

RETAIL TRADING HOURS AMENDMENT BILL 2011

Second Reading

Resumed from 17 August.

MR A.P. O’GORMAN (Joondalup) [3.45 pm]: The state opposition will support this bill. This bill amends only one provision of the Retail Trading Hours Act, to raise from 13 to 18 the number of employees who can be employed by a small business. For a business to fit the definition of a small business, it must have fewer than that number of employees on the floor at any one time. This bill is fixing a mistake or an oversight in the last retail hours trading bill that came through this place in that it made no reference to the number of people that the likes of the IGA stores et cetera were allowed to employ. We have seen a number of IGA stores —

Mr C.J. Barnett: It wasn’t a mistake.

Mr A.P. O’GORMAN: I said it was an oversight.

Mr C.J. Barnett interjected.

Mr A.P. O’GORMAN: I am giving my speech.

There was a complete overlooking of the fact that there was a 13-person employee limit on small businesses. That is now being raised to 18 people. What happened is that Coles, Woolworths, Big W and Kmart—all of those stores—could operate until 9.00 pm and on Sundays in certain trading precincts with any amount of staff they wanted, but we tied our small businesses to 13 staff. We have seen a number of those small businesses go out of business because they could not compete. That is the reason the representatives from WA IGA stores went to the government and said they needed that regulation fixed. We are moving the number of employees allowed by five, from 13 to 18 people, to give those stores a small bit of a better opportunity to trade in the market place. However, small businesses in this state are still trading with their hands behind their backs because they cannot compete with Coles and Woolies, because the retail trading hours legislation does not give them that opportunity, and many of our smaller retailers are going out of business. We can see that right across the metropolitan area. In my local shopping centre, Lakeside Joondalup Shopping City, I have counted 13 small businesses that have gone to the wall and just packed up and walked out of Lakeside Joondalup Shopping City. The pet shop has gone, the menswear store has gone and card and gift stores have gone. A card and gift store that has been there since Lakeside Joondalup’s inception, Cardiology, is closing its doors because of the excessive might of the large landlords over these small businesses.

Mr A.P. Jacob: I think your problem is that your comparison to Lakeside is a bit hard, because Lakeside is doing a roaring trade at the moment; business is booming.

Mr A.P. O’GORMAN: You go through there and you tell me that the small businesses are surviving. Thirteen of them are gone, and Cardiology is going as well.

Mr A.P. Jacob: It is one the most successful shopping centres in the northern suburbs.

Mr A.P. O’GORMAN: And it is because landlords are screwing the small businesses; the member knows it and I know it. When the businesses come up for a renewal of their leases, to extend them for another five years, they are being forced into a refit that is often completely unnecessary. It costs hundreds of thousands of dollars and they have five years to recoup not only the fitting out, but also all the —

Mr T.R. Buswell: That is why we are changing the commercial tenancies legislation framework.

Mr A.P. O’GORMAN: It is still happening. This bill allows most of the small stores to move from 13 employees to 18 employees. That is all it does. It was an oversight in the last bill; it was pointed out in the second reading debate and it was just not put in there. Now the government is coming back with another bill, just to push it into the legislation quickly, because the IGAs, John Cummings and those people, have been to the government to say that they can no longer compete, and for some reason, the Premier has now decided to put away his dispute with IGA. We remember his comments about IGA in this place. We remember the minister’s comments in this place when he threw rolls of toilet paper around and accused the IGA store in my electorate of being overpriced, and he knew it was wrong.

Mr T.R. Buswell: It was certainly not wrong.

Mr A.P. O’GORMAN: It certainly was wrong, because I actually went and did it afterwards and the minister was certainly wrong. I said that small businesses had their hands tied behind their backs; this legislation releases one or two fingers to help. It does not really do a whole lot to bring them up to the same type of a market as some of the larger stores.

Until we get proper retail trading hours legislation in this state, our small businesses will go to the wall. As I said, 13 to 15 small businesses in the Lakeside Joondalup shopping centre have gone out of business. The pet shop came to the end of its lease. The owner was quite happy at the end of the lease to accept the terms of the new lease. The only thing he could not meet was the excessive refit costs. The management at Lakeside would not accept that he could just carry on. Nothing was wrong with his shop; it was of a very good standard. The only thing he said was, “I can’t cop this” and he packed up and walked away and went back to New South Wales.

