provisions in part V of the Trade Practices Act. COAG further agreed that the Australian Consumer Law should be enhanced by implementing new unfair contract terms provisions and adopting best practice provisions from the states' and territories' fair trading acts. As a result, many of the

provisions contained in the Australian Consumer Law are substantially the same as those that already exist in our Fair Trading Act 1987, although they have been redrafted to reflect modern drafting conventions.

The unfair contract terms provisions are possibly the biggest reform arising out of this law. These provisions regulate terms in standard form “take it or leave it” consumer contracts that are so commonplace, particularly in new electronic commerce contracts. The unfair contract terms provisions will mean that terms in such standard form consumer contracts will be void if they are found to be unfair by assessment against the criteria set out in the bill. Unfair contract terms provisions have been operating successfully in Victoria for several years. Like the current Fair Trading Act, the Australian Consumer Law prohibits misleading or deceptive conduct and includes provisions prohibiting persons who are operating in trade or commerce from engaging in unconscionable conduct.

The Australian Consumer Law also provides for a wide range of specific consumer protections covering unsolicited selling, pyramid schemes, consumer guarantees, lay-by agreements, product safety, and information standards. To ensure a national coordination and consistency, only the relevant commonwealth minister will have the power to issue permanent product safety bans, make safety and information standards, and conduct voluntary recalls. However, states and territories will retain the right to issue interim product safety bans, compulsory recall notices and public warning statements.

The Australian Consumer Law provides for a national approach to enforcement that will mean that regulators can take effective action against unprincipled operators. A corporation convicted of an offence under the Australian Consumer Law could be fined up to \$1.1 million, whereas an individual could face a fine of up to \$220 000.

In addition to implementing the Australian Consumer Law, the bill standardises the scope of investigation and enforcement powers available to the Commissioner for Consumer Protection that currently sit across a range of acts in the consumer protection portfolio. The disparate powers available under a multiplicity of acts create a source of confusion and uncertainty for investigators, which can compromise the success of enforcement action. They also create compliance difficulties for businesses that are subject to different acts. This bill also includes some new powers for the Commissioner for Consumer Protection to address changes in technology, such as the right to access passwords or other information to enable access to computer data.

Mr Deputy President, this bill marks an exciting and important development for consumer protection in Western Australia. It introduces reforms that will significantly reduce regulatory complexity for businesses, and it will empower consumers and free businesses to make our markets work better, delivering tangible benefits for all.

The government will be seeking to have this bill passed before Parliament rises this year to achieve the goal of a single consumer law for Australia being able to commence nationally by 1 January 2011. This will enable, for the first time, all Australian consumers to enjoy the benefits of consistent rights wherever they may be, and will allow all Australian businesses to obtain greater efficiencies through a single, simplified national law.

I commend the bill to the house.

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