COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL 2011

Second Reading

Resumed from an earlier stage of the sitting.

HON LJILJANNA RAVLICH (East Metropolitan) [5.04 pm]: Once again, I welcome the opportunity to continue my remarks. With regard to the unfair commercial tenancy practices perpetrated on small and medium-sized enterprises—I have to say, enough is enough. There is so much widespread evidence of bullying behaviour by landlords of tenants that it is just not funny. I have already identified a number of shopping centres for which there is evidence of this and I now want to put on the public record what is going on at Midland Gate. I am mindful that we want to get through this legislation in a timely way, and will offer only one small example.

On 10 May 2011, an article written by Kaitlyn Offer from the Community Newspaper Group, appeared in the *Midland–Kalamunda Reporter*. The article is titled, "We won't be bullied: Shopkeeper takes action to ward off centre management" and stated —

> AMID allegations of bullying, a Midland Gate shopping centre tenant is taking the centre's management to the State Administrative Tribunal ...
>
> Ian Wood and his wife have been running the Gourmet Deli in the centre since September 2009.
>
> Mr Wood alleges the small business operators have been victims of a "concerted bullying attack by the management of this shopping centre", with the last straw for him being issued a default notice last month.
>
> Mr Wood said in March their shop was closed for a few days because he was away, and his wife worked a second job.
>
> He said Midland … centre management then issued them with a default notice —

It does not take much to get a default notice out of Midland Gate, by the looks of it —

> and was "threatening to throw us out of the shop".
>
> "This is in clear breach of section 12c of the Commercial Tenancy (Retail Shops) Agreements Act 1985," Mr Wood said.

I am interested to know, perhaps the minister can take it on notice, whether Mr Wood contacted his department to lodge a complaint in relation to a breach of section 12C of the commercial tenancy act; and, if so, what was the follow-up in this case. It seems to me that Mr Wood is just one of the many, many people who find themselves in this position. The article continues —

> The shopkeeper also alleged other small tenants were fearful of centre management because heavy-handed tactics such as letters and bills from lawyers had been issued instead of management talking to tenants first.
>
> "I tried to set up a retailers' association so retailers could approach centre management as a group," Mr Wood said.
>
> "Unfortunately the group failed, primarily because other tenants were worried about reprisals by centre management and centre management made it clear that they would under no circumstances talk to more than one tenant at a time."

Now, gee whiz, how pathetic is that! That is a matter of divide and conquer and is, I must admit, really, really pathetic —

> Mr Wood provided the *Reporter* with a copy of a SAT notice …

And so on and so forth. The article goes on to state —

> Neither Midland Gate nor SAT would comment on the matter.
>
> "We are unable to comment on this actual tenant issue at Midland Gate," …
>
> "All issues raised in relation to the lease and obligations of the same are confidential."
>
> Chief executive officer of the WA Retailers Association, Martin Dempsey, said he had received a number of complaints from about a dozen Midland Gate tenants over treatment by centre management.

The real concern about the lodgement of a dozen complaints about one centre, is that only one of them may well have had the resources, the energy, the expertise and everything else required to make application to the State Administrative Tribunal, but many, many others would not be so fortunate—for example, a small stallholder in

the food section of a shopping centre where people come for their lunches; the chances are this person is operating a Chinese takeaway—and many, many such people would not have the capacity, would not know how to make an application to SAT and would not be in a position to find the money to fund a case before SAT. They tell me that it in fact costs about $10 000 to take a case to SAT, remembering that a claim before SAT that fails cannot be taken to the Supreme Court. Even if they can take a case to the Supreme Court, the fact is that the cost of a case in the Supreme Court can run into the hundreds of thousands of dollars, or even millions of dollars, depending on the case. I know of a case that has been before the Supreme Court for more than 10 years, and I can tell members that it is absolutely draining blood from the persons concerned.

Hon Nick Goiran interjected.

Hon LJILJANNA RAVLICH: To the extent of millions of dollars, absolutely.

These are just small business people who want to make a livelihood for themselves, and they are being done over. When they complain to a government agency, they get fobbed off and they are left with nowhere to go. I can tell members with some degree of confidence that it is highly unlikely that the operations of the Commercial Tenancy (Retail Shops) Agreements Act 1985 are ever regulated; there would be breaches of this act left, right and centre. In respect of Mr Wood, I would be keen to hear from the minister how many complaints the department has received regarding the Midland Gate shopping centre; what action has been taken as a result of those complaints; and whether there has been any follow-up action. I put the minister on notice because I know that he has been advised of what is going on in Armadale, at Midland Gate and at Morley Galleria. I expect his department to follow up on the behaviour of landlords towards operators who hold commercial tenancies at each of those locations. I expect him to follow that up.

Section 14 of the Commercial Tenancy (Retail Shops) Agreements Act 1985 deals with compensation by landlords. It reads —

> **14. Compensation by landlord**
>
> Where a retail shop lease provides for the occupation of a retail shop situated in a retail shopping centre, the lease shall be taken to provide that if the landlord —
>
> (a) inhibits the access of the tenant to the retail shop in any substantial manner;
>
> (b) takes any action that would substantially alter or inhibit the flow of customers to the retail shop;
>
> (c) causes, or fails to make reasonable efforts to prevent or remove, any disruption to trading within the centre which disruption causes loss of profits to the tenant;
>
> (d) fails to have rectified as soon as practicable any breakdown of plant or equipment under his care and maintenance which breakdown causes loss of profits to the tenant; or
>
> (e) fails to adequately clean, maintain, or repaint the building or buildings of which the centre is comprised or any common area connected with the centre, and after being given by the tenant notice in writing requiring him to rectify the matter does not do so within such time as is reasonably practicable, then notwithstanding any provision contained in the lease, the landlord is liable to pay to the tenant such reasonable compensation in respect thereof as is thereafter agreed in writing between the parties or determined by the Tribunal.

I want the minister to take this question on notice: how many times have there been claims for compensation to be paid by a landlord to a tenant? I assume that this information would be recorded somewhere. I want the minister to endeavour to provide the house with information on how many times, since September 2008, compensation has been paid by a landlord under section 14.

Finally, I am concerned about this legislation. I do not think it will do what it purports it will do; I think it could have been written in a much better and more positive light. It is framed within the context of negativity in my view. It purports to be about regulating commercial tenancy agreements for certain shops to prohibit unconscionable or deceptive conduct by landlords or tenants. If that is what the government wanted to avoid, it would have drafted it in the context of a much more positive framework that would require tenants and landlords to act in good faith towards each other in all their dealings. The bill clearly does not do that. The government has argued that it is interested in getting the best results for both parties. That is not evident in the detail of this legislation. We find there is still evidence of landlords demanding that shops provide turnover figures. I heard in only recent weeks of a centre manager rolling up to a pharmacist and saying, “I want your turnover figures.” If

the pharmacist says, "I don't want to give them to you," he can expect to be not particularly well treated by that landlord. The time has come when we do not want landlords demanding turnover figures or passing on operational or legal costs.

Hon Simon O'Brien: That is why there is a bill before you. The bill is there to outlaw that.

Hon LJILJANNA RAVLICH: It has holes in it all over the place, but we will get to that. We do not want landlords taking punitive action against shop owners who choose not to open as a result of the changes in trading hours or due to family illness, as was the case at Midland Gate. We do not want rents set at levels higher than market value. We want legislation to provide the appropriate protections so that these things do not happen. That guarantee is not in the bill before us. In fact, there are huge holes in this legislation. I am pleased to see that there are some amendments on the notice paper to address some of those issues.

HON MAX TRENORDEN (Agricultural) [5.17 pm]: I should get a glass of water because I think Hon Tom Stephens once spoke for two or three days in this place, and I aim to knock that off today, so let us sail into it! The National Party strongly supports the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011. It does a range of things: it requires landlords to disclose certain leasing information to tenants prior to entry into a lease; imposes a minimum five-year lease term for most leases; prohibits landlords requiring retail shops to open during certain hours; includes provisions regulating rent review; and prohibits unconscionable conduct. It 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. It contains a new requirement for landlords to provide tenants with prior notification of the expiry date of their option to renew a lease. It contains a new requirement for 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. I will talk about that later on. The bill will also clarify tenants' rights regarding relocation and prohibit misleading and deceptive conduct.

The State Administrative Tribunal has the power to deal with all matters arising under a retail shop lease and thus has the power to consider and determine claims. That is one matter I would like to leave with the minister. Most of us would be aware that SAT does not do that. SAT can determine the claim but it cannot prosecute the claim. As the member who spoke before me said when outlining the strong contests that have occurred with people in this industry, SAT can make a determination but it cannot enforce that determination. The only way that a determination can be enforced is by taking it to the courts, which takes us right back to where we started. I suggest to the minister that, in those cases, that is not a clear answer. I expect that maybe that will be the answer in 90 per cent of cases and or maybe even 95, 96 or 97 per cent, but it will not be the case in all of them. SAT's determination falls to pieces when people dispute it. I suggest that we need to get the lead agency argument going; that is, that argument can go back to the Small Business Development Corporation for it to give assistance in that area.

The two areas that I wish to talk about relate to the definition of "retail shop" and clause 9. Clause 9 of the bill states that information provided under section 11 must remain confidential and not be disclosed unless it was publicly available when disclosure was made. If confidential information is disclosed and the tenant or landlord suffers loss or damage, they are entitled to be paid compensation by the individual who made that disclosure. That is another issue that members of the National Party will talk about at some length.

This debate has been around for a long time. Western Australia has been trying to deal with the question of commercial tenancy for at least three decades, which has been to the detriment of the government, industry, small business and the consumers of this state. The Nationals in WA and also those on the federal scene have always been committed to supporting small businesses. We understand the vital role that they play in the community, whether we are talking about metropolitan or regional areas. A Nationals Queensland senator who will be retiring from the federal scene very shortly, Senator Ron Boswell, did a lot of work with other Liberal Party members in the Senate to try to get the Trade Practices Act and a range of other acts aligned to this very difficult debate on commercial tenancy and also to the supremacy of the two majors in the retail sector. In fact, if we go back in history, we find that over the years there have been several debates in both houses of this Parliament on whether Western Australia should have antitrust laws to deal with the same issues. Legislation on this issue never quite got through because the Trade Practices Act overrides any antitrust law that this state may put up. I am not sure whether that is the truth but that is the technical argument.

