

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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## RETAIL SHOPS AND FAIR TRADING LEGISLATION AMENDMENT BILL 2005

### *Consideration in Detail*

**Clauses 1 to 5 put and passed.**

**Clause 6: Section 10 amended -**

**Mr A.J. SIMPSON:** The opposition will move an amendment to subclause (1)(c) to increase the number of people to 20. In my second reading contribution I said that in a perfect world there would be a level playing field. However, we must look at ways of protecting an industry that provides competition, which helps the consumer. Clause 6(1)(c) provides that “5 persons” will be deleted and “10 persons” will be substituted. Currently, it is five people. However, is it correct that the minister can give an exemption for shops to trade with another five people, making a total of 10? It is being increased to 10 people under this bill, but is the number currently five? That is the first part of my question.

**Mr J.C. KOBELKE:** The amendment in the bill changing the provision from “5 persons” to “10 persons” is in full conformity with the outcome of the referendum, which was to cement in place the existing arrangements. The act says five persons, but by ministerial order in 1994 it was changed to 10.

**Mr A.J. Simpson:** Does that mean that any shop that is operating now with 10 people has definitely asked the minister to allow it to go to 10 people?

**Mr J.C. KOBELKE:** No.

**Mr A.J. Simpson:** It just has 10.

**Mr J.C. KOBELKE:** The ministerial order relates to the definition of small shops. There are different categories of retailers. I believe the member is talking about retailers in the small shops category, which are the small supermarkets that can trade for extended hours. Currently, they cannot have more than 10 persons employed at any one time. The act provides for five. This is one of those areas in which the last Liberal government’s changes in 1994 have the effect of law, but there is ample evidence, including from a committee in the other place, that this is ultra vires; that is, the government overrode the law by way of a ministerial order. There is a clear High Court decision relating to a similar matter in South Australia that says that that cannot be done. However, until someone challenges it in court, it nonetheless has the effect of law and is the practice. Since 1994, the law and the practice have been to allow up to 10 people on the floor, even though the act provides for only five persons.

**Mr A.J. Simpson:** Is it only in the metropolitan area or -

**Mr J.C. KOBELKE:** This relates to the definition of small shops. The constraints on small shops are different in other parts of the state.

**Mr G.M. CASTRILLI:** I refer to proposed paragraph (be), which states -

no owner of the retail shop is related, in the opinion of the chief executive officer, to an owner of another retail shop . . .

It goes on. Will the minister please explain why that provision is in the bill?

**Mr J.C. Kobelke:** You are referring to the act, not to the bill, are you?

**Mr G.M. CASTRILLI:** No, I am sorry, I am referring to the bill. I am referring to proposed paragraph (be) under clause 6, which goes on to state -

. . . that is in such close proximity to the first-mentioned retail shop that, in the opinion of the chief executive officer, those retail shops are to be regarded as occupying the same location; and

I presume that might mean, for instance, that a brother and sister own the stores, which are probably side by side, and they put holes in the wall and operate them as one store. Following on from that, there may be a genuine case in which a cousin owns a store around the corner. What provisions are there for legitimate cases in which a cousin twice removed or whatever may own a store in the complex, but perhaps around the corner? Basically, as I read this provision, “in such close proximity” could mean three doors down. What sort of safeguards or what sort of information would the chief executive officer require to satisfy himself that it is a genuine transaction, so to speak?

**Mr J.C. KOBELKE:** The member for Bunbury’s question raises two quite different aspects. The first aspect is that this amendment is simply putting into the act the provisions of the current ministerial order. When this amendment is passed and becomes law, it will change absolutely nothing in the current situation. As I explained

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

---

earlier to the member for Serpentine-Jarrahdale, the difficulty is that good legal advice from a range of sources has made it clear that the changes made by ministerial order - I am thinking particularly of the 1994 changes - are ultra vires. The example that I gave earlier, which is a clear-cut one, was that the act states that a shop cannot have more than five people on the floor in order to be defined a small shop. The minister said that he would make it 10. Ministers cannot just contradict the act. However, the order has the force of law until someone takes it to court and challenges it. Then we would have to close all those supermarkets because there was a High Court determination that it was limited to five people, not 10. Similarly, the ministerial order put the relationship aspect in place. That is the law that the department must uphold until it is overturned. Even if there is good legal advice that it would not stand up to challenge, it still must be enforced as though it is the law. The first aspect is that this does nothing to change the way in which the law is being administered currently.

The second part of the question was a "what if" question about the relationship between the owners of retail shops. That matter will depend on all the specific elements of the circumstances involved in a particular case, and the judgment of a court. An example in a slightly different area is that we know Harvey Norman tried to get around this provision by saying that different parts of its stores were franchised or had different arrangements; therefore, they should come within the definition. Harvey Norman tested that in court and lost. I cannot answer the member's specific question about the relationships between people running stores, because it would depend on a range of quite specific details, which could be tested in court and a court decision might determine the matter. However, I come back to the first point. With this amendment, we are simply making sure that the act reflects what is currently a complex mix of law and ministerial orders that are likely to be open to challenge. In light of the outcome of the referendum, it simply cements in place the practice that has existed for the past few years.

**Mr D.F. BARRON-SULLIVAN:** This clause, which amends section 10 of the principal act, is extremely important. If section 10 of the Retail Trading Hours Act is read in conjunction with proposed section 12C, it touches on a matter of great sensitivity for the small business community. Proposed section 12C is a one liner which reads -

A small retail shop may be open at any time.

Clause 6 deals with the definition of a "small retail shop". Putting it in a nutshell, an owner of a shop that meets this definition can open for any length of time up to 24/7, 365 days of the year in Western Australia. This provision allows the Dewsons and independent supermarkets to open for longer hours than Coles Myer Ltd and Woolworths Limited. That is why it is absolutely essential that nothing be done to this legislation that in any way gives a foot in the door for Coles, Woolworths or any multinational to come in and start usurping the situation and having access to these legislative provisions.

We all know that this legislation is a dog's breakfast. We all know it is an extremely crude way of protecting competition in the retail sector in Western Australia. However, it has worked. It is nowhere near as effective as the measures that apply in America or what is being done in the United Kingdom; that is, prevent market domination through a number of ways and in the process enable competition and more extensive trading hours than we have in this state. At least Western Australia has protected retail trading. It is important when considering this clause and section 10 of the act that we ensure nothing is done to give - I will be candid - Coles and Woolworths a foot in the door to open their shops for more hours.

The opposition's understanding of this clause and the way in which the amendments have been framed is that it purely reflects the existing situation, and the minister confirmed that a moment ago. We have not picked up concerns from the small business community about the way this is worded.

The opposition considers that one provision of this clause could be improved quite considerably. Since this legislation was struck with the original restriction that only five people could work in a small retail shop at any one time, otherwise it would no longer be deemed a small retail shop and consequently could not have unlimited opening hours, it has been deemed necessary to increase that number from five to 10. The minister confirmed, in answer to a question from the member for Bunbury, that this was done by ministerial order. The question then became, according to the government, that if someone challenged this in the High Court and the government lost the case, then the pack of cards could fall down and the independent supermarkets that have up to 10 people working on the floor at any one time will have to be told to cut that number to five. It is interesting that this has not been challenged. It has not gone to the High Court; therefore, the High Court has not been able to make a determination. Members would think that the Coles and Woolworths of this world would have paid for some very good legal advice by now. They would have taken this to the courts by now if they were ever going to. The opposition has always indicated it would support this provision, as well as a tightening up of the code requirements to make sure there is no possibility that they could be the subject of a successful legal challenge.

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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One area in which we consider it is necessary to improve this clause further is in relation to the number of people who can work in a shop at any one time for it to maintain the classification of a “small retail shop”. The reason for this is simple. Let us consider the independent supermarkets, because this is the area that affects most of them at the moment. As that industry has developed, independent supermarkets have changed the way in which they do business.

