

FAIR TRADING AMENDMENT BILL 2018

Second Reading

Resumed from 2 April.

MR P.A. KATSAMBANIS (Hillarys) [7.52 pm]: I rise as the lead speaker for the Liberal Party on this bill and again indicate that the Liberal Party will support it. This bill will amend the Fair Trading Act 2010. It makes a series of amendments. The primary amendment is to bring the elements of the Australian Consumer Law that apply in Western Australia by the operation of the Fair Trading Act 2010 into line with the Australian Consumer Law as it applies across Australia, including those elements of the Australian Consumer Law that apply in Western Australia by the operation of commonwealth statute rather than Western Australian statute. That sounds slightly tautological but this amending bill will meet an important constitutional requirement. For a long time in consumer law, certainly for a few decades, one consumer law has applied across Australia. Initially, that was done by a series of commonwealth laws before an attempt was made to replicate those laws in Fair Trading Acts across various state jurisdictions. The reason that commonwealth law can apply to constitutionally formed corporations but will not apply to sole traders or business partnerships is that they are not governed under the Australian Constitution; they are governed by specific state legislation. We know that about 80 per cent of businesses that operate in this state are covered by the commonwealth law but the remainder are covered by state law because they are not constitutional corporations formed under the Australian Corporations Act. Usually, businesses that fall under state law are smaller businesses. Because of historical precedent, some rather large businesses operate either as sole traders or as business partnerships. They could be in the professions or in agriculture; in retail, some of the larger pharmacies are still partnerships. There are various other reasons businesses operate in partnership. I believe some of the stevedoring companies also operate in partnership. It does not just apply to small business; it applies to a unique set of businesses that simply are not covered by the corporations law but are covered by state law.

The Australian Consumer Law, as it applies to corporations, should apply across the whole of Australia whether the business is governed by federal or state law. Western Australia has created a framework in which any changes to the commonwealth law do not automatically flow through to the Western Australian Fair Trading Act unless we, as a Parliament, update our legislation to do so. The last time this Parliament did that was quite some time ago—in 2013. Currently, the elements of the Australian Consumer Law that are incorporated into the Western Australian Fair Trading Act are those up to and including 1 January 2013. After that, the changes that have been made have not been incorporated into the Western Australian Fair Trading Act because we simply have not got around to updating this.

The Attorney General knows that this is one of my pet topics. I think we need to come up with a better way of dealing with these matters than simply waiting for legislation to go through both houses of Parliament and just expecting that at some stage we will pick up the commonwealth amendments. I have made that point in reference to other matters. I note that the genesis of the bill before us today attempted to create a framework for a future in which we do not fall behind and we are not incorporating laws that have applied—I will talk about some of those in a minute—to constitutional corporations and have applied across the rest of Australia for quite some time. We want Western Australian consumers and small businesses to be able to access one set of consumer laws irrespective of whether they are dealing with a corporation or business that is controlled under federal or state law. This bill, which was introduced in the other place, attempted to do that.

Some issues that have been discovered with that framework probably need to be addressed separately from updating our law to incorporate the changes that have already happened to the Australian Consumer Law. I recognise that that has been split off in the Legislative Council. In his second reading speech, the Attorney General indicated that the intention is to bring in a new framework to do that. I am looking forward to seeing that in this place. It is not good enough in 2019 to simply hope that we get around to updating our Fair Trading Act to give Western Australian consumers and small businesses the protections that are incorporated in commonwealth law and other state laws.

Clause 4 of the Fair Trading Amendment Bill 2018 amends section 19(1)(a) of the Fair Trading Act so that the Australian Consumer Law as it applied on 26 October 2018 is incorporated into the Western Australian law upon the passage of this bill and on the day after gaining royal assent, which is the effective commencement date under clause 2. What will be incorporated into Western Australian law when we pass this bill that is not currently incorporated in the Australian Consumer Law? The explanatory memorandum lists a series of changes that have been incorporated into the Australian Consumer Law since 1 January 2013 and up to 26 October 2018 that are now being introduced. I will not go through all of them exhaustively because they are listed in the explanatory memorandum, but I will go through some of them because they are important to small business and consumers. First of all, the Competition and Consumer Amendment Act 2013—it is a commonwealth act; all of them are—regulates how restaurants and cafes can display holiday surcharges on their menus. As long as they meet certain conditions around disclosure and transparency, they do not need to produce two sets of menus. They can have

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one menu and a little description at the bottom about the surcharge. Here in Western Australia, a business that is regulated by Western Australian law that is a sole trader or a partnership cannot do that, but a business regulated by commonwealth law, a statutory corporation, can take advantage of the laws introduced in 2013 at the commonwealth level. That will be brought into being. Technical changes were made in the Consumer Credit Legislation Amendment (Enhancements) Act 2012 to the use of the term “consumer goods” in several parts of the Australian Consumer Law. We are catching up with that many years later.

A change in the Omnibus Repeal Day (Autumn 2014) Act 2014, which was also a technical amendment, was the deletion of section 19(6)(c) of the consumer law as a result of some changes that were made around the same time to broadcasting licence arrangements. In practice, this would not affect too many businesses in Western Australia, but at least we are updating our law.

The Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015 introduced an extension of the unfair contract terms protection that was previously afforded to only consumers under the Australian Consumer Law to small business entering into consumer contracts. It is a very important protection for small business that is now being extended to Western Australian small businesses that is governed by the Fair Trading Act rather than commonwealth legislation. It is a very important protection.

The commonwealth’s Competition and Consumer (Country of Origin) Act 2017 provided certainty for small business and clarification for consumers by setting out clear safe harbour defences for country-of-origin claims and the use of logos indicating the origin of consumer products. One can imagine that a small food business importing various ingredients and using some ingredients locally would want to make sure that it is applying the correct law. A statutory corporation would have the safe harbour protections that were included in the 2017 commonwealth act, but a sole trader or a business partnership does not have those protections. Therefore, again, it is very good for small business and consumers. It avoids complications and it avoids consumers looking at one set of labels for statutory corporations and another set for small businesses in Western Australia that are not statutory corporations.

The Competition and Consumer Amendment (Competition Policy Review) Act 2018 clarified how the cooling-off period operates in unsolicited consumer agreements preventing a loophole that permitted the supply of goods prior to the commencement of the cooling-off period. It is very important. If there is a cooling-off period, someone cannot supply goods before the cooling-off period and say, “Sorry, the cooling-off period did not apply because you took possession of the goods prior to the cooling-off period.” That is good clarification.

The Treasury Laws Amendment (2018 Measures No. 3) Bill 2018 strengthened penalties under the Australian Consumer Law for improved alignment with the maximum penalties under competition provisions of the Competition and Consumer Act 2010. It also importantly provided a safe harbour defence under the consumer law for compliance with an information standard for producers of free-range eggs. It is another practical safe harbour provision for primary producers. We know that some primary producers still operate either as partnerships or sole traders for historic purposes and have not been converted or they might be operating as trusts without a corporate trustee. They have not been converted into a statutory corporation so they would have welcomed that safe harbour provision as producers of free-range eggs.