I want to run through the history of commercial tenancy. I will run through this relatively quickly so that I do not have to get a glass of water. This is a highly protected industry. Off the top of my head, I cannot think of an industry as protected as this one. When a new area is established, the planning department designates where a shopping centre can be built. If we go to any of the existing suburbs and knock down 50 houses and build a shopping centre, we are not allowed to operate it. The main gazetted shopping centre is the gazetted shopping centre and its operation is protected by this house and the other house for that purpose, and nobody else within a

given precinct can oppose it. Once the centre is there and someone takes control of it, they get an anchor tenant and the banking arrangements are almost instantaneous. The person who gets hold of the land is in a privileged position in the market. People would struggle to give me an example of any other industry in which that is the case. Once the centre is owned, it is a nice little earner. The only time it is questionable whether it is a nice little earner is when there is a crash, such as the one we have had in the past couple of years, and all of a sudden retail starts going south. When the retail market is going the way we want it to go, what happens? What happens is that incomes increase, rents increase and the whole system bowls along nicely. The really hot issue is that the financial matters of the anchor tenant or tenants are secret; they are a national secret. We can do a lot of things, but we cannot tell anyone the rents and outgoings of anchor tenants. That is a very strange issue for members on both sides of the chamber who would argue that they support private enterprise. In these centres, the small business operators, not the anchor tenant, pay the bulk of the outgoings. The power and control in the centre is overwhelmingly in the hands of the manager appointed by the owner.

As I have already said, in better times things bowl along nicely. For the past two decades, as the market has bowled along, people have made money. As people have made money, rents have increased; and, as rents have increased, the value of the centre has increased. They all rise with the argument. But what happens when it goes bad, such as at the current time? Do rents fall? No, they do not. Why do rents not fall? They do not fall because the information is secret. All the information that the owner has when times are good allows the owner to roll the machine on and to keep turning it over. There is no information on what those shops are making. The amendment that I introduced some years ago to deal with turnover was knocked on the head. I moved it from opposition when I was in the other place, and a Labor minister accepted that amendment. People cannot get information on turnover, but they do know when shops are doing well and the capacity of a shop to pay increased rents. As time goes by, rents escalate. A lot of centres in this state and in other parts of this nation, and certainly some in the United States, are under pressure. The information is not there for a new person who wants to pick up a lease in a centre and start a small business. The information is not there for that person to realistically argue that their rent should be set at today's commercial value, not at some commercial value that was struck some time ago when the economic climate was somewhat different. Of course, it is true that if rents in shopping centres fall, the value of the shopping centre falls and the value of the asset falls. Is that not what happens everywhere else? Does that not happen in any business in most of Australia and in this state? If that happens, people are sad. Most members in this chamber have friends who are in that predicament and have businesses that are struggling, because right now is not a good time to be in the commercial world. It is a bit tough out there.

The thing that worries the Nationals is that this bill will struggle to get consensus. We will argue that it is time to have an open market in commercial tenancy. Let me just read a couple of sentences from a letter I have dated 7 April 2011 that was sent to Mr Martin Dempsey, the chief executive officer of the WA Retailers Association, who happens to be sitting behind me, by the Department of Commerce. It states —

> the Department of Commerce released a Position Paper outlining a proposal to introduce lease register requirements

I understand the argument; we want to get a lease register out there. The second paragraph of the letter states —

> there was limited support for the model proposed in the Position Paper.

That is an area that concerns the National Party a great deal, because that is where we have been for 30 years. I cannot remember any change in this argument. We can go back to the days of Senator Ron Boswell on the federal scene and we can go back to the days of many of those Liberal Party senators of whom I am aware who fought these arguments under the Trade Practices Act about five or six years ago in the Senate. They were fighting a monster; they were fighting a large, successful machine. I have not seen it defeated. So I will ask the question: why would we be confident that it will be defeated this time? Why would we be confident, with the review that is taking place, that the outcome will be any different?

I will also quote one paragraph from the ministerial statement of the Minister for Commerce on 28 June, which is quite recent. This morning the minister stated —

> In contrast, there remain widely diverging views on the best method of achieving greater access to retail tenancy information.

I absolutely agree with the minister. The minister continued —

> The proposal was not supported and concerns were raised about confidentiality, the misuse of information and increasing leasing costs.

I agree with the minister. I also agree with some of the advisers—I thank the minister's advisers for giving me their time—that not everything I am going to say will be greeted with open arms by sections of the commercial

community. It will not be. That has been the history of this matter for 30 years. I will further quote from the minister's statement today —

> appropriate cost–benefit analysis to ensure that any new regulation is proportionate to the problems addressed.

That raises three options —

> increased access to lease information for valuers in a broader range of circumstances than permitted in the Commercial Tenancy (Retail Shops) Agreements Amendment Bill; a publicly accessible statewide electronic database of lease information; and compulsory registration of retail shop leases on the land title.

I laud the minister for trying to get those outcomes.

Hon Simon O'Brien: They came from the submissions to the paper that you refer to. With your indulgence, Mr Deputy President (Hon Col Holt), the proposal that was central to that had very little support, according to the submissions, but those other matters on which we have not consulted until now were the ones that came through, and I suspect there is divergent opinion about each of those.

Hon MAX TRENORDEN: I feel for the minister. As I said to the minister privately a little while ago, he is in a difficult position. I have no angst at all with the minister and his position. His job is to carry forward a consistent argument for the state of Western Australia and to put a consistent argument on commercial tenancy to the public of Western Australia. The National Party has problems because we have been doing that for 30 years, and we do not believe —

Hon Simon O'Brien: I haven't been doing it for 30 years.

Hon MAX TRENORDEN: No. I can tell by the colour of the minister's hair that he has not been doing it for 30 years! Nevertheless, we have. I have not been doing it for 30 years, but I certainly have been doing it for 25 years. Therefore, the National Party does not have confidence that things will be any different tomorrow, next year, or three years or six years hence. History shows that this has been a hotly debated and hotly contested issue, with no give. We would argue that the laudable things that the minister is after are important. I am sure that his attempt to get a tenancy register is supported by the majority, but it will not be supported in total, and when the minister gets down to the detail of it, it will be very difficult to get the proposal up. Our solution is to open it up and to not have any secrets—just make it an open market. That is the core of the National Party's first amendment on the supplementary notice paper. That amendment, to pages 4 and 5 of the bill, will change the definition of "retail shop lease". If our amendment is passed, basically a retail shop lease will be any lease in a shopping centre including the anchor tenants. Therefore, no-one will be treated any differently under the roof of the shopping centre or, indeed, in the precinct of the shopping centre, because not all businesses are under the shopping centre roof.

I have advice from the minister's advisers that this amendment does not quite do what I intend, but I cannot see why. I had massive help in drawing up my amendments. There is a great writer of amendments in this house called Max Trenorden who would not have a clue what he is doing, basically, but that is not the point. There is me, one adviser —

Hon Simon O'Brien: I won't accept that; I've never seen amendments like yours!

Hon MAX TRENORDEN: However, the point I make is that as backbenchers we do not have a lot of resources; we can only do the best we can. That is all we can do. This is the best that I can do. Some people might argue that the paragraphs in my amendment are not right, but I point out that they come from a New South Wales act.

The National Party does not see the purpose of defining a retail shop lease differently for a small and a big business. We are not talking about lettable areas of 1 000 square metres and all these sorts of matters. If a shop is in a shopping centre complex, it is simply a business in the centre. For example, why should Woolworths or Coles be treated differently from any other shop in a shopping centre complex? It is the National Party's opinion that no distinction should be made. The Commercial Tenancy (Retail Shops) Agreements Amendment Bill deals with retail shop leases, so it should deal with all retail shop leases, not just some, under a shopping centre's roof. This amendment ensures that the provisions of this bill will apply to all retail shops, and it is an important step in achieving a fair retail tenancy market in Western Australia. What we are trying to achieve, which I thought many members in this chamber would philosophically agree with, is an open market. The amended definition that we propose was drawn from the New South Wales Retail Leases Act 1994. We feel that it sufficiently covers all relevant leases and, importantly, includes leases that may not be a standard written agreement but are verbal or by another arrangement. That is an important point. By ensuring that unwritten and verbal lease arrangements are included in this definition, straightaway we have eliminated a considerable amount of frivolous legal action

to try to ascertain whether a particular lease agreement falls under the jurisdiction of this legislation. Therefore, straightaway we have resolved a potentially enormous problem. We want to deal with these matters with some immediacy.

Our second amendment relates to the confidentiality of information provided by the landlord or the tenant to a valuer or any other relevant person as requested under proposed section 11(3B). In line with the minister's comments in his second reading speech about his expressed intention behind this bill, we agree that inequality exists between landlords and tenants and big business and small business, and our amendments go towards evening that up. We could go on forever about that, but it is a position that I do not think too many people would argue against. We want to promote efficient and fair relations between those groups in Western Australia. This amendment simply ensures that tenants will be able to negotiate lease agreements on a level playing field. They will know what that big department store just down the corridor is paying in rent and what it is contributing financially to the common areas of the shopping centre. The amendment will ensure that small business can remain economically viable and competitive. We do not say that if these amendments are passed, the anchor tenants will automatically start paying more rent; that will not happen. However, the small business people down the corridor will know what the anchor tenants pay and what they contribute to outgoings. The small business people can then make an assessment about the value of the square metreage that they will lease. A part of that argument has to be what is happening around a tenant in the shopping centre, as well as what is happening to the major anchor tenant or tenants in that centre. Importantly, the amendment does not make it compulsory to disclose all this information; it simply makes it possible and it does not penalise people who disclose the information. It does not say that people have to make that information available, but if a person within the shopping centre wants to disclose that information, they are free to do it and no-one can come down on them with a pair of jackboots. That is a considerable difference from the current clause in the bill.

It also follows that information regarding the financial turnover of the company will remain confidential. We respect and appreciate the need for the privacy of individuals and businesses, and our amendment retains the confidentiality of this most important element—that is, turnover. As Hon Ljiljanna Ravlich pointed out, managers have always tried to get the turnover of businesses and to beat them over the head with their own success. A while ago the owner of a sporting store told me that he had been approached by the manager of the shopping centre who told him that he knew the sporting store's turnover and that the business was worth so much a year. The shopping centre manager then said that he would put the store on the market, that the owner could not keep it and that he would tell the buyers what its turnover was so that they could bid for that profit margin. It was not a threat; that actually happened, but it was some time ago and there has been some amendments to the legislation since that time.

