

**COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL 2011**

*Introduction and First Reading*

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

Explanatory memorandum presented by the minister.

*Second Reading*

**MR T.R. BUSWELL (Vasse — Minister for Transport)** [12.25 pm]: I move —

That the bill be now read a second time.

The bill the government is introducing today is the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011. The purpose of the bill is to amend the commercial tenancy legislation in Western Australia to improve the tenancy rights of small business and to promote an efficient and fair retail tenancy market in Western Australia.

The retail industry in Western Australia is characterised by a mix of small and large businesses participating as landlords and tenants. This characterisation can lead to inequalities in bargaining power and information asymmetry. The commercial tenancy legislation regulates this relationship and promotes equitable leasing arrangements. The legislation currently contains a number of protections for tenants, including a requirement for landlords to disclose certain leasing information to tenants prior to entry into a lease; a minimum five-year lease term for most leases; a prohibition on landlords requiring retail shops to open during certain hours; provisions regulating rent review; and prohibitions on unconscionable conduct. These protections will continue to apply; however, a review of the legislation in 2003 identified the need for further reform in some key tenancy areas. This review involved extensive consultation with over 90 stakeholders, including key tenant and landlord representatives. Following consultation, the review committee made 61 recommendations for reform, some requiring changes to the legislation and others to be implemented administratively.

Since the time of the review, recommendations relating to unconscionable conduct have been incorporated into the act, while other recommendations are no longer relevant, given changes in the industry and the law since the time of the review. In particular, the majority of recommendations regarding the Commercial Tribunal will no longer need to be implemented as a result of the establishment of the State Administrative Tribunal. The review committee recommended the creation of a public lease register. The government is pursuing policy development in relation to this matter in consultation with the retail sector; however, the lease register provisions are not included in this bill. The bill implements most of the remaining recommendations.

I now turn to the key provisions and benefits of the bill. The bill will provide extra protection to small business tenants by prohibiting landlords from passing on to retail shop tenants certain legal costs associated with preparing and negotiating the lease. At present, many retail leases require the tenant to pay the landlord's costs in preparing and negotiating the lease. Not only does this increase the tenant's leasing costs, but also it potentially undermines the tenant's bargaining position, as tenants may be unwilling to enter into negotiations with the landlord for fear of increasing their costs. The amendments in the bill are expected to reduce tenants' leasing costs and strengthen their bargaining power. To provide extra protection for tenants who risk losing their livelihood and substantial financial investment if they inadvertently fail to or incorrectly exercise an option to renew their lease, the bill amends the act to require landlords to provide tenants with prior notification of the expiry date of their option to renew.

Rent reviews have historically been a contentious issue for landlords and tenants, as valuers have not always had access to meaningful data on which they can base their valuation reports. For the purpose of determining market rent for premises, the bill amends the act to require landlords and tenants to supply valuers with relevant leasing information about retail shops in the same building or retail shopping centre. This will promote more accurate and consistent market rent reviews.

The bill includes comprehensive provisions concerning relocation clauses that may be included in retail shop leases. The bill clarifies and strengthens the tenant's rights in regard to relocation. Specifically, in relation to retail shop leases when five years of the term have not yet elapsed, a provision allowing for relocation of a tenant will be void unless it is in the prescribed form or it is approved by the State Administrative Tribunal. If five years of the term of the lease have already elapsed, a relocation provision is also permitted if it is in accordance with requirements set out in the act.

The bill also includes specific provisions prohibiting misleading and deceptive conduct by the parties to a retail shop lease. To ensure that the State Administrative Tribunal has the power to deal with all matters arising under

a retail shop lease, the tribunal will be given the power to consider and determine claims for misleading and deceptive conduct.

The review committee also made a number of recommendations for improving the disclosure statement and tenant guide documents contained in the regulations to the act. These recommendations will result in greater disclosure to tenants on key tenancy issues, including options to renew, hidden leasing costs and trade restrictions.

The proposed amendments contained in the bill have been reviewed and endorsed by the Economic and Expenditure Reform Committee in accordance with the state's regulatory gatekeeping process. Although some minor transitional and compliance costs associated with changing lease documentation may arise, it is anticipated that the benefits to the Western Australian small business retailing sector as a whole will outweigh any minor cost implications. The amendments contained in this bill will provide improved protections for tenants, while balancing the need to provide a regulatory framework that is fair to landlords. In particular, the reforms will promote a more efficient and fair retail tenancy market by reducing disputes between landlords and tenants, reducing the disparity in bargaining power that can exist between parties, and enhancing the clarity and effectiveness of the legislation.

I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.