**Dr G.G. JACOBS:** I stand to give the member for Leschenault the opportunity to continue his remarks.

**Mr D.F. BARRON-SULLIVAN:** As the industry has developed, a number of independent supermarkets have been taking the fight up to the multinationals. They have been developing their supermarkets so that they can compete with the multinationals. They offer the range of goods that are offered by Coles and Woolworths. I suppose they have been developing a very efficient way of providing this service to the community.

A rampant deregulationist would have to say that is a good thing, because the more competition, the better. However, these supermarkets, whether it is under an artificially constrained system such as that under the retail trading hours legislation, must be allowed to grow and develop so that they can compete with the Coles and Woolworths of the world.

Coles and Woolworths have no restriction on how many employees can work in their shops at any one time. However, a small retail shop or an independent supermarket is limited to 10 people working in the shop at any one time, not just after-hours at eight o'clock or 10 o'clock at night. It means the expansion of the business can go only so far. Once a business has reached the stage of being able to operate with only 10 people, it cannot go any further. It constrains the business in the meantime. For example, an independent supermarket in Farrington Fayre actually has an office on the other side of the road. The reason for that is very simple. Had the office been situated on the supermarket premises, it would mean that when the owner of the premises, his accountant and maybe a bookkeeper were in the office at the same time, only seven people could be on the floor of the supermarket. With this arrangement, it can continue to have 10 people working on the supermarket floor at any one time.

If these shops are to be able to develop their business to compete with the Coles and Woolworths of this world, it is necessary for them to increase the number of people who can work in those shops. The opposition is suggesting that the number be increased to 20 - previously it went from five to 10 - to allow a gradual expansion in this area and the shops can begin to match the ability of Coles and Woolworths.

Some members may think we should be protecting competition through the artificial means of the Retail Trading Hours Act or, like me, they may believe in the system in America with antitrust legislation and a range of measures to protect monopoly powers from dominating, or they may be blanket deregulationists who do not care about putting competition safeguards in place, but believe in deregulation. However, whichever level members believe in, they must ask why should not Dewsons and other independent stores be able to operate in the same way as Coles and Woolworths. Increasing the number of employees able to work at any one time to 20, will not in any way give Coles and Woolworths a foot in the door to open their shops for longer.

**Mr D.T. Redman:** It sets a precedent.

**Mr D.F. BARRON-SULLIVAN:** It does not, because Coles and Woolworths already can employ 100 people if they want to, but Dewsons can employ only 10 on the floor at any one time.

The key constraint is the ownership constraint. For example, retailers can have up to six shareholders only to be classified as a small retail shop. Coles and Woolworths cannot be classified as a small retail shop. Similarly, with all the other ownership restrictions provided in the legislation.

**Mr D.T. Redman** interjected.

**Mr D.F. BARRON-SULLIVAN:** Coles and Woolworths already can. They can employ 200 people in their shops if they want to. They are limited to when they can open because they cannot be deemed to be a small shop because of the ownership restrictions.

I move -

Page 4, line 26 - To delete “10” and substitute “20”.

I welcome the advice of the member for Stirling and the minister.

**Mr J.N. HYDE:** I urge caution when considering whether to vote for this amendment. Currently we have a massive problem with the dodgy definition of a small retailer as a retailer with 10 employees. A number of people are big players in this town. I am more concerned about the real small businesses with three or four employees than the Action supermarkets that are “Woolworths light”. A lot more thought needs to be given before we increase from 10 to 20 the number of persons who can be employed by a small business.

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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Before the Liberal Party moved its amendment, I was going to ask: what is the penalty imposed on a company that breaches section 10, which is to be amended, of the Retail Trading Hours Act? The bill details amendments to penalties relating to other sections of the Retail Trading Hours Act. The minister will recall an issue in East Perth of a business owner who operated four retail outlets throughout the state and who was threatened with prosecution for breaching the act, but the penalty he faced was merely a tiny fine. I support the amendments to the legislation, but I seek information on the amount of the fine for a company that exceeds the limit on the number of employees employed by a small retail shop, be it the government's proposed limit of 10 employees or the Liberal Party's proposed limit of 20 employees. If the opposition is proposing that 20 staff be allowed under the definition but the fine is only \$1 000 or \$2 000, it will open the door for Woolies, Coles and Wal-Mart as a \$2 000 fine would mean nothing to them in that situation.

**Mr D.T. REDMAN:** I will argue against this amendment. Earlier this year we spent some time debating the concern in the community about market dominance in the retail sector. When I presented my motion, I understood it had the full support of both sides of the house. There was real concern that two retail chains control 80 per cent of Australian supermarkets. In Western Australia, the two major chains control about 60 per cent of the supermarkets. Both major parties were concerned about that. There are very real concerns about the capacity of the Trade Practices Act to put controls on that situation in Western Australia. Western Australia is a unique market, and I am seriously concerned about the current situation. At the last election a referendum was held to decide whether to change the retail trading hours. The people of Western Australia demonstrated that they are very concerned about the market dominance of the large retail chains. One of the factors is the level of protection provided to small business. We either protect small business or we do not. I support this bill. I support maintaining the limit of 10 staff as a determiner of whether a shop is a small retail shop. Increasing that limit to 20 staff would allow other very big players into the market.

**Mr T.R. Buswell:** Which ones?

**Mr D.T. REDMAN:** Obviously they will be in a position to take over some of the Action stores. If those operators were allowed to trade extended hours, which the big chains are currently not permitted to do because of the three stores limit, it would create a situation in which Coles and Woolies could argue strongly that some retailers were allowed to generate a lot of turnover at the expense of the big stores. This amendment would lower the bar to allow the big chains to make such a case. This is a serious issue that is a real smack in the face to small business. I am a big supporter of small business. There are many small business players in this chamber. I am concerned that this amendment will lower the bar. I strongly oppose the amendment and will certainly vote against it.

**Mr J.C. KOBELKE:** I am happy to take more comments from members, but I need to put on the record straightaway that the government rejects this amendment and will not support it. I refer briefly to the reasons for that, and members might wish me to comment on other aspects when I have finished. The member for Leschenault did not say it explicitly, but he implied that the issue of uncertainty in the legislation does not necessarily exist. When umpteen top lawyers, a report of the committee of the other place, a High Court decision in South Australia regarding similar legislation and a former Attorney General, Hon Peter Foss, recognised it was a problem - Hon Peter Foss also promised to fix it - it must be acknowledged that there is a problem. The fact that it has not yet been challenged is largely due to the Labor Party indicating that it would fix the problem. Why would retailers spend \$100 000 or \$200 000 taking the matter through the courts knowing that the government would fix it? I always feared that they would step in, call our bluff and have a go, but they did not. There was a risk while the problem was not fixed. We sought to fix that problem with legislation in 2003 that would have overcome all the inconsistencies between the ministerial orders and the act. However, by doing that, we had to make a decision whether to fix or to shift the retail trading hours. Under our bill, small businesses would clearly have been allowed to expand and more shopping hours would have been created. We proposed to expand weeknight retail trading hours to 9.00 pm. As a condition of those proposed changes, we suggested that small retailers could have up to 20 staff on the floor. It was in the context of the changing retail environment that it was proposed to increase the limit of employees a small retailer could have on the floor from 10 to 20. That was part of the 2003 bill. However, that was conditional on the retail trading hours being extended to 9.00 pm. We proposed to open up extra competition and extend the retail trading hours.

Many changes could be made to this very complex area. We could change the type of goods that retailers are allowed to sell because of the restrictions on various categories. We could have changed the number of owners a small business is permitted to have or the number of retail outlets that are permitted. That was done in part in 1994. Not just one part of the current legislation can be changed. In the 2003 bill, the government proposed to implement gradual change. A part of that gradual change was to increase the retail trading hours to 9.00 pm during the week and to increase the number of employees who could work in a small retail store at any one time

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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from 10 to 20. However, we are not increasing the retail trading hours for small businesses to 9.00 pm on weeknights, which is one reason for not increasing the number of employees from 10 to 20.