The Treasury Laws Amendment (Gift Cards) Bill 2018 made a very important amendment to the consumer law in an area that is growing in popularity—namely, gift cards. It introduced a national regime to regulate gift cards, including requirements that gift cards must have a minimum three-year expiry period and they display the expiry date on the card. It also introduced a prohibition on the charge of post-purchase fees. One set of laws applies to constitutional corporations and exactly the same laws will apply to the businesses governed by the Fair Trading Act of Western Australia.

The Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018, which resulted, as the title suggests, from the review of the Australian Consumer Law, extended the unconscionable conduct protections of the consumer law to publicly listed companies. It did some stuff around unsolicited service provisions and unsolicited consumer agreements that are entered into in a public place. It required that fees associated with pre-selected options attached to a product be disclosed in the headline price of that product and it clarified when the notification obligations under a voluntary recall apply and the scope of consumer guarantees when goods are transported or stored. Those are very important provisions and that is why we do reviews of these laws. The commonwealth did it in this case and they should extend to the Western Australian law as soon as possible. Obviously, with this being a 2018 act, the delay has not been as long as it was for the 2013 acts. They are important provisions that should be applied to Western Australian consumers and small business irrespective of whether they fall under the commonwealth or state regime.

That is what clause 4 does. It is a very important clause because it brings in all of the commonwealth amendments to the Australian Consumer Law into our Fair Trading Act. By bringing them in, it ensures that one clear set of Australian Consumer Law applies across the board, irrespective of whether a business is governed by state or

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federal law. That is good for business, it is particularly good for small business and obviously it is very good for consumers. There is absolutely no risk of confusion, or of things slipping through the cracks or consumers and small business missing out on a protection simply because we have not got around to passing a bill through both houses of Parliament that incorporates changes to the commonwealth law. In this sort of consumer law regime, we are really takers. We do not go off on our own bat and introduce our own amendments to fair trading laws that ought to apply nationally. We have a national agreement. We make some minor changes to our specific set of laws but when it is intended that consistency be applied across all the states and the federal jurisdiction, we need to make sure that that consistency is maintained and continues to apply.

The review—I will throw this in here because we are talking about it—that I spoke about that initiated the last set of federal changes in 2018 will require further amendment to the commonwealth laws, which makes it imperative that the other bill, the next tranche that the Attorney General spoke about in his second reading speech, comes to us sooner rather than later. We do not want to be in this invidious position that we are in today again in the future when we wait and wait before we update our laws. In 2019, we should have a process in this place so we can update our laws very, very quickly but still allow for appropriate parliamentary scrutiny of what we are doing. Right now, we are incorporating all those changes. There were nine sets of changes. We are bringing them all in. We should not be waiting that long. That provision is a good one, and obviously a new way of incorporating future changes in a more timely manner would be good for everybody, so we look forward to that.

Some of the other changes that are made by this bill are also relatively uncontentious and good practice. A series of committees are set up under the Fair Trading Act. There is the Property Industry Advisory Committee, the Motor Vehicle Industry Advisory Committee and the Consumer Advisory Committee. In the case of each of those committees, clauses 5, 6 and 7 allow the minister to appoint any committee member to be the chairperson of that committee. As explained in the second reading speech and in the explanatory memorandum, in practice that will allow the minister to appoint any committee member, including the Commissioner for Consumer Protection, who is a member of that committee *ex officio*, to be the chairperson. I am told that when these advisory committees were set up in relation to the property industry and the motor vehicle industry, it became the practice to appoint the director general of the department as the chair. It was not as if there was an industry representative who was the chair; it was the director general. That gave rise for these committees to utilise the expertise within the department, as a secretariat and the like, and to provide them with research capability and the like. In the effluxion of time, it has been considered that the commissioner is probably better placed than the director general to do so, so it gives the power to appoint the commissioner as chairperson but also to appoint any other committee member. If someone from industry puts up their hand and says, “I want to be on that body”, they can. I was told at a briefing by the Attorney General’s staff—I thank them for that—that the consumer advisory committee has occasionally been chaired by a person outside of the director general, one of the lay people who has been appointed to the committee. I imagine that when someone is available to do that, the minister of the day will take that into account but again it gives the minister of the day the flexibility to appoint any of the committee members, including the commissioner, who sits on that committee as an *ex officio* representative. That is non-controversial and it ought to be supported.

Clause 8 makes a change that is outside the realm of the things that are incorporated from the commonwealth law, the Australian Consumer Law, directly into our Fair Trading Act but it also arose from that Australian Consumer Law review that I spoke about earlier in my contribution. It is modelled on section 137H, I think, of the commonwealth act. Section 108 of our Fair Trading Act currently permits findings of fact in related proceedings to be relied upon in subsequent follow-on proceedings. This amendment extends that beyond just findings of fact to include admissions of fact that have been made by the parties in related proceedings so they can also be relied upon in further proceedings so that we do not have to litigate the same issue. If someone has admitted a series of facts in previous proceedings, they can then be used as a starting point for subsequent proceedings so we can take out orders under the Fair Trading Act or under the operation of Australian Consumer Law. They are a worthwhile series of amendments. They arose from the Australian Consumer Law review. They have been incorporated into the commonwealth act. They are not directly incorporated into our act by simply adopting all the other changes of the other acts. They need to be made specifically, so they are being made at this time. It is an opportune time, given that we are amending the Fair Trading Act.

Given that this bill assists both small business and consumers in Western Australia, it ensures consistency between the federally governed corporations that operate in Western Australia and the small businesses and other businesses that operate under our Fair Trading Act so that consumers have one set of consumer laws applying to them, small businesses have one set of consumer laws applying to them, and there is absolute clarity, no confusion and no slipping through the cracks.

Given all that, we support the passage of this legislation. I reiterate that this is my personal opinion, which I have expressed before in relation to other legislation when we eventually incorporate commonwealth law into the

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operation of the law in Western Australia. In 2019, we ought to have a better process than simply waiting and waiting for the passage of a bill. The Parliaments of some of the other states have grappled with this problem and come up with their own unique solutions that allow these changes to be incorporated much quicker than we have been incorporating them in the past and up until now in Western Australia. Apart from supporting the passage of this bill, I look forward to seeing the next bill that the Attorney General foreshadowed in his second reading speech, which will create that broader regime that helps to incorporate these changes into our laws much more quickly in the future to provide better consistency, clarity and protection for our small businesses and consumers, who rely on the Australian Consumer Law to protect them.

