

**FAIR TRADING AMENDMENT BILL 2018**

*Discharge of Order and Referral to Standing Committee on Uniform Legislation and Statutes Review — Motion*

Resumed from 19 March on the following motion moved by Hon Michael Mischin —

- (1) That the Fair Trading Amendment Bill 2018 be discharged and referred to the Standing Committee on Uniform Legislation and Statutes Review for the purposes of considering the adoption or disallowance of amending laws;
- (2) that the committee consider the proposed amendments contained in supplementary notice paper 75, issue 5, dated Tuesday, 19 March 2019; and
- (3) that the committee report by 4 June 2019.

**HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition)** [12.34 pm] — in reply: Perhaps it might be useful if I say that since we last debated the Fair Trading Amendment Bill 2018, we have had extensive discussions behind the Chair about how this matter ought to proceed, and agreement has been reached with the government. It may assist if the government indicates what that agreement is. I am prepared to do so, but I think it may assist in the progress of the debate and the direction that the debate takes from now on. At the moment, we are debating a motion for a referral, so we need to deal with that. We can continue to debate it or we can cut it short.

**HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development)** [12.35 pm]: At the moment, we are debating a —

*Point of Order*

**Hon NICK GOIRAN:** The matter that is currently before the house is a consideration of the motion of Hon Michael Mischin that the bill, in effect, be discharged and sent to the standing committee. According to the uncorrected proof of *Hansard* from Tuesday, 19 March 2019, the honourable minister who has just risen has already spoken on this motion.

**Hon Alannah MacTiernan:** Point of order.

**Hon NICK GOIRAN:** I have not finished my point of order. It is not my understanding that the minister gets multiple opportunities to speak to this motion. If that is suddenly a new convention, I would also like a second opportunity.

**Hon ALANNAH MacTIERNAN:** I think this is an unusual situation, but perhaps if I can seek leave to make a statement, we can take it from there. I wish to formally move that so much of standing orders be suspended as is necessary to allow me to make a statement.

**The ACTING PRESIDENT (Hon Robin Chapple):** I suggest the minister makes a statement by way of a point of order.

**Hon ALANNAH MacTIERNAN:** Thank you. I wish to make a further point of order. We have agreed that we will allow the amendments that have been moved by Hon Michael Mischin. The substance of the legislation is the process through which the consumer laws that have been implemented federally up until a date in October last year can become part of the consumer law of Western Australia. We will subsequently introduce another piece of legislation, which will deal with the mechanism by which subsequent pieces of commonwealth legislation are incorporated into the law of Western Australia. We anticipate being in a position to do that the next time we sit. We understand that that legislation would then be referred to the Standing Committee on Uniform Legislation and Statutes Review for inquiry and report, so that everyone can be confident that we have protected the democratic rights of the people of Western Australia and the powers of their Parliament.

My understanding, from the discussions that we have had, is that Hon Michael Mischin proposes to withdraw his motion to refer the entire matter to the Standing Committee on Uniform Legislation and Statutes Review. We will then proceed to the Committee of the Whole stage, and we will not oppose the amendments that are being proposed by Hon Michael Mischin.

**Hon MICHAEL MISCHIN:** The debate up until now has focused very significantly on what I can term the future adoption provisions of this bill. The Liberals do not wish to impede the expeditious passage of the uncontroversial elements of this bill, the most significant being to bring the consumer law in Western Australia into line and up to date with the Australian Consumer Law, as amended between 1 January 2013, and the last amendment of which we are aware, which came into operation, I think, on 25 October last year. Our concern is to ensure that any future adoption mechanism is fit for purpose and the best available, and that means, in our view, having a committee properly examine the proposed amendments and make any necessary recommendations. That element of the bill

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is not time critical and, in our view, it should not be rushed. Given that many of the amendments in response to the standing committee's report tabled in November last year have been piecemeal and provided to members at very short notice, we have not felt comfortable to agree with them, hence my motion to refer the bill to a committee of this Parliament to consider those amendments.

As I have mentioned, there have been extensive discussions with Hon Alannah MacTiernan, as the minister responsible for the bill. I thank Hon Nick Goiran for his contribution to the debate on the referral motion and I thank Hon Aaron Stonehouse for his work behind the scenes. I have had discussions with the Clerk of the house, as has Hon Alannah MacTiernan, and with government advisers, as well as Hon Stephen Dawson and Hon Sue Ellery. The government has indicated that it will agree to the deletion of clauses 4 and 6 of the bill and an amendment to clause 5, with the effect of adopting all the changes to the Australian Consumer Law up to 26 October 2018. Supplementary notice paper 75, issue 7, reflects the amendments that will be agreed, and abandons the government's amendments.

Upon the resumption of the debate, and the government undertaking that it will agree to this course, and on the basis of the undertaking by Hon Alannah MacTiernan that those amendments will be agreed to, I will seek leave to withdraw my motion for the discharge and referral of the bill. If leave is granted, I will withdraw that motion, so that we can proceed with the second reading debate on the bill. It may assist in cutting the debate short, noting that the future adoption provisions will not be the subject of any discussion. Those provisions will be culled out of the bill, so that should cut short the debate significantly, and we will proceed to a conclusion in the usual way, debating the merits of the bill rather than the motion. I will move my proposed amendments during the Committee of the Whole House in due course and, if it is the will of the house that the bill be passed, it will be that foreshortened bill. I trust that that is of some assistance to members in understanding the progress we have achieved to date, and the direction in which we are going to be heading. I would welcome an interjection, but if I understand it correctly, the government will accept the amendments on supplementary notice paper 75, issue 7.

**Hon Alannah MacTiernan:** Member, when I stood, I made that very clear.

**Hon MICHAEL MISCHIN:** In that case, I seek leave to withdraw my motion for the referral —

**The ACTING PRESIDENT:** We are dealing with the point of order first, if I may. In relation to the point of order, it is correct that people have spoken twice, and we are trying to facilitate the process. I will give the call back to Hon Michael Mischin in relation to the motion he is now moving.

*Debate Resumed*

**Hon MICHAEL MISCHIN:** In light of the government's undertaking, I seek leave of the house to withdraw my motion to discharge the bill from the notice paper and refer it to a committee.

Motion, by leave, withdrawn.

*Second Reading Resumed*

**HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition)** [12.46 pm]: I conclude my remarks in the second reading debate on behalf the opposition as its lead speaker on the Fair Trading Amendment Bill 2018.

**HON NICK GOIRAN (South Metropolitan)** [12.46 pm]: What a mess; what an absolute mess the Fair Trading Amendment Bill 2018 is. It is now Thursday, 21 March 2019. Only two days ago, when Hon Michael Mischin moved that this bill be discharged and referred to the Standing Committee on Uniform Legislation and Statutes Review, the minister of the Crown, Hon Alannah MacTiernan, urged us not to support the motion. According to the uncorrected *Hansard* of two days ago—in fact, less than 48 hours ago, the concluding remarks by the minister were —

... I think it is completely unnecessary to defer this for three months when we have come up with a resolution. We listened to the committee, got it slightly wrong, and went back and worked to try to corral everyone to come up with a solution that respects the sovereignty of this place. I absolutely urge members not to go down the path of splitting this bill and sending it back. We have done the job. We now have a provision that will give this place the certainty that it will be the final arbiter of any consumer law that takes effect in this state.

Those were the words of the government's lead member on this bill—the most experienced member opposite—who urged all of us to oppose what Hon Michael Mischin had suggested, and now we find ourselves in exactly that situation. What has changed in the last 48 hours, that, all of a sudden, the minister has abandoned that position? She was urging members, only 48 hours ago, to take a particular course of action. Members may recall that, shortly after that, Hon Alison Xamon contributed to the debate on that procedural motion, and then I spoke. I urged members to be very cautious about the words that were being expressed by the minister. I indicated to members

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that we simply cannot trust this government. It says one thing one moment, and then, before we know it, it says something else. At the time, I indicated to members that I had a version of the supplementary notice paper in front of me, and that I was not sure how many other versions would still appear. The version before me 48 hours ago was issue 5. Members might have thought that I was joking when I suggested that maybe there would be further supplementary notice papers. That version was issue 5; the version in front of me at the moment is issue 7. My question once again—I will repeat what I said the other day and I hope no-one would dream to say that I am tediously repetitious—is: how many more supplementary notice papers will we have? Is the government once again busy working on another version? Will we suddenly find out in the next 48 hours that the government has reversed its position and decided that it wants to go ahead with the original provisions? We are now operating in a remarkable set of circumstances in which members have to trust what the minister said to the house earlier this afternoon. Hon Michael Mischin only withdrew his motion on the word of the government, and this is the word of a government that has proven itself time and again to be untrustworthy. Not a few minutes pass without it saying one thing with the exact opposite thing happening.

I reemphasise for the benefit of members that this is hardly the first time this has occurred. I recall that the last time this minister had carriage of a bill in this place was at the end of the spring sittings when we were due to rise for the summer recess. There was such a state of chaos in this place that members who have been here longer than I have said that they had never seen anything like it. The shambolic nature in which the Residential Tenancies Legislation Amendment (Family Violence) Bill was dealt with, which, members might recall, dealt with elements of family and domestic violence, was unprecedented. It was an important bill. But, again, this arrogant and pig-headed government said, “No; under no circumstances will we be listening to you, Hon Rick Mazza, and your amendments.” The government was not interested in any of that—“No, forget about it.” The amendments were rejected in the other place and when the bill came back here, the government had absolutely no idea what was going on with it. In the end, it was proved that Hon Rick Mazza was absolutely correct about that bill and the amendments were ultimately passed. Here we have a situation in which Hon Michael Mischin and his committee—it is not just him; the Standing Committee on Uniform Legislation and Statutes Review comprises four members of this place—carefully considered this matter and said, “Listen, government. You haven’t got this right” to which Hon Alannah MacTiernan said, “We got it slightly wrong.” The government got it so wrong that the committee of four said that clauses need to be opposed and amended, so wrong that Hon Michael Mischin looked to refer the bill back to committee, and so wrong that now the government, 48 hours later, finally concedes that it has a problem.

The greatest irony of all is that 48 hours ago, Hon Alannah MacTiernan was very concerned that this bill might be deferred for three months. Members, it is March, so three months from now will be 21 June. Members should remember that date. In three months, we will know whether Hon Alannah MacTiernan is correct. She was very concerned that this would be delayed by three months. I suggest to members that it will be delayed far longer than that because as it has just transpired, the government has said that it intends to agree to Hon Michael Mischin’s proposal to oppose clauses. Why is it going to do that? Because it is busy drafting another bill to deal with this issue. When will that come before Parliament and does the government think it will pass Parliament in the next three months? Please!