We also must take into consideration the outcome of the referendum, which was a clear decision by the people that they did not want changes made to the retail trading hours. The two questions put to people in the referendum were primarily about whether the extension to weeknight retail trading hours should be changed and whether retail trading on Sundays should be allowed. There is a logical case that people did not want to extend retail hours to 9.00 pm during the week or allow six hours of trading on Sundays. The secondary issue is that the population would not be happy if the government then changed the state's trading hours by tinkering with other bits of the apparatus. Increasing the number of employees that a retailer can employ from 10 to 20 would be part of that tinkering. It would be only a small amount of tinkering, but it would represent the beginning of changes to the number of stores a small retailer is permitted to open. If the chains are big enough, Coles and Woolworths could get into the market because they own so many stores. The hours might not be changed, but if the criteria were changed to define a small retail shop, it would change the definition of who could trade under the extended hours. Increasing the number of employees from 10 to 20 would be the start of the process of making changes behind the scenes that could undermine the people's view as expressed in the referendum.

I ask members to think back to 1994, when changes were made to the relevant legislation. Perhaps some people do not realise the significant impact those changes had on local retailing in Perth. Do members remember how many corner stores there were in the early 1990s? How many corner stores are there throughout members' electorates now? There is hardly a single one. They have closed because the changes which allowed the extended hours and which increased the number of employees a small business could employ on the floor from five to 10 meant many corner stores became small supermarkets. Very few corner stores or delis remain. If the definition of a small retailer were amended to increase the limit of employees from 10 to 20, it would create another shift. Who would be the winners and who would be the losers? The argument can be made that it should happen. However, we are simply saying that in light of the referendum, we will not start tinkering with the legislation to make such a change. The people have said that they do not want the trading hours changed. If the number of employees a small retailer was allowed to have was increased from 10 to 20, it would be the beginning of tinkering that could lead to other consequences. Many small supermarkets could be put in jeopardy if the definition were increased from 10 to 20 because of the competition they would face from other supermarkets.

**Mr D.F. BARRON-SULLIVAN:** There are some cute arguments from the minister. Let us take them in reverse order. I will deal with the point that extending the number of employees on the floor from 10 to 20 could hurt small supermarkets and large delicatessens. Those small supermarkets and large delis already have competition from Dewsons, Coles, Woolworths and so on. Believe me, I have gone around the state for four years talking to the owners of small delis, independent shopping centres and Westfield shopping centres, and I can say that this is not a major concern in the small business sector. What is of more concern is tinkering with trading hours in particular areas. For example, the Australind shopping centre recently applied for extended trading hours. The only beneficiary of that would have been Coles Supermarkets. Consequently, I am very pleased that the Shire of Harvey will not be seeking the minister's approval to extend trading hours there. That is because a deli there employs seven people and that business would suffer the most. It would shift the market share from the deli to Coles; it is that simple. At the end of the day, this is all about market share in the supermarket game. Currently, as we all know, Coles and Woolworths have roughly 65 per cent of the market share in WA. That compares favourably with Tasmania, where they have more than 90 per cent of the market share. Tasmania deregulated its trading hours and the independents were sent broke - it was that simple - because the big guys were able to use all their market predatory pricing techniques and other initiatives to shove the other guys out of business. We are lucky in that WA has a crude mechanism - I am the first person to admit it is crude - that protects competition in this state. However, if we do not allow the independents in the supermarket industry to expand, Coles and Woolworths will continue to expand, continue to employ more people in their shops and continue to take more market share at the expense of the independents. The more the market share is concentrated in fewer hands the more it will lead to less competition. All we are saying is that we should keep the retail sector in WA competitive. We are lucky that we do have a competitive sector, unlike the other states, that delivers the cheapest possible prices and the best possible services. The Australian Bureau of Statistics has backed up that fact with data that indicates retail price increases have been lower in WA than in other states. WA has a competitive retail industry and we must enable it to continue being competitive.

If we were suggesting, for example, that Coles, Woolies or newsagents should be able to take over pharmacies, I would be the first person to stand in this place and say, "Hold everything, we do not support that." The Liberal Party does not want to erode small business sectors in that way. I think the minister has confirmed that the legislation will not do that. However, this one relatively minor amendment, about which the minister would find not one iota of community concern, would go a long way towards protecting competition in Western Australia.

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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The member for Stirling made some points that I have heard before. I encourage the member for Stirling to talk to people like Paul Leonetti in Albany or the operator in Denmark and so on, because Dewsons operators in the great southern are the sort of small business operators that are actually pushing this change.

**Mr D.T. Redman:** No, they are not. You're talking to the wrong people.

**Mr D.F. BARRON-SULLIVAN:** I suggest the member for Stirling talk to them. I have actually spoken to them. They will explain to him, especially those in Albany, what has happened there in the past couple of years and why it is important for the independents, particularly Dewsons, to be able to expand their employment in those areas so that they can take the fight to the big multinationals.

**Mr D.T. Redman:** You say this really relates to the metropolitan areas. The referendum in Albany actually supported it.

**Mr D.F. BARRON-SULLIVAN:** No, that deals with hours. Under this definition, a Dewsons store in Denmark would still be restricted to employing 10 people. However, if the restriction were lifted to 20, regardless of whether it was a Dewsons store in Albany, Denmark or Leederville, it could expand to 20.

**Mr J.C. KOBELKE:** I will comment on what the member for Leschenault said, as there is clearly an issue of competition between the large majors and supermarkets of a range of different sizes. Some are very large and modern and put a lot of money into their stores; others are just corner stores that have expanded a bit and are much smaller supermarkets. There is competition between that small sector of the market. I do not agree with the member for Leschenault that the small sector of the market wants it. Small retailers have said to me that they do not want 20 employees on the floor. Perhaps the member for Leschenault and other members of the Liberal Party should declare an interest here, because the group that is pushing this amendment is the Western Australian Independent Grocers Association. That group went to the newspapers prior to the last election saying that it would donate between \$300 000 and \$350 000 to the Liberal Party campaign. That is the group that the Liberal Party wants to help. A lot of other retailers do not want it.

**Mr D.F. Barron-Sullivan:** Coles donated to the Labor Party. Are you declaring an interest?

**Mr J.C. KOBELKE:** No. I am saying that Coles donated to the Liberal Party as well.

**Mr D.F. Barron-Sullivan:** So are you declaring an interest?

**Mr J.C. KOBELKE:** No. I am saying that this group said it would put money into the Liberal Party, not into Liberal and Labor. Coles and Woolies donate to Liberal and Labor, but the Western Australian Independent Grocers Association said that it would kick in between \$300 000 and \$350 000 to the Liberal Party campaign, particularly in marginal seats. That group, which does not represent all retailers, is now asking the Liberal Party to pay it back and allow it to put 20, not 10, employees on the floor. That is really what this amendment is about; it is not about looking after small business. It is about looking after a subsection of small business that is doing well, wants to expand and wants to kill off other small businesses. The Liberal Party is therefore sticking up for that group because it donated money to the Liberal Party's election campaign. It is saying that this is the payback and that the Liberal Party should not worry about other small businesses that do not want the number increased. Other small businesses have made it very clear to me that they do not want it increased.

**Mr G. Snook:** Every small business proprietor has had every opportunity to join the association.

**Mr J.C. KOBELKE:** There is more than one association that covers small retailers.

**Mr G. Snook:** I understand that.

**Mr J.C. KOBELKE:** There are competitive bodies that represent different sectors in the small retail part of the market. I am saying that this one group that has backed the Liberal Party and donated to it huge amounts of money wants 20 employees. A lot of other small retailers have said that they do not want 20 employees. There are clearly issues of substance here and we could make the call one way or the other. However, the Liberal Party should put on the table the fact that it is backing the side that funded it and not the side that did not fund it. If the other side did fund the Liberal Party, the opposition should announce it and point that out to small retailers who are against going to 20 employees and who might also have funded the Liberal Party.

