

40TH PARLIAMENT



Report 116

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Fair Trading Amendment Bill 2018 - Extension of time

Presented by
Hon Michael Mischin (Chairman)
September 2018

Standing Committee on Uniform Legislation and Statutes Review

Members as at the time of this inquiry:

Hon Michael Mischin MLC (Chairman)

Hon Pierre Yang MLC (Deputy Chairman)

Hon Laurie Graham MLC

Hon Robin Scott MLC

Staff as at the time of this inquiry:

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Fair Trading Amendment Bill 2018

Extension of time

On 27 June 2018, the Legislative Council referred the Fair Trading Amendment Bill 2018 (Bill) to the Standing Committee on Uniform Legislation and Statutes Review (Committee) for consideration and report. The referral was made under Standing Order 128 and the reporting date was 14 August 2018, being the first sitting day following the expiry of the 45 day reporting timeframe.

On 28 June 2018, the Committee sought an extension of the time in which it was to report to the Legislative Council from 14 August 2018 to 18 September 2018.¹ That extension of time was granted on 28 June 2018.²

The Committee has identified two key Parliamentary sovereignty issues raised by the Bill including:

- On commencement of the Bill, amendments made to the Australian Consumer Law (ACL) by six Commonwealth Acts will automatically apply as the law of Western Australia. The Bill makes no provision for Parliamentary scrutiny of those Commonwealth Acts.
- The automatic incorporation of future amendments to the ACL into the Australian Consumer Law (WA) unless the amendments are disallowed by Parliament. The proposed tabling and disallowance mechanism is novel. The Committee has concerns about this mechanism. The concerns include how those amendments will be subject to Parliamentary scrutiny.

The Committee received evidence that the tabling and disallowance mechanism proposed in the Bill may be used in future national scheme legislation.³ This may have implications for Parliamentary procedure and the Committee has requested further information from the Department and, through it, from Parliamentary Counsel's Office.

The Parliamentary sovereignty issues raised by the Bill are significant and relevant to future national scheme legislation as it is applied in Western Australia. These issues require further detailed consideration.

On 27 August 2018 the Committee passed a motion to seek a further extension of time in which to report on the Bill. This extension of time is requested to enable the Committee to properly discharge its reporting obligations to the House due to the need to consider the significant Parliamentary sovereignty and process issues raised by the Bill.

The Committee therefore seeks a further extension of time in which to report on the Bill from 18 September 2018 to 20 November 2018. The Committee will use its best endeavours to report to the Council earlier than 20 November 2018, however has requested this date to ensure no further extension is required.



Hon Michael Mischin MLC
Chairman

¹ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 114, *Fair Trading Amendment Bill 2018 – Extension of time*, June 2018.

² Western Australia, Legislative Council, Parliamentary Debates (Hansard), 28 June 2018, p 4108.

³ C Scott, General Manager, Legislation and Policy, Department of Mines, Industry Regulation and Safety – Consumer Protection Division, *Transcript of evidence*, 22 August 2018, p 17.



Standing Committee on Uniform Legislation and Statutes Review

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'6. Uniform Legislation and Statutes Review Committee

- 6.1 *A Uniform Legislation and Statutes Review Committee is established.*
- 6.2 The Committee consists of 4 Members.
- 6.3 The functions of the Committee are –
 - (a) to consider and report on Bills referred under Standing Order 126;
 - (b) on reference from the Council, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to Standing Order 126;
 - (c) to examine the provisions of any treaty that the Commonwealth has entered into or presented to the Commonwealth Parliament, and determine whether the treaty may impact upon the sovereignty and law-making powers of the Parliament of Western Australia;
 - (d) to review the form and content of the statute book; and
 - (e) to consider and report on any matter referred by the Council.
- 6.4 In relation to function 6.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill or proposal may impact upon the sovereignty and law-making powers of the Parliament of Western Australia.'



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