Before we know it, the budget will be handed down by this inept government. As the government knows full well, the standing orders require that budget contributions be given by members in this place, as has been mentioned previously by Hon Peter Collier. He reminded the Leader of the House that a bigger number of members are interested in making budget contributions because the crossbench in this Parliament is bigger than usual. All those factors need to be taken into account. This mess has been created by this inept government. I cannot believe that after what happened in November last year, we are in exactly the same situation again and the same minister is handling a commerce bill. Shadow Attorney General, I think this is a commerce bill.

**Hon Michael Mischin:** Yes.

**Hon NICK GOIRAN:** Once again a commerce bill is being handled by this minister and the outcome is chaos. From one day to the next, the government takes a different position. In actual fact, its position changes within a day; sometimes it takes multiple positions in one day. Mr Acting President (Hon Robin Chapple), after you decide to leave the chair until the ringing of the bells in approximately five minutes, I am not sure whether, in that short recess of one hour, the government will be busy preparing yet another position on this bill. How are we supposed to deal with a piece of legislation with any sense of certainty when the government does not know what it is doing with that legislation? It is not as though this is a private member’s bill, in which case we could give the government extra latitude for having to be a bit agile and move on the spot. But that is not the case here. This is a government bill. In fact, this is a government bill that has been with us for months. I refer members to the 119<sup>th</sup> report of the Standing Committee on Uniform Legislation and Statutes Review, which was tabled in November 2018 because, if I remember correctly, it helpfully sets out the chronology of this bill. It reminds us that as far back as 27 June

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last year, the Minister for Regional Development—yes, the same minister—introduced the Fair Trading Amendment Bill into the Legislative Council. Perhaps the minister was so concerned about the three-month delay because had it been delayed by three months, the minister would have had the embarrassing situation of dealing with this bill in this place for a year. Perhaps that was the significance of the three months. Well, minister, at this rate I have no confidence that we will be able to deal with it in the next three months because I am not too sure how many more positions the government can take on this bill.

Was the minister genuine the other night, less than 48 hours ago, when she urged us to make sure that we oppose what Hon Michael Mischin said? Next time she urges us to do something, should we pay her the same amount of attention that we paid her the other night? I put it to members that every time Hon Alannah MacTiernan urges us to do something in the next two years, I suggest that we give it the absolute least weight possible. It is becoming a high farce that this chamber has to deal with this minister on commerce bills with her time and again taking different positions, with different issues of supplementary notice papers going left, right and centre, with us having to decide whether matters should go to a committee and dealing with the different findings and recommendations that come from a committee, with the different amendments that may or may not be moved and the different procedural matters. We even had the spectacle earlier of members being asked to contribute substantively to matters before the house by way of a point of order. That is how farcical things have become with this bill.

**Hon Michael Mischin:** In fairness to the minister, she is representing the Attorney General now and we have had some form from him, and early last year she was representing Minister Johnston.

**Hon NICK GOIRAN:** The learned shadow Attorney General has raised an excellent point and I concur with him entirely. The problem is that—this is the point raised by the honourable member—it does not matter which minister we are dealing with in this Labor administration because they are all bad.

**Hon Michael Mischin:** Part of my point was that she is not getting much help from the people she is representing.

**Hon NICK GOIRAN:** Indeed. Last year, she represented a particular minister and it was chaos and this time she is representing a different minister and it is chaotic. There is one common denominator in both those situations—that is, the minister representing in this place. Is the fault with this minister or are the other two ministers not really sure what is going on? Is nobody in the Labor administration able to deal with the commerce portfolio? There are a number of scenarios, and I invite members to contemplate them over the luncheon interval.

*Sitting suspended from 1.00 to 2.00 pm*

**Hon NICK GOIRAN:** The matter before the house is the consideration of the Fair Trading Amendment Bill 2018, which in my view ought to have passed through the house well before now and in a far more efficient fashion. For those who are tuning in for the first time to the debate on this bill in this latest episode, I draw to their attention that the only reason this bill has not passed in a more efficient fashion is simply because of the arrogance of the McGowan Labor government. First of all, the government brought into this place a bill that its experienced members would have known full well would never pass unamended through the Legislative Council. The bill might well pass in the other place, but it would never pass in this place. Why is that? As members would be aware, this bill includes a provision that would have seen the automatic incorporation of future amendments of the national law into WA, unless the amendments were disallowed by Parliament. That provision was not crafted by the committee, a private member or anything like that; it was crafted by the government. The bill passed through the various iterations of the complicated caucus arrangement that exists for members opposite—it went through those various arrangements. We will never know whether anybody expressed any concern. I doubt it, because people would have been concerned about promotions and the like. Instead, this bill was presented to us some nine months ago by the Minister for Regional Development on behalf of the then Minister for Commerce—that ministry has since been shifted to another minister. That bill never had a chance of surviving the Legislative Council in its original form. Experienced members opposite would have known that. Some of the newer members might not have been aware of that, but definitely experienced members opposite would have known that. Yet, this arrogant government presented the bill in its current form. It should be recognised that it is the prerogative and entitlement of the government to bring bills into the Legislative Council in a form that it knows full well will not pass, but is that a sign of a government that is governing well? Is that a sign of a government that shows respect for this chamber? No, it is not; it is a sign of an arrogant government. It was bad enough that a bill of this sort would be presented to this place when senior members knew full well that it would not pass.

Thankfully, we have a safeguard in this place. Our standing orders include a capacity to send bills of this nature to the Standing Committee on Uniform Legislation and Statutes Review. Interestingly enough, if members review the *Hansard* from when this bill first appeared, they will note that it was suggested that it was not considered to be a uniform legislation bill; nevertheless, it was moved, without notice, that the bill be referred to the standing committee. This is one of the safeguards that exist in our system to ensure that bills that are simply bulldozed through the Labor caucus are still subject to an appropriate amount of scrutiny. As it so happened, the committee

**Extract from Hansard**

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identified the very issue that senior members opposite would have known full well it would always identify. Thankfully, the four members of that committee—Hon Michael Mischin, Hon Laurie Graham, Hon Pierre Yang and Hon Robin Scott—prepared the 119<sup>th</sup> report and tabled it in November last year, in which they unequivocally drew to our attention that there was a problem, specifically with respect to clauses 4, 5 and 6 of the bill.

This government and its senior members must have known full well that there was a problem with this bill, but perhaps not. Perhaps I am being uncharitable. Perhaps they did not know there was a problem with this bill. That is possible. That would be possible if no-one read the bill. If members opposite, through their multitude of caucus meetings and the like, did not read the bill, it is possible that no member was aware at the time that this would be a problem. That is possible. Let us take the most charitable interpretation and assume that no member opposite read the bill and no-one raised it as a problem, so the first time they would have known there was a problem was when this tripartisan committee tabled its report in November last year. The committee unequivocally drew to the attention of all 36 members of this place that there was a problem with the bill.

At that point in time—November last year—it was open to the government and its senior members to efficiently and effectively prepare amendments to address the concerns of the standing committee. They could have done that in November last year and this whole bill could have been passed in the spring sittings of 2018. But that is not what happened. Instead, this arrogant, pig-headed government decided that it would joust with the chair of the standing committee and start to offer alternative solutions. As it so happens, this bill was not deemed to be sufficiently important by this government to rank in the top three bills to be brought in after the long summer recess—not at all. But it was eventually brought in, and the government decided to continue to joust with the chair of the Standing Committee on Uniform Legislation and Statutes Review, notwithstanding that by that stage, it must have known there was a significant problem with this bill. If government members did not know beforehand because they had not read the bill, they must have known by November, unless they had not read the committee report either. It is possible that no-one in government read the bill at first instance, it passed through the multitude of caucus meetings that exist with members opposite and then the standing committee prepared its report but no-one in government decided to read it. That is possible, but highly unlikely. I feel confident to say that surely some members would have read the bill and surely some members would have read the report. Surely that must have been the case. By that point, it would have been known by members opposite that there was a problem. We then find that, by the time the bill comes on for debate proper, we have brought to our attention amendments to solve this problem, not by the government but only by the opposition. It transpires that it requires Hon Michael Mischin and the restricted and limited resources of opposition to prepare amendments to address the problems that the government knows full well exist. Then, instead of the government showing any element of good grace in accepting what Hon Michael Mischin had done, and perhaps even thanking him for the work he had done, no, government members continued with their jousting and put up further amendments. We then had the spectacle of supplementary notice paper after supplementary notice paper being presented to this house with the government continuing to shift and change positions almost every hour of the day. After all that, quite understandably, the shadow Minister for Commerce rose and moved a motion suggesting that, in all the circumstances—given everything I have just described—perhaps it would be best if cooler heads prevailed and the matter instead be considered yet again by the Standing Committee on Uniform Legislation and Statutes Review. In that referral, was the committee going to consider precisely the same things it had considered earlier, which are encapsulated in its report from November last year? No, not at all. It was specifically going to look at the so-called solution the government had proposed, which we were urged 48 hours ago to support. That was all the shadow minister sought to do, yet, we were told by the government, “Don’t worry about it. Trust us; we’ve got this all under control. You just need to support our amendments and oppose what Hon Michael Mischin is doing.” That was the government’s position some 48 hours ago. We were urged not to send the bill to the committee.

For those members who have been following the sequence of events in this debate, it is interesting to note one thing. Actually, the shadow minister had proposed another solution to this problem. Very early on, he said that the government should give serious consideration to splitting the bill, which would be a way of efficiently dealing with this matter because then the non-controversial aspects of the bill could be passed very speedily and we could deal with the matters, which Hon Alison Xamon has correctly previously categorised as having precedential value, on a separate occasion. That was the solution that was provided by the shadow minister. Was it agreed to by the government? Not on your nelly. No way. Government members continued their jousting with the honourable member and they continued to urge members not to go down that path. You would not believe it, Mr Acting President, but the final position—perhaps I should correct the record; I should not be so bold as to suggest it is the final position. Maybe I should say the “current” position of the government as we debate this matter on 21 March 2019 at quarter past two in the afternoon—at least it was the position prior to the luncheon interval—is not even to split the bill, which would be the efficient way of dealing with this matter. No, the government says, “No, our solution is to support the opposition to our own bill for the clauses that are problematic. We will obliterate those clauses and therefore the bill can pass unimpeded through the Legislative Council.” What will the government do then? It

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has committed to going away and preparing a second bill. How is that possibly the most efficient way to deal with this matter? Why does the government continue in its pig-headed, arrogant fashion that has become systemic with this government? Why does it not simply agree to the proposal that was originally put forward by the learned shadow Attorney General and split the bill? That would be the efficient way of dealing with this matter, but no. Instead, government members will oppose clauses in their own bill and send the resources of government and Parliamentary Counsel on another expedition to go and start another process with another bill on another day and then bring that to this house in the fullness of time.