The same has happened with Cardiology, a teddy shop at Lakeside Joondalup. That business has been to me a number of times because the shopping centre put very strong restrictions on it and demanded certain things of it that it simply could not do. If I remember correctly, Cardiology has been there since the shopping centre opened; I could be wrong. At the moment, Cardiology has a full sell-out of stock at that shopping centre. I am sure the same thing is happening at many other shopping centres around this state; small businesses are either going to the wall or simply packing up and walking out because they cannot afford to pay the exorbitant rates and they are not able to trade on the same terms as the larger retailers such as Coles and Woolies. We will support this bill. It is a very small bill and really has only one clause, which reads —

4. Section 10 amended

In section 10(3)(bc) delete “13” and insert:

18

That is all this bill will do. Hopefully, some of the smaller IGA stores that are competing with Coles and Woolies will be able to hire those five extra staff and start providing some extra service to compete with the Coles and Woolies stores once more. It is really one of those bills that fix small indiscretions, if we like. Hopefully, we will see that some of our smaller businesses will be able to compete a lot better in the future.

MR F.M. LOGAN (Cockburn) [3.52 pm]: I rise to also add a few words to the debate on the Retail Trading Hours Amendment Bill 2011. I have indicated to the minister that we will support the bill. Because of the huge length of it—four clauses—I do not think we will spend any time in —

Mr T.R. Buswell: Size isn’t everything! This has a significant impact.

Mr F.M. LOGAN: I have heard that the member for Vasse regularly argues the case that size is not everything! I do not know why he put that so strongly; only he would know that.

In terms of the length of this bill, it contains only four clauses, so we will not go into consideration in detail and I have given that assurance to the minister. I rise to concur with the member for Joondalup that we will not oppose the bill at all and we acknowledge the changes being made. I will ask something of the minister. I know that the minister is the representing minister, but he has been the minister in this area before. I think that this point with which we are dealing today was also under consideration when he was the Minister for Commerce. I think that is right. The minister was considering increasing the number of staff to 18; I do not know whether he dealt with it.

Mr T.R. Buswell: It was not considered as part of the creation of the special trading precincts. I was considering a range of things in retail trading and my opportunity to carry on those considerations ceased.

Mr F.M. LOGAN: Perhaps the minister will be able to respond anyway, given that he has had experience in the area, about how he sees this bill impacting small businesses in Australia and the likely outcomes for increasing the numbers of persons employed in small trading enterprises from the current level to 18. I believe that number of staff will also be allowed to be employed for those enterprises on Sundays; is that right, minister?

Mr T.R. Buswell: In small retail shops.

Mr F.M. LOGAN: Small retail shops that are allowed to trade on a Sunday will be able to increase their numbers to 18, so it applies across the seven days of the week. How does the minister see that flowing on to the economy here in Western Australia? Obviously, it is a very good outcome if more people are being employed by these enterprises on a seven-days-a-week basis. That is good for employment and the economy. Obviously, there is a downside for other companies. Some companies will complain, and I am sure have complained, to the government about the competitive impacts of this decision. I am thinking, in particular, of some of the larger players in the industry.

Mr T.R. Buswell: As I said, I was not closely involved in this. The only complaint or issue I heard about was from the IGA on Cambridge Street, which is a fantastic shop. When the special trading precinct boundary was expanded, the IGA was outside the special trading precinct and the Coles or Woolies 500 metres up the road was still inside the precinct. The IGA was very keen for some relief so that it could also trade on the Sunday. Unfortunately, that IGA is so successful that its number of staff is also more than 18. That IGA was the only business I spoke to at that time.

Mr F.M. LOGAN: It is also interesting that we can see development in some of those larger companies—in particular, Coles—and they are opening up stores that are smaller than their normal shopping mall operations to gain a foothold in this market. I remember having discussions with Coles and Woolworths and also put that to them because of their complaints about the trading hours. I know that the minister has responded by way of interjection, but I would like to hear what the minister has to say about the impact of this bill on a broader basis.

