

RETAIL TRADING HOURS AMENDMENT BILL 2012

Second Reading

Resumed from 1 May.

HON LJILJANNA RAVLICH (East Metropolitan) [9.21 pm]: Mr Deputy President, this is not my bill. I had no idea it was coming up so quickly. Could we go to another order of the day?

Point of Order

Hon SIMON O'BRIEN: As the member would know, the prerogative for the order of business typically rests with the minister. Even though this bill is next on the notice paper, it has been there for a little while. The lead speaker for the opposition is not available to debate the issue.

Hon Adele Farina: She has been urgently called away from the house on a private matter, which was unexpected.

Hon SIMON O'BRIEN: With your indulgence, Mr Deputy President, it appears to me that no other opposition members are ready to debate the second reading at this time as events have taken them by surprise. However, other members wish to speak to the second reading so there is no reason why we cannot proceed. I stress that if the opposition spokesperson was not able to contribute at this point and was in danger of missing out, we would adjourn proceedings. As we are in a position to proceed, we should make the most of the time available. I do not know whether Hon Ljiljanna Ravlich wishes to retain the call.

Hon LJILJANNA RAVLICH: I am wondering whether Hon Nick Goiran might take the call. We will be supporting this legislation but I want to be able to reserve my right to make some comments after I go to my office and get some information that is not readily at hand. To be honest, this course of proceedings has taken everybody by surprise, given that we expected that we would be moving into the committee stage of the previous bill that we were considering. I understand that Hon Nick Goiran is happy to make some comments while I collect a file. I seek leave to continue my remarks.

The DEPUTY PRESIDENT (Hon Michael Mischin): So that we can straighten things out, I will put the question again and give the call to whichever member is prepared to speak on the bill. The question is that the Retail Trading Hours Amendment Bill 2012 be read a second time.

Debate Resumed

HON NICK GOIRAN (South Metropolitan) [9.24 pm]: Like other members, I do not know that I am fully prepared to contribute to the debate on the Retail Trading Hours Amendment Bill 2012 this evening but I will give it my best shot. I note that members opposite are not prepared. I think one of the government backbenchers has to do the job for them.

Hon Ed Dermer interjected.

Hon NICK GOIRAN: I will not take the interjection from Hon Ed Dermer; I will continue with my remarks.

I rise to contribute to the debate on this bill, having been somewhat provoked due to the unsatisfactory history of reforms in this area in this term of Parliament. As you would be aware, Mr Deputy President, first we considered the Retail Trading Hours Amendment Bill 2009, which was to bring in weeknight trading until 9.00 pm. Then we had the Retail Trading Hours Amendment (Joondalup Special Trading Precinct) Bill 2009, which changed the name "tourism precinct" to "special trading precinct" and created one of these in Joondalup. This was followed by the Retail Trading Hours Amendment (Midland Special Trading Precinct) Bill 2010 and the Retail Trading Hours Amendment (Armadale Special Trading Precinct) Bill 2010, which created special trading precincts in Midland and Armadale respectively. I note that these special trading precincts are to be very short-lived as they are to be abolished by this bill. Then we had the Retail Trading Hours Amendment Bill 2011, which adjusted the criteria for a retail shop to be defined as a small retail shop by allowing for 18 rather than 13 persons to work in the shop at any one time. Now we have the Retail Trading Hours Amendment Bill 2012 which would not only introduce Sunday trading on every Sunday of the year for general retail shops in the metropolitan area but also pave the way for ministerial orders to allow for general retail shops to trade on every public holiday except Anzac Day, Christmas Day and Good Friday. It has been put to me that I should not be concerned about these things because basically it is the equivalent of offering a child an ice-cream. If that child wants the ice-cream, we should give it to them and we should feel good about doing that. It is also said that too much ice-cream is not good for us either, and I regret to say that that is probably where I fall in this debate.

I turn to the issue of referendums. As a general principle, I do not support the Parliament creating the need for referendums. In my view, we have been elected to represent our constituents and to vote as we deem appropriate in each instance. It is illogical to pose certain questions to constituents, otherwise it follows that we should ask

our constituents about every law before we vote, in which case we will become mere ballot boxes. However, I also hold as a general principle that once Parliament has determined that a matter requires the input of constituents via referendum, such input should be respected. In the event that Parliament holds a contrary view, it ought to test that again with the people of the state. Naturally, that would not apply to a referendum in which electors supported something that was inherently wrong, such as racial segregation or killing a category of human being. When members consider this matter, we have to consider the 2005 referendum. In 2005 the electors of Western Australia were asked quite explicitly in a referendum: do you believe that the Western Australian community would benefit if trading hours in the Perth metropolitan area were extended to allow general retail shops to trade for six hours on a Sunday? In my research I found that 672 478 electors—that is 61.4 per cent of those who voted on this question—answered no. That result alone should give us some pause to those who act as though all Western Australians, other than a handful of troublemakers, support Sunday trading. The bill before us would extend trading hours in the Perth metropolitan area to allow general retail shops to trade for six hours on Sundays from 11.00 am to 5.00 pm. The view of the majority of electors in the 2005 referendum is that this outcome would not benefit the Western Australian community.