This is all in the context of the minister with the carriage of this bill in this house emphasising—underscoring and highlighting—only earlier this week that this matter ought not to be deferred for three months. The minister with carriage of the bill was very concerned about this three-month hiatus, which she believed would exist if this matter was dealt with in the fashion proposed by the learned shadow Attorney General. She was very concerned about the three months, yet, in the height of irony, the very process that the government proposes for all of us to embark on—the process the government has agreed to, which the minister stood earlier during a very interesting point of order and committed to—was that this would be the process that we undertake. It will be a far more elongated process because the minister has decided that the government will oppose clauses in its own legislation. I note in passing that supplementary notice paper 75, issue 7—at least, that is the latest version that has been provided to me—has four amendments on it. It has been indicated to me that the government proposes to support each and every one of the four amendments that are found on supplementary notice paper 75, issue 7. Who is the author of those four amendments? Is it the government? No, it is the shadow Attorney General. Each of the four amendments is proposed in the name of Hon Michael Mischin. The first amendment is to oppose clause 4. Government members want to oppose clause 4 in its entirety despite the fact that 48 hours ago they said they had a solution and urged us all to trust them. Thank goodness members did not trust them. I would urge members—much like Hon Alannah MacTiernan likes to urge members—to not trust the members of this government. Do not trust them when they say to us, “We’ve found a solution. Just agree to our proposal. Don’t listen to Hon Michael Mischin; just trust the government.” Do not listen to them. They have form. We have been putting up with this for two years. Each and every time a piece of legislation goes through this house and flaws continue to be found, instead of the government facilitating the reasonable objections that are found, it tries to frustrate the process and, in the end, the whole process takes a lot longer than it needs to.

**Hon Peter Collier:** That’s because they bulldoze it through the other place.

**Hon NICK GOIRAN:** The arrogance in the other place—do not get me started!

**Hon Alannah MacTiernan** interjected.

**The ACTING PRESIDENT:** Order, members!

**Hon NICK GOIRAN:** The second range of amendments on supplementary notice paper 75, issue 7, deal with clause 5. I have dealt with clause 4. The government has decided to get the TNT out and obliterate clause 4 of its bill. It has decided in March 2019 that that clause is repugnant and it wants to obliterate it; that is what it would like to do to clause 4. We have dealt with that clause.

Now we have two amendments to clause 5 that Hon Michael Mischin would like to move. One is to delete the phrase “from time to time” and to insert a precise date. It is hardly surprising that the honourable member would propose that amendment because to not do so would have left us with the ridiculous situation in which the law would have automatically been applied from time to time by other places around the nation. That was never going to pass through this place. Yet it has taken Hon Michael Mischin to draw that to the attention of the government for it to come, most reluctantly, to this position now, despite the fact that there is an even more efficient way of dealing with it, which would have been to split the bill. Nevertheless, the government wants to deal with it in this fashion. It is quite entitled to do so and that is its prerogative. Later in clause 5, Hon Michael Mischin also proposes to delete certain lines. That is again a series of three lines—not one line, but three lines—that the government agrees will be obliterated from its bill and that it wishes to tear up. It has indicated that it will be supporting the shadow Attorney General in that proposal. Why is that? Despite the fact that 48 hours ago it said something different, the government now concedes that there is a problem with clause 5.

We then move to the amendment to clause 6 on supplementary notice paper 75, issue 7. I have not had another version passed to me within the last six minutes, so it is still the latest version. What has been proposed with clause 6? The government is proposing to oppose the clause. This is yet again another part of the Fair Trading Amendment Bill 2018 that the government now concedes will need to be deleted. If members take the time to look at clause 6 of the bill, they will see that it is a significant clause that runs over some three pages. If members have the bill at their disposal, I draw their attention to page 3, where clause 6 starts. It continues over page 4 and concludes on page 5. The specific lines that the government seeks to delete are found on page 3. The amendment specifically deals with line 5 on page 3, all the way through to line 7 on page 5. Members can see in the bill that

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the entirety of clause 6 is to be deleted—not a portion of the clause, but the entire clause. What will be left in the bill? Clauses 1 to 3 will be unamended. There is nothing spectacular about that because every bill that ever passes through this place will have those standard clauses in it. Clause 4 is going to be entirely opposed—obliterated, gone. In clause 5, one of the lines will be deleted and a substitution made. Clause 5 will be passed, as amended. Clause 6—a very significant and massive clause, the largest clause of all in the bill—will be obliterated. We will then finish off on a few minor clauses—clauses 7 to 10—to conclude the bill.

Why has the government taken so long to do all that? Why has this bill taken so long to get to this stage? When the minister provides a reply and concludes this second reading debate, I would like the government to explain why this bill has taken this long. How is it possible that a matter of this simplicity has taken this long? It beggars belief that the government allowed the bill in its current form to be presented to this Parliament. It beggars belief that the government, after reading the tripartisan report of the Standing Committee on Uniform Legislation and Statutes Review in November last year, would then continue to joust with the chair of the committee. It beggars belief that the government, upon eventually realising that there was a problem and putting forward an amendment, which was also never going to pass, would continue to oppose suggestions that there be further scrutiny of this matter. It beggars belief that after all that, the government has finally said, “It’s all too hard. We’re just going to oppose the clauses in our own bill.” It then takes the position that says: “We, the McGowan Labor government in Western Australia, are so arrogant and so pigheaded on these matters that we will not even have the good grace to pick up the suggestion by the shadow Attorney General and split the bill. We will not do that. We are going to do it the pigheaded way.”

I might add that this is not the first time that the government has taken this approach. If I am not mistaken, and to the best of my recollection—I am happy for members to correct me if this is factually incorrect—last year, when we dealt with a bill that made amendments to the Corruption, Crime and Misconduct Act, which was the former Corruption and Crime Commission Act, the government indicated after much prolonged debate in the other place that it would split the bill. In fact, that is not what happened. In the end, a subsequent bill was brought into the Parliament. Interestingly enough, that particular bill gave to the Corruption and Crime Commission the power to explore unexplained wealth. What happened to the second part of the bill in terms of trying to split it? That very bill is still before the house. If members look at the *Daily Notice Paper*, they will see that that second bill is still before the house at the moment—the one the government said it would split, which it did not do. It ended up bringing it in in a different fashion. If that is going to be the speed with which this matter is dealt with, I would have thought that that would cause great consternation, anxiety and stress to the Minister for Regional Development because only 48 hours ago the honourable member was expressing great concern about a three-month delay. As I understand it—I am happy for members to correct me if I am wrong—this particular bill to which I refer has been with us for far longer than that. In fact, ironically, one would have thought we would have finished dealing with that matter, but it has not yet appeared on the weekly bulletin either this week or last week. The Corruption, Crime and Misconduct Amendment Bill 2017 is yet another bill that is suddenly being buried.

As I have said, the way in which this government deals with legislation is quite incredible. Far be it from me to suggest that during our eight years in government we dealt with everything perfectly. Members will know that I am certainly not one to suggest that we dealt with things perfectly, but we did not have the arrogance and pig-headedness that we have seen when dealing with this kind of legislation. When members put forward sensible proposals, they were duly considered by our ministers and dealt with accordingly. But this government almost instinctively takes the opposite position to any proposal that is put before it. It takes an attitude of frustration rather than facilitation. That is why we find ourselves in this situation.

As I conclude my remarks on the second reading of this bill, I should add that I support the Fair Trading Amendment Bill 2018. I commend the work of Hon Michael Mischin, who has painstakingly gone through this bill and tirelessly prosecuted an argument that the government months later has finally decided to see sense and listen to. Had the government just done that in the first instance, we would have finished this last year. Indeed, the bill is titled with “2018”, yet here we are still debating this bill in 2019. Why is that? It is because of the arrogance and pig-headedness of the government. I indicate to members that I will be supporting the passage of this bill but only if the government is true to its word—the words that were spoken earlier by Hon Alannah MacTiernan during that highly irregular point of order. During that highly irregular set of circumstances, she gave a commitment that the government would support in their entirety the four amendments that have been put forward by Hon Michael Mischin. Assuming that the government can be trusted on something as basic as that, it will receive my support for the passage of this bill, but if there is any shifty business by this government whatsoever during Committee of the Whole House, I will not resist or restrain myself. I will get involved because I am sick and tired of this government treating this house with contempt and disdain. It deserves better than that. We have seen far too much of that from this Labor administration over the last two years. It has good members sitting on the back bench who must lose

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sleep over the madness that sometimes takes place on the front bench. Subject to the amendments put forward by Hon Michael Mischin, I encourage members to support this bill.

**HON ALISON XAMON (North Metropolitan)** [2.32 pm]: I rise as the lead speaker on behalf of the Greens to speak on the Fair Trading Amendment Bill 2018. From the outset I indicate that subject to the amendments that appear on issue 7 of supplementary notice paper 75 being passed the Greens will support this bill.

Members may be surprised that what may appear to be a relatively innocuous bill has been the source of so much angst in this house. It is important that we get this bill right, precisely because we need to ensure that the legislation will interact with the federal jurisdiction. Section 51 of the Australian Constitution sets out a long list of matters on which the Australian Parliament has power to make laws. Relevant to this bill is that it includes the power to legislate on trade and commerce internationally and interstate in relation to corporations. The Australian Parliament has so legislated by passing the Australian Consumer Law. In Western Australia those laws have applied to corporations, which constitute about 80 per cent of traders, but not to non-corporate businesses such as sole traders and partnerships. For those non-corporate businesses in Western Australia, the Australian Parliament has power to legislate only if the Western Australian Parliament either refers that matter to it or passes its own law adopting the commonwealth law after it has been passed. To date, the Western Australian Parliament has chosen the latter course of action by passing its own laws to apply the Australian Consumer Law so that it applies to non-corporate businesses as well as to corporations. Unfortunately, that has meant that Western Australia is lagging, as is the case with many types of legislation that we choose to adopt. We have adopted the Australian Consumer Law only up to 1 January 2013. Since then, there have been at least eight amendments that are not applicable in Western Australia. The nature of those amendments is set out on pages 25 to 34 of the very helpful report of the Standing Committee on Uniform Legislation and Statutes Review, which was tabled in this place in November last year.

