

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL 2011

Third Reading

MR T.R. BUSWELL (Vasse — Minister for Transport) [4.03 pm]: I move —

That the bill be now read a third time.

MR A.P. O’GORMAN (Joondalup) [4.03 pm]: I realise that it is late on a Thursday afternoon, and I do not want to take up too much of the time of the house, but I again want to go through some of the aspects of this bill. This bill came into this place as part of the agreement between the Premier and the Leader of the Opposition to create special trading precincts in some parts of the Perth metropolitan area that would allow the shops in those areas to open on weekends and on weeknights. Part of that agreement was that a bill would be introduced to provide better protection for small businesses. This bill has not brought in all the protections for small businesses that I had hoped it would. One vital protection that is missing is a commercial tenancies lease register, which in my view should be held by Landgate, which will enable tenants to make an informed decision before they sign a tenancy agreement. Many small businesses in this nation are facing difficulty. Yesterday we heard about Colorado, which is not a particularly small business, which will be closing 100 of its stores, with the loss of 1 000 jobs around the nation. One of the reasons cited for the closure of that business was the cost per square metre for leasing its premises. This morning we heard the sad news that Angus and Robertson will be closing another 42 stores in this nation, with the loss of 500 jobs. My fear is that if we continue to allow shopping centres to charge exorbitant lease rates for small businesses, particularly mum and dad small businesses, it will reduce consumer choice across our retail system. The dominance of large supermarkets and retail chains is already reducing people’s choice. This bill will go some way towards addressing that situation.

This bill will put the onus onto landlords to inform tenants, 12 months and six months prior to the end of the lease, that the lease is coming up for either rollover or renewal, and to give tenants information about the lettable area, as it is now called, and the rent per square metre for similar retail shops within the shopping centre. Tenants will then be able to determine, when they are entering into a tenancy agreement, what is a fair and reasonable rent. The bill will also remove the ability of landlords to pass on to tenants, by what was often a sleight of hand, their legal costs, particularly if there is a five-year rollover of an agreement. That will be of great benefit to small businesses. The hardest part of setting up a small business is getting it off the ground. Every dollar that the operators of a small business can save in the initial stages of setting up their business is a dollar that they can put back into their business to help it succeed.

Although this bill does not address all the issues that we had hoped it would address, particularly the establishment of a lease register, I commend the minister for bringing the bill into the house. I acknowledge that the minister has not completely dismissed the notion of establishing a lease register, because the minister informed us during consideration in detail that he will be consulting further with the stakeholders, the shopping centre councils, the tenants and the retailers’ associations to see whether he can reach agreement about the type of lease register that would be acceptable to them. Therefore, although this bill does not cover everything that we had wanted, it takes some steps towards doing that. I am sure that when we get back into government, and now that we have a better understanding of small businesses and how they operate in this state, we will be able to work more closely with small businesses to make sure that we give them the best deal possible, and to make sure that the people of this state will continue to have choice across a range of retailers and not just the two or three majors that dominate our marketplace at the moment.

DR A.D. BUTI (Armadale) [4.08 pm]: Like my colleague the member for Joondalup, I also want to add my comments on the third reading of the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011. I congratulate the Minister for Transport for bringing this bill to the house. Yesterday’s consideration in detail phase was a very worthwhile exercise, and the minister answered our questions in a thoughtful and honest manner.

Mr T.R. Buswell: As always.

Dr A.D. BUTI: As always, I know; that was nothing unusual, and I thank the minister very much.

As the minister stated in his second reading speech, the purpose of this bill is to create a more equitable relationship between tenants and landlords. As the member for Joondalup said, the problem in the retail industry is that when there are major landlord operators, particularly in the major shopping centres, that may make it very difficult for small operators. As we know, the Colorado chain, which is not that small an operation, has found itself in difficulty and is closing down, and that has a flow-on effect on employment and on other parts of the economy.

It is obvious that we support the legislation. We had some concerns, and they were addressed yesterday during consideration in detail. I also raised some concerns about misleading and deceptive conduct, which often rears its

ugly head in business. It is good that we will now have a legislative framework that will give a business that has been the victim of misleading and deceptive conduct some remedy. As I have stated previously, the misleading and deceptive conduct clauses in legislation are the clauses that are most often litigated under the commonwealth Trade Practices Act.

I commend the bill, and I compliment the minister for bringing it to the house.

MR T.R. BUSWELL (Vasse — Minister for Transport) [4.10 pm] — in reply: I thank members for their contributions to the second reading debate and the consideration in detail stage of the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011. I thought yesterday’s debate was a good example of how Parliament should work during the consideration in detail stage. We examined a number of issues in detail and hopefully I was able to provide some approximate direction on what this bill is intended to do. I take this opportunity to also put on the record my thanks to the advisers who assisted me and the people in the Department of Commerce who either drafted or assisted in the drafting of this bill. The member for Joondalup drifted off the bipartisan nature of the bill when he claimed that the Labor Party was the great protector of small business in this state and that he looked forward to the next change in government when the Labor Party would have the opportunity to show small business just how much the Labor Party cares for them. I suspect that that view is not reflected by the vast majority of small businesses in Western Australia, but I do not need to burst the member for Joondalup’s bubble. I acknowledge that he has been a long-term advocate for small business. I think he has run a business.