MR S.A. MILLMAN (Mount Lawley) [8.20 pm]: I rise to add my voice to those supporting the passage through this chamber of the Fair Trading Amendment Bill 2018. I am going to start with a short recitation of some of the constitutional history, so if members are prepared to settle in for a bit of a discussion, they should feel free to do so. The background is this. In Western Australia we have the Fair Trading Act, which provides consumer protection to Western Australian consumers for what I will call a certain class of business or enterprise. That has existed for many years, and it has operated very effectively. At the federal level, consistent with the powers contained in section 51(xx) of the commonwealth Constitution—the corporations power—since 1974 we have had what has previously been known as the Trade Practices Act. That act provided consumer protection and competition regulation for entities known—as my colleague the member for Hillarys has already spoken about—as constitutional corporations. The difficulty with this dichotomy is that identifying what is a trading and financial corporation, and therefore subject to the Australian Consumer Law—the successor to the Trade Practices Act—and what is not a constitutional corporation, and therefore subject to the state Fair Trading Act, is either a minefield for small business and consumers or a goldmine for lawyers and accountants. The question is not readily or easily resolved. I will come back to that in a second.

I commend this legislation for doing three things, which have been touched on by the member for Hillarys and which, as a member of the McGowan Labor government, I am incredibly proud of. Firstly, it provides for equality before the law for people in Western Australia, and brings Western Australians into line with our brothers and sisters in other jurisdictions in the Commonwealth of Australia. Secondly, it provides important protection for consumers and, thirdly, it makes sure that we are looking after small business. This is a very important and worthwhile piece of legislation. This is not the first time the fortieth Parliament—the time of the McGowan Labor government—has introduced legislation that helps to harmonise the laws that operate in Western Australia to bring us up to equivalence with other jurisdictions. Members will recall my contribution in the Assembly on Tuesday, 7 November 2017, when I was talking about our work health and safety regime. I said that the effect of that legislation was to make sure that the fines and penalties being imposed for occupational safety breaches were consistent with those implemented in other jurisdictions. That was important because it provided certainty for workers and a level playing field for employers. Members might also recall my contribution on 27 November 2018 when we were talking about the Child Support (Commonwealth Powers) Bill 2018.

In his erudite contribution, the member for Hillarys made known his personal views, which he has made known to the chamber before, about the importance of having a process in place to make sure that we do not need to go through this process of legislating frequently every time there are changes to federal provisions. It is a sentiment that I would express my support for. As the member for Hillarys well knows, we are a sovereign Parliament, and we are entitled to determine our own future. It is incumbent upon us to make laws for the peace, order and good government of Western Australia, but we can do so in an efficient and effective way, and there are provisions whereby we do not necessarily need to yield the floor to the commonwealth Parliament, but we can put in place a process that makes sure that changes made at the commonwealth level, if it is the driver of the change, can be incorporated quickly and painlessly into the Western Australian statute book. Members will remember the contribution I made on Child Support (Commonwealth Powers) Bill 2018.

The Fair Trading Amendment Bill does the three things that I mentioned before in two ways, which is probably the way to say it. It catches us up to the commonwealth competition law regime. If I can return to the question of constitutional corporations, the analogy is probably inarticulate, but it helped me to identify how the distinction is drawn. When I was working as a legal practitioner, I used to do a lot of employment law-related claims. To bring an unfair dismissal claim against an employer, I had to identify the jurisdiction in which that claim should be brought. Ever since the passage of WorkChoices in the early 2000s, the commonwealth has legislated to cover the field of industrial relations with respect to constitutional corporations. If a worker's employer is a constitutional corporation, the federal workplace relations regime will apply. If the employer is not a constitutional corporation—in other words, if it is a small business, a partnership, a sole trader or the state government—the state Industrial Relations Act will apply. As a threshold question, every unfairly dismissed worker was required to get legal advice, or advice from their union, about which jurisdiction it was appropriate to bring this claim in. Is the claim for unfair dismissal to be brought in the Western Australian Industrial Relations Commission or the Fair Work Commission?

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The Fair Work Commission published a handy fact sheet on the question of what was a constitutional corporation, and for the purposes of *Hansard* and members, I am quoting from that at the moment. It begins with a fairly unhelpful definition that states —

The Fair Work Act defines constitutional corporations as ‘a corporation to which paragraph 51(xx) of the Constitution applies.’

The Australian Constitution defines constitutional corporations as ‘Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth’.

This definition has two limbs that are ‘comprehensive alternatives’. This means that constitutional corporations are either ‘foreign corporations’ or ‘trading or financial corporations formed within the limits of the Commonwealth’. Therefore, a foreign corporation does not need to be formed within the limits of the Commonwealth or be a trading or financial corporation to be classified as a constitutional corporation.

Many incorporated employers in the private sector who sell goods or provide services for a fee —

Which is obviously the vast majority of them —

will easily satisfy the criteria of a trading or financial corporation.

The issue of whether an employer is a constitutional corporation usually arises where the employer is a not-for-profit organisation in industries such as health, education, local government and community services.

The guidance note goes on to state —

Trading denotes the activity of, providing for reward, goods or services.

The Commission will consider the nature of a corporation with reference to its activities, rather than the purpose for which it was formed.

...

One factor that may be considered is the commercial nature of the activity. When considering the commercial nature of a corporation’s activity, the Commission will look at a number of factors, including:

- whether it is involved in a commercial enterprise; that is, business activities carried on with a view to earning revenue
- what proportion of its income the corporation earns from its commercial enterprises
- whether the commercial enterprises are substantial or peripheral,
- whether the activities of the corporation advance the trading interests of its member.

I spell that out in relative detail because it highlights the difficulties faced by both small businesses and consumers in identifying the rules that they are required to adhere to.

To the extent that we are capable of harmonising those rules, it is our duty to do so. If we do that, we achieve the three objectives that I spelt out before. Firstly, we will make Western Australian businesses accountable to the same standards of businesses in the rest of the commonwealth, thereby promoting equality before the law. Secondly, we will provide protection to consumers in Western Australia that is equal to the protection that consumers in all other states enjoy. Thirdly, we will also take the necessary steps to make life that much easier for our small business proprietors. When I think about the electorate of Mount Lawley and the business operators at Dog Swamp Shopping Centre, Dianella Plaza and up and down Beaufort Street who are already putting in such a terrific effort to contribute to the economic and commercial activities of our great neighbourhood, I know that anything that this Parliament can do to make their jobs a bit easier is a worthwhile endeavour. The member for Hillarys and the minister in his second reading speech have covered these matters in significant detail, but I want to go through the particular benefits. We have the overall philosophical and political objectives achieved by this legislation, but if we break it down to the clause-by-clause improvements that this legislation will provide for people in Western Australia, we can see further reason that this is a worthwhile endeavour.

As the member for Hillarys said, a number of commonwealth amendment acts enacted after 1 January 2013 have improved commonwealth competition law and by virtue of this bill becoming law in Western Australia, those benefits will accrue to the people of Western Australia. The Competition and Consumer Amendment Act 2013 amended the Australian Consumer Law to enable regulations to be made to exempt a class of representations from the component pricing requirements, which are the holiday surcharges that others have mentioned already, provided that certain conditions in relation to disclosure and transparency are met—tick.

