

**RETAIL SHOPS AND FAIR TRADING LEGISLATION AMENDMENT BILL 2003**

*Second Reading*

Resumed from 2 December 2003.

**HON NORMAN MOORE** (Mining and Pastoral - Leader of the Opposition) [9.16 pm]: We seem to be making much more progress than most members would have imagined.

It seems that the Government is not quite sure what it is doing on this whole issue, which is obviously a very important issue for the community. The Government seems to be going from one crisis to another in its position on this matter. I understand that trading hours are a vexatious issue in the community and one that occupies the minds of people from various sides of the argument on a regular basis. The Government seems to have the view that putting off the decision-making processes until a later time will be one way in which it can get itself off the political hook on which it has caught itself. It is interesting in the context of this debate that the national competition policy arrangements seem to be driving the agenda for all States of Australia and that somehow or other State Parliaments are being put in a position in which they must make decisions based upon the financial requirements of the States as a direct result of decisions being made by the National Competition Council.

I have always had a problem with the situation we find ourselves in. On many occasions when we were in government I felt that the National Competition Council was making decisions that were quite rightly decisions to be made by State Parliaments. We had signed off on a national competition policy that allowed a process to be put in place under which the National Competition Council could virtually dictate to State Governments what they should or should not do on a range of issues, one of which was retail trading hours. The problem we have is that every State is entitled to make decisions about these sorts of matters. State Parliaments have the jurisdiction to make laws that relate to circumstances that are appropriate to that particular State. That some distant central organisation can make decisions about how much funding States should or should not get on the basis of some centrally determined position on matters relating to competition is a matter that has been of significant concern to me since I have discovered what the ramifications have been of national competition policy.

I acknowledge the difficulty that the State Government has in trying to respond to a situation in which reasonably large sums of money are at risk if it does not follow the path of national competition policy. On the other hand, the Government must also recognise the demands, needs and requirements of consumers in Western Australia and those who are providing goods and services to those consumers. It always seems to me to be appropriate that the State Parliament should be able to decide when and for how long shopping facilities should be made available to people in Western Australia.

In the context of that comment, I am pleased to acknowledge that the lead speaker from the Opposition is now available to speak on this Bill. It is probably a reflection of the speed at which this House is making progress with the legislation on the notice paper. I guess it demonstrates to those members of the Government who seek to criticise this House that if legislation is brought on sensibly and is not contentious and they do not seek to argue the case and occasionally agree with what the Opposition says, things happen much more quickly than anybody would expect. That is what has happened today.

**HON BARRY HOUSE** (South West) [9.20 pm]: Hon Simon O'Brien is the lead speaker for the Opposition on the Retail Shops and Fair Trading Legislation Amendment Bill, because he is now the shadow Minister for Consumer and Employment Protection, but I have prepared some notes on the Bill and am pleased to say a few words. The House needs to know at the outset that the Opposition will not be supporting this legislation, for very good reasons. Unfortunately I do not have the exact quote in front of me, but a comprehensive document was put out about four years ago about small business, trading hours, regulation and deregulation, and it finished with the words that the Labor Party will not change trading hours, full stop; in other words, it will not deregulate trading hours. The Labor Party then won the election - surprisingly - and it was presented with the situation of trading hours. It appears that the Labor Government has been totally seduced by the prospect of national competition policy payments. We have heard a lot about the \$70 million in total for changes to retail trading hours, the Potato Marketing Board, liquor licensing and various other bits and pieces. The fact is that the Labor Party has been so seduced by the prospect of those few extra federal dollars that it has abandoned all of its principles and commitments and has gone back on all of its pre-election promises. This is yet another example of that.

Hon Kim Chance: Hang on! We have kept the Potato Marketing Board.

Hon BARRY HOUSE: That is one board the Government did keep. I am pleased it did. The Government handled that very well, because that is the only example of which I know of the Government's successfully mounting a public interest argument.

Hon Kim Chance: No, we were not successful. We mounted the public interest argument, but we were not successful, and we are paying the penalty now at nearly \$4 million a year.

Hon BARRY HOUSE: Yes, but we still hear rumblings about adjusting the potato marketing system to try to grab even those few dollars.

Hon Kim Chance: Yes, that is true.

Hon BARRY HOUSE: So I take it back; the Government was not successful. In the minister's case, I know he at least tried -

Hon Kim Chance: We were successful with the Grains Licensing Authority, which is the biggest of them all.