Mr A.P. O’Gorman: I am still running it.

Mr T.R. BUSWELL: I had to stop running mine because some of the member’s colleagues kept hounding me about my business interests. I paid a fairly heavy price upon becoming a member of Parliament. I had to spend a lot of money to divest myself of my small business and the structures with which I was involved, notwithstanding the fact that the former Premier and member for Willagee used to call me Billy Bunter. Who was the guy from *On the Buses?* Reg Varney. Divesting myself of those business interests cost me a fair bit of money, but I thought it was the best thing to do because I did not want the former Premier to die of envy. I learnt a lot about the benefits of being in small business.

It is important to understand that the bill is designed to provide special levels of protection for certain types of retail shops or shops or businesses that are operating in a retail centre. The bill is not designed for all retail outlets; it is designed just for small ones. Why is that? It is because it has been long understood that many of the small businesses that deal with large landlords are presented with challenges.

This legislation will improve a range of components of the Commercial Tenancy (Retail Shops) Agreements Act. It is also worth pointing out that the bill was generated by a review that was instigated in 2002 by the former government. It is now 2011 and we are finally bringing into this place the second set of recommendations from that review. Another bill flowed from that review but it has taken all this time for this bill to get to this point. It makes us question the former government’s commitment to small business when it has taken so long for the process to move forward, but it is here now and it is done, which is good.

I will comment on the failure of small businesses. Both previous speakers mentioned Colorado Group Ltd and Angus and Robertson. We must be realistic. Rents and cost pressures can impact on businesses, but so can a range of other factors. One of the biggest impacts on Angus and Robertson has been online shopping and the fact that technology has changed. I saw people the other day with a thing like what’s-his-name’s —

Mr A.P. O’Gorman: The member for Forrestfield.

Mr T.R. BUSWELL: The member for mission brown!

Mr M. McGowan: You could do with it.

Mr T.R. BUSWELL: I prefer to go down the graceful path. I did not have a visible grey hair when I became a member.

Mr M. McGowan: You are unrecognisable today.

Mr T.R. BUSWELL: I know. This job has aged me, just as I have aged the Premier, he assures me!

Mr A.P. O’Gorman interjected.

Mr T.R. BUSWELL: I did not even want to raise the topic; members opposite have raised it. I am very happy to go salt and pepper, or perhaps I have passed through the salt and pepper stage quite quickly; there is more salt than pepper!

Mr M. McGowan: I do not know if anyone else would say that you are graceful.

Mr T.R. BUSWELL: I have a home video of me in my tutu. I have to tell the member that people have said that some aspects of that are very graceful!

Getting back to the bill, because the Leader of the House wants to move on —

Mr C.J. Barnett: Please spare us the video!

Mr T.R. BUSWELL: I can bring it to the Christmas party this year and the Premier can make even more fun of me!

Mr M. McGowan: The Premier was a young man before you came to Parliament. He was in his prime. Look at him now; he’s a relic. How could you have him meet the Queen?

Mr T.R. BUSWELL: There are other factors in the dynamic business environment that impact on business profitability. I received an email yesterday from a book provider in my hometown —

Mr M. McGowan: Will the Premier let you meet her?

Mr T.R. BUSWELL: No!

The book provider commented on the impact that a lot of changes the commonwealth is making are having on his small business. There are a lot of dynamics, but cost pressures do play a role in that.

The member for Joondalup raised the issue of the lease register. That matter is not dead and buried. We will continue to pursue it through the consultation process that I outlined to the member yesterday. I understand fully the intent of the member’s argument about the lease register. No-one can argue with the intent, but we must look at the mechanism we can use to deliver the necessary outcomes. I will not rehash the detail of the bill, suffice to say that it makes significant improvements to the act and provides some important protections to small retail businesses in this state, which sometimes operate in an environment in which there is an imbalance between them and the landlords. This bill will help provide a framework to restore the balance.

The other major change is the introduction of the Small Business Commissioner. I do not think we can ever understate the potential significance of having a Small Business Commissioner to address a number of disputes that arise regarding commercial tenancies. I had a briefing from the Victorian Small Business Commissioner a little over 12 months ago. The experience in Victoria has been that if good legislation is in place, which I think we have, the commissioner can play a major role in assisting small businesses to work through those disputes and enforce the intent of the legislation. The changes this bill makes to the commercial tenancies framework for retail shops and the introduction of a Small Business Commissioner will lead to a dramatically different environment in which small retail shops in Western Australia can operate, particularly in relation to their tenancies. I appreciate the support of the house and look forward to seeing the passage of the bill through the other place and the introduction of this framework for the benefit of Western Australian businesses in the not-too-distant future.

Question put and passed.

Bill read a third time and transmitted to the Council.

House adjourned at 4.18 pm