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The Consumer Credit Legislation Amendment (Enhancements) Act 2012 made technical amendments to correct drafting errors in respect of the use of the term “consumer goods”—tick. The Omnibus Repeal Day (Autumn 2014) Act 2014 made a technical amendment that deleted section 19(6)(c) of the Australian Consumer Law as a result of changes made to broadcast licence arrangements—tick. Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015 made an excellent amendment, and there is already significant jurisprudence and case law on the benefit of having unfair contracts legislation available to contracting parties and small businesses and consumers. The Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015 extended the unfair contract term protections afforded to consumers in the Australian Consumer Law to small businesses entering into consumer contracts. That meant that remedies previously available only to consumers for unfair contracting breaches committed by nefarious parties on the other side of the contract were now available to small businesses. Given the disparity of negotiating power that often exists in these commercial arrangements, that is a good thing.

The Competition and Consumer Amendment (Country of Origin) Act 2017 provided certainty for small businesses and consumers by setting out clear safe-harbour defences for country of origin claims and the use of logos indicating the origin of consumer products. The Competition and Consumer Amendment (Competition Policy Review) Act 2017 clarified how the cooling-off period operates in unsolicited consumer agreements, preventing a loophole that permits the supply of goods prior to the commencement of the cooling-off period. The Treasury Laws Amendment (2018 Measures No. 1) Act 2018 strengthened the penalties under the ACL for improved alignment with the maximum penalties under competition provisions of the Competition and Consumer Act. That is another great amendment that has been implemented as a result of this legislation.

The Treasury Laws Amendment (Gift Cards) Act 2018 is a great one for anyone who has ever bought a gift card. Plenty of people have bought them. I know I have. It amended the ACL to introduce a national regime—it is a simple thing—to regulate gift cards, including that cards must have a minimum three-year expiry period and display the expiry date on the card and prohibits the charge of post-purchase fees. There is some certainty introduced right there. For anyone who has ever bought a gift card and have been told it has expired, it seems unfair. As a result of this amendment, that is clarified and applied. That is fantastic.

Mr W.R. Marmion: I was in Queensland and I had two gift cards for a year and a half—total value \$200—and I went to Myer and they accepted them.

Mr S.A. MILLMAN: Great. That is a fantastic result. I thank the member for Nedlands for that interjection. It demonstrates the point I made earlier. Why on earth should Queenslanders have a better system than Western Australians? Kudos to the Attorney General, for making sure that we in Western Australia get the level playing field that we are entitled to, and to the Liberal Party, for supporting this Attorney General in his legislative endeavours. We can see the raft of benefits that accrue as a result of this legislation.

Another point that I want to make pertains to how corollary benefits will arise as a result of this legislation that probably have not been contemplated in the deliberations of this chamber—sorry; let me put it differently. In and of itself, this legislation is worthy legislation that this Parliament should pass because of the benefits that it delivers. Notwithstanding that, I would like to put before the chamber further considerations that demonstrate that extra benefits will apply. On 20 July this year, Annabel Hennessy, a journalist with *The West Australian*, had a terrific article titled “Apartment owners in class action” on page 14 of *The Weekend West*. She wrote —

WA apartment owners could be part of a multimillion-dollar class action against the manufacturers of deadly cladding, which is costing hundreds of thousands of dollars to replace.

The Weekend West can reveal the lawyers running a national class action against the manufacturers of two cladding products, Alucobond PE and Vitrabond PE, have received expressions of interest from apartment owners in WA.

It comes after the Federal Government this week rejected pleas from Victorian Premier Daniel Andrews to provide financial support for apartment owners impacted by its cladding crisis.

It continues on the issue of class actions. I make that point because this Attorney General and the McGowan Labor government have already secured passage through the Legislative Assembly of our representative proceedings legislation, which encourages the pursuit of class actions in the jurisdiction of Western Australia. While we may be able to commence a jurisdiction in the WA registry of the Federal Court, the WA courts will now be enlivened with that jurisdiction. I go on to make this point. Ms Hennessy wrote in her article —

Both individual apartment owners and entities have joined the action, which will claim the companies failed to meet standards required under Australian Consumer Law and the Trade Practices Act.

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I think whoever referred her to the Trade Practices Act was, unfortunately, incorrect. It is the Australian Consumer Law or the Competition and Consumer Act 2010.

[Member's time extended.]

Mr S.A. MILLMAN: Therefore, we have this great convergence. On the one hand, Western Australian citizens, consumers and small businesses will be given certainty and equality in the legal regime that applies to them. On the other hand, litigants who need to access class action provisions will be given that opportunity. The incredible reform efforts that have been made by this Attorney General can never be considered independently, because the convergent benefits that we will get from having both representative proceedings and reforms to the consumer law regime will mean that these sorts of cases will be amenable to prosecution in the Western Australian jurisdiction, and that will be of benefit to the people of Western Australia.

I began my contribution by saying that the current regime is either a minefield for consumers and small businesses or a goldmine for lawyers and accountants. I conclude by saying that this legislation achieves three great McGowan Labor government objectives. It will provide Western Australians with an equal playing field. It will provide equality before the law. It will protect Western Australian consumers. It will make sure that we do everything we can to take care of the engines of our economic and employment growth, and of our community spirit—our local small businesses. For those reasons, I have no hesitation in commending this bill to the house and congratulating the Attorney General for the work he has done.

MR C.J. TALLENTIRE (Thornlie — Parliamentary Secretary) [8.41 pm]: I am very happy to speak to the Fair Trading Amendment Bill 2018. I will begin by saying that the member for Mount Lawley has delved into a lot of the detail and intricacies of the legislation that is before the chamber. I am keen to put to the Attorney General a few points about this legislation, and I look forward to his response.

I am rather concerned about the safe harbour defences for traders who make country of origin claims. Consumers place a lot of reliance on country of origin. For one reason or another, we like to know where our products come from. It goes without saying that people want to know the origin of their food products. They want to know not just where their food products have come from, but what production and growing methods were used, and what animal welfare provisions were employed. I understand that food products are not covered by this legislation and are a separate matter when it comes to the safe harbour defences. I am concerned about the safe harbour defences that might apply to non-food items. For example, we might see a nice merino sweater in a shop and think it is an Australian wool sweater. However, it might not be 100 per cent Australian merino. That might be of concern to the consumer. Consumers want clarity so that they can make those decisions. Likewise, people might want to know where their cotton products have come from, and where the cotton mill was located. Some people have a prejudice against Australian cotton, because they are concerned about the amount of water that is used in the production of cotton plants. They might be worried about the roting activities of country Liberal and National Party members on the east coast who have secured vast water entitlements, to the severe detriment of the environment, which enable people to continue the questionable activity of producing cotton in Australia, when other countries in the world may be able to produce cotton with less environmental impact. Those are some examples of why consumers want to be aware of country of origin.