The other thing I raise is also about the retail trading hours changes that the government has made so far. The minister was the minister responsible at the time for increasing the number of trading precincts and broadening the boundaries of the trading precincts for Sunday trading and extending trading hours to 9.00 pm. Certainly in Cockburn, the response from retail trading businesses is that nine o’clock trading is a complete waste of time. I am positive that the minister has also heard that. Particularly companies that operate within the larger shopping centres in our suburbs say that the traffic is so light that it does not warrant opening their shops.

I remember that before the trading hours were changed, I went out and spoke to nearly 60 businesses in my constituency. It was not a survey, but I simply went out and spoke to them and asked the same types of questions. I spoke to more than 60 businesses, which is quite a lot for the area of Cockburn, and they were all small retail trading companies. They all said the same thing; that is, the nine o’clock trading would not help them. Now that it is in place, they maintain that argument and they get quite angry and worked up over the issue of the nine o’clock trading. As the minister knows—I know that he will probably fire this back at this side of the house—businesses are calling for Sunday trading as opposed to nine o’clock trading. The minister has heard that. I have to be honest and say that that is exactly what I hear as a local member of Parliament.

Mr T.R. Buswell: I found some that open later in the morning and then shut at 7.00 pm. A lot of people say to me that there is bit of a burst of activity from 5.00 pm and 7.00 pm, maybe 7.30 pm, and then they shut up and go home. I think it is for everyone to decide, basically.

Mr F.M. LOGAN: At least the minister is consistent. That is consistent with his argument all the way through.

One of the other things that came out of those earlier discussions on retail trading hours was the establishment of the Small Business Commissioner for analysing contracts. I believe that position has been advertised. We put forward a proposal for the Small Business Commissioner to look at retail trading.

Mr T.R. Buswell: I am not sure, but I imagine it would, because that bill was passed.

Mr F.M. LOGAN: My understanding is that the position has been advertised. I know many small businesses are looking forward to the time that they will be able to gain access to the jurisdiction of that body, because currently they have no place to go. As the minister knows, the only place they have to go is court. Most small businesses would not go anywhere near court because it is too expensive for them. The impact and repercussions from some of their landlords would be too great for them to bother going to court in the first place over their tenancy contracts. They are certainly looking forward to that body being established.

Mr T.R. Buswell: They can also deal with non-tenancy-related matters that impact on small business. In fact, the Victorian Small Business Commissioner informed me when I went and met with her when I had that portfolio that a bit of that activity is taking action on behalf of small businesses against state entities, which she said caused a bit of angst—that is, electricity and water suppliers et cetera.

Mr F.M. LOGAN: That does not surprise me at all. I imagine they will be taking action in the Victorian Small Business Commissioner’s jurisdiction against local councils over rate increases and the way in which those rate increases flow on through their landlord.

Mr T.R. Buswell: Maybe. I do not know.

Mr F.M. LOGAN: One of the major complaints from retail traders who operate within shopping malls is the on-costs that flow on to them. Even though landlords say, “Look, this is an open-book contractual relationship. We show them how much we get charged by utility companies and by local governments, and we then just pass those costs on a per-square-metre basis as per their contract,” the retail traders always contest that and always are very angry with their landlords about the way in which those costs flow on.

As I say, that was a good outcome in terms of the discussions between this side of the house and the government over changes to the retail trading hours. The lease register was one that was not introduced; it is being introduced, but not introduced in the same way.

Mr T.R. Buswell: But not ruled out, either.

Mr F.M. LOGAN: I realise it has not been ruled out, but it is not going to be introduced in the same way that we put to government. That is about having open access to the lease register. As the minister knows, that proposal was based on trying to ensure that the real estate market for retail contracts worked in the same way as

the housing market works; that is, people can see what sales have taken place and see the tenancies that exist in the real estate market and how much those transactions have cost and for what time. People then have a very good idea of how that market in that area is moving. That simply was the argument we put forward for the lease register in the shopping precinct. Obviously, that is seen as a no-no for the Shopping Council of Australia, as it believes that for its members, who are extremely large shopping centre owners, that exposes information that is detrimental to their competitive position as a shopping precinct owner. Therefore, it bitterly refuses that. I am sure it has put that argument to the minister as well.

