

EXPLANATORY MEMORANDUM

Fair Trading Amendment Bill 2018

FAIR TRADING AMENDMENT BILL 2018

Overview of Bill

The Fair Trading Amendment Bill 2018 amends the *Fair Trading Act 2010* (the FTA) to bring the Australian Consumer Law in Western Australia (ACL WA) into alignment with the Australian Consumer Law (ACL) in other jurisdictions. It will also provide a mechanism in the FTA for the automatic incorporation of future amendments to the ACL into the ACL WA unless the amendments are disallowed by Parliament.

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

- section 108 will be amended to allow litigants to rely on admissions made in previous related proceedings. The section currently only permits the use of 'findings of fact' by the court in such proceedings. The Bill will make this amendment to the FTA to maintain consistency with the ACL in other jurisdictions in this regard; and
- amend sections 63B, 63F and 63J of the FTA to permit the Minister for Commerce and Industrial Relations (the Minister) to appoint any member, including the Commissioner for Consumer Protection (the Commissioner) as Chairperson of the Property Industry Advisory Committee, the Motor Vehicle Industry Advisory Committee and the Consumer Advisory Committee.

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 Act 2018*.

Clause 2 Commencement

This clause provides that sections 1 and 2 of the Act will commence on Royal Assent and the remaining sections will commence 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 definitions of "amend" and "amending law" to section 17. The section contains an explanation of terms used in Part 3 of the Act which deals with the application of the Australian Consumer Law -

"amend" is defined to include replacement of existing text; and

"amending law" is a Commonwealth Law that, if amended, with impact on the text of the ACL and, as a result, on the content of the ACL (WA).

Clause 5 Section 19 amended

Clause 26 amends section 19 of the FTA to provide that the Australian Consumer Law (ACL), being Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth) as in force from time to time applies as the Australian Consumer Law (Western Australia) subject to specific provisions that permit disallowance. The effect of this amendment is to incorporate all amendments to the Commonwealth ACL up to the date of commencement of the provisions into the text of the ACL WA, and to provide for the automatic incorporation of future amendments subject to the power of WA Parliament to vote to disallow the amendments.

Clause 6 Sections 19A to 19C inserted

Clause 6 inserts new provisions to provide for Commonwealth legislation that will amend the ACL to be considered by the Parliament and to provide a mechanism for disallowance of the amendments by either House.

The provisions ensure that consistency is maintained between the Commonwealth ACL and the ACL (WA) by the automatic adoption of Commonwealth amendments, but that all amendments are subject to Parliamentary scrutiny.

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

Each House will have 14 days from tabling to give notice of a resolution for disallowance of the amending law.

Section 19B will provide that, where a resolution for disallowance is passed by either House, notice of the resolution is to be published in the Gazette as soon as practicable.

Section 19C deals with the effects of failure to table the Bill, or disallowance by Parliament.

If the amending law has not been tabled within the time provided in section 19A, then from the following day the amendment ceases to have effect in WA. If the amending law has been disallowed by Parliament, then from the day following the passing of the resolution the amendment ceases to have effect in WA.

Anything done in reliance on the amended law prior to disallowance ceases to have effect on disallowance, but without affecting the validity or invalidity of that action.

Clause 7 Section 63B amended

Clause 7 amends section 63B of the FTA by deleting subsection 63B(2) and replacing it with a new subsection that provides that the Minister must appoint a member of the Property Industry Advisory

Committee to be the Chairperson of the Committee. The new provision will give the Minister greater choice by allowing him or her to appoint any Committee member, including the Commissioner who is a member of the Committee ex-officio, to be the Chairperson.

Clause 8 Section 63F amended

Clause 8 amends section 63F of the FTA by deleting subsection 63F(2) and replacing it with a new subsection that provides that the Minister must appoint a member of the Motor Vehicle Industry Advisory Committee to be the Chairperson of the Committee. The new provision will give the Minister greater choice by allowing him or her to appoint any Committee member, including the Commissioner who is a member of the Committee ex-officio, to be the Chairperson.

Clause 9 Section 63J amended

Clause 9 amends section 63J of the FTA by deleting subsection 63J(2) and replacing it with a new subsection that provides that the Minister must appoint a member of the Consumer Advisory Committee to be the Chairperson of the Committee. The new provision will give the Minister greater choice by allowing him or her to appoint any Committee member, including the Commissioner who is a member of the Committee ex-officio, to be the Chairperson.

Clause 10 Section 108 amended

Clause 10(1) amends section 108(1) and (2) to insert the words “or an admission of fact by the person, in a proceeding” and to change “finding” to “finding or admission” in each subsection.

This extends the operation of section 108, which currently permits findings of fact in related proceedings to be relied upon in subsequent follow-on proceedings under section 105(3) of the FTA or sections 236(1), 237(1), 238(1) or 239(1) of the ACL WA to include admissions made in the course of the earlier related proceedings as well as findings of fact by the court.

Clause 10(2) amends the wording of section 108(3) to reflect current drafting practice and does not affect the operation of the provision.