

**SMALL BUSINESS AND RETAIL SHOP LEGISLATION AMENDMENT BILL 2011**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Simon O'Brien (Minister for Small Business)**, read a first time.

*Second Reading*

**HON SIMON O'BRIEN (South Metropolitan — Minister for Small Business)** [5.56 pm]: I move —

That the bill be now read a second time.

In 2010, the Barnett government made a commitment to establish a Small Business Commissioner in Western Australia, to create a more competitive and fair operating environment for the state's small businesses and to support small retailers in the transition to a more deregulated trading environment. In discussions with the state opposition, we agreed that the commissioner would provide a low-cost, non-litigious means of resolving disputes between landlords and tenants in retail shopping centres. But the Barnett government wanted to go further than this and deliver to small businesses in this state a service that would assist them to resolve all types of business disputes relating to unfair market practices. This could include, for instance, disputes between franchisors and franchisees or disputes over payment terms or over the timely delivery of products. The bill I am introducing today will deliver on these aims by establishing a Small Business Commissioner in this state who will work to reduce the vulnerability of small businesses to unfair market practices. The commissioner will also have a specific role in assisting with the resolution of retail tenancy disputes.

In government, we regularly hear arguments from stakeholders that small business operators with limited bargaining power, limited access to information and limited resources can fall victim to the unscrupulous behaviour of other businesses. We also hear that current avenues of redress are not sufficiently accessible or responsive to small business people, with the costs, time and complexity of some of these mechanisms deterring their use. The Small Business Commissioner will work to address these issues by offering hands-on, timely, uncomplicated assistance to small businesses. The commissioner will operate along similar lines to the very successful Victorian Small Business Commissioner, who investigates a range of business-to-business and business-to-government disputes and provides a means of resolving these through mediation. Since its establishment eight years ago, the Office of the Victorian Small Business Commissioner has handled more than 8 000 matters and consistently maintains a mediation success rate of around 80 per cent. This translates into significant savings for the state and the business community. For individual small business people, it translates into savings in that livelihoods are protected, homes are saved and health and relationships are maintained. In 34 per cent of cases considered last financial year, the staff of the Victorian Small Business Commissioner successfully resolved disputes even before they went to mediation by providing information and advice, investigating the circumstances and offering hands-on assistance. The staff also provide education and guidance to small business operators to help them avoid disputes. This is a critical role because, as experience demonstrates again and again, many disputes could be prevented by parties understanding at the outset what they are getting into and what pitfalls to avoid.

In Western Australia, the Small Business Commissioner will take on all these functions, while focusing on cutting through formal processes and getting to the heart of disputes quickly and effectively. The Small Business Commissioner will take a practical approach to disputes and work with disputants, small and large, to get them working together again. The Small Business Commissioner will strive to preserve business relationships, as no dispute is satisfactorily resolved if the business relationship is destroyed in the process.

As is the case in Victoria, the Western Australian commissioner will not have decision-making powers, and this is as it should be. Powers of this nature must always be accompanied by a range of safeguards that ensure that due processes are followed and miscarriages of justice are avoided. Necessarily, they add time, formality and expense to the dispute resolution process. This is not our intention; neither is it our intention to duplicate other government services, such as those provided by the State Administrative Tribunal. Like the Victorian commissioner, the Western Australian Small Business Commissioner will achieve outcomes through the exercise of influence, credibility and a commonsense approach to finding solutions. The commissioner will build relationships across industry, not only working with small businesses, but also engaging with and educating large businesses and their representatives to ensure that they, too, understand their rights and obligations. The new Small Business Commissioner will also receive and investigate complaints from small businesses when they encounter difficulties in their commercial dealings with government agencies. Through this measure, the state government is putting in place another level of scrutiny of how agencies across all tiers of government interact with and support small business. This is already a focus of the Small Business Development Corporation and is a role that will be enhanced with the establishment of a Small Business Commissioner.

Placing the commissioner as chief executive officer of the Small Business Development Corporation is an important move that will boost the profile and scope of the agency, while providing the commissioner with the expertise, knowledge and resources that this new position will need. The commissioner will then be a central point for complaints from small business about retail tenancy and unfair market practice disputes in this state. In this way, the commissioner will be uniquely positioned to make an informed assessment of market behaviour in Western Australia. If business conduct issues are identified that are not being adequately dealt with by existing measures, the commissioner will have the capacity to bring such matters to the attention of government. This will be of significant benefit to small businesses.

Currently, more than 213 000 businesses are operating in Western Australia, almost 96 per cent of which are small businesses. More than one-third of Western Australia's employees work in small businesses. The Barnett government recognises that small business is a critical part of our economy and that small businesses need support and protection. This bill is a major step forward for small businesses and represents a landmark occasion for this state.

I commend the bill to the house.

Debate adjourned, pursuant to standing orders.

*Sitting suspended from 6.00 to 7.30 pm*

*Tabling of Explanatory Memorandum*

**HON SIMON O'BRIEN (South Metropolitan — Minister for Small Business)** [7.31 pm]: Further to the second reading of the Small Business and Retail Shop Legislation Amendment Bill 2011 and my second reading speech, I now table the explanatory memorandum.

[See paper 3240.]