I am also concerned about the notion of safe harbour defences for traders. I am not sure that I want traders to be given some sort of safe harbour defence. I might have misunderstood this, Attorney General, and be overestimating the power of these defences. If a person makes a false claim about the origin of their product, they would be misleading consumers and would be in breach of the fair trading legislation around being honest about the description of a product. Country of origin is very important to Australia. An important study area within the Australia–European Union Free Trade Agreement is around geographic indicators. The Europeans have become masters at adding value by being very clear about the geographic indicators of their products. They get a premium price for their products because they are able to say in which city or region a particular product has come from. I believe that Australia has been rather hesitant to get on board with the notion of geographic indicators. We have not realised that that presents a tremendous opportunity. If we can attach a geographic indicator to poultry from Mt Barker, or wines or cheeses from a particular region, those products will fetch a premium price. Therefore, we should embrace the concept of geographic indicators. I am not sure that the current federal government gets it. That is one reason some lobby groups, particularly those with the older farming sector mentality, say that they are worried about geographic indicators when it comes to the negotiations under the free trade agreement. I believe they are missing an opportunity. I am worried that given that this legislation seems to be putting us in sync with much of the federal legislation, we might also fall into that trap when it comes to these safe harbour provisions or defences as they are called.

I realise that this issue is complex. A product may be grown in one country, milled in another country and assembled and sold in another country. We live in a globalised world. I welcome the enormous opportunities that come from being a good global trading partner. I am absolutely enthusiastic about that. However, we need to honour the

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worthiness of consumers' questions. When a consumer asks where a product has come from, we should be able to answer that clearly. I understand that, in many cases, the answer will be complex. Many products contain bits and pieces that have come from all around the world. It is not beyond us to ensure that a system is in place that will enable us to break that down and point out that in a particular laptop computer, some of the components have come from one country, the titanium has come from another country, the assembly has taken place in another country, and the packaging and marketing has taken place in another country. I understand that. However, the consumer should be respected by being given the opportunity to ask the question and delve into what I accept will sometimes be a complex answer. We need to provide people with the answers to the questions that they legitimately ask.

Moving on from the issue of safe harbour defences and country of origin claims, I welcome other aspects of this legislation. For example, I think holiday surcharges are good, and I welcome them; I am always thrilled. When I go into a cafe on a public holiday, I am really pleased to think that the staff there are being paid extra; they are being paid an amount that is commensurate with the sacrifice that they are making not to be with their family and friends on a public holiday. I really welcome that. If this facilitates businesses to put on those surcharges, I welcome it. However, I point out that a lot of the explanation of surcharging could be done by the waiter or waitress in an establishment. That gets me to an issue that I think is unique to Western Australia, if not Australia, and that is that we seldom have table service these days. I know it is an issue I should take up with the Minister for Tourism. Elsewhere in the world, we can go into an establishment, sit down at a table and someone comes to us with a menu and asks what we like; there is table service. Here it is the rarity. I know some cafes, and I am always keen to go to them, where there is that kind of table service, and I always welcome it. It is always helpful, and it is nice to have that level of engagement with staff at a particular place.

Mr P.A. Katsambanis: Come to Hillarys. Our cafes offer table service.

Mr C.J. TALLENTIRE: Do they? Very good, member for Hillarys. I will note that.

Mr P.A. Katsambanis: I will start naming them one by one.

Mr C.J. TALLENTIRE: Yes, I think it is something we should absolutely be promoting. I touched on the point that from a tourism point of view we need to have consistency. At the moment, the poor tourist arrives in WA and sees a pleasant looking cafe, but they do not know whether this is one where they have to go to the counter to order. Is it one where they have to sit at the table and wait? Is it one where they have to go to the counter, order and wait for the order to be given to them to take it to the table? Is it one where they go to the counter, order and they get given some beeping or GPS device? It gets very confusing for the poor consumer. Other countries are ahead of us on this when it comes to looking after the visitor, making sure there is a consistency and that the consistency has a human dimension that is welcoming and people can enjoy a conversation. In passing, staff can mention that there is a surcharge because customers happen to be in the cafe on WA Day or some other such holiday. It is actually fair enough that we have that surcharge and that it be explained in a human manner. I think this legislation opens that up for us. I just make the point again about the need for table service, human contact and how useful it is to have this provision in this legislation. I think it could be used to deliver on that particular aim.

Other members have touched on the issue of gift cards. It is certainly very frustrating when someone goes to the trouble of buying a gift card and they find it does not have very long validity. It is most welcome to see that there will be a significant lengthening on the minimum time a gift card can be valid. I think everyone will appreciate that. If members are like me and are occasionally fortunate enough to receive a gift card and they put it in a drawer somewhere and are inclined to forget about it, there is a greater chance that when that gift card is discovered it will still have some value when we get to the shop that will honour it.

Many other benefits come with this legislation. I understand that fair trading is always a complex area because we are dealing with the blending of federal and state legislation. I think it is always a positive thing overall. If some conservative elements do not want to see federal commonwealth legislation really respecting what consumers are entitled to, we have to make sure that in WA we can do things differently so we can lead the way and show what is best for the state and the Australian people in general. WA should be an exemplar for good consumer laws and not be shackled by what may be the intentions of federal legislation. Overall, I commend this bill to the house, but I seek some explanation from the Minister for Commerce on the safe harbour provisions.

MR R.R. WHITBY (Baldvis — Parliamentary Secretary) [8.45 pm]: I rise to speak on the Fair Trading Amendment Bill 2018. I believe there is a lot to talk about that is positive for consumers. This bill will improve the operation of consumer law in Western Australia and is designed to align our state law with changes that have already occurred at the federal level. The Australian Consumer Law was updated on 26 October 2018, but in Western Australia we are still operating under consumer law that is five years old because we have not aligned ourselves with the federal legislation.

Mr P.A. Katsambanis: I think it is seven years all up.

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Mr R.R. WHITBY: Okay, it is seven years.

Mr P.A. Katsambanis: It was on 1 January 2013.

Mr R.R. WHITBY: I have got that. It is a long time in any case—six or seven years—but I will take the member's advice on it being seven years, maths not being a strong point of mine!

These amendments are important. We, as consumers, need our rights protected in our community. Tonight we heard other members mention various parts of this legislation, and I will go through them briefly before I get to the part that particularly interests me. Changes will extend unfair contract provisions to small businesses entering into a standard form of consumer contracts. That is a good thing for small businesses, and this government is always keen to encourage and support small business. My colleague the member for Thornlie talked about naming countries of origin and safe harbour defences, and I think he raised some legitimate issues there. The intent of the legislation is to allow safe harbour to prevent action against companies that put a logo, a “manufactured in” or “made in” sign on a product. Consumers feel that they have been told of the full origins of the product and do not feel deceived. I think that is the standard. If consumers feel that they were cheated or deceived in some way, it would be wrong, but the safe harbour provisions are extended to cases in which consumers feel what they were told was reasonable under the circumstances. We know that many components come to Australia and are maybe assembled here, so that description of “made” or “origin” is sometimes a little grey, but the standard is whether the consumer would feel deceived or not, and the safe harbour provisions provide that protection.

There is confusion in Western Australia because, as I said, some of our businesses operate as corporations, that being about 80 per cent of traders, and are subject to federal laws, and other small enterprises, often sole traders and partnerships, operate under state laws. The different standards that apply may give rise to confusion.

There is the issue of restaurant menus not needing to be wholly updated every time. I think that is reasonable as long as consumers are aware that there is a surcharge that applies on particular days. I, like the member for Gosnells, have no problem paying a few cents.

