

Fair Trading (Australian Consumer Law) Amendment Bill 2010

Explanatory Notes for Amendments to be Moved During Consideration In Detail by The Honourable Peter Lawlor MP

Title of the Bill

Fair Trading (Australian Consumer Law) Amendment Bill 2010

Objectives of the Amendments

The objectives of the amendments to be moved during consideration in detail are set out below:

- These amendments will, in effect, retain the current prohibited hours under section 63 of the *Fair Trading Act 1989* for unsolicited consumer agreements where the total price paid is \$100 or less. Also, where the total price paid or is payable is \$100 or less and the unsolicited consumer agreement contravenes the prohibited hours provisions, the consumer should have the right to terminate the agreement during the termination period.
- These amendments will also ensure that Part 2-3 of the Australian Consumer Law (ACL), as applied as a law of Queensland, will not apply to consumer contracts entered into, varied or renewed before the date on which the provision commences.

Achievement of the Objectives

The objectives are achieved by amending the definition of unsolicited consumer agreement in section 69 of the Australian Consumer Law (Queensland), as it applies to permitted hours in section 73 of the Australian Consumer Law (Queensland), by not including section 69, subsection (1), paragraph (d) which provides that an unsolicited consumer

agreement under the Australian Consumer Law (ACL) must have a total price paid or payable of over \$100.

Due to the definition of an unsolicited consumer agreement under the ACL, it is possible that a dealer in Queensland could sell goods door-to-door or in a non-retail environment, if the total price paid for the goods is \$100 or less, without regard to the prohibited hours currently in Queensland.

The amendments will give a person the right to the termination of a contract for a breach of section 73 for a contract of under \$100 where the agreement is made outside the permitted hours. The amendment will also make persons who breach section 73 for a contract of \$100 or less liable to the same enforcement remedies as those for contracts over \$100.

These amendments will also clarify the application of Part 2-3 of the ACL (Queensland) to contracts entered into prior to the commencement of the Bill. The amendment will clarify that Part 2-3 of the ACL (Queensland), as applied as a law of Queensland, will only apply to contracts entered into, renewed or varied on or after the commencement day.

Alternative Ways of Achieving Policy Objectives

There is no alternative way of achieving the policy objectives other than to amend the Bill.

Estimated Cost for Government Implementation

There is no cost associated with these amendments.

Consistency with Fundamental Legislative Principles

There is no breach of fundamental legislative principles of the *Legislative Standards Act 1992*.

Consultation

Consultation has occurred with the Department of the Premier and Cabinet.

Notes On Provisions

Clause 18 – Replacement of pt 3 (Trade practices)

Section 53A - Interpretation of unsolicited consumer agreement permitted hours provisions and termination period provision

Section 53A provides that for the Australian Consumer Law (Queensland), section 69, subsection (1) of that section is taken not to include paragraph (d). Paragraph (d) provides that an unsolicited consumer agreement must have a total price paid or payable of over \$100. The intention is to prohibit dealers approaching consumers in an unsolicited manner outside of the permitted hours where the unsolicited consumer agreement is \$100 or less.

Section 53A also gives a consumer the right to terminate an unsolicited consumer agreement, where the agreement is an unsolicited consumer agreement under section 69 (Meaning of unsolicited consumer agreement), but for the total price paid or payable, and the agreement is in contravention of the permitted hours of section 73 (Permitted hours for negotiating an unsolicited consumer agreement) of the ACL. The intention is to provide Queensland consumers with the right to terminate in certain circumstances.

Clause 57 - Insertion of new pt 10

Section 123 - Unfair contract terms

Clause 57 will insert section 123 into the *Fair Trading Act 1989*. The intention is to clarify the application of Part 2-3 of the ACL (Queensland) to existing consumer contracts. Section 123 explains that Part 2-3 of the ACL (Queensland) does not apply to existing consumer contracts unless such a contract is:

- renewed on or after that commencement, in which case Part 2-3 of the ACL (Queensland) applies to the contract as renewed on and from the day on which takes effect (the renewal day) in relation to conduct that occurs on or after the renewal day; or

- varied on or after that commencement, in which case Part 2-3 of the ACL (Queensland) will apply to the contract as varied on and from that day on which the variation takes effect (the variation day), in relation to conduct that occurs on or after the variation day.

© State of Queensland 2010