

**FAIR TRADING AMENDMENT BILL 2021**

*Second Reading*

Resumed from 9 August.

**HON ALANNAH MacTIERNAN (South West — Minister for Regional Development)** [5.52 pm] — in reply: I thank both the Leader of the Opposition and Hon Donna Faragher, who spoke on and expressed their support for the Fair Trading Amendment Bill 2021, which will bring our consumer legislation in line with that of the commonwealth and provide a mechanism for lock-step changes in the future, but in a way that preserves our parliamentary sovereignty. Subsequent to a change to the standing orders of this place that was made earlier, uniform commonwealth legislation will be captured under the disallowance provisions to make sure that there is an opportunity for any such disallowance to be dealt with before the legislation comes into effect.

I will answer some very specific questions. Members sought confirmation that the concerns raised by the Standing Committee on Uniform Legislation and Statutes Review have been adequately addressed. I am advised that the bill, if passed, will replace the existing Australian Consumer Law application provisions within the Fair Trading Act with the proposed new mechanism that will automatically incorporate amendments to the Australian Consumer Law into the Western Australian law, but sovereignty will be protected by providing that all future commonwealth amendments will be subject to tabling in each house of Parliament and may be disallowed by any house. Any proposed commonwealth amendments will not be incorporated into WA law until such time as the disallowance process is complete. The government has accepted and supported the recommendations of the uniform legislation committee and agrees with its principle in the finding that referral to the Joint Standing Committee on Delegated Legislation will provide an extra layer of scrutiny.

We also had a question about the steps that will be taken to meet WA's obligations in the case of disallowance. The question was: if a provision was disallowed, how would this be dealt with? I am advised that the parties to the intergovernmental agreement have committed to maintaining consistent legislation. The commonwealth has not made any amendments to the ACL without the unanimous approval of all states and territories. If the Parliament determined it was not going to support that, we would need to engage with other parties to attempt to formulate an amendment to the ACL in Western Australia that would achieve a consistent outcome in a way that is acceptable to the Western Australian Parliament. The amendment would then need to be incorporated into WA law by way of an amendment bill. All parties would be strongly committed to attempting to find an acceptable solution, so, ultimately, it could be managed without any constitutional issues. Passing an amendment bill could take some time, but it would be the same process that has been used since the commencement of the ACL in 2010, so it could be managed if necessary.

Hon Donna Faragher asked me to confirm that the proposed amendment on the supplementary notice paper is consistent with the amendments made to the Legal Profession Uniform Law Application Bill 2021 and that it reflects the recommendation of the uniform legislation committee. The response to that query is that the wording of the amendment is different from that proposed by the committee, and that has been on the advice of the Parliamentary Counsel's Office, but the result will be the same. The proposed draft amendment makes it clear why publication is being referred to and also allows the standing orders to change the committee that a bill can be referred to. This will provide more flexibility should the Parliament decide that a review should be undertaken by a different committee from the joint delegated legislation committee. I can confirm that this is the same approach that was undertaken to implement the recommendations made in the 136<sup>th</sup> report of the Standing Committee on Uniform Legislation and Statutes Review, which reviews the equivalent provision in the Legal Profession Uniform Law Application Bill 2021.

This particular mechanism is obviously now going to be more frequently used. For our gene technology legislation, it will provide a new way of overcoming some of the impasse experienced in the past by that legislation. As expeditiously as possible, it will allow us to move forward with legislation in a nationally consistent way. At the same time, it will allow for a mechanism to protect the sovereignty of Parliament. It will mean that we do not have these long lags between Western Australia and the national schemes and we will be able to proceed in a far more expeditious way. At the same time, it will ensure that if the will of the Parliament is such that Western Australia does not conform, we will have the option to withdraw our consent. I think it will make the administration of these uniform legislation schemes much more effective and see us, importantly, not creating difficulties by having legislation that is very much out of date.

I thank the Standing Committee on Uniform Legislation and Statutes Review for the work it did on this bill. I am very pleased to see that we have been able to devise an elegant solution to the problem of expeditious passage of uniform legislation agreements. I thank all who have been involved. I thank the personnel who have been involved in preparing this legislation and I commend the bill to house.

Question put and passed.

Bill read a second time.

*Committee*

The 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 Dr STEVE THOMAS:** We will not be particularly long in this debate. The intent is to make sure that we finish the third reading of the bill by 6.20 pm so that it can progress. We will aim to get through this as quickly as possible. Just before we get to the amendment to be moved by the minister, which I will put out at the start we will be supporting, I have a question. Can the minister tell us whether any other alternatives were looked at for what the minister called a neat solution to this problem, or was this the only option that was looked at?

**Hon ALANNAH MacTIERNAN:** My understanding is that only two options were considered. It was the option we have before us by way of the amendment and the option that was recommended.