**Mr D.F. Barron-Sullivan:** Has Brian Burke been involved in giving you any advice on this matter?

**Mr J.C. KOBELKE:** I have not spoken to Brian Burke for years.

**Mr D.F. Barron-Sullivan:** None of your staff or anybody?

**Mr J.C. KOBELKE:** No.

**Mr D.F. Barron-Sullivan:** That is funny, because they seem to be the same sorts of arguments that he would put forward.

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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**Mr J.C. KOBELKE:** So who is he backing; as I have no idea?

**Mr D.F. Barron-Sullivan:** Gee, I wonder whether he is involved in this somewhere.

**Mr J.C. KOBELKE:** I have no idea what the member for Leschenault is talking about.

**Mr D.F. Barron-Sullivan:** I think you do, minister.

**Mr J.C. KOBELKE:** He has not spoken to me.

**The ACTING SPEAKER (Mr P.B. Watson):** Members, let us get back to the bill, please.

**Mr J.C. KOBELKE:** The point is that the WA Independent Grocers Association is clearly on the record that it is funding the Liberal Party, and it will benefit from this amendment. A lot of other small retailers are opposed to it and do not want it. We are simply standing on the merits of the case; that is, at the referendum the people said that they wanted the existing system. We will put in place legislation that fixes the current problem and cements the existing system. There will be a review in due course by the government, and the Parliament can say then whether it wants changes. However, the government at this stage is not open to any other change that would shift the pendulum towards favouring some operators over other operators, whether it be small businesses over the large national companies or one group of small businesses in WA over another group of small businesses. The Liberal Party is clearly backing one group of small businesses over another group of small businesses.

**Mr R.F. Johnson:** What about other small businesses? Aren't they the ones that wanted deregulated trading hours and to open 24 hours?

**Mr J.C. KOBELKE:** No, I do not think so. There is a mixture of businesses; a few did.

**Mr R.F. Johnson:** There was certainly one fairly large group that wanted deregulation and was, in fact, backing the Labor Party.

**Mr J.C. KOBELKE:** That is not what we are dealing with. We are dealing with whether small retailers will go from 10 to 20 employees on the shop floor. There is a range of issues among small retailers. Our position is that because of the referendum, we will not make any change. All I am saying is that the Liberal Party must substantiate the reason it is backing the side that funded it and not the other side.

**Mr T.R. BUSWELL:** I have had a very embarrassing pen leak on my hand. I thought I should point that out in case the minister thought it was blue blood!

I want to touch on one aspect of the equation that has perhaps been overlooked; that is, the potential impact on consumers of a change such as this. I am often interested in these debates about the impact on consumers, whom of course we also represent in this place in one way, shape or form. I tend to share the opinion of the member for Leschenault about whether increasing the number of people allowed on the floor at any one time from 10 to 20 will bring competition into the marketplace from the top down. I am referring to bringing the dominant forces in the market into that competitive environment. It will not bring in the dominant forces, as has been clearly pointed out, because that is prevented under numerous clauses in the Retail Trading Hours Act. The sections in the act that prevent Coles and Woolworths from opening outside normal trading hours will remain.

**Mr R.C. Kucera** interjected.

**Mr T.R. BUSWELL:** When the number of employees allowed on the floor is increased from 10 to 20, there will be no new entries from the top down.

**Mr D.T. Redman** interjected.

**Mr T.R. BUSWELL:** However - this is an important point - an increasingly large number of what we call small business operators, especially in the grocery and retail sector, have to become larger to compete as independents in a marketing environment with dominant operators. It is a fact of life. They are being placed, effectively, at a competitive disadvantage because they must restrict the number of employees on the floor to 10. That means they cannot grow and they cannot compete effectively with Coles and Woolworths. I accept the minister's point that they will continue to grow and that that may have a subsequent impact on some small businesses. To be frank, I have never heard small businesses complain about competing in a relatively fair marketplace. However, I have heard them complain about having to compete against Coles and Woolworths, which enjoy all the fruits of market dominance. I am talking about not just how they enjoy the fruits of market dominance and how they develop the art of retailing, but also how they treat their suppliers. The minister will have heard this articulated many times. Most small businesses in the retail market cannot buy their produce from suppliers for the price that Coles and Woolworths can afford to sell it for. Some of these larger independent retailers will be given the capacity to remain competitive and stay in business. Who will that benefit? At the end of the day, it will benefit consumers.

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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I refer to an article written by Evan Jones that appeared in issue 55 of the *Journal of Australian Political Economy*. It examines the impact of liquor retailing on what he calls the Coles and Woolworths juggernaut. It makes for very interesting reading. He refers to a survey conducted in Melbourne by an industry watcher, as he terms it, called FoodX. He compares a basket of comparable products, mainly meat and fruit, sold in different suburbs. The suburb of Malvern, in which two national chains compete, is compared with the nearby suburb of Prahran, in which the two big competitors face competition from an independent. He points out that the consumers in the suburb in which no independent competes with the two major chains pay significantly higher prices than do consumers in a nearby suburb in which a viable, significant independent grocer competes with the two major chains. The fact of the matter is that consumers stand to benefit by maintaining a competitive retail environment. I have a fundamental belief that allowing a business to have 10 people on the floor at any one time is an impractical reflection of the method of operation that independent retailers need to embrace if they are to compete in the long run in a sustainable way against Coles and Woolworths. The minister might argue to the contrary, but I argue that that is a fact. I do not necessarily agree with his contention that because this legislation may be seen to advantage those larger independent operators, it will have an impact on other small businesses that may compete with them.

**Mr J.C. Kobelke:** I accept that there will be shifts when a change is made, and there will be good and bad. We could make a judgment that could be overwhelmingly good. The point I am making is that because we have said that we will not shift things, we will not start moving away with it.

**Mr T.R. BUSWELL:** I do not think that maintaining the level of 10 employees is an accurate reflection of the reality of the competitive marketplace, especially in the retail sector.

**Dr G.G. JACOBS:** In my deliberations on this issue, I give a lot of credence to people in the industry. I have had discussions with the proprietor of a medium-sized independent Supa Valu supermarket in my town. He runs an after-hours service in Castletown with 10 employees on the floor. When I asked him his view on increasing from 10 to 20 the number of employees allowed to operate his supermarket, he said that it would enable him to deliver a best-practice service during those after hours. That would enable him to take up the fight in competitive terms to Woolworths, with which he competes in the town. He can deliver best practice with 15 staff, but he finds it a little tight at the moment. It does not allow him to expand that best-practice component of his operation. Many people who go to his store on Sundays, including me, because the big supermarket is not open, like the store, as it delivers a good service and has a full range of products. Therefore, they might go to the store during the week because he delivers more services than those provided by a corner store, which people normally use when they run out of a product. It is more than a deli; it is a Supa Valu store. The most interesting issue for this proprietor is whether increasing the number of employees from 10 to 20 will let Woolworths open in competition on Sundays. The answer is no, and I believe it is no for two reasons. First, the bill contains a limitation in that a person must own no more than three retail shops. Clause 6(2)(b) states -

- (ii) does not own or operate, either alone or together with any other person, more than 3 retail shops.

That will prevent Woolworths opening in competition with this proprietor. Secondly, the Corporations Act 2001 stipulates how many partners in corporation one can have. The minister may correct me if I am wrong and clarify the issue, but I believe that limits whether a big store such as Woolworths can open.

**Mr J.C. Kobelke:** That is correct.

**Dr G.G. JACOBS:** I would like to reassure this proprietor that the guidelines on owning no more than three retail shops and the guidelines in the Corporations Act will prevent Woolworths opening in competition. He would be very happy to increase the number of employees from 10 to 20, because he would be able to deliver a better service that is best practice. It would allow him to take it up to Coles and Woolworths in the competitive marketplace. I am reassured by that and will support the amendment to increase the number of employees from 10 to 20.