Mr C.J. Tallentire interjected.

Mr R.R. WHITBY: Sorry, he is the member for Thornlie.

I have no problem paying that small increase, knowing people are giving up a significant public holiday in order to serve me a coffee, a meal or what have you.

However, the key thing for me, and what I think has most interest for ordinary Western Australians, is the issue of gift cards. Gift cards have become a huge industry. A person only has to walk into a supermarket to see shelves of these cards—cards from other stores with a wide range of the denominated values. It is a booming industry in Australia. It is estimated that 34 million gift cards are sold every year in Australia. If we take the 10 per cent portion rule, that would mean up to four million cards are sold each year in Western Australia alone. The value of those cards is estimated to be \$2.5 billion nationwide. We are not talking about an insignificant industry. At the moment there is no requirement for a statutory period that these gift cards are valid for and there is no requirement that the valid-to date be printed on those cards. When a person is gifted a card—that is, they have not purchased it themselves—they may not be aware of the time the gift card will be valid for and may not be aware of the life of the gift card and how long they may have to use it. I think we have all experienced this disappointment: after being given a gift card, we put it in the drawer at home. We know we are going to get around to using it, but time gets away from us and we discover that it is too late, the time has exhausted and the gift card is worthless. The industry actually has a name for this—it is called breakage. When a gift card's period of value has ended and it is no longer able to be redeemed for a product, it has lost its value. That breakage is estimated in Australia to add up to about \$70 million a year. Overseas, it is a much bigger issue. In the United States, for instance, about \$40 billion to \$60 billion is wasted or ends up in the pockets of corporations and businesses because the recipients of gift cards have not used them in time. This is a major issue. We know that Australians purchase gift cards to the value of \$2.5 billion each year. The breakage figure is \$70 million annually. It is really hard to get a firm grasp on these figures because there is no way of knowing exactly how many cards are sold each year or indeed how many cards end their life without being used. It is a real issue. It is an issue of inconvenience and disappointment for many hundreds of thousands, maybe even millions, of Australians who have received gift cards in the past and do not get to use them.

It is also an issue for companies. It may be thought that companies benefit when gift cards are not used and they keep the money. Companies have to carry that liability on their balance sheet because they never know when the consumer might discover that card and, depending on the valid period of the card, they never know when it will be used. The liability remains on their books. One day, that card might be found in the bottom drawer and used to provide a service or a product at one of their stores. Companies would say that they would rather the cards were used. The cards are often used to purchase a product or a service that is worth more than the face value of the card.

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They end up spending more money once it is redeemed. It is an interesting scenario, but it is an issue. My major concern is for the consumers who receive these cards and for one reason or another do not use them in time—either they forget or they are caught out because it has a much shorter usage period than they would expect, or they simply do not know the card's use-by date.

There is no uniform national regulation for gift cards. New South Wales and South Australia have introduced laws requiring a three-year expiry period. In those two states, three years tends to be the agreed number of years and Western Australia seeks to introduce the national standard. The requirement would be that gift cards have a three-year life before they expire and that they also be marked with the expiry date so people know full well what the expiry date is and how long they have to use the card.

The third issue with gift cards in Australia, and indeed overseas, is that sometimes companies charge an additional fee for their use. They are purchased in goodwill but the recipient is not aware that sometimes a usage charge kicks in after a certain period has elapsed. That is automatically deducted from the value on the card, if it is an electronic card. That would be something that people would not be aware of. I guess it goes to the culture in Australia and in similar countries where it is seen to be a bit uncouth to hand over cash to someone. When celebrating someone's birthday, it is much easier to give a \$100 or \$50 voucher rather than cash. I know that in other cultures, cash is welcome and acceptable—at weddings and things like that. I am familiar with some cultures where cash is produced. The member for Kingsley is probably aware of that as well. For many people in Australia, it is a bit awkward to hand over cash; it seems a bit uncouth or it is not what we are used to. This is why gift cards have become so popular in Australia.

There is no rule of thumb for how long they should last for and whether the expiry date should be on them. There are different types of cards also. There are cards that are redeemable only at a particular store or only at a certain chain of stores. There are also cards that can be used at multiple stores. It is a bit hit and miss. That adds to the confusion that can develop.

In Australia, there has been a large uptake of gift cards. *Choice* magazine estimates that about 70 per cent of Australians have purchased a gift card in the past year. That is quite a large number. As I said before, the size of the gift card market is hard to pin down, but consumer magazine *Choice* estimated that Australians spend upwards of \$2.5 billion on gift cards every year. That equates to about 34 million separate cards being purchased.

There are different periods that cards are valid for. I can tell members what those are for some of the better-known gift cards that are available nationally. New South Wales and South Australia have already moved in this area to have a standard period of three years. A number of company gift cards have already adopted the three-year expiry period. These include gift cards from David Jones, Myer, Google Play, Coles, Rebel Sport, Priceline, Qantas, Virgin Australia, OPSM, Dymocks and Harvey Norman. Some cards have no expiry date at all; they are valid indefinitely. These include iTunes vouchers and gift cards from JB Hi-Fi, Woolworths, the Good Guys and Bunnings, which I know are very popular. Those cards have no expiry date. Some gift cards or arrangements at large national theme parks, especially those in Queensland, have a 12-month expiry date. With some arrangements, gift cards can be purchased for single stores and might have a life of about three months. Members can hear why there would be confusion amongst consumers about how long gift cards will operate and be valid for. It can be between three months and infinity.

This is a welcome change for Western Australian consumers. These days gift cards are a big part of the consumer habit. They are purchased very widely and a lot of money is spent on them. It is more than time for standardisation and confidence in the way gift cards are used in Western Australia. In simple terms, this legislation will require that all gift cards have a life of three years, that the expiry date—the end of the three years—be clearly marked on the card and that there be no after sale extra fees for the use of the card. These changes will be welcomed by many Western Australians, particularly with Christmas coming up. Gift cards often form many of the gifts under the tree because when we are very busy and we do not know what to purchase for people, they are a convenient alternative. I welcome those changes. They are the most significant in terms of consumers at a very basic level.

I will comment on one part of the Australian Consumer Law that is not covered in the Fair Trading Amendment Bill 2018, but it bears repeating and it is a pet issue of mine. When I go into a major retailer, particularly an electrical goods store to purchase a television or a computer, I am often offered an extended warranty. Most of the time the manufacturer provides a 12-month warranty. I am told that if I purchase, for instance, a widescreen television for \$2 000, \$3 000 or more, I should purchase an extended warranty to cover me for two, three, four or five years. It is a pet annoyance because I know that such warranties are completely unnecessary. There is a whole industry in this state and across this nation flogging unnecessary warranties. As the Attorney General would know, under Australian Consumer Law we have a statutory warranty that basically states that a product should last for a reasonable term according to the design of that product. If a person spends \$5 000 on a widescreen television, they should expect that product to last, I am guessing, at least five years. If it does not, they are protected under

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the Australian Consumer Law. They have a statutory warranty for which they do not have to pay a cent. I had this experience in the past when a particular make of widescreen television failed at the 13 or 14-month mark. I was told I was not covered. I have a very intelligent wife who knows her law and she said, “Actually, it’s covered by a statutory warranty.” The seller of the product—not the manufacturer but the major department store—came good and replaced the product with another brand of television. It is about consumers knowing and exercising their rights. If the Attorney can do something to make consumers more aware of their statutory warranty rights, I would be very grateful. I commend the legislation to the house.