It is interesting to re-visit the arguments put in the official no case distributed by the Western Australian Electoral Commission to the electors of Western Australia before they voted in the majority against Sunday trading. What did they find persuasive? Are these arguments still relevant today, seven years later? I will turn my mind to some of those issues now. The first is the issue of market share and the creation of what is known in simple economics as oligopolies. One of the key arguments against Sunday trading is that it would likely lead to a bigger share of the market being cornered by two supermarket giants—Coles and Woolworths. There are disputes over which type of statistical measure we should use to assess market share by these two supermarket chains. Page 691 of the Productivity Commission report entitled “Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments” states —

... the combined market share of Woolworths and Coles is also, on average, lower in Western Australia ...

That has to be for a reason. Presumably, it is because of the system that we currently have. Our present retail trading laws do something to level the field between the independent grocers and the two giant supermarkets. I think it is fair to say that Western Australians were, and are, concerned about Coles and Woolworths becoming such dominant players in the grocery business as they are in New South Wales and Victoria. Sunday trading could tip the balance, in my view, even further in favour of the two major players.

Personally, returning to some of my studies in economics at Murdoch University, which happens to be in my electorate, I am concerned that an oligopoly in retail trading exists in this state. To the contrary, I am not overly concerned about the fact that this might create that situation. I think that, subject to satisfactory oversight to protect against collusion, this form of market structure can and does in many instances work very competitively and consequently very well. However, whether for this reason or others, the electors of this state do not desire the deregulation of retail trading hours on Sunday. That is what they said in the 2005 referendum, and we have not had anything to the contrary put before us. As I said at the beginning, in my view, we should never have gone to a referendum in the first place. But we did, and when we ask the people for their opinion, we have to respect it.

This bill contains no protection for workers against being required to work on Sundays. That is a point of great disturbance to me. It is claimed that federal industrial relations legislation would override any provision in the bill that attempted to provide such protection. The current enterprise agreements for Coles and Woolworths, as I understand them, contain provisions giving some freedom of choice to existing workers when trading hours change. However, the problem is that these provisions will not apply to new employees hired after Sunday trading becomes a reality in Western Australia. I would have thought that one approach to this problem could be to defer the proclamation of this legislation until these enterprise agreements are amended to extend freedom of choice about Sunday work to all employees.

I guess the matter that concerns me the most is the impact that this bill will have on family life in Western Australia. Since entering Parliament exactly three years ago, I have endeavoured to keep constantly in mind the useful principles on reform espoused by G.K. Chesterton in the fourth chapter of his book *The Thing*, and I will take a moment to quote a slab of it. It begins as follows —

In the matter of reforming things, as distinct from deforming them, there is one plain and simple principle; a principle which will probably be called a paradox. There exists in such a case a certain institution or law; let us say, for the sake of simplicity, a fence or gate erected across a road. The more modern type of reformer goes gaily up to it and says, “I don’t see the use of this; let us clear it away.” To which the more intelligent type of reformer will do well to answer: “If you don’t see the use of it, I

certainly won't let you clear it away. Go away and think. Then, when you can come back and tell me that you do see the use of it, I may allow you to destroy it."

This paradox rests on the most elementary common sense. The gate or fence did not grow there. It was not set up by somnambulists who built it in their sleep. It is highly improbable that it was put there by escaped lunatics who were for some reason loose in the street. Some person had some reason for thinking it would be a good thing for somebody. And until we know what the reason was, we really cannot judge whether the reason was reasonable. It is extremely probable that we have overlooked some whole aspect of the question, if something set up by human beings like ourselves seems to be entirely meaningless and mysterious. There are reformers who get over this difficulty by assuming that all their fathers were fools; but if that be so, we can only say that folly appears to be a hereditary disease. But the truth is that nobody has any business to destroy a social institution until he has really seen it as an historical institution. If he knows how it arose, and what purposes it was supposed to serve, he may really be able to say that they were bad purposes, that they have since become bad purposes, or that they are purposes which are no longer served. But if he simply stares at the thing as a senseless monstrosity that has somehow sprung up in his path, it is he and not the traditionalist who is suffering from an illusion.

In other words what Chesterton was saying was: before you tear down a fence, you ought to find out why it was put up in the first place.

The notion of the week with a distinction between the ordinary working days and a weekly day of rest for refreshment and family time is one of the greatest gifts of Judaism and Christianity to our civilisation. With many families now needing both parents to be working, weekends are more important than ever for family time. Requiring those mums and dads who happen to work in the retail sector to work most Sundays is a major assault on family life.

I want to quote now, if I can, a letter that I received from the Retail Traders' Association of WA, which is dated 17 March 2011. It is a long letter. I will not read the whole thing, but I will quote from two paragraphs. It states —

However, there are even greater concerns ahead.

Of course, this means that the association was already raising some argument, but—wait for it—there are greater concerns ahead, according to it. I continue —

Simply put, current regulations are slowly strangling retailers here in Perth. You just need to ask yourself one simple question. With the percentage of double income families in Perth rapidly increasing (now approx 65-70%) when do they get the time to shop? By this, I mean, the time to research, investigate, communicate and find exactly what they really need.