**Mr D.F. BARRON-SULLIVAN:** I alluded to this matter earlier, but the member for Roe has made a point that has come through very strongly in the discussions I have had with a number of small business people; that is, although they support the extension in the number of employees from 10 to 20, they want to know that that will not be a foot in the door for Coles and Woolworths. They do not want to see the ice broken and the pollution creeping through, if I can put it that way. When it is explained to them that the ownership restrictions will continue to apply, and that by putting them in legislation there will be absolutely no doubt that they will withstand any legal challenge, they are quite happy about it. In the case raised by the member for Roe, that small business proprietor would have the confidence to expand his business and have up to 20 people working in his shop at any one time and continue to be deemed a small business and therefore able to open whenever he wants. However, he would know that Coles and Woolworths, in particular, would not be able to use the

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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provision as a loophole because of the other restrictions in the legislation. I ask the minister to confirm whether what I and the member for Roe have said is still the case; that is, that the other restrictions will prevent another major operator, such as Coles or Woolworths, from taking advantage of these trading provisions. That would go 100 per cent of the way towards resolving the concerns of the member for Stirling. It is the other restrictions, particularly the restriction on the number of shareholders and real owners, that prevent any of the multinationals using this as a loophole to extend their trading hours.

**Mr J.C. KOBELKE:** I reiterate that this bill confirms the current arrangement of retail hours. Having 10 employees working at one time in a small retail shop is the current rule. If we were to change the number of employees from 10 to 20, we would not overcome the other restrictions. Those running the no vote campaign during the referendum - it was very successful - made it clear that they wanted to retain the status quo. They did not say that they wanted to change the number of employees on the floor - they merely referred to the status quo. The government is delivering - as it said it would - on the outcome of the referendum. The referendum specifically referred to weeknight trading to 9.00 pm and six-hour trading on Sundays. It did not specify a range of other issues. The government will not accept the member for Roe's criticism that it has changed this or changed that when the outcome of the referendum clearly indicated that people wanted to retain the status quo. The key element of the no campaign - to retain the status quo - was successful. The government will retain the status quo.

**Dr G.G. Jacobs:** Increasing the number of employees from 10 to 20 will not change the effect of the status quo, because it will not change anything -

**Mr J.C. KOBELKE:** It will for some small businesses. In the case referred to by the member for Roe in which a small supermarket competes with a national major, it probably will not. As the member for Stirling said, a change could be seen by some as the thin end of the edge and they will wonder what the government might change next. They might think that we will start to fiddle with this and fiddle with that. That may be of minor or no consequence; however, it will be a concern. The government is clearly delivering on its election promise. We put up a referendum and we will deliver on the outcome of that referendum. The legislation will overcome the legal uncertainties that exist with the current arrangement. I make it absolutely clear that the government will not increase the number of employees from 10 to 20, because then it would be open to criticism that it has moved away from the status quo. There are a range of arguments - we have started debating some of them but I do not think we have laid them out fully - between different small businesses. There are issues. They may not be of any great consequence. It may be that the vast majority of businesses would support an increase from 10 to 20 employees. It may be that only a minority would not want that change. This government will not enter into a debate about which small businesses will be advantaged or disadvantaged. The government is simply confirming the current practice in Western Australia and overcoming the uncertainties.

I will use this opportunity to respond to the question raised earlier by the member for Perth about people contravening the provisions. Section 26 of the act states that the maximum penalty for a first offence for people who trade outside the hours or who sell goods for which they are not authorised under that classification is \$25 000. A second offence incurs a penalty of \$36 000. A third offence incurs a penalty of \$58 000. The section goes on to state that any penalty after that cannot be less than \$25 000. The potential penalty is even greater; that is, a serial offender could have his certificate withdrawn and not be allowed to trade. There are severe penalties for people who breach the act.

**Mr T.R. BUSWELL:** Quite clearly this debate is starting to take on the proportions of the Scalextric racetrack as we zoom around! It is interesting that my home town and the areas that I represent - Busselton and Dunsborough - have limited seven-day trading. In fact, all shops in Busselton trade on Sundays from 11.00 am to 4.00 pm. Those hours are generally supported in the local community. Interestingly, the no, no vote in my town was as high, I imagine, as it was right across the state. I tried to fathom why that was the case. The only conclusion I could draw was that at a broader level a yes, yes vote would have been seen as playing into the hands of the dominant market players in Western Australia. That message came through loud and clear all around WA. I still maintain that not supporting a change from 10 to 20 employees will make it more difficult for larger independent supermarkets to compete with the nationals. By not supporting a change from 10 to 20 employees, the government, by default, is supporting those market dominant players because it is making it more difficult for independent competitors to compete with them on a sustainable basis in the long run. There is evidence to suggest that that will have an impact on consumers because they will have to pay higher prices. I was interested to hear the minister's implication, which I reject completely, that this is a form of payback for support. I found his statement quite offensive. I was interested to hear - it has yet to be confirmed - about the meetings between the chief executive officer of Woolworths and the Premier.

**The ACTING SPEAKER (Mr P.B. Watson):** I ask the member for Vasse to stop grabbing the microphone.

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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**Mr T.R. BUSWELL:** I feel comfortable grabbing something.

**The ACTING SPEAKER:** I will not ask how the member for Vasse got a blue hand.

**Mr T.R. BUSWELL:** Crikey, I think I had better put a stop to that conversation! My apologies, I shall not fondle my microphone. I thank the Acting Speaker for his instruction.

I was interested to hear about the meeting between Mr Corbett and the Premier which, I guess, happened around the same time that the Premier made his famous comments linking his change of heart to his wife's influence.

**Mr D.F. Barron-Sullivan:** I believe he also met the CEO of Coles.

**Mr T.R. BUSWELL:** How convenient. It could be said that by not supporting the change from 10 to 20 employees, the government is supporting the long-term capacity of the dominant market players in retail trade in Western Australia to maintain that dominant position and to build their market share. We know that a significant social cost will be incurred by consumers in building that market share.

It is interesting that this bill, which I accept comes under the portfolio of the Minister for Consumer and Employment Protection, is very important to small business. We have all talked about small business. When I ask small business groups to name the five or six key issues that they confront they list government taxes and charges, industrial relations and labour shortages. Do members know what other things they talk about? They talk about market dominance. We are debating one of the top four issues confronting small business in Western Australia - a manifestation of it - and yet the Minister for Small Business is not in the chamber.

**Mr D.T. Redman:** How many extra players do you think this will capture from the bottom up? You talked about -

**Mr T.R. BUSWELL:** I do not have empirical data on which I can rely. However, anecdotally there is evidence to suggest that there are people in the retail sector who are at that limit. The member for Leschenault referred to one earlier who has been forced to operate in a ridiculous set-up in an attempt to avoid prosecution. I think the minister would agree that that is ridiculous. This is happening more and more. The difficulties in competing with the dominant market players in Australia will not ease. They are moving into selling fuel; indeed, they have their eye on everything. It will become harder and harder.

**Mr D.T. Redman:** What you're asking is to bring them all up to the same level, with the exception of one clause which states that you cannot own more than three stores.

**Mr T.R. BUSWELL:** I am asking that the government provide the capacity for those stores at that margin to push on and compete effectively against the dominant market forces.

**Mr R.C. KUCERA:** I cannot let pass a couple of comments made by members opposite. Firstly, members must realise that bringing members' wives and families into the debate of this house is fairly ordinary.