I flick through a couple of closing remarks. The tenancy register is probably a good idea, but we would prefer an open market—to have all the information open and free. Therefore, we would not have to put up an electronic site, we would not have to argue with people who want to be on that electronic site and that information would be out there in the ether. I agree that if a person has just signed a five-year tenancy lease and their competitors open at a shopping centre down the road and pay less rent; that is not good. But as I said before, that happens to everyone else outside the shopping centre; it happens to everyone else out there trying to carry out business. I cannot see how we help the industry by arguing that we should not allow that information to escape because rents might go down, valuation sentiment might go down and people might get hurt. Commercial tenancy is real life and in all commercial activity, people get hurt; that is an unfortunate fact. If this bill passes with our amendments, there will be significant changes. We would like to see immediate change. We are not part of any argument that may or may not exist between the Liberal and Labor Parties—I am frankly not interested in that argument—but my colleagues and I do not want this day to pass without taking the opportunity to create a level market for commercial tenancy. When we get into the Committee of the Whole, we will ask that our amendments be supported. Those amendments are available at the back of the house. They are simple amendments. I repeat for the third time that all our amendments do is make all information, except commercial turnover, public. That is what happens for the majority of business in the western world and in Australia; why does it not happen in our shopping centres?

HON LYNN MacLAREN (South Metropolitan) [5.44 pm]: I rise on behalf of the Greens (WA) to express our support for the principal aims of the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011. This government has embarked on some very serious and important reforms in small business regulation. We have discussed on a couple of occasions in this house the various protections afforded to small business in this time of change. I am clearly on the record saying that the commercial tenancy act should be amended. The bill before us amends the commercial tenancy act in the way that we called for when we deregulated trading hours. I thank the minister for listening to the requests of various parties in carrying out those reforms and in delivering us a bill that we could debate. It goes a considerable way to address the concerns that small businesses have today. The principal aims of the legislation that I want to go on the record as supporting are: to encourage the fair treatment of small businesses in their commercial dealings with other businesses and with governments; to

provide support to small businesses in their transition to a more deregulated trade environment; to reduce the vulnerability of small businesses to unfair market practices; and to reduce the frequency and cost of disputes involving small businesses. The Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011 amends the Commercial Tenancy (Retail Shops) Agreements Act 1985 by improving protections for tenants.

I have listened carefully to the previous speakers who expressed their very serious concerns about how this bill will deliver protections to tenants. I too am concerned that the bill does not go far enough. The lease register we talked about should be part of the legislation to amend the commercial tenancies act. I note, however, that it was clearly acknowledged in the briefing I was provided that that lease register is still on the cards and that ongoing consultation is taking place with small business. The department aimed to have something on the table within 12 months. I can share the pain of my colleagues in this place because, in the first place, we wanted these protections to extend to small business before we deregulated trading hours. We suffered because those reforms went through first; however, these are not that tardy in coming to us.

We share the fear that the bigger players have more negotiating power because they have more information at their fingertips. This bill goes some way to address that power imbalance in negotiations. I would hate to see us lose that because, like members before me, I am acutely aware of the problems that small businesses are facing in Western Australia. Only last weekend the *Fremantle Herald* ran a front-page story about the Chamber of Commerce head, Peter Nolin, being very distressed about the closure of small business in our little port city. Retail shops are suffering in the global economic crisis. Small business is suffering because we are not spending. I do not think that the proposed amendments are going to make us spend more.

Hon Max Trenorden: I have seen you at Fremantle a couple of times, and I think I have seen you spending.

Hon LYNN MacLAREN: Yes, I was out for dinner one night, and I did run into Hon Max Trenorden. What we are talking about here is retail, and retail shops are suffering. This bill goes some way to make it better for them. I would hate to see us lose the momentum established through the tabling of these amendments.

I support the bill. The recent changes that we have already agreed to in this place necessitate these reforms. I know that the WA Retailers Association is very concerned about the impact of these changes and feels that we should be doing more. As I said, I agree. It is definitely a weakness in this bill that we have not put forward an opportunity for open and transparent information about leases, because I know that that is one of the things that will assist small business in those shopping centres. I would like the minister to respond to the concerns that have been raised and come up with a solution for that. He has demonstrated an ability to think on his feet. I would like to see us move forward with this and not see it fall in a heap. It would be a shame to miss out on the other reforms that are being proposed because these weaknesses have been exposed. I really would like to see this bill improved.

The two issues that have been raised are the lease register and the confidentiality of information available to valuers. It is my understanding that valuers have very professional standards of confidentiality. It would be most unusual for a valuer to release information to other clients. However, it is imperative that we protect small business if we can, because it is a vital part of our commercial sector.

I note the comments about landlords and tenants acting in good faith. Some readings of this amendment bill have illustrated that it may not be encouraging and facilitating landlords and tenants to act in good faith. I am concerned about that. That might be something that the minister and the department could take on board to see if there was some way that they were encouraging unhealthy competition. However, at the end of the day, on assessment, I have repeatedly said that we need the Small Business Commissioner. We need to balance out the scales, because they are moving a little bit too much in favour of big business, and I think this bill is a good step in that direction.

The last point I want to make is the lack of robust data about the health of the small business sector. I would like to see that improved so that in debates such as this we can assess whether the changes that are proposed are going to dramatically impact on the many families that are relying on small business. That is something that we can improve upon. It is something that the Small Business Development Corporation has acknowledged and is working towards addressing. If we had more data about how these changes would be impacting families who are dependent on small business, then we could perhaps consider the amendments before us in a different light.

In conclusion, the Greens (WA) support the bill. We look forward to the debate on the proposed amendments and we appreciate the efforts that the minister has made to address the inequities between small and big business in the commercial sector.

HON PHILIP GARDINER (Agricultural) [5.54 pm]: I rise to address some of the issues in the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011. These issues have been pretty well canvassed by Hon Max Trenorden, Hon Ljiljanna Ravlich and Hon Lynn MacLaren. However, I want to put my perspective because I became attached to the relevance and significance of this bill when I learnt that, as a tenant, if I

happened to divulge information to someone else about what I had learnt about rentals from the landlord—for example, my rental might have been lower than my colleague's, who was also a tenant—and my colleague went to negotiate with my landlord to lower his rental, and that cost the landlord, I would have to pay the landlord damages for the costs that he was incurring as a result of lowering my colleague's rental. That means that if a tenant talks about his rental to someone else and that results in any cost to the landlord, the tenant has to pay the landlord the difference. I found that to be a gross inequity.

It led me to see that this bill contains the two basic principles of free competition and competitive trade; they are attached to it, but not embedded in it. The first one is transparency. I am a great believer in transparency. If a person is trying to hide something, they are doing it for a particular reason. There are a whole lot of things in this bill that support the hiding of information about rentals in shopping centres. If a person is hiding things like that, there must be a reason. It is like tax: when we are dealing with tax, we have to assume that the taxman will come to our door to look at our books. If those books do not pass that transparency test, they are not being done right, or they are being done illegally or for some other benefit that they should not be done for. Transparency is the first principle, which is important when analysing what is contained in this bill.

The second principle I find in the bill is that of countervailing power. I believe that too often small business is at a huge disadvantage compared with big business. Small business has to develop its own structures to deal in that commercial world to find a balance of power; otherwise, it will always be the case that small business will not get up and grow in the way that small businesses should have the capacity to grow. Innovation is one of those things that allows small businesses to grow. As one of my National colleagues, Senator Barnaby Joyce, has said—not that I agree with him on everything—every big business grew from a small business. That is exactly right. We need to give every small business a commercial environment that allows them to grow. However, when we have such divergency of size in businesses, the difficulty that the minister or anyone in government has is to get consensus or agreement. The reason it is impossible to do so is that the vested interests are so deeply embedded that they will never agree. Basically, they have too much to lose. We have an opportunity to embrace the good parts of this bill, of which there are a number, but we can also address those parts that cut across what I believe are those key principles of transparency and countervailing power. Without those, we are cutting across our philosophy of what constitutes free and fair commercial behaviour. The two issues that are related to fairness of competition are, first, fairness between retailers. In shopping centres we have the very big fellows, the anchor tenants, and then we have the small businesses. The second issue is the countervailing power of landlord to retailer. What I feel has to be changed in this bill, through the amendments that Hon Max Trenorden and Hon Ljiljanna Ravlich will introduce in due course, is that the retailer does not have that power over the small retailer in such a way that it is only the small retailer who must not divulge information.

Sitting suspended from 6.00 to 7.30 pm

Hon PHILIP GARDINER: As I was saying before the dinner break, the second aspect of unfairness is the issue of countervailing power of landlords and retailers already embedded in the act, and, in my view, this amendment bill will similarly embed that imbalance of countervailing power. We have to balance this bill for the sake of small business. Often there is a lack of understanding about what small business entails.

Hon Matt Benson-Lidholm interjected.

Hon PHILIP GARDINER: It is not that bad!

Small business is essential to our economy and we know what proportion of our economy small business makes up. For those operating a small business, the work is arduous, the hours long, the stress continuous, and it often involves the whole family. Small business has different dynamics to that of big business, which can afford someone to administer the overheads, someone to manage the accounts, who is different from the person managing the operations, and, of course, big business has managers and operators, whereas the small business owner is, just about, the lot.

Hon Max Trenorden: And then there is the wife!

Hon PHILIP GARDINER: And then there is the owner's wife, and thank goodness, because she is often the strength behind a small business, Hon Max Trenorden. Without her, small business most often fails. However, it is not easy on a wife.

As a result of the current act, a small number of large businesses are subsidised by a large number of small businesses. How are they subsidised? When the anchor tenant negotiates a deal with the landlord, the anchor tenant's outgoings are often paid by the rest of the small commercial retail tenancies. That is a subsidy. And as Hon Max Trenorden said, it is protection at its worst when a landlord buys land for the sole purpose of a shopping centre and embeds an anchor tenant whose outgoings are subsidised by the anchor tenant's fellow retailers, who are nearly all small business owners. In my view, that needs to be remedied by this bill.