Further, as a result of the 2017 review of the Australian Consumer Law, a raft of further amendments are expected in the future. All other state jurisdictions have already passed laws that apply the Australian Consumer Law in their jurisdictions. There is variation between jurisdictions in the method that is used to achieve this, but the outcome is essentially the same. The Western Australian Consumer Law for non-corporate businesses is currently different from the law in other Australian jurisdictions that is applicable to corporations and, indeed, to non-corporate businesses. It is set to become increasingly inconsistent in the future. This will potentially be very confusing for those businesses and their customers. It also denies them and their customers the benefit of any consumer law protections or defences that are legislated at the commonwealth level. With the aim of curing that inconsistency—I think that is the intention of all members here—we will amend the Fair Trading Act 2010 to adopt the Australian Consumer Law up to 26 October 2018 and, from that point on, have a process that will allow each subsequent amendment to the Australian Consumer Law to also be adopted, provided that neither house of the Western Australian Parliament objects. Unfortunately, it has taken quite a while to figure out what that process should look like, and it has not yet been agreed to. As a result, there has been a flurry of supplementary notice papers over the last few days, which reflects the gradual progress of this discussion as we have all grappled with the issue and tried to reach a consensus. Again, I would like to commend the very good work of the Standing Committee on Uniform Legislation and Statutes Review. Its excellent report has informed the discussion and served us very well. Once again, the Legislative Council is coming to the rescue! The discussions have reached the point that it has been decided to split the bill so that it adopts the Australian Consumer Law up to 26 October 2018, and the process for adopting or rejecting subsequent commonwealth amendments will be left to another day, another bill and, probably, another excellent Standing Committee on Uniform Legislation and Statutes Review report. I wait for that with bated breath! That is a tidy outcome, which the Greens will support.

The bill will also amend provisions relating to the Property Industry Advisory Committee, the Motor Vehicle Industry Advisory Committee and the Consumer Advisory Committee. Currently, the members of each committee are the Commissioner of Consumer Protection ex officio plus other persons who have been appointed by the minister as prescribed, with one of the latter to be appointed as the chairperson. Originally, this was the director general of what was the then Department of Commerce. Now that those committees are well-established, the bill will change that to allow the minister to appoint any member, including the commissioner, to be the chairperson. That does not seem to be a controversial change. Another change that will be made by the bill is to amend section 108 of the act. That section currently states that findings of fact by a court in certain proceedings will be taken as prima facie evidence of that fact in certain other proceedings. This bill will expand that. It will apply to not only a court finding of fact, but also admissions of fact. This is pursuant to a recommendation of the 2017 Australian Consumer Law review, which has already been referred to. I understand, and ask the minister to confirm, that there will be a commonwealth amendment to similar effect, but that amendment will be via a different act and therefore cannot be subject to the adoption provisions in the second split bill.

**Hon Alannah MacTiernan:** Sorry member, which section?

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**Hon ALISON XAMON:** There is going to be a commonwealth amendment to a similar effect on the admissions of fact. That will be introduced in a different way. It will not be subject to the provisions that we will be contemplating in the future split bill. Therefore, as I understand it, the government is taking the opportunity to amend our law, ahead of the commonwealth amendment, to avoid the need to bring another bill before this Parliament in order to implement it. The government does not anticipate a problem arising under section 109 of the Constitution, because the effect of the Western Australian law and the commonwealth law will be the same, even if the wording ends up being slightly different.

The Standing Committee on Uniform Legislation and Statutes Review advised in its report that the bill in its current form is supported by the Consumer Credit Legal Service of WA, which was an important point to make because it, on a day-to-day basis, deals with individuals who are adversely affected by consumer protection matters. The Consumer Credit Legal Service is therefore well placed to talk about how these changes are likely to facilitate it in assisting its clients. The bill, in the form that I am expecting it to pass, hopefully shortly, will go some way towards what the Consumer Credit Legal Service has been advocating for. The intended second split bill will, hopefully, complete that process.

With those few words, I wish to indicate that the Greens will support the passage of the bill through the second reading stage, but further passage is contingent upon the proposed amendments, which are on the supplementary notice paper, being passed.

**HON COLIN HOLT (South West)** [2.42 pm]: What a shambolic mess of a process we have had to get to this point. I will go through the series of events that I have some optics of.

**The ACTING PRESIDENT (Hon Matthew Swinbourn):** Excuse me, member. Are you the lead speaker for your party?

**Hon COLIN HOLT:** I am, Mr Acting President.

I will give some indication of how confusing this whole process has been. The Fair Trading Amendment Bill 2018 came into this house last year and was referred to the Standing Committee on Uniform Legislation and Statutes Review to do some work on behalf of the house, which happens quite a bit. Usually, the committee comes back with some great recommendations to improve the bill. It happens with legislation all the time. On a number of occasions during this term of government, committees have done good work on behalf of this house. It was the same with this bill. I am sure that every member expects that when we refer a bill to a committee, that it will do as much good work on that legislation as possible to inform the house whether there are any concerns with that legislation. That is the process that this bill went through. The committee reported back in November last year with some recommendations and raised some questions about the bill.

Maybe this is about my expectations of this government, but I expected that, at some point, the government, the minister responsible for this bill or the minister responsible for that portfolio, would come back to the house to respond to the committee's recommendations. That often happens when legislation first comes into the house, but there is some sort of explanation or briefing beforehand. When, three or four weeks ago, a note was sent out that this legislation was going to come up, I sought a briefing from the responsible minister's office to see what the legislation was about, with the full expectation that I would get an explanation about the government's response to the committee report, because, as a member of this house, I was relying on that committee to do our good work, to raise the issues of the bill, and I would have expected some thought would have gone into it.

Two weeks ago when I received that briefing, I asked, "What is the response to the committee? Do you have some amendments that may be considered when the bill comes to the house?" The response I received at the time was, "Yes, we are working on those, and we expect to have them ready in the good fullness of time." When I saw that the bill was listed in the order of business, I had our office ring the minister's office at least twice to ask, "How are the amendments going? Where are we at with the amendments, because I would really appreciate some briefing and explanation on how those amendments address the concerns of the committee." The amendments were not forthcoming and we had no further briefing. Even when we got to last Thursday, just before we had the first contribution to the second reading debate provided by Hon Michael Mischin, a supplementary notice paper was issued outlining the government's amendments. But before that point, Hon Michael Mischin had talked to me about some amendments. Supplementary notice paper 75, issue 1, outlined what he thought needed to happen to make the bill pass this place. My interpretation was that with a lack of anything else from the government in response to the committee, the committee chair, as a member of this place, took some responsibility himself to suggest some amendments that would help address those issues in the legislation. Here we had a member of this place proposing putting in place some amendments to address the concerns that the committee raised on our behalf as this house. I thought that if there is nothing else on the supplementary notice paper, that is what we are going to have to go with.

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It was not long after that—in fact, I think it might have been just before Hon Michael Mischin got to his feet—that we received supplementary notice paper 75, issue 2, which outlined some of the government’s amendments to address those concerns. I do not know about other members, but I have some issues with what that signals to this house. It does not show respect for this house and the committee process when, at the eleventh hour, one minute to midnight maybe, we have a response to our committee’s hard work and recommendations. It is definitely mismanagement of some kind. Hon Nick Goiran said, “That’s fine. If that’s the way the government wants to run the process of bringing bills into this place when there is a committee report that asks for some changes, I suggest we’re going to end up in this spot over and again.” But, of course, that was not the end of the issue, because that supplementary notice paper contained a number of conflicting or alternative amendments and approaches to fix this bill.

Last Tuesday at one o’clock, when we were about to recommence the debate on the bill, I received another briefing from the minister’s office to say, “Here are the amendments. We’re completely satisfied that these amendments will meet the needs outlined in the committee report.” My response was, “What sort of feedback have you had on that reality from other members in the chamber?” As Hon Alison Xamon offered in her contribution on the motion to refer the bill to a committee, this is an important issue. It is also quite technical. To tell members the truth, as a non-lawyer I need to seek advice from members in the chamber and also from the minister’s office and others to try to make a decision on this. There was some conflicting advice and there were conflicting amendments on the supplementary notice paper to deal with. Once we were in this place, issue 3 of the supplementary notice paper came out. I was sitting in my office when issue 4 of the supplementary notice paper came out, and I thought, “You beauty; I’ll run down to the chamber and grab that supplementary notice paper to see what might have changed from issues 1, 2 and 3!” When I requested a copy, I was told, “We’re not doing that one because issue 5 is on its way.” In the time it took me to walk from my office to the chamber, which takes about a minute and a half—two minutes if I am really slow—there was another issue of the supplementary notice paper. This is not the time for debate to swirl around the house. I completely understand that it can happen that way, and often does. That is why we have ended up in this situation. The shambolic management of this bill has delivered us to this point.

About that time, Hon Michael Mischin, in response to either no briefing or an unsatisfactory briefing, moved the referral motion to send the bill back to the Standing Committee on Uniform Legislation and Statutes Review. I have to say that I agreed with him at that point. What I had been exposed to did not answer any of the questions we had. There was obviously no concurrence across the house. At that point, the minister responsible stood and said, “We have been listening to all the concerns and we have amendments in response to those.” Hon Alison Xamon stood and said, “We are completely satisfied with those amendments and we do not support the referral motion.” About that time, there were signals going across the chamber about where support for the referral motion would come from. It was probably starting to be clear to the government that maybe the bill would go back to the committee: “We’d better find a solution that does not send it to the committee and enables the timely passage of the bill.”

The debate was adjourned on Tuesday. Even today, some solution seems to have been garnered behind the Chair that the referral motion will be withdrawn on the undertaking of some agreement about amendments, but this time the agreement is around the amendments originally moved by Hon Michael Mischin in issue 1 of supplementary notice paper 75. That seems to now be the accepted position of the government and the chamber. Even today, when we knew that was the course, we could not find a way to manage the house to deliver on that! There were expanded points of order, which I am not sure will be ruled on again. Imagine if we all used that sort of mechanism to sort out the mess that this process has delivered. In my mind, if members wanted to test that, they probably could. We last debated this bill on Tuesday night and it is now Thursday. Was there not some way to manage that process to move on from the shambolic mess of Tuesday and start with a clean slate today? It could have been sorted out. Maybe with agreement we could have moved the referral motion, lost the vote and got back to the substantive debate. Other members could have agreed. Issue 7 of supplementary notice paper 75 indicates a clear line of what is to occur. For some reason, we could not even manage that.

I do not know about other members, including Mr Acting President (Hon Matthew Swinbourn), but it seems to me that the committee delivered a report on behalf of the house that suggested some changes. For some reason, at one minute to midnight, either through arrogance or incompetence, the government thought it could ignore the recommendations of the Standing Committee on Uniform Legislation and Statutes Review. Maybe it thought, “We can probably ignore that committee, or at least we will ignore it until someone asks for it or somehow the house needs it”. Who knows? Maybe there were issues around the responsible minister or the original minister’s timing in addressing all these issues. Maybe not enough resources were put into the drafting of the legislation or there are not enough resources in the minister’s office, or there are other important things to do. If the government was running out of time, it did not have to list the Fair Trading Amendment Bill in the order of business this week. The government could have sorted that out before coming to this place. It could have said that it had agreement from the committee or the committee’s representatives. It could have had discussions with the committee or the

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committee chair and said, “We’re happy with this approach.” It could have done that potentially—let me think about that—for the last three to four months. I know that it is hard between sitting periods to get everyone in the right space to have those discussions, but for the government to list the Fair Trading Amendment Bill on the business program and say, “We’re going to get this legislation passed”, without really indicating to anyone in the chamber how it would address the concerns raised by the Standing Committee on Uniform Legislation and Statutes Review, which is a function of this house, is beyond belief.