Hon BARRY HOUSE: In the case of retail trading hours, the State Government made no attempt at all to mount a public interest case to the federal authorities. In the case of liquor licensing - I am straying off the mark a little, but it is a parallel situation - the State Government also made absolutely no attempt to mount a public interest case. In August 2003 the Minister for Racing and Gaming, who has responsibility for liquor licensing, charged off and put out a media release announcing large-scale changes to the liquor licensing regime in Western Australia. However, he did that without proper consultation and proper process.

Hon Nick Griffiths: People who say that mislead the people of Western Australia.

Hon BARRY HOUSE: The minister was caught out.

Hon Nick Griffiths: I was not caught out at all. Frankly, the people who say I did not consult are not telling the truth, and they know it.

Hon BARRY HOUSE: Truth is a subjective thing, of course.

Hon Nick Griffiths: No, it is not. People either tell the truth or they do not. It is not subjective. That is where you have a difficulty. You think the truth is subjective.

Hon BARRY HOUSE: In that case the Opposition very quickly grasped what the real situation was in Western Australia and put together a position paper. We did that in December 2003. Lo and behold, in February of this year, the Premier did a back flip on liquor licensing and said that the proposed liquor licensing changes would not be introduced. That was a classic case in which the public sentiment and judgment had been completely misinterpreted. The minister has belatedly put together a comprehensive review - which should have happened in the first place - involving all stakeholders in that area. I asked a question today about which personnel will head up that review. In that case, we support the minister.

Hon Kim Chance: One of the problems with consultation is that as much as we do consult - this is generally not just in this area - the people who do not get their way will always claim that they were not consulted.

Hon BARRY HOUSE: Absolutely.

Hon Norman Moore: You are learning!

Hon Kim Chance: I just thought I would interject with that little grain of wisdom!

Hon BARRY HOUSE: I agree with the Leader of the House. We all know that there are individuals and groups in the community who not only want to be consulted and be part of the process but also want to run the process and get their way 110 per cent; and, if they do not, they go outside the process afterwards and cry foul. That is a situation that we all have to live with.

Hon Kim Chance: It is a human condition.

Hon BARRY HOUSE: Yes. I will now get onto retail trading hours.

Hon Nick Griffiths: At last! I was going to interject to ask you what you were talking about!

Hon BARRY HOUSE: The Government originally proposed the complete deregulation of retail trading hours in Western Australia after its eyes had lit up with the \$70 million that was flashed in front of it like some gigantic payout on a poker machine. The Government jumped into that very quickly. However, it then had to back down from that. I give a great deal of the credit for that to the small business community of Western Australia, which galvanised into action and lobbied very hard to point out to the Government, the Opposition and the community at large what the real situation was. I also give some credit to the Government's backbenchers, because this was one case - I think they had a bit to do with the proposed liquor licensing changes as well - in which they actually showed some spine and stood up to the Government and the ministers. That is always refreshing to see because as a member who has been around this place for a while, I can see when people are being done over and when members on the back bench become good representatives by standing up not only to their ministers, but also a bureaucracy that drives a very hard agenda. In this case, there was a backdown on retail trading hours.

However, it was only a partial backdown, because in true Fabian socialist style, there is another incremental approach to deregulation. These guys never lay down; they will always backtrack two steps and then take another step forward. They want to achieve the same result - complete deregulation - by increments and by stealth. That is what this legislation is all about. This legislation will open the door with weekday extensions of trading hours for general retail shops till 9.00 pm and it will provide a three-year review of the major retailers. Of course, in Western Australia, the major retailers are Coles and Woolworths. This is a partial step to complete domination of the retail industry in Western Australia. In Western Australia, Coles and Woolies control 61 per cent of the retail market. In the eastern States, where complete deregulation has been in force for some years, the market concentration of Coles and Woolies is 80 per cent, and it rose to 80 per cent very quickly after the introduction of deregulated shopping hours across the board. We all know the reasons for that. All this has been done for a few million dollars in national competition payments. I mentioned that this is due to the Government not even trying to present a case to justify the public interest. It was caught out. If members read the debate on this issue from the other place, they will see clearly that the Government put forward a 1999 review document, which the coalition Government rejected, that advocated the complete deregulation of trading hours as its justification for a public interest.

Hon Nick Griffiths: You read the Legislative Assembly debate?

Hon BARRY HOUSE: I read the Legislative Assembly debate; it was a good debate that covered a lot of ground.