When we get down to it, the issue of competitiveness is the pressure between retailers. We want, as best we can, to have a free, open and transparent market, but the confidentiality provisions and definitions contained in this bill determine what information can be shared, and they exclude non-proprietary companies. What is a proprietary company? It has fewer than 50 shareholders; it does not need to have auditors; and it does not need to seek capital by way of a prospectus. It is, by definition, a small company. Such companies are differentiated in the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011 in a way that affects them adversely. On the other hand, the bill also contains some good equity conditions. The legal costs of landlords can no longer be put back onto tenants for payment when they are negotiating a lease agreement. Of course, most of these lease agreements are pretty standard agreements, and if they are not standard, small details can be changed through a one-page schedule; yet it costs something like $1 500 or $2 000 in legal fees for a lease agreement that can be printed out at the press of a computer key. Under this legislation, the landlord's legal costs are no longer payable by the tenant.

Clause 13 of the bill makes provision for renewal notification, which is a good measure. Retail tenants can often forget that they have to renew their lease, and run over the renewal date. Under this provision, landlords have an obligation to remind and advise their tenants that their tenancies are up for renewal. The unfairness of some market reviews, where tenants' assets are included in the value of the lease, is covered by clause 8. Under this legislation, if a landlord wants a tenant to relocate and there is a dispute, it is specified that the State Administrative Tribunal will assist and arbitrate if necessary. As Hon Max Trenorden said, we can arbitrate all we like and even have conciliation, but unless both parties want it, it can still end up in court and go back to the very beginning. There is a similar provision to involve the State Administrative Tribunal in dealing with misleading and deceptive lease provisions. As we know, in this state the State Administrative Tribunal becomes involved in matters only when it is specified in legislation. That is why that clause is so important in this particular bill.

Currently, a landlord can give information to some tenants but not others. One of the things that the amendments will do is make that a general case, so that all tenants are treated the same. The confidentiality and damages provisions will also be changed so that all parties in a shopping centre will be treated the same and will have access to the same information.

I am very much in favour of retaining the useful aspects of this bill, because they will apply fair competition to an area that currently does not enjoy fair competition. They are essential amendments, but we want to build transparency and fairness into the bill, to bring about healthy competition and healthy knowledge, and to bring about an outcome that opens it up so that we can have a value system in our commerce of which we can be justifiably proud because it is fair and reasonable to all parties.

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [7.39 pm] — in reply: I would like to express my appreciation to all sides of the house for their support of this bill, and for providing some very thoughtful, indeed inventive on occasions, suggestions about how we might make things even better. I appreciate that sort of input and I propose to take just a little while to respond to the issues that have been raised. Whenever I am handling one of my bills and members take the time to raise issues with me, I want to respectfully provide responses to those issues. I am also aware that in due course—anticipating a positive response to the second reading vote—that perhaps not many, but some, issues need to be teased out in committee, so, hopefully, we will add some further value at that point. I thank members for participating in the debate. I also acknowledge members who dealt with me outside the chamber on some of these matters. I think, as I have indicated in not only this debate but also other proceedings today in fact, that I am not done with this. I am prepared to pursue issues which members would like to see pursued and which touch on the issues contained in this bill, even though they are not actually part and parcel of this bill. I will be proposing we do that.

Hon Max Trenorden, in his inimitable way, indicated that we have been making these points on some of the matters he has raised for 30 years. I thought that was an interesting point to raise and wondered how I could check its veracity. I looked around, and the Leader of the House was away on urgent parliamentary business. He is the only one who has been here long enough to tell us whether that is true. I accept Hon Max Trenorden's view that the issue of access to lease information has been going on for 30 years, and there is a general form of agreement about what is the right, fair and decent thing to do. But it has perplexed successive members, governments and ministers who have wrestled with it in trying to work out how to make it happen in a way that does not cause more harm than the good it does.

I do not know what was happening 30 years ago. I was not as intimately involved in this debate before I assumed portfolio responsibility, but I know that we have an act that goes back to 1985 and in this bill we are reinforcing and adding to the very good small business protections contained in that act. That is a good thing about this bill, and I think everyone agrees on that. I also know that in 2003 a comprehensive review of these and related issues was done, and I am now the minister who has taken these final matters to cabinet. I identified them when I came into this portfolio six months ago, along with some other things: some key changes in workers' compensation

that are before this house now, and some key matters about small business commissioners that we dealt with last week. I was the new minister who identified those things as important, prioritised them, took them to cabinet, got them through cabinet, got approval to have them drafted, got them drafted and introduced them into Parliament, and now we are proceeding to make them into law. I have been around for six months; I have not been here for 30 years. I say to Hon Max Trenorden, stick with me because I am about getting things done. I do not know how long I will be here. It will not be for 30 years—not in this portfolio anyway.

Hon Norman Moore: Of course you could.

Hon SIMON O'BRIEN: Do not try to depress me!

I am keen to make a difference in whatever way I can. We have to judge people by what they do rather than what they say. I am doing things about this. Hon Max Trenorden noted that in 30 years we have got precisely nowhere, so he should stick with me and we will see what we can do.

Hon Max Trenorden: I agree; there have been improvements over the years but they have been minor.

Hon SIMON O'BRIEN: Let us get on with the matters we need to deal with. Hon Ljiljanna Ravlich raised a number of issues, as we would expect, she being the lead speaker on behalf of the opposition. She also spent some time talking about matters relating to a lease register. There is no provision for a lease register within this bill but it is right and proper for us to discuss it in this second reading debate. Members have already alluded to the reasons it is not in the bill. I want to give a final perspective on why it is not part of this bill, even though it is part of the wider debate. We do not have to knock a lease register into shape tonight because there is no provision for it in this bill. It is a matter for another day. The question of a lease register arose in a review committee, which recommended the introduction of a public lease register that records and provides all relevant lease information. That was back in 2003. That is how long this has been around. A review committee found that it was in furious agreement as well. It said this is what we need, which is what so many members in this house think—that was recommendation 31.

In September 2010, just before I was given this portfolio, in response to some undertakings that had been given by the government, the Department of Commerce undertook consultation on the government's lease register proposal through the release of a position paper. This government's proposal was the subject of a position paper that was put out by my predecessor, Hon Bill Marmion, last year. That position paper outlined a proposal to include a requirement in the act that landlords in retail shopping centres maintain a register of relevant lease details for all retail shops in a retail shopping centre, which is exactly what Hon Max Trenorden was talking about. That is what we went out with. We received a lot of submissions from stakeholders. An analysis of those submissions revealed that whilst a number of stakeholders might support registration of lease details in some form, there was very limited support for the model proposed in the position paper. That was the result of the consultation. A number of those stakeholders indicated support for some alternative model such as compulsory registration of leases on the land title. I will not go into the detail of the pros and cons of that model. Although some people might think it sounds like a good idea, I would be very wary about going down that path for reasons that we will canvass in detail on another occasion, if members are willing. As an alternative, stakeholders also proposed development of a publicly accessible electronic database of lease information as a form of public register. Again, we will discuss the pros and cons of that in detail, if members are willing, on another occasion. There was no clear majority support for any particular alternative but there certainly was not support for the model that had been put forward in the government's position paper, which was so consistent with what we have heard from members during this debate tonight. That is what I discovered on taking custody of this portfolio. I had some decisions to make.

My view was that some reforms needed to be progressed, and I have already mentioned some of those. We have seen them progress. This is one of them. I will outline the alternatives. Do we hold up this bill and all the very good initiatives flowing from recommendations made in 2003 that in some cases had still not been put into the statute book? They were very good initiatives with obvious benefits for small business participants. Hon Phil Gardiner has just summarised a number of those very good initiatives. Do we go ahead with what is in this bill—there is plenty of it and it is all good, and everyone seems to agree on that—or do I hold this up so we can put a complex matter such as a public lease register into this bill as well? We would not be having this debate tonight if that was the case. If we are to consider any of these proposals or measure them against the government's original proposal, as the minister with responsibility in this area I have to go out and consult.

Requirements were laid down by regulatory gatekeeping units that we look at the costs that may accrue to small businesses, and people have spoken and expressed their concerns about that issue. We have to ensure that we do not decide, just because something sounds like a good idea or some lobby group has come up with something or other, that we should go ahead and do that and then regret the decision when we find out the hidden costs, consequences and inefficiencies. It is necessary to consult properly. That is what we are doing. It was the subject of a brief ministerial statement and other remarks I have made. I have invited stakeholders here and elsewhere to

join me in exploring those options, and that is how I propose to take the lease register issue forward. In the meantime, we have this bill, which will not be delayed while we wait for all those processes to happen, including drafting and all the other things that go with a complex system. No; I want to get on with this now. That is why this bill was proceeded with first thing this year and why, as we approach the end of the autumn session, we are on the very edge of making it a reality.

Hon Ljiljanna Ravlich expressed her disappointment about what she calls a breach of agreement on this matter. She described the lack of provisions relating to the creation of a lease register as a very offensive part of this bill. I have explained the reasons why no lease register regime is contained in this bill. The machinery for creating such a beast will be dealt with on another occasion. But there are still very good things to do, apart from a lease register, that are contained in this bill. That is why we are proceeding with the bill. In the case of the lease register, I have explained what we are going to do to progress that matter. In defence of the Premier and this government in relation to the suggestion that this is a breach of agreement, what was the agreement? Hon Ljiljanna Ravlich read into the record a letter that was provided to her by the Leader of the Opposition.

Hon Ljiljanna Ravlich: Your Premier would have exactly the same copy, surely.

Hon SIMON O'BRIEN: I am taking the member's words. This is what she saw fit to read into the record last Thursday during debate on a related bill. I will refresh my memory by reading from page 31 of the uncorrected *Hansard* of Thursday, 23 June. Hon Ljiljanna Ravlich drew our attention to this relevant part of a letter from the Premier to the Leader of the Opposition. She said —

> In regards to the creation of a lease register, I am advised that developing a public lease register that contains up to date information on all necessary lease information would be complex, expensive and difficult to maintain and that ultimately such a measure would be unlikely to adequately address the concerns raised. I am however willing to explore alternatives, such as requiring shopping centre landlords to maintain lease registers. The lease registers would be accessible to licensed valuers, tenants and possibly prospective tenants on a confidential basis.

And, indeed, that is exactly what we have been doing. There is no breach of agreement. I am using the very stanza that the honourable member relied on to allege that there was a breach of agreement—there is not.

Turning to the other elements that the honourable member touched on in her contribution to the second reading debate, there was discussion about legal costs being passed on to tenants. The fact of the matter is that one of the initiatives in this bill is that legal costs and certain other costs incurred by landlords in establishing leases will not be able to be passed on when this bill becomes law. That is one of the good things in the bill and one of the initiatives that I am proud to bring forward.