**Dr G.G. Jacobs:** Stop being a sook.

**Mr R.C. KUCERA:** I hope that the member for Roe remembers that the next time his family his brought into a debate. Arguing about these issues of market dominance is really irrelevant when the whole issue that the other side is dealing with -

**Mr D.F. Barron-Sullivan:** We did not bring it in; the Premier did.

**The ACTING SPEAKER (Mr P.B. Watson):** Order, member for Leschenault!

**Mr R.C. KUCERA:** When Minister Hockey was confronted by all ministers in this nation, including me when I was Minister for Small Business, over the whole issue of market dominance, it was made quite clear to him, the federal cabinet and the Australian Competition and Consumer Commission that the issues of market dominance would never be fixed unless section 46 of the Trade Practices Act was amended and fixed in the federal arena. These are the issues involved. We stand here and argue constantly about trading hours and the numbers of people on the shop floor. No western nation would allow the level of market dominance that exists in this nation's retail industry. It would not allow any entity to dominate over 48 per cent of the industry; it would be unheard of, even in -

**Ms S.E. Walker** interjected.

**The ACTING SPEAKER:** Order! Member for Nedlands, I will not sit here and have you come into the chamber, not even know what the debate is about, and interject. You have done it before. I will not accept it again. The next time you utter a sound, I will call you to order. This is Parliament, not your little playground.

**Mr R.C. KUCERA:** This act, as the minister has said, preserves the status quo -

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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**Mr M.P. Murray** interjected.

**The ACTING SPEAKER:** Order, member for Collie-Wellington!

**Mr R.C. KUCERA:** It preserves the status quo that was demanded by the people of Western Australia at the referendum on this matter. Regardless of what any of us thought about it, this is what it is about. It is a sensible measure. For members on the other side to come into this place and start tinkering, bearing in mind the impact it will have on small business and independent grocers -

Several members interjected.

**The ACTING SPEAKER:** Order!

**Mr R.C. KUCERA:** Big business is quite happy to wipe out the small businesses that we have all grown up with. It is up to the government, the minister and the rest of us as members of this house to make sure that we protect them as well as the middle ground when we start talking about increasing the number of employees who can work in a small retail shop at any one time from 10 to 20. Mr Acting Speaker (Mr P.B. Watson), you know the position in Albany. We all accept the referendum. As the member for Stirling quite rightly pointed out, this is about competition and the Trade Practices Act; he probably made the most relevant comments today that any member in the house has made. This is a messing around of the status quo that was voted for by the people of Western Australia. For opposition members to come in here and then denigrate the Premier and his wife into the bargain is reprehensible.

Amendment put and a division taken with the following result -

Ayes (15)

Mr C.J. Barnett	Dr E. Constable	Mr P.D. Omodei	Ms S.E. Walker
Mr D.F. Barron-Sullivan	Ms K. Hodson-Thomas	Mr G. Snook	Dr J.M. Woollard
Mr M.J. Birney	Mr R.F. Johnson	Mr T.R. Sprigg	Dr G.G. Jacobs ( <i>Teller</i> )
Mr T.R. Buswell	Mr J.E. McGrath	Mr M.W. Trenorden	

Noes (26)

Mr J.J.M. Bowler	Mr J.N. Hyde	Mr N.R. Marlborough	Mrs M.H. Roberts
Mr A.J. Carpenter	Mr J.C. Kobelke	Mrs C.A. Martin	Mr T.G. Stephens
Dr J.M. Edwards	Mr R.C. Kucera	Mr M.P. Murray	Mr T.K. Waldron
Dr G.I. Gallop	Mr F.M. Logan	Mr A.P. O'Gorman	Mr M.P. Whitely
Mrs D.J. Guise	Ms A.J.G. MacTiernan	Ms M.M. Quirk	Mr D.A. Templeman ( <i>Teller</i> )
Mr S.R. Hill	Mr J.A. McGinty	Ms J.A. Radisich	
Mrs J. Hughes	Mr M. McGowan	Mr D.T. Redman	

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Pairs

Mr M.J. Cowper	Mr J.R. Quigley
Mr B.J. Grylls	Mr J.B. D'Orazio
Dr K.D. Hames	Ms S.M. McHale
Mr G.A. Woodhams	Mr E.S. Ripper
Mr J.H.D. Day	Mr A.D. McRae

**Amendment thus negatived.**

**Clause put and passed.**

**Clauses 7 to 10 put and passed.**

**Clause 11: Section 14 replaced by sections 14 to 14C -**

**Mr D.F. BARRON-SULLIVAN:** This clause deals with definitions relating to filling stations and small filling stations. Will the minister bring us up to speed on the difference between the two and what the practical implications are of the difference between a filling station and a small filling station?

**Mr J.C. KOBELKE:** The small filling stations are truck stops. They can sell a different range of items, obviously, which relates to the fact that they are in remote areas and, therefore, they are prescribed small. It allows for a particular range of goods that small filling station owners might want to sell because these outlets have quite a specific list of items they can retail.

**Mr D.F. Barron-Sullivan:** There is no intention to change the items that are prescribed that can be sold in these shops as set out in the legislation, is there?

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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**Mr J.C. KOBELKE:** No.

**Mr D.F. Barron-Sullivan:** In other words, there is no way in which a Caltex Star Mart will be able to expand its range of retail products or anything like that as a result of these changes.

**Mr J.C. KOBELKE:** It is my clear intent not to allow an undermining of small retailers by allowing petrol stations to expand their range of goods. There will always be an issue with particular matters, as there is in the hardware area, where hardware gets into the furnishing retail area. There are case-by-case examples. With respect to petrol retailing, I am very aware that it could be a way of undermining small stores and I will do what I can to make sure that does not happen.

**Clause put and passed.**

**Clause 12: Section 15 amended -**

**Mr A.J. SIMPSON:** I have a question about holiday precincts. There is a reference to general retail shops in a tourism precinct or a holiday resort. I require some clarification. I am referring to proposed section 12A on page 9, "Trading hours for general retail shops in tourism precincts and holiday resorts".

**The ACTING SPEAKER (Mr P.B. Watson):** Member, we have dealt with that clause. We are dealing with clause 12 on page 18. I know that it is a bit confusing.

**Mr T.R. BUSWELL:** We are on clause 12?

**The ACTING SPEAKER:** Yes. Clause 12 on page 18.

**Dr G.G. JACOBS:** I would like some clarification, because I come from a potential tourism area. Proposed section 12A refers to tourism precincts and holiday resorts.

**The ACTING SPEAKER:** The member is on the wrong clause; we are at page 18.

**Clause put and passed.**

**Clause 13 put and passed.**

**Clause 14: Section 41 replaced -**

**Mr A.J. SIMPSON:** I have finally caught up with the program! My apologies.

The clause states that the minister will carry out a review of the operation and effectiveness of the act as soon as is practicable after three years. What indicators will be used to determine how well the act is operating? Will it involve indications from lobby groups or will performance indicators be used to determine whether the act is effective or should be changed?

**Mr J.C. KOBELKE:** This area has a range of competing interests between different retailers and consumers. Given that we are different from the rest of Australia - for very good reason - there will be pressure applied by people wanting different things. On that basis we made a commitment to review the changes after three years. We are following through with that undertaking by putting it in the bill. It is only one review and it does not mean that there will not be others. The bill contains a requirement that, three years after the enactment of the statute, there will be a review. That is due to the interest in the area and the fact that it is a contentious area. It is an area in which there will be change caused by market pressures anyway. It is appropriate that the matter be reviewed. A review will be prepared, and it will be up to the minister and the government of the day to decide what is done with it.

**Mr A.J. Simpson:** Will the report be tabled in both houses of Parliament?

**Mr J.C. KOBELKE:** Yes. If that is the requirement, it will have to be done. We had this debate yesterday about the Mahoney report. The government normally tables reports and seeks public debate. Alternatively, it may table a report with a government response.