In that case, the Government used a document to set out an argument counter to what it claimed it wanted to achieve. The Government cannot be fair dinkum if it is doing that. It meekly accepted that "hands in the air", "tickle my tummy" approach and decided to take what was dictated to it through the national competition policy and to get into bed with the two dominant retailers and allow them a free kick to increase their market share and dominate the retail trade sector in Western Australia. That will destroy a host of small businesses along the way. I am always bewildered that the Labor Party is very quick to get into bed with some strange bedfellows; that is, big companies, businesses and unions - the big end of town. However, it constantly bleats to us in this place and to those in the community that it represents the battlers. In this case, it has sacrificed the battlers. It has completely disregarded the battlers in Western Australia and is in bed with the big guys. That is in stark contrast to the Liberal Party, which pro-actively supports small business in Western Australia because it employs more people than the larger retailers. It employs people on a fairer basis than the bigger retailers.

Hon Kate Doust interjected.

Hon BARRY HOUSE: I will get to workplace agreements in a minute.

Several members interjected.

The DEPUTY PRESIDENT (Hon Adele Farina): Order, members!

Hon BARRY HOUSE: The fact is that if we allow the incremental takeover of the retail trading market by the two dominant retailers in Australia - Coles and Woolies - we will create an anti-competitive situation. When Coles and Woolies become established in a metropolitan area, they do not directly compete against each other. Rather, they organise it very cleverly so that Coles has one regionalised monopoly and Woolies has another. Between them they cut out all the little guys. That is how they organise their situation. The Government says it is competitive; however, it is anti-competitive because the end result is that the consumers have less choice. Shopping hours will quickly be reduced to what they are currently. Figures exist to prove that that has happened in Sydney and Melbourne and other places in Australia. Small producers will be driven out and sent bankrupt. There is a lot of evidence to suggest too that prices on average are certainly no cheaper in Coles and Woolies; indeed, they are probably higher.

Coles and Woolies have an insatiable appetite for market dominance. They will be the only companies to benefit from these changes. As we all know, they also want to control other areas. They are heavily into increasing their market concentration and domination in the liquor and petrol industries. We all get pamphlets in our mailboxes, which most people throw out as junk mail. I have one pamphlet that reads "Save at Coles" and on the front there is a petrol voucher. The Woolies pamphlet that I have reads "How to buy well at Woolworths liquor stores". There are 465 liquor stores in Western Australia. About a third of those are owned by Coles and Woolies. About 55 per cent of the sale in packaged liquor in Western Australia is already controlled by Coles and Woolies. There is another piece of legislation floating around that will have the same effect as this legislation - that is, incremental growth that will allow Coles and Woolies a free kick. Of course, Coles and Woolies do this by subsidising the activity that they want to take over from their major activity - that is retailing - until all their competitors are removed. They then lift prices and reduce hours and choice to the consumer.

I also have a great deal of concern for the Western Australian community. Coles and Woolies do not buy local produce. They do national deals. The dairy industry has received a lot of publicity in recent years. I maintain

that the deal done soon after deregulation in 2000 between - I am pretty sure it was Coles and a major producing group in Victoria - for generic milk on the shelves at very low prices, did more damage to the dairy industry than deregulation. Deregulation may have helped that to happen, but -

Hon Dee Margetts: It was all the same deal; it all linked in.

Hon BARRY HOUSE: Perhaps it all linked in. However, the fact is that they do major national deals. Coles and Woolies already have Berri orange juice on their shelves; they do not have Harvey Fresh orange juice. Dewsons Supermarkets and Supa Value Supermarkets support local producers. A good local company like Harvey Fresh is an outstanding company.

Hon Kate Doust: You can buy those at Coles and Woolworths. When was the last time you went shopping?

Hon BARRY HOUSE: Some can be bought there. Some condescend to stock some of those products. However, the major outlets for these local products are smaller supermarkets like Supa Valu and Dewsons. Coles and Woolworths have the terrible habit, once they have secured national deals and locked in producers - as has been done in the fresh fruit market in Western Australia through bypassing the Canning Vale markets and dealing directly with producers - of screwing producers tighter and tighter each year until the process is barely viable for them. The poor old supplier at the end of the production chain always loses out.

The other way in which this process harms Western Australian communities is that Coles and Woolies are pretty poor corporate citizens in local communities. Go along to the Coles stores in your community, Madam Deputy President, and try to get Coles to support local causes, such as sporting teams or a P&C. It is like trying to get blood from a stone. They are super tight and will never support local causes in the way a good home-grown company does.

