

**COMMERCIAL TENANCY (RETAIL SHOPS) AMENDMENT BILL 2009**

*Second Reading*

**MR F.M. LOGAN (Cockburn)** [4.01 pm]: I move —

That the bill be now read a second time.

I propose amendments to the Commercial Tenancy (Retail Shops) Agreements Act 1985. The proposed amendments are significant improvements for the interests of small business retail tenants, without being detrimental to the majority of landlords who act in a responsible and fair manner. The broad objective of these amendments is to redress the current imbalances between the rights of small business retail shop tenants and the rights of landlords who are, in many cases, large, well-resourced corporations. The key clauses of this bill will create the position of small business commissioner, which will provide much-needed protection for small retail business tenants in their dealings with landlords. The position will be held concurrently by the Commissioner for Consumer Protection.

The creation of the position of small business commissioner, with defined powers set out in clause 17 of the bill, will for the first time in Western Australia provide a minimal cost dispute resolution service for small businesses. The commissioner will have the power to inquire, research, investigate, mediate, arbitrate and refer disputes to the State Administrative Tribunal and encourage tenants and landlords to negotiate in good faith. This body will significantly improve access to a simple mediation and arbitration process for both tenants and landlords, and will reduce the reliance on costly and time-consuming court proceedings. The functions of the commissioner will also include the roles of watchdog and educator, through dissemination of information about the act and commercial tenancy leases, establishing guidelines for leases, and maintaining a statewide register of retail tenancies.

Under these amendments to the act, when a lease is signed, landlords will be required to notify the commissioner and provide lease details within 14 days. This will greatly increase transparency and rental competitiveness in the commercial tenancies market. Where rental leases have provisions that determine the opening and closing hours of a retail shop, these clauses are and will continue to be void. Section 12C of the act is further amended by clause 9 of the bill, however, to restrict a landlord passing on the costs of opening a shopping centre to tenants who choose not to open at specified hours or specified times. This will make it clear to landlords that they are prohibited from using lease negotiations or engaging in conduct to induce tenants to open at hours that are not in the economic interests of the tenants. Such cases may be referred to the commissioner for determination.

These changes to the Commercial Tenancy (Retail Shops) Agreements Act are critically important for the protection of the rights and economic interests of tenants who choose not to open on weeknights or on Sundays, should such provisions be somehow forced through Parliament by amendments to the Retail Trading Hours Act 1987, or by regulation or order, as we heard about earlier today. As indicated, the small business commissioner will play a role in preventing retail shops from being forced to have their trading hours dictated by landlords rather than according to their own commercial judgement.

Another important amendment to the Commercial Tenancy (Retail Shops) Agreements Act is the introduction of a general prohibition on linking rent to business turnover. Accordingly, the bill establishes strong financial penalties for landlords who breach this provision. It is not appropriate that such sensitive and private business data should be released to a landlord by an obligation of a tenancy lease in order to calculate rent adjustments. Section 7 of the Commercial Tenancy (Retail Shops) Agreements Act is amended to outlaw this practice and introduce a penalty for breaches of this provision.

There are business circumstances in which turnover-based rent is not only appropriate but helpful—for example, in the case of start-up companies. This bill seeks to get the balance right between tenant and landlord by providing for such arrangements, but only by explicit agreement between the parties. A further extension of this prohibition in clause 8 of the act will prevent landlords from establishing lease provisions that allow access to tenants' turnover statements.

This legislation will also give greater certainty to small business owners over the process of managing the renewal or termination of leases. Landlords will now be required to give written advice on whether the retail lease will be terminated or renewed, including proposed terms, conditions and rent, not less than three months and not more than one year before the conclusion of the term of the lease. Conditions will also be placed on landlords advertising the availability of premises for lease during the term of the tenant's lease, unless the tenant has received an offer of renewal and has not responded, or has chosen to not continue with the lease, or the landlord has informed the tenant that the lease will not be renewed.

The proposed amendments in this bill, which have been long sought by retail tenants, are balanced and reasonable. They are the result of a significant level of consultation and negotiation with representative organisations of both tenants and landlords. I am very pleased to inform Parliament that all the organisations that were consulted approved of the changes and have informed me that small business tenants in Western Australia will enthusiastically welcome these amendments to the act. However, in providing additional protection for small business retail tenants, the amendments do not place unwarranted restrictions on landlords and will not deter investment in the retail property sector. In securing greater protection for small retail businesses to operate in lease premises, these amendments will play a crucial role in stimulating greater investment and activity in the retail sector and thereby go a long way towards helping counter the adverse economic conditions that small retailers currently face.

Debate adjourned, on motion by **Mr J.E. McGrath**.