

FAIR TRADING AMENDMENT BILL 2013

Introduction and First Reading

Bill introduced, on motion by **Hon Michael Mischin (Minister for Commerce)**, and read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Minister for Commerce) [5.12 pm]: I move —

That the bill be now read a second time.

The Fair Trading Amendment Bill 2013 has two objectives. The first, and primary, purpose of the bill is to bring the Australian Consumer Law in Western Australia into line with the Australian Consumer Law in force in all other Australian jurisdictions. Its second purpose is to make a number of amendments that will improve the administration of the Fair Trading Act 2010 and correct a small number of anomalies and drafting errors.

The Australian Consumer Law is a nationally consistent consumer law. Under the Intergovernmental Agreement for the Australian Consumer Law, Western Australia agreed to apply the Australian Consumer Law as a law of Western Australia. This was achieved by the Fair Trading Act 2010, which came into operation on 1 January 2011 and applied the commonwealth Australian Consumer Law in force on that date as a law of Western Australia. However, unlike other Australian jurisdictions, Western Australia's Fair Trading Act does not automatically apply amendments made to the Commonwealth Australian Consumer Law to Western Australia. Instead, such amendments must be adopted by specific amendment legislation passed by the Parliament of Western Australia.

The Australian Consumer Law in Western Australia currently differs from the law in all other jurisdictions due to amendments that have been passed and have come into operation since the Australian Consumer Law was first enacted. Those amendments have been agreed to by all jurisdictions, including Western Australia, pursuant to the voting arrangement provided for in the intergovernmental agreement. Accordingly, this bill amends the Fair Trading Act 2010 to apply the commonwealth Australian Consumer Law in force on 1 January 2013 as a law of Western Australia. This means that Western Australia will adopt all the amendments to the commonwealth Australian Consumer Law that have come into effect up to and including that date.

In addition to aligning Western Australian consumer law to that of the rest of the country, the bill will ensure that the amendments to the commonwealth Australian Consumer Law will apply to Western Australian businesses that are not corporations. The limitations on the commonwealth's constitutional powers to legislate means that the commonwealth Australian Consumer Law applies only to corporations. Businesses that operate under a different business structure, such as sole traders or partnerships, are governed by the Western Australian version of the Australian Consumer Law.

Although there may be only a few differences between the two versions of the Australian Consumer Law, businesses should not have to operate under different laws depending on their business structure. It is advisable that Western Australia adopt the amendments that have occurred so that the law under which businesses operate is the same, regardless of their business structure and so that consumers can enjoy equal protection from uniform laws regardless of the business structure of the entity with which they are dealing.

The amendments sought to be adopted include the introduction of interpretive principles into the unconscionable conduct provisions in order to assist the courts, consumers and businesses to understand the scope of the prohibition on unconscionable conduct. These principles clarify, rather than alter, the effect of the statutory prohibition of unconscionable conduct.

Other minor amendments affecting the definition of "document" and references to the Standards Association of Australia in the Australian Consumer Law will also be adopted. As well as aligning Western Australia's version of the Australian Consumer Law with the rest of Australia, the bill also makes a number of other amendments to the Fair Trading Act 2010. It amends the Fair Trading Act to empower the Commissioner for Consumer Protection to assume conduct of any legal action already commenced by a consumer or business, or to defend any legal action against a consumer or business that is already underway. This will serve as an adjunct to the power the commissioner already possesses to institute or defend proceedings on behalf of a consumer or business where it is proper to do so and in the public interest.

Furthermore, the bill makes it an indictable offence to not comply with an order of the Supreme Court or District Court that prohibits the payment or transfer of money or other property. It expands the number of licensing acts in the consumer protection portfolio under which the commissioner can exercise specific investigation and enforcement powers. It also addresses anomalies and drafting errors in the Fair Trading Act 2010.

The reforms in this bill will enable Western Australia to meet its obligations under the intergovernmental agreement for the Australian Consumer Law as well as improve the clarity and effectiveness of the legislation.

To the extent this bill contains provisions that give effect to an intergovernmental agreement and introduces uniform laws throughout the commonwealth, it is a uniform legislation bill for the purposes of standing order 126 of the Legislative Council and so is referred to the Standing Committee on Uniform Legislation and Statutes Review for consideration and report.

I commend the bill to the house and table the explanatory memorandum.

[See paper 249.]

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