Western Australia is already well served, first, by the big shopping centres under our current trading hours, and, second, by a series of local shopping centres that cater for extended weekday trading and weekend trading on Saturday afternoons and Sundays. Of course, allowance is made for tourism precincts in Perth and Fremantle. Wherever it is appropriate, local authorities, together with the local communities, in country areas can request extended trading hours. In the part of the world that you and I have our offices, Madam Deputy President (Hon Adele Farina), extended trading hours apply. That suits that part of the world with its large tourist element. Extended trading hours are appropriate to that part of the world, but not appropriate in other parts of country Western Australia. Local communities do not want extended hours, so they do not apply for them. I cannot hear a community clamour for change in this area either. The community by and large considers itself to be pretty well served in terms of retail shopping hours in Western Australia. Maybe something can be done for the overseas visitor sector, but that was the point of opening up the Perth and Fremantle tourist precincts. Capacity exists in those areas if people want to take up the challenge.

An argument is made that Western Australia should be like the rest of Australia; that is, because other States of Australia have adopted these trading hours, Western Australia should do so, too. Why? Western Australia is different. Western Australia is an enormous landmass with only two million people. We have not followed other States in gambling, and we do not intend to do so, do we, minister? A bipartisan position has been adopted regarding the non-introduction of pokies in Western Australia and restricting electronic gaming machines to the Burswood Casino.

Hon Nick Griffiths: I'm pleased to hear you say that, as it was not always your view.

Hon BARRY HOUSE: It has always been the Liberal Party view.

Hon Nick Griffiths: Your view was different .

Hon BARRY HOUSE: My view was not different. That difference sets Western Australia and other States apart. There is not a clamour from the political parties or the community to change the State's position with gambling and how we relate to the rest of Australia, and there is no necessity to make this change to retail trading hours either.

Western Australia can boast a high ratio of very effective, innovative and enterprising small businesses in the retail sector that serve the Western Australian community very well. The other strange parallel - it is almost a paradox - is that while the Labor Party is clamouring for deregulation of shopping hours, it has gone the other way with labour relations. We have seen it happen already in this Parliament. The first thing members opposite clamoured to do when they came to power was bring labour relations changes to Parliament and abolish the successful workplace agreement regime that operated in Western Australia to give some flexibility to the workplace and provide some real choice. The Labor Party introduced a pale imitation. I saw some figures in that regard the other day, which I cannot recall. However, the take-up of the pale imitation system has been dismal; it was very small indeed. Western Australian businesses that were big enough voted with their feet and moved in hoards to the federal system through Australian workplace agreements - AWAs. However, that left

small businesses in the retail sector out of the loop as they do not qualify for AWAs. They are stuck with the union-dominated inflexible industrial relations system inflicted upon them yet again in Western Australia. Many businesses have been crippled by these changes. They are crippled financially because they cannot afford the wages. They are also crippled in other ways. As they cannot afford to pay wages, mum and dad who own the business spend more hours working on weeknights and they work seven days a week; very often, there is nothing else in their lives.

In summary, the legislation is unnecessary and misguided. I will not speak for Hon Simon O'Brien, who is the Opposition's lead speaker on this measure. However, I think he would agree that if the Government were prepared to hive off the sections of the legislation that extend weekday trading hours and the review that will become a rubber stamp for incremental deregulation, the Opposition could support the rest of the Bill. The other provisions relating to unconscionable conduct in the workplace are acceptable to the Opposition.

That summarises my major points. The threat in Western Australia of deregulation early in the Government's term galvanised the small business sector into action. It has been led by organisations like the Independent Grocers Association, which has done a very good job putting together some cogent arguments. The Independent Grocers Association was established in 1990 to represent the interests of more than 700 independent supermarket operators and grocery outlets in Western Australia. These stores are overwhelmingly owned by individuals, partnerships and family companies, and have a combined turnover in excess of \$1.2 billion and provide full and part-time employment for 15 000 Western Australians. Independent supermarkets in WA purchase about \$100 million worth of local produce each year. In turn, they contract with thousands of independent professionals and blue-collar businesses in the delivery of a competitive grocery market. Of course, they are led by a very effective spokesman in John Cummings. I am sure members will have been sent other data illustrating that Western Australia has the smallest percentage of market domination by the two majors in Australia - 61 per cent compared with an average of about 80 per cent. Other data clearly sets out that in metropolitan Sydney and Melbourne, where weekday trading hours were extended to 9.00 pm, these stores later closed at 5.30 pm. This is true of the Westfield Shopping Centre, David Jones, Myer and Harvey Norman.

Hon Dee Margetts interjected.

Hon BARRY HOUSE: That is right; they knocked out all their competitors first. Harvey Norman's situation is interesting because it deliberately flouted the rules in Western Australia to try to encourage complete deregulation.