The honourable member also asked a question about the definition relating to the provision for 1 000 square metres and why we are providing some sort of special treatment for stores that are more than 1 000 square metres in area. In responding to that, I must draw members' attention to the definition that is currently in the definitions section in the act relating to retail shop leases. I have caused marked-up copies of the act, with the amendment shown, to be issued to members who are representing their parties in the chamber, and I have a couple of spare copies if anyone else wants one. However, if we compare the current retail shop lease definition with what is proposed, members will see that it is very much the same and that the 1 000 square metre aspect of the definition of retail shop lease already exists in the act. So this is not a new provision. The purpose of the retail shop lease definition in the act is to define the sorts of leases that are the subject of the parent act, and the purpose of the parent act is to capture those smaller businesses and provide them with some protections. Big outfits such as Coles and Woolworths are always mentioned, but there is David Jones and many other large retail outlets—anchor tenants or whatever we want to call them. They are basically—I will use the vernacular—big enough and ugly enough to look after themselves. That is the basic premise of the 1985 act that contains this definition. So, in fact, it is not about providing special treatment if a business has a floor space over 1 000 square metres, which is pretty big. From the point of view of most small shops, it is very big. It is not about providing special treatment if a business has a floor space that is bigger than that; it is about providing a bit of special protection if a business has a floor space that is not any bigger than that—that is, if a business has a floor space that is smaller than that. Therefore, the change to the definition does not interfere with that 1 000 square metres. It was suggested and considered that we do away with that, but that would potentially open up the application of the act to a lot of bigger businesses that were never intended, and are not intended, to be covered by the provisions of the act. Therefore, the change to the definition is to finetune who is excluded more than who is included.

The honourable member asked me how many complaints had been made and what action had been taken about stores being required to open after hours when they do not want to. I am advised that from about 1 November last year to 12 June this year, approximately 23 representations have been made to the Small Business

Development Corporation. However, the vast majority of those have not been actual complaints; they have been inquiries about responsibilities regarding opening hours and the hours that are laid down. The legislation provides for standard hours, and it is within the rights of small businesses or tenants in shopping centres to make their own decision whether to open if the shopping centre is open outside those core hours.

The honourable member made reference to various cases of conflict or bullying—they were the terms used—in the case of a relationship between a landlord and a tenant. Obviously, that information came from the perspective of a tenant. I do not seek to refute that some landlords out there are perhaps very hard in how they deal with some of their tenants, or even unfair. I do not doubt that for one minute. We have all seen enough of life and disputes in various spheres to know that that sort of activity goes on and that there are people who are not nice, not fair and who do not give a damn about harmonious relationships, whether it is a business relationship or any other form of relationship. Therefore, I do not doubt that this goes on. What we as a government are doing—again, I mention the Small Business Commissioner and also the workers' compensation legislation that I have on the notice paper—is trying to find ways in which we can make easier, cheaper and quicker dispute-resolution mechanisms available to people in the workplace, whether for business-to-business disputes, retail tenancy disputes or, in the case of workers' compensation, employer–employee disputes. If members look at the legislation that I am bringing on this year, that is one of the key themes that the government is exploring and it is something that I am trying to do in this place as well. Therefore, my ears are up when I hear members bring forward stories from a shopping centre in Armadale, Morley, Midland or wherever. I want to make things better in those relationships and to avoid or resolve some of those sorts of conflicts. The question was asked: did a Mr Wood make contact with the department? That is probably a question to be asked in another way. I will not respond to an individual's case, not that I am in a position to, in the context of a second reading debate. However, the honourable member referred to all sorts of complaints and asked me to follow them up. I will follow them up. How many of these complaints have been referred to me or to my office? I am not aware of any, but I am here to follow them up, if the member wishes to raise them with me. I am serious, if the member is. I will not go looking for them, but I am here to help, as are my agencies. If any member in this place wants to raise these matters with me, we have forums available for that. One of the forums available in the case of commercial disputes, as with other civil matters, is the State Administrative Tribunal. A member was bemoaning how difficult it is to access SAT and the costs and so on. The cost to take a matter to SAT to have it registered —

Hon Max Trenorden: It is $47.

Hon SIMON O'BRIEN: I understand that for the sort of matters we are talking about an indicative cost is about $69. It is not thousands of dollars, tens of thousands of dollars or hundreds of thousands of dollars; it is $69.

Hon Ljiljanna Ravlich: Is that to take a case to SAT?

Hon SIMON O'BRIEN: Yes, and I am advised that the State Administrative Tribunal will assist the prospective applicant in making their application so that they can get the matter up before SAT to be dealt with.

Furthermore, one of my agencies, the Small Business Development Corporation, also gives guidance to tenants and landlords about how to make applications to the State Administrative Tribunal. Therefore, there is assistance for people to access the dispute resolution mechanisms available and provided for in law. A specific complaint the honourable member raised was about turnover figures being demanded by landlords. The law provides—it is in the principal act—that turnover figures may not be demanded. That is simple. If turnover figures are demanded, there are already unconscionable conduct provisions contained in the principal act to deal with that.

Hon Max Trenorden made a major speech; it was one of the speeches he was born to give, I think. I acknowledge his commitment in this area. I am not being flippant when I say that; he has shown real commitment on this issue. One of his central concerns is that small operators may pay proportionally more than anchor tenants. I think that the member is right in many cases.

But I also think that there are legitimate explanations for why that may be so in many of those cases. That is something that needs to be explored as we look at the wider issue beyond this bill. There is more than one legitimate side to this discussion and I have a responsibility to look at this issue from the point of view of all stakeholders, and I will. Hon Max Trenorden's key argument, and he called it his key argument, was that this amendment was an opportunity to open up information accessibility and availability, and we are invited to go down the path of just opening it up. As I indicated in my earlier remarks, that is one narrow avenue that we might pursue. There are several others which have been nominated, but which have not been evaluated, and I am required and duty bound, as a minister of the Crown, to evaluate them before I bring any matter to this place for inclusion in the statutes of Western Australia, and members in this place would rightly criticise me if I failed to do that. That is one of the reasons I do not agree that we necessarily need to adopt the amendments in the form on the supplementary notice paper, or in some other tweaked form, tonight. I think that we might repent very severely, at great leisure, if we were to go down that path tonight. It has taken 30 years to get here; let us not

snatch that sort of result from the prospect, which I earlier alluded to, of getting on and doing the job properly—a job which probably should have been done before and which we are only now taking to its final conclusion. That is a more detailed discussion for another time.

The amendments on the supplementary notice paper are well intentioned, and I am not being patronising as I say this, but I caution members now, before we get into the Committee of the Whole stage, that the amendments are not benign. They will have ramifications that are yet to be fully identified, fully measured or fully tested. Not only may the ramifications of the amendments, in the form of costs that might be visited on various parties, be bigger than the honourable member thinks, but the amendments may also have a counterproductive effect on what is trying to be achieved. Let us work together and do it properly. We cannot achieve that with a supplementary notice paper with a quick amendment on it at the committee table tonight. Hon Max Trenorden and I, and numerous others, have been in this place long enough to know that making that sort law and amendment on the run is a recipe for disaster. I think I have made the point; we will discuss it again when the amendments are moved and we will come back to it.

I ask members to contemplate section 11 of the act and what we propose to add to it through this bill. Hon Philip Gardiner was very pleased to observe that the provisions ensure that in any market rent determination there may be no taking into account of the value of the goodwill of the business carried on in the retail shop and there must not be regard for the stock, the fixtures or fittings of the retail shop that are the property of the shop owner and not the landlord, nor for any structural improvement or alteration of the retail shop carried out or paid for by the current tenant. They are major improvements with obvious and significant benefits that accrue to every retail tenant that could be subjected to those considerations. That is why we want to get on with this bill tonight and why we do not want to jeopardise its adoption and passage. Also in section 11, we propose to insert new provisions that I want to put into the law; this is the bit that some people are contemplating trying to amend. Under the new provisions, under a retail shop lease a landlord must, to assist in determining the rent payable as a result of the review, provide within 14 days of a written request by a qualified person a range of figures, such as the current rental, the rent-free periods or other forms of incentives, recent or proposed variations to the lease, outgoings for each lease or any other information prescribed for the purposes of the paragraph referred to. That sort of information has not been available, and this amendment proposes to make it available. That is a very big step in the right direction and it is backed up by a further provision that provides assistance for tenants in the face of recalcitrant landlords if they have to go to a civil tribunal, in this case the State Administrative Tribunal, to break an impasse. Those changes are proposed to be made to section 11 and all of them are good; I do not want to hear anyone say that we should not make those changes. I do not want to see that provision jeopardised by an amendment on the run.

I thank Hon Lynn MacLaren for her support and for her thoughtful contributions to this debate and the related debate we had last Thursday on the Small Business Commissioner. This ties together a suite of responses that, among other things, assists in determining commercial disputes, particularly for retail tenancies. These provisions do not now exist, but they need to exist and we are all contributing to bringing them into the law. I think that is a very good thing and I am glad Hon Lynn MacLaren recognises it too. I thank the member and her colleagues for their support. The member also said that she would like fair dealing aspects to be included in the statutes that relate to these matters. In addition to the unconscionable conduct provisions already contained in the act, this bill contains some measures that I know the member will like to see. Those measures deal with misleading or deceptive conduct by any party to a lease agreement; I point that out as a specific provision in this bill that provides the support that the member talked about.

I have already thanked Hon Philip Gardiner for his further contribution and I do so again in closing.

I hope that I have done justice to the thoughtful contributions by members and addressed some of the wider issues that were raised. I think that one or two elements, hopefully not too many, may need to be teased out during Committee of the Whole.

I look forward to enjoying the support of the house in moving that the bill be read a second time.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Brian Ellis) in the chair; Hon Simon O'Brien (Minister for Commerce) in charge of the bill.

Clauses 1 to 4 put and passed.

Clause 5: Section 3 amended —

Hon MAX TRENORDEN: I listened closely to the impassioned speech of the minister. It is hard to argue, but we have an impasse here, in my view, with the National Party. I cannot speak for anyone else, but the point the National Party is trying to make, if I can put it a bit more simply, is that we want to introduce urgency to this debate. This debate has been around for a long, long time. Even though this bill may do the things that the minister talked about, one thing it will do, without any doubt at all, is make people deal with it. I told the good people who are now at the table, and during my second reading contribution, about my considerable skills in drafting legislation. I talked about the considerable resources the National Party has to assist me in drafting legislation. I would be the first one to say there is a risk. I also said that in my contribution to the second reading debate. National Party members can only deal with what we have before us, which is a difficult set of circumstances. We want to blow the whistle. We want to say "Time!" We do not want to be arguing.