MRS J.M.C. STOJKOVSKI (Kingsley) [9.13 pm]: I rise tonight to give a short contribution to the debate on the Fair Trading Amendment Bill 2018. I would also like to congratulate the Attorney General. I was looking at the number of bills that he has brought into the house, which is more than 35 and inching close to 40. That is an astounding effort, particularly given that the former Attorney General under the Barnett government brought in fewer than 30 pieces of legislation in six years. Our Attorney General has brought in close to 40 pieces of legislation in just over two and a half years. He should be congratulated on that.

I turn to the question at hand, being the Fair Trading Amendment Bill 2018. In looking at this bill and the nature of it, which is to incorporate federal legislation into state law, it is relevant that we look at what some of our federal colleagues said when the federal government introduced the legislation in 2008 and 2010. I refer to the *Hansard* of Senator Penny Wong, who said —

... COAG agreed to establish a national consumer law that is based on the existing consumer protections in the Trade Practices Act, draws on best practice in existing state and territory laws and includes a national unfair contract terms law.

It is really important to understand that we are amalgamating laws from the states and territories and making them fair across the country. Senator Wong continues —

We now have 13 generic consumer laws in force nationally and in the states and territories. Broadly speaking, they look similar, but each of them differs—to the cost of business and consumers.

That drives at the heart of what we are trying to achieve with this bill. We are trying to not only protect consumers but also give certainty to businesses, particularly small businesses in Western Australia. The differences in each of these laws are enforced by Australian consumer regulators in different ways. Numerous industry-specific laws also provide a host of additional consumer protections, but add yet further complexity.

As a consumer, it can be quite difficult to figure out, as the member for Baldivis said, what warranties people are entitled to and the terms of gift cards. It is really important to make it as smooth and easy as possible for consumers to transact in our economy. Senator Wong continues —

The sophistication of modern consumers and the complexity of modern markets means that we need laws—national laws—that can keep pace with these changes.

...

The government has, with the states and territories, negotiated an Intergovernmental Agreement to set in place arrangements for future changes to the Australian Consumer Law, and allow for cooperation on policy development and enforcement.

Those two things are really important—policy development around giving consumers an easy understanding of how to transact in our economy, but also enforcement, so that there is certainty for businesses, whether they are large corporations, sole traders or small business partnerships.

When Dr Emerson, the then Minister for Small Business, Independent Contractors and the Service Economy introduced the second part of the legislation in 2010, he stated —

The complex array of 17 national, state and territory generic consumer laws, along with other provisions scattered throughout many other laws, must be rationalised.

...

Australian consumers deserve laws which make their rights clear and consistent, and which protect them equally wherever they live. At the same time, Australian businesses deserve simple, national consumer laws that make compliance easier.

That is what I want to talk about. The current practice in Western Australia has resulted in a dual system, with constitutional corporations governed by one set of laws and sole traders and business partnerships operating under another set of laws. This leads to a lot of confusion and a lack of consistency, and disproportionately disadvantages small businesses. Having been a small business owner for eight years, I remember how hard it was to not only run

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the business, but also work on the business. The day-to-day running of a small business, particularly if there are only a few staff members—we had fewer than 10 staff members—means that the business owner quite often works in the business rather than working on the business. Being across all this confusing legislation and changes to legislation and all the requirements can be very time consuming for a small business owner. There is no time to do it in the general nine to five of a work day, particularly in the business I owned, which was a retail business. I could not do that during the retail day and I was often forced to work outside business hours—I know that is an expectation of small business—to comply with all the regulations and make sure that everything was covered.

I turn to the provision relating to restaurant and cafe owners. This is a very sensible provision. I think many consumers—visitors to restaurants and cafes—understand that if they go to a restaurant or cafe that adds a surcharge for staff members on a public holiday, that surcharge will be passed on to them. Going back to small businesses and resources, having to reprint menus because of a public holiday can be a very expensive and time-consuming process. If that business is running on very tight margins, which most small businesses in our state are, that can eat into those margins and have a substantial impact. There were weeks when I did not get paid because my family and I had to pay the staff, suppliers or other people. If these small things eat into the profit margin of small businesses, the first person to miss out is the owner. I firmly believed in paying my staff what they were due, including penalty rates.

I would like to talk about consumer rights and labelling, some of which are covered in this bill but others are not. I understand that food products are not included in this bill. I would like to briefly talk about eggs and what constitutes free range. There has been a great push in the past few years for consumers to buy free-range eggs. I have certainly been caught out thinking I was buying free-range eggs only to find that what I considered to be free range and what was on the sticker on the box showing chickens in vast paddocks might not be what the producers consider to be free range.

Ms M.M. Quirk: They couldn't even cross the road!

Mrs J.M.C. STOJKOVSKI: No, they could not even cross the road, member for Girrawheen.

I am told that the industry settled on 15 000 hens per square hectare as the definition of free range, but that can vary between suppliers and producers. I am told that Coles and Woolworths consider 10 000 chickens per square hectare to be free range. Some of the bigger egg producers consider up to 60 000 chickens per square hectare to be free range. For someone like me who has never worked on a farm, that is very hard to visualise and understand. I just want a simple label saying that the eggs are free range. I want to know that when I pay the extra \$2 a carton, I am not buying caged or barn-laid eggs. I want to buy a carton of free-range eggs because I feel that that is the humane thing to do, and my kids love eggs. I want to know that they are free range and I am not paying an inflated price for nothing.

A friend of mine told me a rather disturbing story about clothing and what constitutes Australian standards. Some manufacturers and producers skirt around Australian standards. My friend bought a fur vest that she thought was lovely. She started to get suspicious about what it was made of. She sent it to the CSIRO to be tested. She was told when she purchased it that it was made from raccoon. I do not know whether I would ever buy a raccoon vest but that is just me. When the report from the CSIRO came back, she was quite shocked to find that it was made from a raccoon dog. For those who are not aware, a raccoon dog is a domesticated dog. Garments made from raccoon dogs are produced and sold as raccoon garments to get around some of the laws we have in Australia. This is a great step, Attorney General, but I think we need clearer labelling on everything we buy to ensure that the consumer is getting what they think they are getting and what they are paying for, whether it be free-range eggs or garments that are not made from domestic animals, which many of us hold so dear to our hearts.

My good friend the member for Baldavis gave us a very thorough analysis on gift cards. I would like to add a few small things. I was looking at the Australian Consumer Law government website. I thought the law on the minimum three-year expiry period for gift cards was particularly good, and also the law relating to fees. Most people do not know that when they buy a gift card, their friend or family member could potentially be charged an activation fee or an account-keeping fee once they use the gift card. This is a really good piece of legislation that will tighten that loophole to ensure that when we give a gift card to a friend or family member, it is a gift with no strings attached.