This legislation is unnecessary. It is driven by a false hope of picking up a few pennies from national competition payouts and it is a policy that the Opposition will oppose.

**HON SIMON O'BRIEN** (South Metropolitan) [9.51 pm]: The Retail Shops and Fair Trading Legislation Amendment Bill 2003 is a piece of legislation which, like the curate's egg, could be described as good in parts. The view of the Opposition, however, is that the bad parts are so significantly bad that they poison the entire piece of legislation, as I shall now describe. The Bill seeks to do a number of things. Firstly, it contains provisions to confirm, as the explanatory memorandum puts it, the current trading hours regime in metropolitan and non-metropolitan areas. This largely relates to a number of orders that were issued in 1994 and 1996, with which the Opposition does not have any trouble agreeing, because the legislation proposes in the first instance to confirm these arrangements that already exist. It is our contention that it is unnecessary to do that, but as the legislation does not materially propose to do any more than confirm the status quo, the Opposition does not object to it and is prepared to support that provision.

The second provision of the Bill broadly extends weeknight trading from Monday to Friday to 9.00 pm for all general retail stores in the metropolitan area from 2 May 2005. In the view of the Opposition, this provision is the fatal flaw in this Bill. I will return to that point shortly, because I need to talk about the implications of that measure, about the timing of it and some other matters. Thirdly, this Bill purports to confirm some existing standard hours and policy for non-metropolitan trading hours, as the Government has put it. Again, the Opposition does not have a problem with this procedure, but it is curious that these non-contentious and unnecessary new provisions which are supported by the Government and simply reflect what happens lawfully now anyway are being put into a Bill that contains controversial and far-reaching consequences. I ask the question: is this all window dressing or a bit of sugar coating to try to make the bitter pill a little easier to swallow? I will also give some views on that in a moment.

The Bill also provides a number of changes to some provisions in existing pieces of legislation, including the Fair Trading Act 1987, to mirror elements of the Trade Practices Act 1974 relating to the prohibition of unconscionable conduct in business-to-business transactions, and further amendments to the Commercial Tenancy (Retail Shops) Agreements Act 1985, which also relate to unconscionability provisions, particularly relating to commercial tenancies. Some other amendments provide that either a current commercial tribunal or

the long-awaited State Administrative Tribunal, which is having an extraordinary gestation period, will give that body or its successor jurisdiction over retail tenancy disputes about unconscionable conduct. There will also be amendments to the Commercial Tenancy (Retail) Shops Agreement Act to provide protection for tenants to form and join tenants' associations and other similar bodies. That is what the explanatory memorandum touches on in its overview of the Bill. However, there is a fifth element. I have already indicated that I will come back to the extension of weekday trading hours shortly. The fifth element to this Bill should not be ignored and it relates to the review provisions. The review provisions give us some idea of what the Government is up to, having sought to distract observers from the central, very important and vexed issue about the extension of weekday trading hours by putting in some other things that do not matter, and I have already mentioned those. While we are wondering about the smoke and mirrors, I will allude to another area relating to the provisions for the review of the parent Act, the Retail Trading Hours Act 1987.

Section 41 of that Act currently provides for a review of the Act in the following terms -

- (1) As soon as is practicable after the expiration of the period of 5 years following the coming into operation of this Act the Minister shall cause an investigation and review to be conducted, and a report to be prepared as to -
  - (a) the operation of this Act;
  - (b) the operation of the Committee; and
  - (c) the need for this Act to continue in operation.

Another provision refers to causing a copy of that report to be tabled and so on. Lo and behold, in the Bill, unannounced anywhere, there is provision for a major change to the nature of the principal Act, and it contains quite a sting. That provision changes what was reviewed and it refers to section 14 of the principal Act. Suddenly that is what the Government wants to talk about - not about a review of the Retail Trading Hours Act, because it is demolishing a lot of that, but it retains an interest in section 14, which relates to trading hours and extraordinary trading hours for filling stations. Is that not interesting? All of a sudden we have gone from the review of an Act to review retail trading hours to simply focus on a review of the provisions that relate to trading hours and extraordinary trading hours for filling stations. Is this a hidden agenda on the part of the Government? It is the Opposition's view that that is precisely what it is. It is part and parcel of a push by some very large retail chains in this country that want to take over a far larger part of the market than they already hold. The key to that, as we are starting to see already, is precisely through the hours and the availability of retailers to operate through filling stations.

Debate interrupted, pursuant to standing orders.

*House adjourned at 10.00 pm*

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