I have an expectation, and I would hope that every member in this place has an expectation. We have heard from the chairman of the committee. Other members of that committee may also have a view because it was their hard work that was ignored. It seems to me it was ignored until the eleventh hour, when Hon Michael Mischin from the opposition put amendments on the supplementary notice paper to force the issue to have this addressed. As I have already indicated, my office rang the minister’s office at least twice to find out what the government was doing to address the committee’s concerns. We were told, “We’re working on it. No; we haven’t got anything yet.” We were completely ignored.

I received a briefing on the Tuesday after the Thursday when the bill was first debated. Again, they are decisions that the government and its ministers can make, but when they make those decisions, we get to the point we are at now, which is that we have been through a shambolic and embarrassing process to get to the point at which we have thrown out the government’s amendments. When Hon Alison Xamon stood to say that the Greens would not support the motion to refer the bill to a committee, she said, “We’re completely happy with the amendments.” She thought they addressed members’ concerns. What has happened now? Does Hon Alison Xamon still agree with where we have landed? Does that meet our concerns? I do not know whether our concerns have been addressed. I thought it would well and truly be a good idea to send the bill back to the committee because we had those conflicting amendments on the supplementary notice paper. Now we are back to square one.

Members should be concerned with the attitude being shown in treating committees this way. I understand that ministers are hard to get hold of, especially late at night, and there is short notice to try to sort things out. But this could have been sorted out way before. If an issue cannot be sorted out way before, do not bring on the debate until it is, because this is where it ends up. We should be supporting our committee structure, as should the government. Referrals to the Standing Committee on Uniform Legislation and Statutes Review result in really good suggestions that make most legislation better. We should continue to do that. This is an unfortunate mess. I cannot remember such an episode ever having occurred in this house. Members can correct me if they want, but I cannot remember a series of events that led to the point that we have seven supplementary notice papers, from issue 1 to issue 7, and we are back to where we have landed now. It seems that somewhere along the line, there is a lack of respect for this house and for the committee system that has delivered on those recommendations.

I appreciate the opportunity to talk about the process and say that the Nationals will be supporting the passage of the bill.

**HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development)** [3.00 pm] — in reply: I thank the members for their contribution to the debate on the Fair Trading Amendment Bill 2018. I accept that it has been a less than perfect situation, but I think it has been absolutely over-hyped. We have a lot of moving parts here. The idea has been put that there is something wrong with us negotiating and trying to establish an outcome. That is what we have to do. We do not control the upper house. Therefore, it is absolutely critical that we move forward with legislation; and when we find that we will be able to get it through, we get it through, and when we find that we have some problems, we accept that and we go to a plan B. That should not be a point of criticism. This is, in fact, what we are supposed to do.

There has been some profound miscasting of the whole situation. I hope Hon Colin Holt will listen to this, because it is important to understand what has happened. This is not a bill that was rammed through the other house and brought to this place. This bill was in fact introduced into this house. One of the reasons the bill was introduced into this house was in order for it to go to the Standing Committee on Uniform Legislation and Statutes Review. The advice that we received at the time the bill was cast is that there was uncertainty about whether this was a bill that triggered whatever it is—standing order 126. However, because there were important issues of sovereignty, the government agreed from the outset that this bill should go to that committee. The suggestion that there has been some sort of arrogance or ramming stuff through is completely and utterly incorrect. We wanted this bill to go to that committee and be considered.

It is true that the committee found—I think quite rightly—that we needed to do far more to protect the sovereignty of the Parliament. Although we accept the fundamental principle of wanting to incorporate the Australian Consumer Law into Western Australian law to give Western Australians the benefits of that law, it was found that given the mechanisms whereby those federal laws are determined, which would not necessarily involve anyone from Western Australia or any sign-off from Western Australia before they went into the federal Parliament and were assented to, we needed to have more safeguards. That report came down in November. In the interim, we had

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a ministerial reshuffle. Once the report came down, we made it very clear that we would accept the fundamental proposition of the committee. The committee chose not to come forward with a proposal. I understand from the chair of the committee that because of the complexity, it thought it was appropriate for that to be done by government. The government then made that draft amendment. It was an immediate acceptance of the principle that we needed to develop that amendment.

I have a print-out of the events. On 20 February, a briefing was provided to the Nationals on this issue, in which it was said that the government agreed with the principle. On 1 March, we got an email from the member's office seeking an update, and we gave that to the member within one hour. We are certainly not seeking to be dismissive; we want members' support, obviously. It was not until 14 March that that amendment was ready. I apologise. Under normal circumstances, this bill would not have come on as early as it has, but we have had a couple of incidents of illness within the team and we have had to juggle things around. I absolutely accept that that amendment should have been created earlier than 14 March, but that is what happened. The amendment then went onto the supplementary notice paper. I am going through this because some wild and I think highly improper accusations have been made in this place.

On 14 March, Hon Michael Mischin commenced his second reading contribution. He went through the bill in quite some detail, as is his wont, and outlined a problem or shortcoming in the mechanism that had been put in place to protect parliamentary sovereignty. He identified that. I then went to the advisers from the Minister for Commerce's office and said I think there is merit in the argument that he has made and that we need to make a further amendment. An amendment had been prepared. We had accepted the report and made the amendment. I would have thought that is the point of this place. It is not correct to say it is chaos when we have listened and said that what Hon Michael Mischin said was right. It was not, "He's not going to vote for it." It was, "He's right." I agree there is a problem. My team has also been talking to our colleagues in the other place. When issues are going through this Parliament, we need to get our people to focus quickly and address those things. It is true that the amendment came in. The Clerk then suggested something else that perhaps needed to be added to make it a bit clearer, and that is why there was then a second version of the amendment.

Hon "Nike" Goiran, I mean, I have been so amazed —

Several members interjected.

**Hon ALANNAH MacTIERNAN:** I am deliberately calling him that because he mispronounces my name, and that might encourage him to be a bit focused on my name. At one stage, it appeared that we would be able to get the bill through. We had listened to Hon Michael Mischin, we had made adjustments, and we were confident that those adjustments would be adequate to meet the demand—the rightful demand—to protect the sovereignty of this house. We thought we had our friend Hon Aaron Stonehouse on side with us, but he then became concerned, after listening to the debate, and thought it might be a good idea to refer the bill so that we could get some more clarity and could double-check, and that was a perfectly valid point.

At that point, when I started a discussion with Hon Michael Mischin and asked him what would be the earliest date that we could bring this back, we were negotiating that, and Hon Michael Mischin said, "I still don't understand why you won't split the bill. I think there have been examples of doing that. It would enable you to get those 80 or so amendments that would protect Western Australian consumers going forward." Therefore, I undertook to approach the Attorney General again about that. It had not been pursued earlier because the departmental staff had not been enthusiastic about the proposition, but Hon Michael Mischin requested it, and I thought he made a reasonable case. I went to the Attorney General and he said, "Yes, okay, that's fine." We then went to the Clerk of the Parliament, who said, "I have a slightly better idea. I think you could do it more efficiently and effectively by removing the process portions from the bill and bringing that back as a separate piece of legislation."

Hon "Nike" Goiran's suggestion that we were somehow or other trying to sabotage a perfectly good idea from Hon Michael Mischin, when he was the one who said, "Listen, the Clerk is suggesting something else, why don't we go down that path?", is complete nonsense.

I will use this opportunity to say this, because I feel this very strongly. I was in opposition for 13 years. I understand that the job of members opposite is to bring us to account; they have to go out and attack other people, and they have to critique. That is just part of the argy-bargy of political life and we do not take it personally. However, it is different with Hon "Nike" Goiran. In my view, he is a truly appalling individual. The poison that seeps from that man —

**The ACTING PRESIDENT:** Order, member!

*Withdrawal of Remark*

**Hon MICHAEL MISCHIN:** There are differing views about the history of this. I can understand Hon Alannah MacTiernan wanting to set the record straight as far as she sees it. I agree with part but not all of

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what she has said. I do not think we need to get into an attack on Hon Nick Goiran. I think it is already unworthy of her to deliberately mispronounce his name. People's names are mispronounced in this chamber by a number of people, and that is simply because sometimes a name does not stick in a particular way. I do not think there is anything deliberate about that. However, to deliberately mispronounce a member's name is not worthy of her or a member of this place. To compound that with attacks on him personally is just out of the ballpark. I take that point of order.

**The ACTING PRESIDENT (Hon Matthew Swinbourn):** Member, I do not think there is a point of order, but I will invite the minister to withdraw her remarks about Hon Nick Goiran.

**Hon ALANNAH MacTIERNAN:** Thank you, Mr Acting President. I will not go down that path any longer, other than to say that that man is truly the Sophie Mirabella of the Western Australian Parliament.

**The ACTING PRESIDENT:** Minister, order! You are to refer to other members by their titles.

**Hon ALANNAH MacTIERNAN:** Sorry, yes. Hon Nick Goiran is truly the Sophie Mirabella of the Western Australian Parliament. He will be a great asset to this side of politics as he goes out there into the community. I reckon he will be the equivalent of Tony Abbott and Eric Abetz.

*Debate Resumed*

**Hon ALANNAH MacTIERNAN:** That having been said, I will mention a few other issues. All members here are supporting the general proposition that we want to see the Australian Consumer Law and the protections provided by that extend to Western Australians, and I appreciate that.

I will respond to a couple of other specific queries. Hon Michael Mischin asked about the provision whereby the minister would have the power to nominate the commissioner as the chair of the industry bodies, and wanted to know why they wanted to have that power. The rationale for that is that currently, because the commissioner is ex officio, they are not part of the class that can be nominated for the position of chair. Traditionally, the chair has been the director general. There has been little industry interest in occupying that position, so it has always fallen to the director general, and agency resources have been used to provide the secretarial services. With the machinery of government reforms, obviously the responsibilities of the DG are much broader, and it was felt that it is unlikely that the DG in this expanded role would have the time to chair those industry bodies. That is why the flexibility is given to allow the commissioner to take on that role.

There is nothing untoward here. It has always fallen to a representative of government to fill that role, so it is unlikely to be a change of practice, although should there be any industry member who is interested, there is still the opportunity for them to do that.