It was an irony that the Shopping Council of Australia took that line, given the fact that it is the first to argue the case for competition. When moves are made to ensure competition in its industry, it is the first to oppose it. I notice that the minister has said that the government has not ruled out moving towards the position of a more open and transparent approach to retail tenancy contracts —

Mr T.R. Buswell: Commercial tenancies

Mr F.M. LOGAN: — commercial tenancy contracts for shopping centres. I would appreciate the minister putting a few words on *Hansard* about exactly what the government expects to do.

Those are really the only points that I wish to make about what has happened over the retail trading debate and also the impact of the changes to the retail trading hours. As I said, I would like to hear how the minister believes these changes will have further impacts on the economy and on small business in Western Australia. I now pass over to my next colleague to speak on this. Nobody else wants to speak on this?

Mr C.J. Barnett: It was such a powerful address that no-one else wants to speak on it.

Mr F.M. LOGAN: It is not surprising it was a powerful address. It is very difficult to talk to four paragraphs, only one of which has anything in it. Does anyone else wish to speak?

Nobody else wishes to speak on this bill. Obviously, the government has convinced people. It has battered us into submission on the retail trading hours issue to the point that we cannot even contribute to the debate anymore! Not only that, Premier, we do not want to contribute to debate anymore on that! We will leave that to the Premier.

Mr C.J. Barnett interjected.

Mr F.M. LOGAN: With that, I will finish my contribution to the debate.

MR T.R. BUSWELL (Vasse) [4.07 pm] — in reply: I thank the member for Cockburn. That was the longest wind-up I have heard —

Mr F.M. Logan: It sounds like Frank Sinatra’s comeback!

Mr T.R. BUSWELL: There were more farewells than Dame Melba.

I make a couple of comments in reply. I acknowledge the concerns relating to the viability of small business made by the member for Joondalup, which I will comment on very briefly, the comments by the member for Cockburn and, more broadly, the support of this bill by the opposition. The legislation is a sensible if not modest change to the retail trading framework in Western Australia. It was done, effectively, following approaches to the government by representative groups of certain independent retail shops, mainly retail grocery shops, which were at or near this 13-employee limit and felt that they needed some more employees to help them to better compete, and, by extension, to better service their customers. We were happy to support that proposition.

I just have a few issues. I say to the member for Joondalup that this was not excluded from the bills in and around the establishment of the special trading precincts. I am moderately familiar with that process. I had carriage of that for a while before having a spell. Those bills were developed to do two things. Firstly, they were to change a tourism precinct to a special trading precinct. Secondly, the creation of the special trading precincts in Joondalup, Midland and Armadale was independent of these considerations. Yes, these considerations were underway, but there was a whole pile of matters that were being considered, including shop numbers. It was not an oversight; they were always intended to be dealt with as two separate issues.

In relation to the change in definition and its potential impacts, as we know, we are talking about small retail shops. At the moment, small retail shops can effectively trade 24/7 in Western Australia. As I recall, three criteria have to be met for a retail shop to be a small retail shop. They are that 13 or fewer staff are employed; ownership is limited to six people; and not more than three shops are owned. There may well be an argument that some of those other matters could have been dealt with as part of this legislation. However, the government has not decided to do that. We are changing the number of persons who can work in a shop from 13 to 18, so we are effectively broadening the number of businesses that will be eligible for definition as a small retail shop.

I think its impact will be at the margin, member for Cockburn. Probably a number of businesses around Perth are at that cap and are being constrained; there are others to which that cap would have been a constraint, so it will help them to more effectively, as they would put it, compete with their larger rivals. However, I think it is always important to acknowledge the flip side of that, which is to more effectively service their customers. I think I provided the member with the example, by way of interjection, of the IGA store on Cambridge Street in Wembley. I went down and met the two owners of that store. They are very proud business owners with a long history in what I would call the grocery business—fantastic—and they run a great store. I am not sure that having 18 persons will enable them to trade. If they make some minor changes, it may. Indeed, it was one of the anomalies of the change in boundaries—which was our first step in retail reform when we increased what was then the Perth and Fremantle tourism precincts—that they were left out. A couple of businesses were impacted like that. There was one in Victoria Park. I cannot remember the name of it. It is the one at the top of the hill, not the one at the bottom of the hill. It may well be called the Park Centre. There was also this one on Cambridge Street. Hopefully, this amendment will enable them to operate. I think that the impact will be at the margin, but for those businesses to which it does apply, the impact will be significant.