I was going to say during my second reading debate contribution, but did not, that the best the minister could do, in my experience—this is in no way a shot at the minister—is come back here in about 18 months. But a lot of people will get hurt in 18 months. By the time the minister completes his review, puts it out for drafting and gets it on the notice paper, 18 months would be a really good effort. That is part of what we are arguing about. My one hesitation here, as an individual member, is that I do not want to be part of passing something that is poor legislation. On the other hand I am not going to not do something because of a lack of capacity as a member or a lack of party resources. This is an age-long debate. I am not technically in opposition. In Australia, no-one likes to resource anything else except government. That is part of the argument. If we only resource government with the capacity to do things, when people like me get a chance, we may not get the best outcome but we will get the best effort. We will discuss this later because I do not want to take the time of the chamber now. There is no point talking in circles; we might as well address the matter. I move —

> Page 4, line 6 to page 5, line 8 — To delete the lines and insert —
>
> > ***retail shop lease*** means any agreement under which a person grants or agrees to grant to another person for value a right of occupation of premises for the purpose of the use of the premises as a retail shop —
> >
> > (a) whether or not the right is a right of exclusive occupation;
> >
> > (b) whether the agreement is express or implied; or
> >
> > (c) whether the agreement is oral or in writing, or partly oral and partly in writing.

Hon LJILJANNA RAVLICH: I rise to add my support to the amendment moved by Hon Max Trenorden. The proposed definition of a "retail shop lease" as provided in the amendment bill is totally unacceptable to us. It states —

> ***retail shop lease*** means a lease that provides for the occupation of a retail shop, unless —
>
> (a) the retail shop —
>
> (i) has a lettable area that exceeds 1 000 square metres; and
>
> (ii) is not of a kind prescribed by the regulations for the purposes of this definition;

So far as we can see, this provides an opt-out provision for those retail shops that are more than likely to be the anchor tenants in some of the larger shopping centres in and around the state. That would be particularly concerning to us, because to my mind that simply reaffirms a position that we currently have, and it is one that will continue into the future, given the provisions of paragraphs (a) and (b) of the definition of "retail shop lease". Paragraph (b) provides the exception of a lease held by —

> (i) a listed corporation (within the meaning of the *Corporations Act 2001* (Commonwealth) section 9) that would not be eligible to be incorporated as a proprietary company;

Basically it provides an opt-out provision for retail shops that have a lettable area that exceeds 1 000 square metres or where the lease is held by a listed corporation or a subsidiary within the meaning of the commonwealth Corporations Act 2001. Unless I am very badly mistaken, that is an opt-out provision that we would find totally unacceptable. Quite frankly, this amendment may not be perfect in its drafting, but if its intent is as Hon Max Trenorden says it is, its intent is good. The intent is to make sure that this sort of opt-out provision and this perpetuation of the in-built injustices within the system are put to an end. If this is the intent of the amendment of Hon Max Trenorden, we fully support it.

Hon SIMON O'BRIEN: I say to the honourable member that yes, she is completely mistaken. It is important that I rise now to clarify the issue. What the member has described as the effect of the proposed amended definition—because the definition will appear after this statute is passed, if it is passed—is substantially the same

as what already exists in the act now. The effect is not to allow certain larger entities to opt out; it is to make sure that they do not opt in to a system that actually seeks to look after what has been described as "the little guy". That is what this definition does. In taking a definition of "retail shop lease", that is then applied throughout this act, and, as I might have said during an earlier stage of debate, the whole parent act is about looking after small business.

I think Hon Ljiljanna Ravlich has misinterpreted exactly what this definition is about; it is 180 degrees from what the member has suggested. The purpose of adding to the current definition provisions, such as are included in the bill, is to tighten up the intent of the Commercial Tenancy (Retail Shops) Agreements Act, not to relax it. If that misunderstanding is the basis for Hon Ljiljanna Ravlich supporting the amendment, I can assure the member that that has evaporated.

From listening to Hon Max Trenorden speak to his amendment, I think that he was raising an issue for debate because even he acknowledged in his remarks that his amendment is legislating on the run, which has risks attendant upon it.

Hon Max Trenorden: There's no question about that.

Hon SIMON O'BRIEN: I have already acknowledged the heartfelt contributions of members during the second reading debate about how serious these matters are. However, if we introduce a provision that turns on its head the intent of the act, which is to provide protections for those who are vulnerable, we will be very sorry; but, more to the point, we will have more people getting hurt than would otherwise be the case. Again, that is diametrically opposed to Hon Max Trenorden's intent in moving this amendment. This amendment proposes to take the existing definition out of this bill. This bill proposes to tighten up the existing definitions, while Hon Max Trenorden's amendment goes further and proposes to go back to the parent act and to rip out the entire definition upon which the act is based and put in this new definition, which sounds as though it wants to achieve the sorts of things that we want. However, with the greatest respect, this amendment is no way to do it. I have spoken before about my obligations to ensure that we do not have legislation that creates unintended consequences or victims. I cannot in any form of good conscience contemplate this amendment because of the effect that it would have. What are the effects? I think the old cliché about throwing the baby out with the bathwater has been used in the second reading debate. If this amendment were to be adopted by the Committee of the Whole, I do not see how I could then proceed with this bill. All those good things that have been alluded to in the debate on this bill would then be lost. That would lead to more people being hurt further on. Where would that bring us to? Hon Max Trenorden suggested that it takes about 18 months to get something back here. That may or may not be the case. I got this bill approved and drafted and through the stages that we have come to in this half of this year. I have indicated to members that things are already in train to examine further matters about lease registers and so on. I will not take 30 years—that is for sure! But if we go too far and think that we need to support this amendment, I fear that we will be very regretful indeed. I am not asking Hon Max Trenorden to withdraw the amendment; he has moved it in good faith. Perhaps when the question is put, those voting aye might choose not to be loud about it. I hope that while I have been making these remarks, the official opposition has had the opportunity to have another read of the existing definition in section 3 of the act and that it understands that what I am saying is true. I know that if members opposite know that I am right, they will agree with me. The government opposes this amendment.

Hon MAX TRENORDEN: I cannot agree with the minister. We decided, as the National Party, that we wanted an open process and the proposed amendment does just that; it ensures that under the shopping centre roof or in the shopping centre precinct, everyone will be equal. The minister and his advisors quite rightly argued with me during the briefings that it will make available a whole raft of consequences to anchor tenants, or whatever it is we wish to call them. Well, that is what the National Party is saying that it wants to have happen. We want that to happen; that has been our intent right from the start.

As I identified during my contribution to the second reading debate, this amendment draws on the New South Wales act. It also states that an agreement is an agreement, be it expressed of implied—thereby adding another element not currently in the act—whether that agreement is "oral or in writing, or partly oral and partly in writing".

I have already told the minister—

Hon Simon O'Brien: What else is not in the act that is in the New South Wales legislation?

Hon MAX TRENORDEN: We seek to put in one definition, not the whole of the New South Wales act.

Hon Simon O'Brien: You are saying that it is from the New South Wales act. Look at the New South Wales act; it has other provisions.

Hon MAX TRENORDEN: No; I am stating that that is where the definition came from—slightly altered.

Hon Simon O'Brien: Severely altered.

Hon MAX TRENORDEN: No; this definition is altered —

Hon Simon O'Brien: Severely altered.

Hon MAX TRENORDEN: From the New South Wales act?

Hon Simon O'Brien: Yes.

Hon Max Trenorden: How is it severely altered?

Hon Simon O'Brien: I will respond in a second—I am sorry.

Hon MAX TRENORDEN: Although the next two minutes should perhaps not be included in the record of this debate, I will say it anyway. Years ago, I went to Gettysburg and saw the high-water mark—the trees the Confederate soldiers got to; that is, the high-water mark of the Confederate action. That is where the Confederates hit their peak, and after that they declined. And that reminds me of this debate because this principle is the high-water mark of this debate. The National Party has a principle that it wishes to hold to. National members are attempting to say to the minister that they want an open process for commercial tenancy agreements. The minister is saying that there could be consequences. He is wrong. There will be consequences. I do not think that I have ever seen a bill without consequences go through this place or the other place. We are talking about quite significant consequences. However, why should this particular industry live in a cocoon while the rest of the world has to compete?

Hon SIMON O'BRIEN: I agree with Hon Max Trenorden when he says that perhaps we have to get on with this rather than just go round and round in circles. However, if I thought that this was a good move, I would support it.

Hon Max Trenorden: I do not doubt it.

Hon SIMON O'BRIEN: I have adopted amendments previously; I have no reticence in doing that.

We have been told that this amendment is consistent with the New South Wales legislation, but I do not know if New South Wales legislation is the high-water mark that Western Australia wants to adopt. We regularly debate such indices here, do we not, Hon Max Trenorden?

Hon Max Trenorden: We do.

Hon SIMON O'BRIEN: We debate lowest common denominators and all the rest of it.

My advice is that retail tenancy in other Australian jurisdictions contain a test or some measure to ensure that the act applies only to smaller businesses.

It is usually based on the size of the premises, such as 1 000 square metres, or some other indicator, such as whether it is a listed company or whatever. I do not have it with me now, but I have received an indication that, in fact, the New South Wales legislation may include the 1 000 square metres and also listed companies in the definition. Hon Max Trenorden's definition seeks to get rid of all that, and that is a change that would so fundamentally overturn the parent act that, as a responsible government, we cannot allow it to proceed. Furthermore, I must say that I reject—in a nice way—Hon Max Trenorden's assertion that, yes, this amendment would bring about change, but that it would be all to the good. As I said in my reply to the second reading debate, this amendment is not benign. It will have serious unforeseen ramifications. It is my observance of this place that we are not so reckless as to say, "Oh, what the heck; this has just come out of left field, but let's wing it. We don't know what the outcomes will be, but let's just do it. What the hell. Let's live dangerously". That is not the way that this house of review works, and it should not work that way on this occasion.

Everything else that has been put forward has been tested and measured, and is guaranteed to produce a beneficial act. If we want to risk all that being suspended—because I would not be able to take this bill forward any further if it is to be sabotaged in this way—members should vote accordingly. I hope, though, that commonsense will prevail. I hope that this is not a matter of serious disagreement, and I hope that the opposition, in particular, will rethink the form of brinkmanship that it currently seems to be engaged in. This is not a good way to proceed; therefore, I restate the government's opposition to this amendment for those reasons, and I appeal to the collective reason of the chamber.

