

EXPLANATORY MEMORANDUM

Fair Trading Amendment Bill 2018

FAIR TRADING AMENDMENT BILL 2018

Overview of Bill

The Fair Trading Amendment Bill 2018 amends the *Fair Trading Act 2010* (the FTA) to bring the Australian Consumer Law in Western Australia (ACL WA) into alignment with the Australian Consumer Law (ACL) in other jurisdictions.

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

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

A clause by clause commentary of the Bill is as follows:

Clause 1 PART 1 - PRELIMINARY

Short Title

This clause provides the short title of the *Fair Trading Act 2018*.

Clause 2 Commencement

This clause provides that sections 1 and 2 of the Act will commence on Royal Assent and the remaining sections will commence on the following day.

Clause 3 Act amended

Clause 3 provides that this Act amends the *Fair Trading Act 2010* (FTA).

Clause 4 Section 19 amended

Clause 4 amends section 19 of the FTA to replace “1 January 2013” with “26 October 2018”. The effect is to incorporate all Commonwealth amendments to the Australian Consumer Law (ACL) made between 1 January 2013 and 26 October 2018 into the Australian Consumer Law (Western Australia) (ACL (WA)).

The following Commonwealth legislation has made amendments to the ACL which will be incorporated into the ACL (WA) as a result of the amendment:

- *Competition and Consumer Amendment Act 2013*

Will permit display on a restaurant or café menu of holiday surcharges provided that certain conditions in relation to disclosure and transparency are met.

- *Consumer Credit Legislation Amendment (Enhancements) Act 2012*

Makes technical amendments to correct a drafting error identified by the Commonwealth in respect of the use of the term 'consumer goods' in several parts of the ACL.

- *Omnibus Repeal Day (Autumn 2014) Act 2014*

A technical amendment which deletes section 19(6)(c) of the ACL as a result of changes made to broadcasting licence arrangements.

- *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015*

Extends the unfair contract terms protections afforded to consumers in the ACL to small business entering into consumer contracts.

- *Competition and Consumer (Country of Origin) Act 2017*

Provides certainty for small business and clarification for consumers by setting out clear 'safe harbour' defences for country of origin claims and use of logos indicating the origin of consumer products.

- *Competition and Consumer Amendment (Competition Policy Review) Act 2018*

Clarifies how the 'cooling-off' period operates in unsolicited consumer agreements preventing a loophole that permits the supply of goods prior to the commencement of the cooling off period.

- *Treasury Laws Amendment (2018 Measures No.3) Bill 2018*

Strengthens penalties under the ACL for improved alignment with the maximum penalties under competition provisions of the *Competition and Consumer Act 2010*.

Provides a safe harbour defence under the ACL for compliance with an information standard for producers of free range eggs.

- *Treasury Laws Amendment (Gift Cards) Bill 2018*

Amends the ACL to introduce a national regime to regulate gift cards including requirements that cards must have a

minimum three year expiry period and display expiry date on the card and prohibition on the charge of post purchase fees.

- *Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018*

Extends the unconscionable conduct protections of the ACL to publicly listed companies.

Ensures that unsolicited service provisions in the ACL operate as intended by including situations where services were not actually supplied.

Clarifies that an unsolicited consumer agreement may be entered into in a public place.

Requires that the fees associated with pre-selected options attached to a product are disclosed in the headline price.

Clarifies when the notification obligations under a voluntary recall apply.

Clarifies the scope of consumer guarantees where goods are transported or stored.

Clause 5 Section 63B amended

Clause 7 amends section 63B of the FTA by deleting subsection 63B(2) and replacing it with a new subsection that provides that the Minister must appoint a member of the Property Industry Advisory Committee to be the Chairperson of the Committee. The new provision will give the Minister greater choice by allowing him or her to appoint any Committee member, including the Commissioner who is a member of the Committee ex-officio, to be the Chairperson.

Clause 6 Section 63F amended

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

Clause 7 Section 63J amended

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

to appoint any Committee member, including the Commissioner who is a member of the Committee ex-officio, to be the Chairperson.

Clause 8 Section 108 amended

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

This extends the operation of section 108, which currently permits findings of fact in related proceedings to be relied upon in subsequent follow-on proceedings. In addition to findings of fact admissions of fact made in related proceedings will also be able to be relied on in proceedings for an order under section 105(3) of the FTA or under sections 236(1), 237(1), 238(1) or 239(1) of the ACL WA.

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