The member asked a couple of other questions. One of them, not quite related to this bill, was about the lease register. When we had the debate in and around commercial tenancies, obviously the opposition had a view—it was well put, I think, by the member for Joondalup at the time—about the lease register. We were not at a point at which we could adopt the lease register. I do not have any up-to-date advice on that, other than that I know from the debate that we had here at that time and the advice I received that the Department of Commerce is still considering and engaging in dialogue on the issue of the lease register.

Mr A.P. O’Gorman: Minister, where is that commercial tenancies bill at the moment? It seems to be stuck somewhere at the moment and we have not got it back. Where is it? What is happening with it?

Mr T.R. BUSWELL: I do not have any advice on that, I am sorry. I am hoping, if it is not here, that it is in the upper house. That is a place, the workings of which —

Mr A.P. O’Gorman: But it has passed the upper house. It has been agreed to in the upper house, hasn’t it? It has been through the committee stage.

Mr T.R. BUSWELL: I seriously do not know. I just do not follow all the bills that go through the upper house, so I could not advise the member on that—although, with a flash of brilliance, the commercial tenancies information has arrived on my desk. The bill was passed in the Council on 28 June with three amendments. Yes, yes.

Mr F.M. Logan: Can you read the handwriting?

Mr T.R. BUSWELL: It is well-presented information.

Mr A.P. O’Gorman: Does it scare you?

Mr T.R. BUSWELL: No. I am just trying to understand it. I have not seen it. It would appear that some of the amendments passed have caused us to go back and consult further with the people upon whom those amendments would impact. That is happening. Submissions in relation to that closed on 19 August. There were 30 submissions, and the department is currently analysing those submissions. As I think the member probably knew before he asked me the question, that bill has travelled through the upper house with some amendments, which were supported by the majority of members at that time.

Mr F.M. Logan: But not necessarily the government!

Mr T.R. BUSWELL: That bill is currently in transit between the upper house and our house. That period of transit is requiring some additional consultation on those amendments. Effectively, just for the purposes of completion, the amendments deal with changing the definition of “retail shop lease”; deleting the word “comparable” in relation to lease information obtained by valuers conducting a market review; and removing the requirement for valuers to maintain confidentiality in relation to information obtained under the new section. As I said, we are now consulting, as I think is appropriate, before those amendments come back to this house for consideration by the government. No doubt, member for Joondalup, that situation will be resolved in due course.

I will quickly step back, though, and once again reiterate what the government has done in and around retail reform. We made changes to the hours at which shops could open in special trading precincts—or, as they were known then, tourism precincts. We made changes to the boundaries—I might have to get a conveyor belt.

Mr M. McGowan: Just table it.

Mr T.R. BUSWELL: It is a handwritten note, and well written too.

We changed the boundaries for Fremantle and Perth. We then brought legislation into Parliament to change tourism precincts to special trading precincts, because clearly they were not just tourism precincts. We now have special trading precincts for the city, Fremantle, Armadale, Midland and Joondalup. The advice I have had is that the response to those, in particular the Sunday trading aspect, has been very, very positive from a consumer point of view.

The member for Joondalup raised the issue of businesses closing in his electorate, in particular in one shopping centre. I think the unfortunate reality at the moment is that businesses are closing in a lot of electorates. This is a difficult time for small business. It is a difficult time for small business in the retail sector; it is a difficult time for small businesses in my electorate in the tourism sector; it is a difficult time for small manufacturing businesses as well as construction businesses, in particular household construction businesses. I think it would be fair to say in regard to the level of underlying growth in the economy that if we took out those significant investments in the resources industry and the energy sector, it may well be the case that the economy is actually contracting.

Ms J.M. Freeman interjected.

Mr T.R. BUSWELL: No, that is a technical term, but it may well be the case that the economy is contracting; I do not know. I have the capacity to do that analysis; I just do not have the time and access to the data. However, it would be an interesting analysis. Unfortunately, in that sort of environment, often small businesses such as those that the member referred to in his electorate, as well as small businesses in my electorate and in all our electorates, are at the bleeding edge, if I could put it that way, of that circumstance. So, it is a difficult time. The best thing that we can do is manage the aggregate economy so that as it grows, that growth filters through more broadly. Hopefully that, combined with what must inevitably be a change in consumer confidence, will lead to a turnaround. I still maintain that the evaporation of consumer confidence in this country is one of the main reasons that people are not spending money in the shops, it is one of the main reasons that people are not investing in property, and it is one of the main reasons that people are not taking holidays. It is a big issue. A whole range of factors impact on consumer confidence. I heard the Treasurer say the other day that he listens to —

Mr P. Papalia: The leader of the federal opposition is a big contributor.