Hon PHILIP GARDINER: I am sure that commonsense will prevail, minister, but I want to make sure that we are all talking about the same clauses and about the same implications, as we best understand, of what is written in the bill. This definition of "retail shop lease" is actually based on the parent act. It is very little different from what is being proposed and, in fact, the only material difference that I can glean from it is that the new definition contains an exemption that provides that the retail shop lease is not of a kind prescribed by the regulations for the purposes of the definition. My reading of the clause suggests that we could have a publicly listed corporation or

a non-proprietary company with a lettable area of 2 000, 3 000 or 5 000 square metres. That is the only difference of materiality that I can see between the bill and the parent act. When reference is made to a non-proprietary company, it means that it is a company that has more than 50 members. Does the minister know how many shareholders a small company has? It is nowhere near 50. A publicly listed company is excluded from the definition of "retail shop lease", both in the parent act and the bill. If we are talking about commonsense—I applaud the pursuit of commonsense—I think we have to look at what is actually in the definition. That is the first thing I want to talk about.

It is where the definition applies. I do not know whether I am permitted to refer further on in the bill where it applies, but if I am, it applies under clause 8 "Section 11 amended" in line 8 on page 8, which is proposed section 11(3B). On my reading, that proposed section provides that if I am a tenant, I can write to the landlord and request information and the landlord has to reply to me within a certain time. But it is only about comparable retail shops. Is that not discriminatory? If we want transparency, which is the principle I espoused in my contribution to the second reading debate, I want to know what the anchor tenant is paying and, especially, the outgoings for each lease; information I cannot get under this bill—it prohibits me. Unless I get special dispensation under paragraph (a)(ii) under the definition of "retail shop lease" in proposed section 3(2), and I do not know how I can get dispensation, I cannot get all the details of my co-tenants in the shopping centre, where we are all tenants. To my mind, therefore, the retail shop lease definition is restrictive; it restricts the information I can obtain from my landlord about my co-tenants. I believe transparency of that information will provide more efficient allocation of resources, although there is no doubt that it will cause some tension between the anchor tenant and the small tenants. If I were an anchor tenant on a very favourable lease with very favourable outgoings, especially when they are apportioned to the other tenants, I would want to be pretty secretive about that. But, as I said before, secrecy is not a good thing unless there is a genuine innovation. Commercially, transparency is the most efficient allocation of resources. That is the reason I am afraid, minister, I believe the retail shop lease definition proposed in the bill is not appropriate and I believe that the word "comparable" should be removed from proposed section 11(3B).

Amendment (deletion of words) put and a division taken, the Deputy Chairman (Hon Col Holt) casting his vote with the ayes, with the following result —

Ayes (17)

Hon Matt Benson-Lidholm	Hon Wendy Duncan	Hon Col Holt	Hon Alison Xamon
Hon Helen Bullock	Hon Sue Ellery	Hon Lynn MacLaren	Hon Ed Dermer *(Teller)*
Hon Robin Chapple	Hon Adele Farina	Hon Ljiljanna Ravlich	
Hon Mia Davies	Hon Jon Ford	Hon Ken Travers	
Hon Kate Doust	Hon Philip Gardiner	Hon Max Trenorden	

Noes (12)

Hon Liz Behjat	Hon Donna Faragher	Hon Robyn McSweeney	Hon Helen Morton
Hon Jim Chown	Hon Nick Goiran	Hon Michael Mischin	Hon Simon O'Brien
Hon Peter Collier	Hon Alyssa Hayden	Hon Norman Moore	Hon Nigel Hallett *(Teller)*

Pairs

Hon Giz Watson	Hon Ken Baston
Hon Sally Talbot	Hon Phil Edman
Hon Linda Savage	Hon Brian Ellis

Amendment thus passed.

Amendment (insertion of words) put and passed.

Clause, as amended, put and passed.

Clauses 6 and 7 put and passed.

Clause 8: Section 11 amended —

Hon LJILJANNA RAVLICH: I move —

Page 8, line 14 — To delete "comparable".

This amendment has already been canvassed by Hon Phil Gardiner. The current wording of the clause essentially restricts the provision of rental information about co-tenants unless they are comparable retail shops. Apart from anything else, there is no definition of "comparable" in the legislation. More importantly, it omits a fair comparison of the rents that are being paid by anchor tenants and any special conditions that may be associated with their lease.

We do not want the information about the current rental for each lease, rent-free periods or any other form of incentive, recent or proposed variations of any lease, outgoings for any lease, or any other information prescribed for the purposes of this paragraph to be applicable just to leases for comparable retail shops. We want that information for all leases for retail shops, irrespective of whether they are small retailers, anchor tenants or anything in between. We see that as being fair and equitable.

Hon SIMON O'BRIEN: The government is not inclined to support this amendment, which fundamentally seeks to change the intent of the amendment to the act contained in the bill. This is about not having a situation in which one point of view just happens to get the numbers on a day, which view prevails because, for some reason, enough people said, "Yes; let's go on with that." The amendments contained in this clause seek to provide an incremental approach that is consistent with the consultation and the processes that have already occurred; therefore, they are justifiable. It is not about taking leaps in the dark. This amendment is another leap in the dark. I do not know what the experience of the mover is with rent reviews. Maybe she has a background as a valuer.

Hon Ljiljanna Ravlich interjected.

Hon SIMON O'BRIEN: The task confronting a valuer in the circumstances contained in proposed new section 11(3B) is that the valuer can provide to the client, the prospective tenant, information that is in the context of what the prospective tenant seeks to do—that is, to take on a lease in a shopping centre, for example, to carry out the scope of business that they propose to carry out. The prospective tenant needs to know what comparable leases look like so that they can make an informed decision. For people who might contemplate going into such a lease arrangement, let us say that they want to set up a shop that sells widgets to a thronging patronage that makes its way through the shopping centre. Those people would consider a whole lot of things about the viability of whether they invest their time, capital and energy in that enterprise. They would consider the cost of the lease, the terms of the lease and the outgoings, as well as a whole heap of other issues. They need realistic comparisons with which to assess that one part of their business plan. If they were looking at a nook for their small business in Westfield Carousel Shopping Centre, I do not know what difference it would make to the efficacy of their calculations if they knew how much Myer paid. What the prospective tenant needs to know is that there is an anchor tenant in the shopping centre or, if there are several anchor tenants, their location in relation to the shop that the prospective tenant proposes to lease and fit out.

That is what a prospective client needs to know about anchor tenants. He needs to know who they are, where they are and how they are going to impact on his business plan. How on earth getting this information will assist a valuer in advising a prospective tenant about his widget shop, I do not know. Hon Ljiljanna Ravlich was just asking me what do I know about these matters. I am the minister of the Crown who has the benefit of the advice of departmental officers. I have also had the benefit of perusing all the submissions that have been made about lease registers and of consulting widely with those of different views about what we are really trying to do. I do know—I alluded to this in closing the second reading debate—that some proposals that have been made in good faith by people about the sort of lease register we should have would cost a lot of money and have unforeseen and indeterminate consequences.

Someone else had a good idea; I am glad this other good idea did not get up today during the course of this committee stage. That idea was for all leases, including those of anchor tenants, to be registered with the title. That had more support than the proposal that our government put forward last year, which is similar to a model that has been supported in this chamber tonight. The obvious disadvantages of all leases being registered on title and, therefore, publicly available include not only the cost that would be incurred every time a person needs to access every single one of those leases—that cost would be very, very substantial, but some people might think it is a good idea—but also that that data starts to go out of date on the day it is registered and at the hour it is registered. Therefore, if a person accesses that sort of information to inform his decisions, it will be counterproductive. Similarly, the lease terms that an anchor tenant such as Myer might have entered into years ago at Westfield Carousel, I think, are unlikely to be very instructive to a widget store operator who proposes to set up there.

Hon Ljiljanna Ravlich: You'd be surprised about that, minister.

Hon SIMON O'BRIEN: But members opposite can make their decisions. The point is that this is a fundamental departure from what has been a process of gradual, instructive and targeted development. If members want to take this leap, it is a leap into the unknown. My advice to them is to not take it and, therefore, to oppose the amendment, and the government will certainly vote accordingly.

Hon MAX TRENORDEN: I would like to know statistically how many people who take leases in shopping centres actually go to valuers. My experience, from speaking to people over the years, is that valuers are a bit like lawyers and are often out of a person's range. Unfortunately, many people, such as those in country hotels, go into leases on the seat of their pants. If I were setting off to get a lease, I would want to know what the

variable outgoings of the anchor tenant were, because that relates directly to me and to my outgoings. That is why I would want to know. I think that is a very critical point.

Hon PHILIP GARDINER: The minister is right that there can be unforeseen consequences, and he talked about these. Are there any which come to the minister's mind at this time and which cause him particular concern?

Hon Simon O'Brien: In relation to what?

Hon PHILIP GARDINER: The deletion of the word "comparable".

Hon SIMON O'BRIEN: This amendment is being contemplated on the run so I do not have as much time to contemplate it as I might like. One of the reasons the amendments that we have proposed in the bill are structured in the way they are is to have an incremental change that will undoubtedly be beneficial but does not contemplate a change beyond that which the proper course of consultation has indicated that the wider sector is comfortable with. I think that is a pretty good principle. That has been thrown out of the window just now, but that is fine if that is the will of the committee. However, one of the potential consequences of this occurring is that it brings in the prospect of people who are not involved in anything more than fishing expeditions to look not at information that they should reasonably have access to for the question of assessing a specific rent review but seek to gain a commercial advantage by using the proposed new subsection as a head of power to gain access to information that may give a commercial advantage. That matter was, I think, reflected in a number of submissions about various types of lease register models. The bill before the committee as it stands has regard for that consideration; this amendment does not. I do not think that has been contemplated by the mover, and members are now asking, as Hon Philip Gardiner has, quite genuinely, what are the sorts of unforeseen circumstances that could happen? This amendment seems so simple and reasonable, so why does the government oppose it? We oppose it for a number of reasons, one of which is that the consequences have not been tested and they have not been modelled, so it is another step in the dark. As I have already indicated, the government is not inclined to do that because these are real businesses and real interests that we are talking about and they will be impacted on by this amendment.