Hon Alison Xamon asked specifically about the changes in the evidence laws. The relevant federal act has already been changed. Apparently that went through in around October last year; it was an amendment to the Competition and Consumer Act. I am happy to provide the member with a copy of this, if she so wishes, or perhaps I could table it.

**Hon Alison Xamon:** Tabling would be better.

**Hon ALANNAH MacTIERNAN:** I will table that so that she can see the other federal legislation that had to be amended, because it could not be amended with the overarching consumer laws.

[See paper 2512.]

**Hon ALANNAH MacTIERNAN:** Ultimately, the reason we have agreed to this—what is effectively a splitting of the bill, but what both Hon Michael Mischin and I thought, on the advice of the Clerk, was a more elegant and faster way of dealing with this—is that we want to get those consumer laws done. We want this matter to go back now, to have a look at the particular provision and mechanism that has been proposed by parliamentary counsel, and to see whether that stacks up. We have not changed our view that we have, in fact, got that right, because we think that that formulation is correct, but we have to negotiate. There are many moving parts. To make progress, we have to get 18 people onside. Sometimes we have to go an extra mile in order to get that eighteenth person onside. That is the nature of negotiation in this place, and I do not think that should be characterised as some sort of inconsistency in ability. But I do say, and I will repeat: I apologise; I think that the first amendment should have been available earlier than 14 March, and I think that the second amendment, which was developed in response to Hon Michael Mischin's comment, probably should have been done more promptly, and probably should have been ready on the morning of the day that we were going to debate this, at least. There has been some change in procedure, because we have had some health challenges in our outfit—I again apologise—but what I think we have been able to do here is to negotiate a very positive outcome. I would hope to be able to come forward, as quickly as possible, with the second piece of legislation. That will then go off to the Standing Committee on Uniform Legislation and Statutes Review to test our view that that is the appropriate or is an adequate mechanism to deal with this problem of protecting our parliamentary sovereignty. I thank members for their support in principle.

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Colin Holt; Deputy Chair

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Question put and passed.

Bill read a second time.

*Committee*

The Deputy Chair of Committees (Hon Martin Aldridge) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

**Clause 1: Short title —**

**Hon MICHAEL MISCHIN:** This bill has had quite a protracted history. I interjected at one point on Hon Alannah MacTiernan's second reading reply to say that I did not entirely agree with everything she was saying. I do not want to go back over old ground; I would rather look forward to finally getting the bill passed in a manner that will allow us to discharge our function in respect of the controversial elements, but get the non-controversial ones out of the way. Given that the government has the management of business in this place, if it has a bill for which there is a committee report, such as the one that was presented in November last year, it is the government's decision to bring it on for debate. It should have used that time to formulate amendments so that we could have had the opportunity to consider them well enough in advance, particularly given the complexities and implications of what is being proposed here. Whether the excuse was that people were ill or otherwise indisposed is all very well; the house can accommodate a variety of problems and is here to not impede the government but assist it as necessary. If the government had dealt with us with respect and consideration, and if we had been provided an opportunity to consider amendments as much in advance as possible and with some leeway, we would not have had to get to the stage of me having to move a referral of part of the bill. Supplementary notice paper 75, issue 1, was intended to be a means of splitting the bill by simply getting rid of the controversial clauses, leaving it open for the government to present a new bill. We have now gotten around to that after some considerable time and turmoil.

We have our differences. Unfortunately, the minister is burdened or cursed with representing two ministers who do not seem to want to cooperate with this place and who have been obstructive, difficult, stubborn and disrespectful. She has had to bear the burden of that. We could have sorted all this out last week if there had been a little bit of cooperation from her principal. Nevertheless, I am glad we have got to this point. Those are the only comments I would make. I urge the minister and the other government ministers here to persuade their colleagues that life would be a whole lot simpler for everyone—the government and us—if they were to try, if at all possible, to deal with these matters more professionally, rather than to barge through. I look forward to moving the amendments in my name on the supplementary notice paper and ultimately having our committee deal with the merits of the proposed future adoption legislation when it is presented.

**Hon ALANNAH MacTIERNAN:** I thank the member for those comments. When I was able to get to speak with the Attorney General, he was quite prepared to go down that path. As I said, colleagues on our team here are making it clear to our colleagues in the other place that they have to be more available when legislation is coming through. We do have to be fleet of foot. There will be changes and there will be different people coming forward with different ideas and agendas, and we have to be able to think on our feet. I again formally thank Hon Michael Mischin for his very original insight in his second reading contribution that we had not got it entirely right the first time round, and for the fact that we have been able to negotiate an outcome.

**Hon NICK GOIRAN:** Is the government preparing any further amendments?

**Hon Alannah MacTiernan:** No.

**Hon NICK GOIRAN:** Is the minister sure?

**Hon Alannah MacTiernan:** I have answered the question.

**Hon NICK GOIRAN:** It appears that the minister is saying that no further amendments are being prepared by the government. I remind members, and in particular the minister, of how certain she was two days ago about matters, which is why I asked whether she is sure. I refer to the uncorrected proof of *Hansard* from Tuesday, 19 March 2019, in which the minister states —

... I think it is completely unnecessary to defer this for three months when we have come up with a resolution. We listened to the committee, got it slightly wrong, and went back and worked to try to corral everyone to come up with a solution that respects the sovereignty of this place. I absolutely urge members not to go down the path of splitting this bill and sending it back. We have done the job. We now have a provision that will give this place the certainty that it will be the final arbiter of any consumer law that takes effect in this state.

Those were the words of the minister who has carriage of this bill on Tuesday, 19 March 2019, as per the uncorrected proof of *Hansard*. I draw to the attention of members the certainty with which the minister articulated those words on Tuesday. She was absolutely sure on Tuesday that the government had done the job, and urged

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members not to go down the very path we are going down now. Hence, that is why I asked whether the government was preparing any further amendments. I add that when I responded on Tuesday, we were at issue 5 of the supplementary notice paper and we are now at issue 7. I am pleased to have this reassurance from the minister and I think we have all heard her say this afternoon that the government will not propose any further amendments at this time, so we will be able to progress with some certainty this afternoon. Can the minister inform the chamber which clauses the government will be supporting and which ones it will be opposing?

**Hon ALANNAH MacTIERNAN:** We will deal with them on a clause-by-clause basis. As I explained during my reply to the second reading debate when the member was out on urgent parliamentary business, I believe that the provision we came up with was one that adequately addressed the concerns. Nothing has changed, but, as I explained to the member, who is a very black-and-white person and perhaps does not understand that we do not control the numbers in this place, although we had that confidence on this side, we did not have a sufficient number of members taking that view to get across the line. That is the reason. I accept that we should have made these amendments available more promptly. It is not that I no longer believe what I said before, but that I have had to acknowledge that in order to bring forward a consensus and get to a position with the majority of members, we have to be flexible and we have to stand back and let that portion of the process go forward and be re-examined by the committee.

**Hon NICK GOIRAN:** Which clauses of the bill will the government be supporting?

**Hon ALANNAH MacTIERNAN:** Mr Deputy Chair, I seek some guidance here: are we on clause 1 at the moment?

**The DEPUTY CHAIR (Hon Martin Aldridge):** We are on clause 1.

**Hon ALANNAH MacTIERNAN:** I am happy to say that we will support clause 1.

**Hon NICK GOIRAN:** The minister has indicated that the government will be supporting clause 1. Will the government be opposing any clauses in the bill?

**Hon ALANNAH MacTIERNAN:** As we have indicated, and I am going to say this only once more—I have already said it on several occasions—we will not be opposing the amendments that have been put on the supplementary notice paper by Hon Michael Mischin. We will not be opposing those amendments. We will support all the other provisions of the bill.

**Hon NICK GOIRAN:** Is that a whole-of-government position or will this bill be coming back from the other place?

**Hon Sue Ellery:** For goodness sake; how can we speculate about what they are going to do down there?

**Hon ALANNAH MacTIERNAN:** I do not want to pre-empt the democracy.

**Hon NICK GOIRAN:** It is interesting that the Leader of the House has decided to engage in this matter. I might remind the Leader of the House what transpired the last time this minister had carriage of a bill before this place. I might remind the Leader of the House that we were told that under no circumstances would any amendments be agreed to by the other place. I am trying to ensure that we have some certainty when we are dealing with this bill. The Leader of the House was away on urgent parliamentary business, so she might not be aware that the handling of this bill has been highly shambolic and that we now have —

**Hon Sue Ellery:** I've been watching the debate and I think the minister's done an outstanding job.

**Hon NICK GOIRAN:** There we go, Mr Deputy Chair. Let *Hansard* not only record that interjection from the Leader of the House, but also bold, underline and highlight it because, according to the Leader of the House—the most experienced member opposite and the Leader of the Government in the Legislative Council—the standard with which this bill has been handled is outstanding. That pretty much says it all about not only the standards of the Leader of the House but also this government with respect to not only this bill but also the contemptuous attitude to the scrutiny by this place and to the house in general. If this is what the Leader of the House would call an outstanding performance, with all due respect, she needs to go back to her *Oxford English Dictionary* and re-familiarise herself with what “outstanding” means. “Outstanding” is not a synonym for “shambolic” or “high farce”. The Leader of the House is now away on urgent parliamentary business, but perhaps when she returns, she can let us know whether she has had the opportunity to consult the *Oxford English Dictionary* on the meaning of “outstanding”.

I have asked the minister whether the government will oppose any of the clauses in the bill that is currently before the chamber. The response the minister indicated was that the government would not be opposing any of the amendments on the supplementary notice paper. For the benefit of members, that means the government will be opposing two clauses—clauses 4 and 6. The reason that is the case is that —

*Point of Order*

Hon Michael Mischin; Hon Alannah MacTiernan; Hon Nick Goiran; Acting President; Hon Alison Xamon; Hon  
Colin Holt; Deputy Chair

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**Hon ALANNAH MacTIERNAN:** We are on clause 1 and I think we should be discussing clause 1. The member is seeking to bring in subsequent clauses.

**The DEPUTY CHAIR (Hon Martin Aldridge):** The minister has raised a point of order. There is no point of order. The purpose of a clause 1 debate is to range over the clauses of the bill, including potential, foreshadowed amendments as they stand on the supplementary notice paper. Therefore, this debate and these questions are in order. I give the call to Hon Nick Goiran.

*Committee Resumed*

**Hon NICK GOIRAN:** Thanks very much, Mr Deputy Chair. I am surprised by the point of order from the minister with carriage of this bill because this minister has a lot of experience in this place. In fact, this is not the first term of Parliament that she has been a member of the Legislative Council. For her to be so unfamiliar with the standing orders and the process of the Committee of the Whole House is quite surprising. I can surmise only that perhaps the hiatus between her stints in this place has caused some confusion and perhaps that is why there has been a little bit of uncertainty by the minister with the carriage of the bill this afternoon.