Mr T.R. BUSWELL: Maybe, but he is not the one in government steering the country in one of the most erratic ways ever, member for Warnbro. He is not the one who jumps around on public policy and undermines confidence. But I did not really want to talk about that. I wanted to talk about the fact that —

Mr P. Papalia: Are you sure he doesn’t jump around on public policy and undermine confidence?

Mr T.R. BUSWELL: The member for Warnbro’s perception of his own importance in this place, I think, is somewhat inflated, but I think there is no doubt that the lack of leadership at a federal level is impacting on consumer confidence. I was going to say that there are more broad factors at play, though. If members turn on the breakfast television programs, as the Treasurer admitted to the other day on one of his rare sleep-ins, for the 5.30 news, which I am sure he rarely catches on his way to work early to beat the improving traffic —

Mr A.P. O’Gorman interjected.

Mr T.R. BUSWELL: That was on only one road. What do members see? They see international turmoil.

Mr C.J. Barnett: He jogs in quite often.

Mr T.R. BUSWELL: The Treasurer does jog into Parliament quite often with his briefcase strapped to his back and with his red ministerial bag. Often he carries a trailer containing other important documents that he has slaved over into the wee hours, when he uses off-peak power. That is what this Treasurer does; he works hard. He does not burden the road network or the public transport system when he is out there sprinting in his Nike runners. The member for Rockingham probably would not see him because he moves too quickly in the morning in his lycra running shorts! Anyway, I will move on. The member for Rockingham told us he has a secret route to the city. He comes up—I will not go on!

Mr M. McGowan: It is the third way.

Mr T.R. BUSWELL: It is a rat run.

I had better get back to the bill. There is a significant issue with consumer confidence in the country and the state. I think it is part of a global issue.

I think I have touched on most of the issues the member for Cockburn raised, except for the Small Business Commissioner. The Small Business Commissioner’s position will be advertised soon. We are committed to providing that service to small business. I am not sure whether the member for Cockburn has met the Victorian

Small Business Commissioner. The Office of the Victorian Small Business Commissioner is a great institution. The Small Business Commissioner has the potential to immediately resolve disputes, whether it be with a landlord or substantive supplier. In Victoria the institution is used to settle disputes for owner contractors in the transport industry.

There is a huge opportunity to significantly advance small business. The Retail Trading Hours Amendment Bill was supported by both sides of this house and it could be said it was conceived by both sides of the house because we all went to Victoria and looked at what happens there.

This legislation will probably be the last step in the retail trading hours reform during this Parliament. I do not see the Premier indicating otherwise. That is my understanding, but it could change. At the next state election, people of this state will have a choice about retail trading. The member for Cockburn hit the nail on the head when he said that when he travels around Cockburn Gateway Shopping City, the people tell him that they want Sunday trading.

Mr F.M. Logan: They don’t want 9.00 pm trading; they want Sunday trading.

Mr T.R. BUSWELL: A very clear line has been drawn in the sand from a public policy point of view. I am not here to debate the various merits of that today; I will do that at another time. There is a very clear view on Sunday trading. We will go to the next election with a policy to support the introduction of Sunday trading. My view is that is what Western Australian consumers are after. Ultimately, shop owners—retailers or otherwise—are there to serve their consumers. When they serve their customers, they make a buck. The opposition has stated that it believes that it will continue to protect consumers by not endorsing Sunday trading. I do not know how it can protect consumers by restricting choice. However, we can debate that in the public forum of the next election campaign. I am glad to be sitting as a Liberal in that debate as we tackle the issues of Sunday trading. That is the most significant next big step in retail trading reform.

I thank the two members opposite for their contributions. As they said, it is a small but important bill, particularly for those retailers upon whom this cap impacts and those people who will be employed as a result of the lifting of the cap.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Mr T.R. Buswell (Minister for Transport)**, and passed.

House adjourned at 4.25 pm