**Clause put and passed.**

**Clause 15: Section 43 repealed -**

**Mr D.F. BARRON-SULLIVAN:** I want to make one point. A former Minister for Small Business was involved in this matter and he might be interested in this matter as well. This clause repeals provisions relating to the referendum that was conducted at the time of the last state election, which takes me back to 2003 when similar legislation was introduced into the Parliament. As the minister himself conceded earlier, that legislation did not relate just to unconscionable conduct and so on; it also related to the extension of trading hours; in other words, the government intended to deregulate or extend trading hours. The opposition made it very clear that it supported every other aspect of the legislation and it wanted to split the bill and remove the trading hours

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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portion, so that it could support the rest of it. Afterwards the government and the former minister even sent letters out to the small business community saying we had not supported all the unconscionable conduct provisions and so on. While we are tidying this legislation and removing section 43, I wanted to make that point and put on the record once again that the Liberal Party has always supported the unconscionable conduct and other provisions that support small business. In the 2003 legislation we opposed the government's intention to break its previous election promise to not extend trading hours. This is a tidy up clause and warrants support.

**Clause put and passed.**

**Clause 16 put and passed.**

**Clause 17: Amendments relating to penalties -**

**Mr G. SNOOK:** Not all legislation contains penalties; lots of legislation contains regulations that impose penalties. Is it the case with this legislation that there are no regulations?

**Mr J.C. Kobelke:** My advice is that the penalties attached to provisions in the act do not relate to penalties in the regulations.

**Mr G. SNOOK:** It is just an observation that regulations would simply be a better way of addressing a need to increase penalties rather than bringing the act back to amend it to increase penalties when the need arises.

**Mr J.C. Kobelke:** Some acts allow for that but this one does not.

**Mr G. SNOOK:** My question is why?

**Mr J.C. KOBELKE:** Because that is the way the act was drafted.

**Mr G. SNOOK:** I understand that is the way the act was drafted. I have read it. Is there a reason in this case for it to be different from other acts?

**Mr J.C. Kobelke:** There may or may not be. To establish that, we would have to go back and do research. No-one has raised a problem with the act in its current form. Lots of acts do allow penalties to be imposed through regulation, but people may argue against that on the basis that that gives the government of the day too much power in respect of penalties, which is just one of the many arguments that surround this issue.

**Mr G. SNOOK:** I think the minister would agree that it is much easier to amend regulations to change the penalties, which is the case with many other pieces of legislation.

**Mr J.C. Kobelke:** Yes, but there are two aspects to that. Many statutes have penalties in the act, which require an amending bill to change, and then there are regulation-making powers that allow penalties by regulation. Therefore, we will not overcome this issue if the penalties are in the act, as they often are, because they will still need to come back by way of amendment.

**Clause put and passed.**

**Clauses 18 to 22 put and passed.**

**Clause 23: Part IIA inserted -**

**Mr A.J. SIMPSON:** Part IIA, which is proposed to be inserted, is headed "Unconscionable conduct". I would like some clarification of the meaning of those words, because I am concerned that they could mean almost anything we want them to. There is a difference between conduct that is wrong and conduct that is unconscionable. If a claim is made that a landlord or a tenant has acted unconscionably, it will obviously be necessary to back that up with facts and figures to prove that the conduct has been unconscionable. To just use the words "unconscionable conduct" without defining those words leaves the meaning wide open.

**Mr J.C. KOBELKE:** I am not a lawyer, but it is my understanding that there are High Court decisions and common law decisions in the courts, both in WA and in other jurisdictions, about the words "unconscionable conduct". Lawyers will obviously look at those decisions when determining whether a person has acted unconscionably. It is a term that can be used to good effect. The problem is that even if we did provide a detailed definition to cover all the issues, cases would invariably arise that would not be covered by the specific things that we included in the definition. Therefore, people rely on the meaning of the words as has been determined by court decisions. That may vary from time to time, and people will then look at whether the meaning has gone beyond what was intended, which may mean that amendments will need to be made at a later stage. We believe the words in this clause are the best way to provide this protection.

**Clause put passed.**

**Clauses 24 to 31 put and passed.**

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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**Title put and passed.**

*Third Reading*

**MR J.C. KOBELKE (Balcatta - Minister for Consumer and Employment Protection)** [11.14 am]: I move -

That the bill be now read a third time.

**MR D.F. BARRON-SULLIVAN (Leschenault)** [11.14 am]: I had assumed the minister would want to reply to some of the points that were raised.

**Mr J.C. Kobelke:** I thought I had done that more than adequately.

**Mr D.F. BARRON-SULLIVAN:** I want to make a couple of important points about this legislation. Although the Liberal Party supports this legislation, it is a huge shame the government has not gone a number of steps further. Earlier, the member for Yokine indicated that the commonwealth government was not doing enough in the area of trade practices laws and so forth. Interestingly, everyone seems to think that trade practices is an issue solely for the commonwealth government. However, there are arguments why, constitutionally, trade practice provisions sit more comfortably at state level. Obviously, if something is covered by a federal law, we cannot do anything at state level to contradict that law. For example, in I think the late seventies the commonwealth Parliament passed price discrimination legislation - the minister can correct me if I am wrong. That legislation was subsequently repealed. If this state wants to pass price discrimination legislation similar to the commonwealth legislation, it cannot do so because it is covered by commonwealth law. I would not argue that that is the sort of legislation we necessarily want. My point is very simple: a range of laws can assist in promoting competition not only in the retail sector but also throughout the economy of Western Australia. That could squarely be the responsibility of this state Parliament.

In America, that bastion of free enterprise, that is exactly what has happened. In that country, both federal and state laws are in place to protect, preserve and foster competition. People in most places in America would scratch their heads if we told them that in WA small shops can trade 24 hours a day, a general shop's trading is restricted but if it has up to six shareholders certain things apply, a filling station faces certain requirements and a small filling station faces different requirements. What a dog's breakfast of regulations apply in this country!

Other countries have asked what is the purpose of trading restrictions. They are not aimed at protecting one particular part of industry or pushing anyone's barrow. Other countries want to protect and foster competition and enable it to grow. That is done through a very complex network of legislation to ensure that competition is maintained and strengthened wherever possible. I am not aware of anywhere else in the western world in which a major industry like the supermarket sector is dominated to the extent that it is in Australia by two multinational companies. In fact, the example I used earlier in Tasmania - where Coles and Woolies dominate more than 90 per cent of the market - would not happen anywhere else in the world. Places elsewhere ensure that there is competition. The problem with the commonwealth legislation is that it is based on a short-term price imperative. By that I mean that when the Australian Competition and Consumer Commission examines a situation, it says that it probably means that prices will come down in the short-term. However, it does not consider what will happen in one, two or five years when market domination and lack of competition occur and prices are pushed through the roof.

The member for Vasse referred to a study, and the opposition has examined a range of studies. Some time ago we employed our own economist to examine this issue. We found in the supermarket trade particularly that where the duopoly of Coles and Woolworths prevailed, prices were higher. For example, when New South Wales deregulated trading hours, the independent retail stores were pushed to the side and, in effect, Coles and Woolworths took over regional monopolies. Coles and Woolworths were competing head to head with one another in very few places. In Western Australia, Coles and Woolworths might be competing against one another in major shopping centres. However, in most of the district shopping centres in Sydney, there was lack of competition. That has happened elsewhere in this industry. Faced with all these matters and the success of other countries in protecting competition etc, one would have thought that the government would have been able to introduce into Parliament legislation that was more far-reaching than the bill that is in front of us. The government has brought in legislation that relates to unconscionable conduct in shopping centre leases and the like. On the face of it, that is worthwhile. However, the legislation does not touch on some of the most important issues that relate to the erosion of competition in our economic system, yet we could start dealing with those matters in a very constructive way through the competition policy reform act and other legislation, as well as new legislation, if need be. I asked what legislation the unconscionable conduct provisions were modelled on and what had happened in the state in which that legislation had been introduced. The simple answer is not a lot, because the legislation does not have a lot of teeth. It includes a lot of nice words, but not enough specific provisions. It does not provide a specific definition of unconscionable conduct in relation to shopping centre

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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leases. The bill also does not go far enough in other respects. For example, I would have liked the minister to provide a detailed explanation of why the government did not contemplate banning the use of turnover figures in rent calculations. We all know how the major shopping centres work: they are able to squeeze every bit of blood out of the small businesses in the shopping centres because they have access to the turnover figures for those shops. Elsewhere, shopping centres have been told that they cannot do that. What right does any business have to force another business to provide its turnover figures?

