

EXPLANATORY MEMORANDUM

Fair Trading Amendment Bill 2019

FAIR TRADING AMENDMENT BILL 2019

Overview of Bill

The Fair Trading Amendment Bill 2019 (the Bill) amends the *Fair Trading Act 2010* (the FTA) to ensure ongoing consistency between the Australian Consumer Law in Western Australia (ACL WA) and the Australian Consumer Law (ACL) in other jurisdictions. The current requirement for the FTA to be updated by way of an amendment bill creates a lack of consistency that adversely impacts small businesses and consumers and hampers enforcement in WA. The Bill will insert a mechanism in the FTA for the timely incorporation of future ACL amendments into the ACL WA following a process in which amendments are tabled and subject to scrutiny by Parliament.

The Bill will also make the following amendments to the FTA:

- Section 36 will be deleted as it is no longer required. In 2014 the permitted calling hours for negotiation of unsolicited contracts in Western Australia were amended to make them consistent with those applying under the ACL. As a result of those amendments this section, which provides for different calling hours in WA is now obsolete.
- The Fair Trading (Permitted Calling Hours) Regulations 2014 will be repealed as they are no longer required as a result of the deletion of section 36.

A clause by clause commentary of the Bill is as follows:

Clause 1 PART 1 - PRELIMINARY

Short Title

This clause provides the short title of the *Fair Trading Amendment Act 2019*.

Clause 2 Commencement

This clause provides that sections 1 and 2 of the Act will commence on Royal Assent and remaining sections on the following day.

Clause 3 Act amended

Clause 3 provides that this Act amends the *Fair Trading Act 2010* (FTA).

Clause 4 Section 17 amended

Clause 4 adds two new definitions “amend” and “amending law” to section 17 of the FTA. Section 17 contains definitions for terms used in Part 3 of the Act that deals with the application of the Australian Consumer Law in WA -

“amend” is defined to include replacement of existing text; and

“amending law” is a Commonwealth law that amends the text of the ACL.

The definitions link to terms used in new sections added to the Act by clauses 5 and 6 of the Bill.

Clause 5 Section 19 amended

Clause 5 amends section 19 of the FTA to provide that the ACL, being Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth) as in force on 1 March 2019 and as amended by all amending laws that come into effect under new sections 19B and 19C applies as the Australian Consumer Law (Western Australia). The effect of this amendment is to incorporate all future amendments to the Commonwealth ACL subject to a requirement for amendments to follow a process of review by the WA Parliament.

Subclause 2 will add new subsection 1A, to ensure that amendments to regulations made under section 139G of the *Competition and Consumer Act 2010* (Commonwealth) will not apply as a law of WA until the amending law has effect in WA.

Clause 6 Sections 19A to 19E inserted

Clause 6 inserts new provisions to require that all Commonwealth legislation that will amend the ACL WA will first be subject to scrutiny by the Parliament. The clause inserts a mechanism by which an amending law can be disallowed by either House of Parliament.

The provisions will ensure that consistency is maintained between the Commonwealth ACL and the ACL WA by enabling Commonwealth amendments to apply in a timely manner.

Section 19A will introduce a requirement for all Commonwealth laws that amend the ACL be tabled in each House of Parliament within 18 sitting days of the date on which the Commonwealth law receives Royal Assent.

Section 19B will provide that when a Commonwealth amending law is tabled, notice of a disallowance resolution may be given in either House within 14 sitting days of tabling of the amending law (the notice period). A period of 30 sitting days (the disallowance period) is then provided for a vote to be held on the disallowance resolution. If no notice is filed, or any disallowance resolution in respect of any notice has been lost, the amending law will be incorporated into the ACL WA.

New section 19B(3) provides that the periods for giving notice and voting on the resolution will continue to run, notwithstanding the dissolution, proroguing or expiry of a term of Parliament. As a result, it will not be necessary for the process of consideration of the application of Commonwealth amendments to start again in the new Parliament.

Section 19C deals with the date of commencement of the Commonwealth amendments in WA and provides that the laws will come into operation on proclamation of the Governor which will be published in the Gazette. Proclamation is to occur as soon as practicable after the conditions for incorporation of the law are satisfied.

If the Commonwealth amending law has not come into effect when the proclamation is published, the amendment will come into effect in WA when the Commonwealth provision subsequently comes into operation.

Section 19D provides that the review process set out in sections 19A to 19C will apply to any Commonwealth amendments that receive Royal Assent after 1 March 2019. This ensures that any amendments made after the Bill has been considered by a House of Parliament but before commencement of the Bill will be subject to review and disallowance.

Section 19E will provide that, unless the Standing Orders of a House of Parliament are amended to make specific provision for the priority to be given to voting on disallowance motions under the FTA, the provisions currently applying to motions for disallowance of regulations under Standing Order 67 will apply. This provision will ensure that until such time as the Parliament makes other arrangements by amendment of Standing Orders, disallowance motions under section 19B will be accorded priority so that a vote will be taken within 30 sitting days.

Clause 7 Section 36 deleted and related regulation repealed

Clause 7 amends the FTA by deleting section 36. Section 36 modifies sections 73(1) and 170(1) of the ACL to provide different permitted calling hours for unsolicited consumer agreements under the ACL (WA) to those which apply under the ACL. These reflect the permitted calling hours which applied in Western Australia on commencement of the consumer law in 2010. In 2014 permitted calling hours in WA were amended by the Fair Trading (Permitted Calling Hours) Regulations 2014 (the Regulations) to bring them into alignment with the ACL. As a result of the amendment, the variation set out in section 36 no longer applies. Section 36, and the Regulations are no longer required. The section can be deleted, and the Regulations repealed.