The minimum three-year expiry period for gift cards is particularly important. As we have heard, this is a booming business not only in Western Australia and Australia but also across the world. Sometimes we get a gift card at Christmas, we go away for the new year, then it is Australia Day and we do not get the chance to go to the shops. We can sometimes put the card in our handbag but it falls underneath something, and then a year later we pull it out and realise that it was a six-month gift card and it has been wasted. A friend of mine was recently given a beauty therapy card that entitled her to a massage. She is a very busy mum. She said, "I'm going to book that in; I'm going to do that." A year had passed. As any of the mums in the chamber or those listening would know, a year

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can easily go past without realising that we have not used that gift card and received the massage. My friend was very lucky. When she contacted the provider of the gift card, they honoured it because it had expired only two weeks beforehand. As the member for Baldivis said, sometimes people buy more than the gift cards are worth. My friend received a \$100 gift card, so she decided that because they had been so generous, she would buy more than what the gift card was worth. That often happens with gift cards. We could receive a \$50 gift card. I cannot go into Myer and spend only \$50. I always end up spending more of my own money on top of a gift card.

The final thing I would like to talk about is the fees associated with pre-selected options that are attached to a product. It is always a nasty surprise when we have done our homework and we think we know exactly what something is going to cost and then these little fees and additions pop up on the final transaction. It is infuriating because we are not getting what we thought we were getting. There was also the potential to purchase a different, slightly cheaper product, but we did not know about these additional fees and charges, so by the time we get to the end of the process, we are slugged with these extra fees and charges.

This piece of legislation is really strong as it tightens those loopholes. It is a really consumer focused piece of legislation. It also provides some certainty for small businesses around their requirements and consistency so that a sole trader is working under the same laws as a business partnership and a corporation. All the businesses in Western Australia will be working under those same laws, and across Australia. We are increasingly becoming an interconnected economy. It is really important that we have laws that reflect the same thing across all the states. I thank members for allowing me to contribute to the bill tonight. I commend the bill to the house.

MR J.R. QUIGLEY (Butler — Minister for Commerce) [9.29 pm] — in reply: I do not think I have much to contribute because members always laugh when I get to my feet.

Several members interjected.

The DEPUTY SPEAKER: I could always close the house, minister.

Mr J.R. QUIGLEY: There has been a little loss of focus. When I say a little loss of focus, I mean that the design of the Fair Trading Amendment Bill 2018 is not to change Australian Consumer Law; the design of this bill is to bring Western Australia into line with Australian Consumer Law. I can understand, and do not make light of, the concerns of members who want a jumper labelled as 100 per cent Australian merino. There is a lot of benefit in that, and if they want to say that they prefer 100 per cent cashmere—soft fabric—there is a lot of benefit in that, but this is not the bill to effect those changes.

Mr P.A. Katsambanis: Or the Parliament to effect those changes.

Mr J.R. QUIGLEY: Or the Parliament to effect those changes—thank you, member. We have got to do that on a national basis, because as one member referred to, Senator Penny Wong introduced the bill into the federal Parliament to achieve consistency. The supply chains now are across the nation, and delivery into those stores is almost overnight—48 hours, maximum. We need consistency across the jurisdictions so that the big manufacturing houses are working to one standard. My late father, the dear man, was an indent salesman. They used to send fabrics and clothing to him in his office, and then he would put them in a case and take them around to David Jones and everywhere else, and they would order. That is a forgotten world. Today, it is all supplied according to a computer algorithm that says there needs to be so many pairs of pink shorts on a stand in these national stores. We are dealing here with a bill that, as Senator Wong properly identified, is aimed at trying to achieve national consistency. My learned friend the member for Hillarys said that he would like to see the second tranche of the bill, which will provide a more fluid and seamless updating of consumer laws as they develop around the country and give consistency across the nation. I drink to that—figuratively speaking, not literally, here in the chamber, of course.

Mr P.A. Katsambanis: Have a glass of water.

Mr J.R. QUIGLEY: Thank you, member.

We know that the bill, in its original iteration, had that referral power. It had the power to be updated when the Australian Consumer Law came around. We know from the report tabled in the other place—the 119th report of the Standing Committee on Uniform Legislation and Statutes Review—that the referral power was sliced off so that it could be considered separately. I made no issue with the other place looking at that separately, but my learned friend knows that that report was affirmative of the process, and therefore it will have to come back to this chamber in due course, when it has been dealt with by the chamber, as opposed to the committee, in the other place. There is progress in that regard.

I realise that the people I am addressing on the other side of the chamber at the moment were not members of the previous government's cabinet, so I make no specific criticism of those members who are present here today. However, I would like to at least reply to the criticism made of the government by members opposite—that is, that it has taken from 2013 until today to get this through the Parliament. I remind the chamber, without criticising

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those present, that the previous government was a lame duck that could not even go “quack”. These laws have waited to be updated since 2013, the first year of the previous government. The previous Minister for Commerce did diddly squat about it. I laughed a little when his predecessor, the member for Nedlands, was saying, “Yes, this is good, we ought to get onto this.” When he was the minister he did nothing. In an interjection to the Labor backbench about the expiry date on gift cards—most of my gift cards will expire after me, but leaving that point aside—the member for Nedlands said, “What a good move this is”, when the previous government did nothing about it for four years.

In making that point—members know that I am not criticising them, because they were not responsible—when I came to office, as I mentioned on previous occasions, there was a stack of reports needing attention. The guardianship act desperately needs reform. That is with the Parliamentary Counsel’s Office now, but it sat for four or five years gathering dust in my predecessor’s office. The Coroners Act desperately needs reform. That report was sitting there for four years in my predecessor’s office. The reports were everywhere I looked in that office when I first went there. It was a bit untidy, and my chief of staff had to get all the cobwebs out of the joint first, but having got those out, we then got to the reports.

Mr Z.R.F. Kirkup interjected.

Mr J.R. QUIGLEY: I love this; I love it.

Then we got to the reports, and this was one of the reports. We brought it forward, conscientiously, having completed less than three years in government. We have considered all these other reports as well, and we are working on more. I do not take it as a criticism from members present on the other side when they say this should have been done already. I take it as a pertinent observation of my predecessor’s misconduct in not having done it, and I furthermore take the comments of my friends on the other side as encouragement to keep on going and keep on reforming, which this government will do.

Mr D.A. Templeman: You’re a machine!

Mr J.R. QUIGLEY: Thank you. Some people have called me that before, but they reckon I have no oil. I just grind along. However, I will oil it up and close it up. I commend this bill to the chamber, and thank members for their contributions. We assure members that when the remainder of this bill comes out of the other place, it will not gather dust. We will present it to this chamber lickety-split. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Mr J.R. Quigley (Minister for Commerce)**, and passed.

House adjourned at 9.38 pm