Hon PHILIP GARDINER: I thank the minister, and I understand that he and every one of us have not had perhaps sufficient time to contemplate the amendments on the supplementary notice paper and their possible consequences. However, with as much time as we all have, we will never get to all the consequences. I will give the minister one example of a consequence because we have not had any yet, and maybe we should at least consider one. If we were all tenants in a shopping centre and the minister was the anchor tenant and I felt that the anchor tenant's outgoings were going onto my account, for example, I would be interested in knowing how much I am getting and for how long. If it was a lot, I would be interested in knowing how long the anchor tenant's lease is because this is just too much and I think he is getting away with too much.

That is the first thing. The second consequence is that that I might then go and talk to each of my colleagues and we might go to the manager of the shopping centre. The manager of a shopping centre and the landlord are essentially two different people. The managers act as agents for the landlord. In many cases, but not all, the managers are pretty brutal when they negotiate leases and costs of leases with tenants. All the managers are there to do is to ensure that the landlord gets the best return he possibly can and as an agent, the manager will get something on the way through. The general principle is that they do not have much consideration for the niceties of life. Therefore, I might go to each of my colleagues and say that we all need to get together—we might think that this is a real danger—and go to see the agent as a group, if he is not willing to either negotiate or renegotiate or address the issue of what could be a big amount of outgoings, which might seem far too big for each of us to contemplate as being reasonable. They are some of the consequences. Other consequences would also probably be a redistribution of wealth between the anchor tenant and the small retailer, which would be a result of the transparency that we are injecting into this bill with this amendment, and the levelling of the countervailing power. Both are principles that I enunciated when I gave my contribution to the second reading debate, and that is why I feel that this amendment moves very much in the right direction for better commercial efficiency and allocation of resources.

Hon SIMON O'BRIEN: In brief response to Hon Philip Gardiner, I direct his attention to section 12 of the principal act that provides, in part —

> the proportion of those operating expenses payable by the tenant under the retail shop lease shall not be greater than the relevant proportion without the approval of the Tribunal;
>
> …
>
> ***relevant proportion***, in relation to a retail shop, means —

(a) where the retail shop is situated in a retail shopping centre, the proportion that the retail floor area of the retail shop bears to the total lettable area of the retail shopping centre at the commencement of the accounting year; or

(b) where the retail shop is adjacent to, or forms a cluster with, one or more other premises which have or, on being leased, would have a common head lessor and are grouped together for the purpose of allocating to each of those premises a portion of an item of operating expenses, the proportion that the retail floor area of the retail shop bears to the total lettable area of the premises in the cluster at the commencement of the accounting year;

That is already a part of the existing act and I do not think that it helps the argument that the honourable member has put forward.

Hon PHILIP GARDINER: I am sorry; I just need a bit longer to understand what that part of the parent act means.

Hon Simon O'Brien: So, you're going to vote for the amendment without knowing what it means? Okay.

Hon PHILIP GARDINER: No, I understand what the amendment means.

Hon Simon O'Brien: Do you?

Hon PHILIP GARDINER: I understand very clearly what the amendment means; I do not understand what this part of the parent act and the deletions fully mean. I just need a bit more time to do that, but I very clearly understand what the amendment means.

I only tried to put it because the minister raised the possibility of the dangers. It is a very easy question to raise, as we all know. I am trying to give substance to the dangers. I have not had any firm response about the dangers the minister envisages. I tried to put mine as a possibility to see what the consequence of that might be. If this clause satisfies the danger I put, fine.

Hon MAX TRENORDEN: My concern, looking at both the parent act and this amending bill, is that there is no definition of "operating expenses"; or none that I could find. I would appreciate it if the minister could find it for me. That leaves the whole process wide open. There are recent horror stories, within weeks of today, of people paying outgoings without the anchor tenant's involvement. I am concerned about what are operating expenses? Is that all matters or is it just what we expect to be operating expenses, such as electricity, air conditioning, cleaning and security, or is it all of those matters? What is "operating expenses"?

Hon LJILJANNA RAVLICH: I have to say that the minister's response, as far as I am concerned, is totally inadequate. We are really talking about being able to compare the current rental for smaller retail shops with anchor tenants, or anything in between. We want to be able to compare who gets rent-free periods or any other forms of incentive from one retailer with the next retailer and so on; the recent or proposed variations to any lease; and any outgoings for each of the leaseholders. To me, these indicators are benchmarks by which business proprietors compare what they have in terms of their own lease agreements with what the bloke next door has and compared with what Coles or Woolworths or indeed any other major anchor tenant has. The minister is talking about one small aspect. I do not think his response is adequate. The amendment I have before the house is one that will result in greater transparency and less discriminatory practices. That was certainly the intent of my amendment. That is what the deletion of the reference to the term "comparable" will achieve.

Hon SIMON O'BRIEN: Two items: the definition of "operating expenses" that is claimed to be missing from this bill is contained in existing section 12 under "operating expenses" and defines the term. Members will see that on page 24 of the principal act under section 12. In relation to the word "comparable", its meaning there does not necessarily mean only that the rent or other considerations, including premises, could be compared with one of similar size, for example. The use of the word "comparable" envisages a valuer having access to information that is useful in comparing what is on offer in the lease that is being contemplated. It might canvass the anchor tenant's lease, for example, or it might not. If we do not have the term "comparable" there, there is no restraint on the information that a valuer might obtain. If that word is not there, it means that it is just open slather. People will seek to obtain selected information for commercial advantage on the pretext that they are doing a rent review. That is another case in which there could be unintended consequences that are nothing like the purest of motives that are no doubt behind this particular amendment. That addresses those things. If people will not accept the advice that is being offered, then I guess we just have to proceed.

Hon MAX TRENORDEN: The only thing I could find on page 24 or 25 is a subparagraph that states —

> the landlord is required to give to the tenant a written statement in accordance with subsection (1a) (an **operating expenses statement**) …

Hon Simon O'Brien: What are you looking at, Max?

Hon MAX TRENORDEN: Page 25.

Hon Simon O'Brien: I am referring to the actual act.

Hon MAX TRENORDEN: That is something we do not have. Did the minister not tell me this is the parent act that I am quoting from?

Hon Simon O'Brien: The member is looking at a marked up copy of the act, which has everything in it. On my copy it is page 29.

Hon MAX TRENORDEN: I am quoting from section 12(1)(d)(ii) of the act. It just says "an operating expenses statement", but it does not say that that operating statement is a statement —

Hon Simon O'Brien: I do not know what you are looking at, but it is obviously not the right one. There is a definition of "operating expenses" in section 12(3) of the principal act.

Hon Ljiljanna Ravlich: It gives a definition of "operating expenses" not "operating expenses statement", which is what the member said.

Hon MAX TRENORDEN: Having just read it, I find that it is hardly a striking definition of "operating expenses".

Amendment put and a division taken, the Deputy Chairman (Hon Michael Mischin) casting his vote with the noes, with the following result —

Ayes (17)

Hon Matt Benson-Lidholm	Hon Wendy Duncan	Hon Col Holt	Hon Alison Xamon
Hon Helen Bullock	Hon Sue Ellery	Hon Lynn MacLaren	Hon Ed Dermer *(Teller)*
Hon Robin Chapple	Hon Adele Farina	Hon Ljiljanna Ravlich	
Hon Mia Davies	Hon Jon Ford	Hon Ken Travers	
Hon Kate Doust	Hon Philip Gardiner	Hon Max Trenorden	

Noes (12)

Hon Liz Behjat	Hon Donna Faragher	Hon Robyn McSweeney	Hon Helen Morton
Hon Jim Chown	Hon Nick Goiran	Hon Michael Mischin	Hon Simon O'Brien
Hon Peter Collier	Hon Alyssa Hayden	Hon Norman Moore	Hon Nigel Hallett *(Teller)*

Pairs

Hon Giz Watson	Hon Ken Baston
Hon Sally Talbot	Hon Phil Edman
Hon Linda Savage	Hon Brian Ellis

Amendment thus passed.

Clause, as amended, put and passed.

Clause 9: Section 11A inserted —

Hon MAX TRENORDEN: I move —

Page 9, line 7 to page 10, line 7 — To delete the lines and insert —

> section 11(3B) may disclose that information, with the exception of information relating to financial turnover, to any other person.

Hon SIMON O'BRIEN: This is another amendment that appeared today. Again, the full ramifications are something that we can only speculate on. The amendment turns on its head the well-developed amendment contained in the bill. The amendment contained in the bill was sought to provide a counterbalance to the amendment just considered to section 11, which we only recently debated. The consultations at the time the lease register matter was considered touched very heavily on this, and upon examination of all submissions, the government determined new subsection (3B) needed a counterpoint in terms of a confidentiality clause to keep faith with the general weight of views brought forward by the consultation process—a process that was sector wide and not restricted to a particular vantage point of some particular vested interest or other. Everyone who is a stakeholder has a vested interested determined by their viewpoint. Given consideration of the potential for some level of abuse of proposed section 11(3B), subject to the amendment just carried, it makes it, I think, doubly important that the current wording of proposed section 11A be maintained. If members are not of a view that that should be the case, that is a matter for them. However, I indicate that the government does not support this provision and submit that to the consideration of the chamber.

Amendment put and a division taken, the Deputy Chairman (Hon Michael Mischin) casting his vote with the noes, with the following result —

Ayes (17)

Hon Matt Benson-Lidholm	Hon Wendy Duncan	Hon Col Holt	Hon Alison Xamon
Hon Helen Bullock	Hon Sue Ellery	Hon Lynn MacLaren	Hon Ed Dermer *(Teller)*
Hon Robin Chapple	Hon Adele Farina	Hon Ljiljanna Ravlich	
Hon Mia Davies	Hon Jon Ford	Hon Ken Travers	
Hon Kate Doust	Hon Philip Gardiner	Hon Max Trenorden	

Noes (12)

Hon Liz Behjat	Hon Donna Faragher	Hon Robyn McSweeney	Hon Helen Morton
Hon Jim Chown	Hon Nick Goiran	Hon Michael Mischin	Hon Simon O'Brien
Hon Peter Collier	Hon Alyssa Hayden	Hon Norman Moore	Hon Nigel Hallett *(Teller)*

Pairs

Hon Giz Watson	Hon Ken Baston
Hon Sally Talbot	Hon Phil Edman
Hon Linda Savage	Hon Brian Ellis

Amendment thus passed.

Clause, as amended, put and passed.

Clauses 10 to 25 put and passed.

Title put and passed.

Bill reported, with amendments.