**Hon Dr STEVE THOMAS:** As part of the bill before us, effectively three commonwealth acts were enacted during the period. They are already in place at a commonwealth level. They are the Treasury Laws Amendment (2020 Measures No. 6) Act 2020; the Competition and Consumer Amendment (Australian Consumer Law—Country of Origin Representations) Act 2020; and the Financial Sector Reform (Hayne Royal Commission Response) Act 2020. How has the government and the system dealt with them in the interim, from their federal enactment to currently when they are being put in place by this bill?

**Hon ALANNAH MacTIERNAN:** The agency has been basically unable to enforce those commonwealth provisions. It has had to deal with these things in an educative way. It creates a problem that we are out of step with the federal provisions, notwithstanding the fact that there does not appear to be any parliamentary opposition to the provisions. What we can see in this legislation and Legal Profession Uniform Law Application Bill 2021 is really an important step forward. I referred to the gene technology legislation that had this problem. We are now approaching the drafting of that legislation in the same way.

**Clause put and passed.**

**Clauses 2 to 4 put and passed.**

**Clause 5: Section 19 amended —**

**Hon Dr STEVE THOMAS:** Clause 5 is the beginning of the amendment to section 19. It is a slightly confusing clause to me. Section 19 effectively changes the definition of an amending law. It states —

- (a) Schedule 2 to the *Competition and Consumer Act 2010* ... as in force ... as amended by each provision that —
  - (i) is in an amending law that has effect for the purposes of this section under section 19B; ...

Is there a simple way to explain the impact on schedule 2 to the Competition and Consumer Act 2010 that tells us why that is an important part of the bill?

**Hon ALANNAH MacTIERNAN:** The last amending bill was in 2018, so in the legislature it has 2018. This updates it until 2021. During that period was when those three provisions were adopted. It enables those three provisions to be incorporated.

**Clause put and passed.**

**Clause 6: Sections 19A to 19D inserted —**

**The CHAIR:** I draw members' attention to the supplementary notice paper.

**Hon ALANNAH MacTIERNAN:** Can I move —

**The CHAIR:** No, you cannot, minister. In accordance with standing order 136(3), I am required to, on behalf of the committee, put its amendment as it stands on the supplementary notice paper. If it is the decision of the house that the minister's amendment is preferred, the course of action required of the house is to defeat the amendment of the committee. We can then move forthwith with your amendment. I move —

Page 4, line 7 — To delete "Assent." and insert —

Assent and upon being laid before each House is taken to be published under this Act.

**Hon ALANNAH MacTIERNAN:** I would urge the opposition's members to oppose this amendment, for the reasons that we have already explained. We have another model that we think will work better, give greater flexibility

to Parliament and in a very consistent way allow us to protect parliamentary sovereignty whilst moving expeditiously towards uniform enactment.

**Hon Dr STEVE THOMAS:** The opposition has obviously accepted that the government's position on this is that this is adequate protection for the sovereignty of Parliament and it is still on here because the committee's proposed amendment came in first. We will take the government at its word that this will do an adequate job. Obviously, we will be here to point fingers if there is a problem with it, no doubt, but there has been a general acceptance, including by the Chair of the Standing Committee on Uniform Legislation and Statutes Review, that the proposal by the government is worthy of giving it a chance of success. We will support the government's position in opposing the committee recommendations supporting the minister's recommendation.

**Amendment put and negatived.**

**Hon ALANNAH MacTIERNAN:** I move —

Page 6, after line 15 — To insert —

**19E. Tabling of amending law taken to be publication for Standing Orders**

(1) In this section —

*parliamentary committee* means a committee established by either or both of the Houses of Parliament.

(2) If a Standing Order of a House of Parliament provides that on the publication of an instrument under a written law the instrument is referred to a parliamentary committee for consideration, the laying of an amending law before the House under section 19A is taken to be publication of the amending law for the purposes of the Standing Order.

(3) This section does not apply if the Standing Orders of the House provide specifically for an amending law to be considered by a parliamentary committee.

**Hon Dr STEVE THOMAS:** As I said, the opposition will take the government at its word and support the amendment proposed by the minister, and give it a chance to succeed.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 7 put and passed.**

**Title put and passed.**

*Report*

Bill reported, with an amendment, and, by leave, the report adopted.

*As to Third Reading — Standing Orders Suspension — Motion*

On motion without notice by **Hon Alannah MacTiernan (Minister for Regional Development)**, resolved with an absolute majority —

That so much of standing orders be suspended so as to enable the bill to be read a third time forthwith.

*Third Reading*

**HON ALANNAH MacTIERNAN (South West — Minister for Regional Development)** [6.17 pm]: I move —

That the bill be now read a third time.

**HON DR STEVE THOMAS (South West — Leader of the Opposition)** [6.18 pm]: I want to thank everybody who has contributed, particularly the Chair of the Standing Committee on Uniform Legislation and Statutes Review. The work has been done in a cooperative and friendly manner, but in particularly trying to get a good outcome, it just proves that the Legislative Council can work cooperatively when it needs to. In the hope that we might move directly to members' statements, I also commend the bill to the house.

Question put and passed.

Bill read a third time and transmitted to the Assembly.