Sunday is the best and only time when both partners, in fact the whole family, can together really 'go shopping.'

This has to be one of the most unbelievable things written to me in three years. With all due respect to the writers of this letter, they obviously have absolutely no idea what it is to go shopping with children. I can tell you, Mr President, that when my wife wants to go shopping, the last thing she wants is me going with her. She would much rather that I stay home and look after the kids so that she can go and shop in peace. So the suggestion by the Retail Traders' Association that somehow we all need to go as a family, hold hands and look at the latest fridge, freezer or something that we need to purchase is absolute rubbish.

Hon Alyssa Hayden: I like my husband's advice when I go shopping.

Hon NICK GOIRAN: After that unruly interjection by my good friend and colleague, I suggest that the notion that a visit to the local Westfield on Sundays is a family activity is a fairytale invented by the retail giants. Our current laws allow the purchase of necessary groceries on Sundays from small independent grocers. There is absolutely no need to have seven-day-a-week access to the large shopping centres.

Some advocates of Sunday trading admit that seven-day trading for the general retail sector is just the beginning of the abolition of Sunday as a distinctive day of the week. They expect that banks and other service sector entities may also be required sooner or later to open on Sundays. Indeed, once the notion of Sunday as a special weekly day of refreshment and family is abandoned, it is hard to make a consistent argument against treating all days the same. Mr President, welcome to the anthill. Let me say now that when the house is compelled to sit on Sundays, I will seek a permanent pair to enable me to keep honouring Sunday by attending worship and by spending it with my family.

Several members interjected.

Hon NICK GOIRAN: Sunday as a day when most businesses and shops are closed is like Chesterton's fence; it is there for a reason. The advocates of Sunday trading have failed to convince me that they see the purpose of Sunday as a non-trading day, so I am not inclined to help them pull down this particular fence.

In the time that remains this evening, I turn to the issue of Easter Sunday. In the other place, the opposition moved an amendment to clause 4 of the bill, which would have had the effect of ensuring that general retail shops could not trade on Easter Sunday. Clause 6 of the bill would prevent the making of an order to authorise general retail shops to open on Anzac Day, Christmas Day and Good Friday. In response to the opposition's amendment, it was implied that because Easter Sunday was not a public holiday, this was a reason for not giving it the same protection as Anzac Day, Christmas Day and Good Friday. This is not logical. Easter Sunday always occurs on a Sunday. Public holidays, by definition, apply to the working days of the week, which is Monday to Friday. That is why when a public holiday falls on a weekend, the subsequent Monday is usually gazetted as a public holiday. Easter Sunday has never had to be declared a public holiday because it was always on a Sunday and therefore already a holiday. For Christians, Easter Sunday is the most solemn and significant day in the year. It commemorates the resurrection of Jesus Christ from the dead. This event is the foundation of the Christian faith; indeed, it is precisely because this event took place on a Sunday that Christians meet weekly for worship on a Sunday, rather than on a Saturday as do our Jewish brethren. A change to the law that could result in Christians who happen to work in the retail sector being forced to work on Easter Sunday is certainly in my view undesirable. I would certainly support—I hope that the Leader of the Opposition is listening—an amendment to ensure that this undesirable outcome is not brought about by this bill.

Hon Sue Ellery: Move it yourself!

Hon NICK GOIRAN: I will take the interjection because when this bill was debated in the other place, I had the misfortune of sitting in one of the guest seats in the chamber. What I watched was a rather remarkable display. I came into the place and thought, "What on earth has gone on here?" What had happened was that the ALP had moved an amendment to create a public holiday for Easter Sunday. All members of the government opposed the amendment. I happen to know, because I was sitting there, that there was effectively an attack on certain members in my party because it was suggested that they were being hypocrites or somehow inconsistent with previous policy positions that they had espoused. I also happen to know that those members were not excited about what happened on that day, but I have great sympathy for them for voting against the amendment put up by the ALP because no notice was provided. If the opposition was serious about the amendment, it would make sure that government members had an opportunity to consider the amendment. However, if it was just a stunt for political purposes, the opposition would do it in exactly the way it was done on that day. Therefore, I am saying to the Leader of the Opposition that if it was not a stunt and if the opposition is serious about Easter Sunday, it can count on my vote to support the amendment.

Hon Sue Ellery: Move it yourself! Have the courage of your own convictions.

Hon NICK GOIRAN: The opposition will not do it! We will watch and see what members opposite will do. Their actions on this matter will ensure that we know for sure whether it was a stunt or whether they really meant it.

Hon Sue Ellery: We know for sure what you're doing! Are you going to move it or not?

Hon NICK GOIRAN: If the opposition really means it, I will be there on its side of the chamber.

Hon Sue Ellery: Do you want me to draft it and give it to you?

Hon NICK GOIRAN: I will be there on the opposition side of the chamber, but if not —

Hon Sue Ellery: No, I want you to move it.

The PRESIDENT: Order! It is not wise to invite interjections and it is not wise to interject continuously. Noting the time, I will interrupt the debate, which stands adjourned until the next sitting of the house.

Debate adjourned, pursuant to standing orders.