**The ACTING SPEAKER (Mr P.B. Watson):** Could members please keep the background noise down? I am having trouble hearing the speaker.

**Mr D.F. BARRON-SULLIVAN:** That is just one of a range of initiatives that could have been considered in this legislation. I suspect that the government wants to be seen to be doing something. The government tried to deregulate and extend trading hours a couple of years ago, but the humiliating defeat of its plans culminated in the referendum in which some 60 per cent of Western Australians said they did not agree with the extension of trading hours. The government has now brought in legislation partly to tidy up a potential legal anomaly, but also, I suspect, so that it can be seen to be meeting some of its 2001 election commitments, at least in word if not in deed.

We need a far more detailed and realistic appraisal of the whole economic system in Western Australia. A very crude mechanism is in place to protect competition in the retail sector by preventing a number of companies and businesses from operating extended trading hours. What happens in the United Kingdom and the United States of America shows that there are far better ways of doing this. America has tough antitrust laws and a range of other processes in place that enable customers to enjoy some of the cheapest real retail prices in the world and, in many cases, to shop 24 hours a day. However, the point is that businesses in America are competing as much as possible on a level playing field. Unfortunately, that is not happening here.

We tend to focus on the supermarket industry in Australia, which seems to be the battleground for these issues, but other aspects are involved. One example relates to fuel pricing. It is interesting that in the past couple of months there has been some publicity of the pricing of liquid petroleum gas. In Western Australia, the market is dominated by one company - Kleenheat, a subsidiary of Wesfarmers. BP produces some LPG autogas as a by-product of its refining process in Kwinana, but Kleenheat dominates the market. For all intents and purposes, there is a monopoly in WA. Kleenheat simply decides what will be the price of LPG; it is that simple. It may say that it will follow import parity pricing. Import parity pricing is a policy that may need to be followed when a significant share of the domestic needs must be imported. In the case of petroleum needs, there is no doubt that it is very hard to argue against import parity pricing because we are so dependent on overseas product. In the case of liquefied petroleum gas, Western Australia produces far in excess of its domestic needs, and import parity pricing simply should not apply. However, there is a monopoly, and in the past couple of years that monopoly has jacked up the price of LPG at the bowers by almost 50 per cent and is profit taking as a result. It is as simple as that.

Elsewhere in the world that cannot happen. Elsewhere in the world there are legislative safeguards to prevent it. There is a legislative safeguard in this state, and it is in the minister's portfolio. The minister could use petroleum pricing legislation. At the stroke of a pen - it is not quite that easy, obviously; a fair amount of work would need to be done beforehand - the minister could control the price of LPG at a wholesale and a retail level. People in the gas sector are saying to me that LPG could be retailed at the bowers in Perth for about 30c a litre, and Kleenheat would still make a whopping profit - a massive profit. I encourage the minister to look at the profits in Kleenheat's energy division that relate to the sale of LPG.

The point I am making is that we are tinkering at the edges of a piece of legislation. Yes, it is nice stuff, with good words. A lot of it will not be very effective. Some of it at least will prevent any possibility of a legal challenge to aspects of our retail trading hours laws. However, we have missed a golden opportunity to look at the successes of other nations that have managed to cap the market share of players in key industries, protected competition, and in turn driven prices down and provided the best possible services to people in the community. In Maryland, for example, and in other states in America, divorcement legislation was brought in to tell the major oil companies that they were not allowed to retail. The same thing happened there as has happened here. The oil companies had developed a vertically integrated structure, and they controlled the oil pricing regime from the wellhead through to the bowser. They did not allow competition to get a foot in the door. In Maryland, the government said that it wanted to at least have some competition at a retail level, and it banned the major oil companies from retailing fuel in that state. That is the sort of extreme legislative remedy that has been used in other nations to take on the big end of town, to prevent monopoly or duopoly influences and to prevent market domination to the detriment of consumers in those countries and those states.

Mr Tony Simpson; Mr John Kobelke; Mr John Castrilli; Mr Dan Barron-Sullivan; Dr Graham Jacobs; Mr Terry Redman; Acting Speaker; Mr Troy Buswell; Mr Bob Kucera; Mr Gary Snook; Mr Colin Barnett

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With those brief comments I say that the Liberal Party supports this legislation. It is a shame that the government did not agree to the amendment, which would have enabled independent supermarkets to match it with the majors, such as Coles and Woolworths, to a greater degree. This is a wasted opportunity. So many things could have been done to ensure that we have a highly competitive retail sector and a highly competitive economy overall in Western Australia. Perhaps we need to wait for a government of a different persuasion to fly the flag and to look after Western Australian consumers in that way.

**MR C.J. BARNETT (Cottesloe)** [11.28 am]: I have listened to some of this debate. I do not intend to go through it. My fundamental philosophy is one of progressively, and in an orderly way, deregulating trading hours. I have never shied away from that. However, in the retail business, particularly the retail grocery business, there is an issue of not only trading hours but also market dominance. It is to the advantage of Western Australian consumers and Western Australian producers that we have more competition in our retail grocery business than is the case in other states. I limit my deregulatory zeal by the desire to retain a competitive market. There is no point in deregulating if, at the same time, competition is reduced. It is a pointless move. The fact that the two retail chains in this state have 60 per cent of the market share compared with 80 per cent elsewhere is a preferable result for Western Australia.

I refer to the recent situation in which the Action stores came onto the market and, effectively, Woolworths acquired a significant share of them. In that circumstance, which was also important for consumer choice and competition in the retail market, Action stores were also important purchasers of Western Australian produce from Hillside Meats - a high-quality, small abattoir - many horticultural operations in the south west and fresh fish suppliers. It gave Western Australian consumers the opportunity to buy fresh, good-quality and locally produced produce. Most Western Australians, if given a choice to buy good-quality produce, would buy Western Australian product, particularly as concern increases about the safety of foods and imported food products. People want not only to consume this produce, but also to have some sense of confidence in the conditions under which that food is produced.

The loss of the independent Action chain presents real problems for Western Australian primary producers and food producers. There is little doubt that the major chains will increasingly use home-brand products, as they are doing, and source products from one or two suppliers, and they will be from the east coast.

In an issue that was important to Western Australia, the Australian Competition and Consumer Commission was absolutely useless. It was a genuine issue of competition - that is, ensuring a competitive supply industry for the retail grocery business and competition between retailers - and the ACCC effectively said it was too hard and it could not do anything. I find that approach very disappointing. It was an opportunity to deal with a matter in which there was clearly a public interest and a Western Australian producer interest and which involved a monopoly issue, and the ACCC walked away from it and wrote letters to the editor about why it was too difficult because there was no evidence of substantial change in competition. I was not convinced by that, and most people in the Western Australian business community probably were not either. It is a failing of the ACCC.

We have a serious problem in the state. We are seeing the loss of smaller levels of agricultural, fishing and manufacturing production. Western Australia is very good as a bulk commodity producer - we produce bulk grains and bulk minerals. However, the other fabric of our economic structure is being rapidly eroded and it is reasonable to expect the ACCC to play a role in supporting smaller competitors. There will always be the dominant national players, but there should be a competitive fringe of other suppliers around them.

The ACCC and the commonwealth government failed Western Australia in this episode. This Parliament must take a stronger stand if Western Australia is to have an economy, and an economic structure, that is more than simply a supplier of bulk commodities.

Question put and passed.

Bill read a third time and transmitted to the Council.