Nevertheless, as I was saying before I was rudely interrupted by the minister's non-point of order, I was looking at the fact that the minister had just said, while we are considering clause 1, that the government's position is that it will not oppose the amendments on the supplementary notice paper. For members to familiarise themselves with what that means, it is indicative that the government will be opposing clauses 4 and 6. Before that unruly interruption, I was simply drawing to members' attention that the first amendment on the supplementary notice paper, which deals with clause 4, is in the name of Hon Michael Mischin and he has foreshadowed that he intends, at page 2, lines 10 to 19, to oppose the clause. If members have a look at clause 4 on page 2 of the bill, they will see that lines 10 to 19 cover the entirety of clause 4—not part of it, but the entirety. The minister has indicated that the government will not be opposing what Hon Michael Mischin looks to do in his foreshadowed amendments, so that is indicative that the government will be opposing clause 4 in its entirety. My question to the minister is: will opposing clause 4 in its entirety have any consequential effect on any other element in the bill?

**Hon ALANNAH MacTIERNAN:** We have confidence that by accepting the suite of amendments on the supplementary notice paper, we can proceed, from the point when this bill is assented to, to deliver to Western Australian consumers the protection afforded them under the Australian Consumer Law. We are confident that this suite of amendments on the supplementary notice paper will effectively be to not make a decision on the mechanism for the incorporation of future federal legislation into Western Australian law. We intend to introduce another bill to deal with that. An amendment on the supplementary notice paper will set an end date for the suite of federal legislation that will be incorporated into the law by virtue of this bill once it becomes an act.

**Hon NICK GOIRAN:** Is it the case that all the amendments foreshadowed by Hon Michael Mischin need to be supported as a suite of amendments or is it open for members to support some of those amendments and not others? The point of the question is: are they consequential upon each other or can they be dealt with individually?

**Hon ALANNAH MacTIERNAN:** I would never presume to predict what the member might think is appropriate. All I can say is that this suite of amendments has been agreed upon by Hon Michael Mischin, by Hon Alison Xamon on behalf of her team, I believe by Hon Aaron Stonehouse and, hopefully, by others. We consider that these amendments would come as a package, but the member can do whatever he wants to do—he will in any event.

**Hon NICK GOIRAN:** What will be the impact of supporting Hon Michael Mischin's foreshadowed amendment to clause 4?

**Hon ALANNAH MacTIERNAN:** I am happy to discuss that when we get to clause 4.

**Hon NICK GOIRAN:** What will be the impact of supporting Hon Michael Mischin's foreshadowed amendments to clause 5?

**Hon Alannah MacTiernan:** The answer is the same for that clause.

**Hon NICK GOIRAN:** So that we are clear, will the minister answer that at clause 4?

**Hon ALANNAH MacTIERNAN:** At clause 4, I will again state what I have already just stated. I am happy to restate it, but then that will be the only other time that I will make that statement, probably for about the fourth or fifth time now.

**Hon NICK GOIRAN:** I think that the minister has misunderstood me. We are now talking about the foreshadowed amendment to clause 5. The minister said that she will deal with that at clause 4. Will the minister deal with it at clause 4 or clause 5?

**Hon ALANNAH MacTIERNAN:** I will deal with it at clause 5.

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**Hon NICK GOIRAN:** Can the minister indicate what will be the impact of supporting the amendment to clause 6 that has been foreshadowed by Hon Michael Mischin?

**Hon Alannah MacTiernan:** I will deal with that at clause 6.

**Hon NICK GOIRAN:** The minister mentioned moments ago in her remarks that it is the intention of the government to introduce another bill. Why is that necessary?

**Hon ALANNAH MacTIERNAN:** I have explained this. I know the member totally and absolutely understands it. I know that there is no good faith in this questioning. Honestly, I just hope that other members are really looking at what is going on here and questioning whether this is a respectful process for this chamber.

As I have said, we are agreeing to take out the current mechanism that deals with the way future commonwealth legislation is incorporated into the state consumer law. In order to get before the Parliament a mechanism that embraces the fundamental intent of this legislation—that is, a way in which Australian Consumer Law can be incorporated into state law—we need a new bill to put a mechanism back into the legislation because we have taken out the mechanism from this bill.

**Hon NICK GOIRAN:** What progress has been made in the preparation of that new bill?

**Hon ALANNAH MacTIERNAN:** We will introduce it as soon as it is ready.

**Hon NICK GOIRAN:** Does the minister anticipate that to be within the next three months?

**Hon Alannah MacTiernan:** Yes.

**Hon NICK GOIRAN:** Two days ago, in fact, less than 48 hours ago, the minister expressed concern that this process might take longer than three months. Given that she intends to introduce a bill at some time in the next three months, is that three-month process something that the rest of us should be concerned about or is that no longer a concern?

**Hon ALANNAH MacTIERNAN:** The fundamental issue has been dealt with. If we ever manage to get this piece of legislation through the Parliament with the amendments, 80-odd consumer protections will be incorporated into Western Australian law. Our concern was that if the entire bill went off to a committee, then movement on this would be delayed. Hon Michael Mischin agreed with that and so we worked with the Clerk to find a proper solution.

**Hon NICK GOIRAN:** Will this bill that the government is working on and intends to introduce in the next three months have the same mechanism that the minister was proposing earlier this week or a different mechanism?

**Hon ALANNAH MacTIERNAN:** We are not debating the bill that we are yet to introduce. We are debating the bill that is in front of us.

**Hon NICK GOIRAN:** With respect, if the minister familiarises herself with clauses 4 to 6 of the bill currently before us, they outline the mechanism being proposed by the government. The government is now looking to oppose that mechanism because of Hon Michael Mischin's amendments that it has agreed to support. The minister has indicated that the government is going to prepare another bill and another mechanism. Plainly, it is not the intention of the government to replicate the provisions currently in this bill, but to prepare something different. It is incumbent upon the minister to indicate to the chamber whether the mechanism is intended to be in either the amendments currently in the bill or the version proposed two days ago, or is there a third version?

**Hon ALANNAH MacTIERNAN:** We think that the mechanism that is being removed would be fit for purpose, but we recognise that members on the other side feel that they need more time to look at this and they want that mechanism to be determined by the Standing Committee on Uniform Legislation and Statutes Review. It is not a question of us saying that we do not think that the mechanism is right, but we understand that members on the other side need it ground-truthed, road-tested or whatever, through the processes of the uniform legislation committee, so we are bowing to their desires.

**Hon NICK GOIRAN:** Thank you, minister. That is helpful. I understand that the government has made a commitment to refer the bill that it is currently preparing to the Standing Committee on Uniform Legislation and Statutes Review.

**Hon Alannah MacTiernan:** As I have said about four times, yes.

**Hon NICK GOIRAN:** The minister would be aware that that does not customarily happen under our standing orders. The government will be required to move that in due course to ensure that that happens. I thank the minister for confirming that she or a government member will do that at a particular point in time. Who does the government intend to consult on the bill that it will be preparing?

**Hon ALANNAH MacTIERNAN:** I am not proposing to talk further on that bill during the discussion of this bill.

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**Hon NICK GOIRAN:** Is that because the minister is unfamiliar with who will be consulted or is it because nobody is going to be consulted?

**Hon ALANNAH MacTIERNAN:** The point is that we have a mechanism that we have proposed. It will now go to the Standing Committee on Uniform Legislation and Statutes Review for the committee to consider. We think that is the appropriate mechanism for dealing with this matter. That was the mechanism that we negotiated with Hon Michael Mischin.

**Hon NICK GOIRAN:** Will that be a draft bill that goes to the committee?

**Hon Alannah MacTiernan:** No.

**Hon NICK GOIRAN:** Can the minister indicate to the chamber where we can find the amendments to the Australian Consumer Law that are being incorporated at the moment by this bill?

**Hon ALANNAH MacTIERNAN:** I have a list here, which I am happy to table.

[See paper 2513.]

**Hon NICK GOIRAN:** It would be useful if that document could be made available to all members as we continue with consideration of clause 1. While that is being prepared, what will be the effect of us adopting the amendments that we are incorporating?

**Hon ALANNAH MacTIERNAN:** The uniform legislation committee's report considered each of these provisions and felt that they all should be incorporated into Western Australian law. I am not going to read out all those provisions, but they and the impact of them are contained in the report.

**Hon NICK GOIRAN:** The member mentioned that the committee considered all these. Where in the committee's report do I find that consideration and analysis?

**Hon ALANNAH MacTIERNAN:** In paragraph 6.96.

**Hon NICK GOIRAN:** Mr Deputy Chair —

**Hon Alannah MacTiernan:** You've obviously come in here totally unprepared.

**Hon NICK GOIRAN:** The minister has directed us to paragraph 6.96 on page 25 of the 119<sup>th</sup> report of the Standing Committee on Uniform Legislation and Statutes Review, which was tabled in November of last year.

**Hon Alannah MacTiernan** interjected.

**Hon NICK GOIRAN:** Sorry, minister. I have the call. The minister was very sure of herself a moment ago to say that I was the one in here unprepared. I do hope that Hansard picked up that interjection by the minister because apparently I am the one who is unprepared. If the minister is going to correct the record in a moment, she will wait for the call.

A member interjected.

*Point of Order*

**Hon MICHAEL MISCHIN:** Hon Darren West ought to know better than to make interjections from somewhere other than his own chair.

**The DEPUTY CHAIR (Hon Martin Aldridge):** Members, that is a valid point of order. Hon Darren West has been here long enough to know not to interject from a chair other than his own.

*Committee Resumed*

**Hon NICK GOIRAN:** It seems that members opposite are getting very unruly. They are not even sure which chair they are supposed to be sitting in. Maybe the parliamentary secretary is in a great hurry —

**Hon Alannah MacTiernan** interjected.

**Hon NICK GOIRAN:** Sorry; I missed that. Does the minister want to repeat it?

**The DEPUTY CHAIR:** Order!

**Hon NICK GOIRAN:** I did not think so. It seems that the parliamentary secretary is in a big hurry to get into the minister's seat. That is rather interesting. I return to paragraph 6.96 on page 25 of the 119<sup>th</sup> report in this fortieth Parliament, which the minister has drawn to our attention. That paragraph states —

Eight Commonwealth Acts have amended the ACL since 1 January 2013. They are the:

- *Competition and Consumer Amendment Act 2013*
- *Consumer Credit Legislation Amendment (Enhancements) Act 2012*

- *Omnibus Repeal Day (Autumn 2014) Act 2014*
- *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015*
- *Competition and Consumer (Country of Origin) Act 2017*
- *Competition and Consumer Amendment (Competition Policy Review) Act 2018*
- *Treasury Laws Amendment (2018 Measures No.3) Act 2018*
- *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018*

Interestingly, that is the sum total of paragraph 6.96. This is the paragraph the minister drew to our attention. When I asked where the analysis from the committee about the impact of these laws is, the minister referred us to paragraph 6.96. Will the minister concede that paragraph 6.96 is not an analysis, but, rather, a list of the eight commonwealth acts that have amended the ACL since that date?

**Hon ALANNAH MacTIERNAN:** The analysis continues from that point. That is the starting point, which I was trying to let the member know. It concludes at paragraph 6.172, which states —

The amendments raise no issues of Parliamentary sovereignty or law-making powers.

**Hon NICK GOIRAN:** Again, those are two different things, are they not? The minister is saying now that the committee has provided an analysis about whether those matters impact parliamentary sovereignty. That was not my question. My question was: what is the effect of the amendments that we are incorporating into our law in Western Australia at this time? My question was not whether they affect parliamentary sovereignty. What is it that we are currently incorporating into Western Australian law?

**Hon ALANNAH MacTIERNAN:** The list of each of the provisions is set out in that document that I have tabled. It sets out the impact of those and I have nothing to add to that.

**Hon NICK GOIRAN:** The document that the minister has given me and tabled moments ago lists nine amendments. But the list that the minister referred me to in paragraph 6.96 has only eight amendments. What is the difference and why is it the case?

**Hon ALANNAH MacTIERNAN:** There was an additional one which had been passed prior to the committee reporting but which the committee had not considered. As I understand it that is the Treasury Laws Amendment (Gift Cards) Act 2018, which amends the ACL to implement a national regime to regulate gift cards, including requirements that cards must have a minimum three-year expiry date.

**Hon NICK GOIRAN:** Does the Treasury Laws Amendment (Gift Cards) Act 2018, which we are incorporating into Western Australian law, do anything else?

**Hon ALANNAH MacTIERNAN:** Its effect is set out in that document.

**Hon NICK GOIRAN:** That is the document that the minister tabled a little earlier. The version that I have in front of me indicates that the impact will be that it —

Amends the ACL to introduce a national regime to regulate gift cards including requirements that cards must have a minimum three year expiry period —

I notice that the document says a minimum “three year” expiry period, not a three-year expiry period. Can the minister explain that to us?

**Hon ALANNAH MacTIERNAN:** It should be “three-year”.

**Hon NICK GOIRAN:** That is unfortunate. It is another mistake that has been made in the handling of this bill. Nevertheless, it goes on to state —

and display expiry date on the card and prohibition on the charge of post purchase fees.

What are these post-purchase fees that are to be prohibited?

**Hon ALANNAH MacTIERNAN:** They are any fee. It is a prohibition of charge of post-purchase fees; a post-purchase fee is a charge that occurs after a purchase.

**Hon NICK GOIRAN:** Is that the minister’s definition or is that defined somewhere?

**Hon Alannah MacTiernan:** That is just the logic of the word; it is a post-purchase fee, which means a fee —

**Hon Nick Goiran:** So it is not defined?

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**The DEPUTY CHAIR (Hon Martin Aldridge):** Order, members! We are in Committee of the Whole and it would certainly assist the Chair, as well as Hansard, if members stood and sought the call before replying or asking a question.

**Hon NICK GOIRAN:** Does the minister now have a definition in front of her?

**Hon ALANNAH MacTIERNAN:** Yes; the definition in the act of what is called a “post-supply fee” states —  
... a fee or charge payable in relation to a gift card after it is supplied to a consumer, other than a fee or charge of a kind specified in the regulations.

**Hon NICK GOIRAN:** Can the minister identify the document that she just quoted?

**Hon ALANNAH MacTIERNAN:** The document is the Treasury Laws Amendment (Gift Cards) Act 2001, and it is listed on the Australian Consumer Law amendments document as a bill; it is now an act.

**Hon NICK GOIRAN:** Is that a commonwealth act?

**Hon ALANNAH MacTIERNAN:** I mean, honestly, this is absurd. As the member well knows, the whole purpose of this bill is to incorporate these commonwealth laws.

**Hon NICK GOIRAN:** The minister noted earlier, as did I—I think we were in furious agreement—that paragraph 6.96 of the committee’s report listed eight commonwealth acts, yet the document that the minister tabled a little earlier has nine acts listed, and she explained why. Have there been any further changes since that time?

**Hon ALANNAH MacTIERNAN:** No further changes will be incorporated if we proceed with this bill, because we have incorporated into the amendments before us a cut-off date of 26 October 2018. That was the date after the committee report was concluded, so any subsequent changes to law that are to be incorporated will have to wait until we have the new mechanism.

**Hon NICK GOIRAN:** I thank the minister; that is helpful. I note that the document that the minister tabled earlier indicates that it is current as at 20 February 2019. Are all the acts that have been incorporated as at 20 February 2019 also on the list for the cut-off date in October that the minister specified?

**Hon Alannah MacTiernan:** Yes.

**Hon NICK GOIRAN:** Is the minister sure that there have been no changes between 26 October 2018 and 20 February 2019?

**Hon ALANNAH MacTIERNAN:** No, I am not sure, but it is not relevant, because with the suite of amendments that we have, we are dealing with changes only until 26 October 2018.

**Hon NICK GOIRAN:** The minister says that those are the nine acts that she referred to in this document. What was the significance of selecting the 20 February 2019 date?

**Hon ALANNAH MacTIERNAN:** It was just an administrative document made when we were preparing for this legislation to come through, but we have negotiated with Hon Michael Mischin that an appropriate cut-off date is the date that the committee concluded its report.

**Hon NICK GOIRAN:** The minister says that, but the version of the report that I have in front of me is dated November 2018, not 26 October 2018. Why the discrepancy?

**Hon Alannah MacTiernan:** It is the date, I understand, that the report was signed off by the committee.

**Hon NICK GOIRAN:** On what basis does the minister say that that is the date?

**Hon ALANNAH MacTIERNAN:** I was acting on the advice of Hon Michael Mischin. If the member wishes to change the date, change the date.

**Hon MICHAEL MISCHIN:** Originally, as I mentioned in the course of my contribution to the second reading debate, I selected 27 June 2018 as being the date that the bill had been introduced into this house. I think 25 October is the date of the last set of commonwealth amendments to Australian Consumer Law, or the date that that last set of amendments came into effect, those amendments being the last ones that we as a committee were aware of. As a consequence of yesterday’s discussions about the way to proceed, I suggested 26 October, being the day after the date that that last set of laws came into effect at the commonwealth level, just as a safeguard to ensure that everything that had amended Australian Consumer Law up to and including that date were incorporated. As a committee, we had not been aware of or able to consider any commonwealth amendments to Australian Consumer Law after the Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018, which came into effect on 25 October 2018. We settled our report after that, but that was the last bill that we considered.

Hon Michael Mischin; Hon Alannah MacTiernan; Hon Nick Goiran; Acting President; Hon Alison Xamon; Hon  
Colin Holt; Deputy Chair

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**Hon NICK GOIRAN:** One of the amendments to the ACL that will be incorporated, if we agree to this bill, is the Competition and Consumer Amendment (Competition Policy Review) Act 2018. According to the document the minister tabled earlier, this amendment will clarify how the cooling-off period operates in unsolicited consumer agreements. What is the cooling-off period?

**Hon ALANNAH MacTIERNAN:** I am seeking clarification. Is the member seeking to know the length of the cooling-off period?

**Hon Nick Goiran:** Yes.

**Hon ALANNAH MacTIERNAN:** The cooling-off period is 10 days.

**Hon NICK GOIRAN:** This amendment will clarify how that 10 day cooling-off period operates in unsolicited consumer agreements. What is an unsolicited consumer agreement?

**Hon ALANNAH MacTIERNAN:** It is the consumer agreement that has not been solicited.

**Hon NICK GOIRAN:** Is there a definition of unsolicited consumer agreements, or is this just the minister's personal definition?

**Hon ALANNAH MacTIERNAN:** Those definitions are already part of the current consumer law that has been incorporated into Western Australian law. They are part of the Fair Trading Act 2010.

**Hon NICK GOIRAN:** The Competition and Consumer Amendment (Country of Origin) Act 2017 and the Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015 will have an impact on small businesses in Western Australia—both will deal with small businesses. Will all small businesses in Western Australia be captured by these amendments?

**Hon ALANNAH MacTIERNAN:** Yes. The small business advocacy group really wants these to go through because it makes its job much easier when there is national consistency.

**Hon NICK GOIRAN:** In what fashion has the small business group communicated that to the government?

**Hon ALANNAH MacTIERNAN:** It has been having regular meetings with representatives of the Small Business Development Corporation.

**Hon NICK GOIRAN:** In respect of the Competition and Consumer Amendment (Country of Origin) Act 2017, this document says it will provide certainty for small business and clarification for consumers by setting out clear “safe harbour” defences. What is a safe harbour defence?

**Hon ALANNAH MacTIERNAN:** It sets out the sorts of things that a small business is required to do to have a defence against a charge that there have been wrong country-of-origin claims. If a small business is able to establish that it took all steps to make reasonable representations and it had a basis for making those representations, that constitutes a defence.

**Hon NICK GOIRAN:** This is a general criticism, not a specific one in respect of this bill or the handling of it: I find it a little unsatisfactory that the bill before us does not set out all these matters and we have to delve in great detail and ask numerous questions to find out what exactly is going on behind the scenes, noting that all these amendments will become Western Australian law, should this bill pass through both houses of the Western Australian Parliament. It should be set out far more explicitly. I commend the government for the preparation of this document that was tabled earlier, titled “Australian Consumer Law Amendments”, because at least it provides some clarification about what is intended to be captured or incorporated into Western Australian law in a plain English fashion, albeit, as we can see here, many more questions could be posed for each and every one of the nine acts that are to be amended. I refer to simple things such as whether all Western Australian small businesses will be covered; what exactly are safe harbour defences; and how long is the cooling-off period and the like. We could spend hours interrogating each and every one of those nine acts if we were so minded. As a general comment, it is regrettable that these types of matters are not more expressly set out in these types of bills. It requires great interrogation to appreciate exactly what we are agreeing to and what type of law changes we are agreeing to on behalf of our representatives. Nevertheless, I thank the government for the preparation of that document, which takes us a little further, and for the tabling of it. I will just indicate that I support clause 1.

**Clause put and passed.**

**Committee interrupted, pursuant to standing orders.**

[Continued on page 1672.]

*Sitting suspended from 4.15 to 4.30 pm*