

RETAIL TRADING HOURS AMENDMENT BILL 2011

Second Reading

Resumed from 22 June.

HON LJILJANNA RAVLICH (East Metropolitan) [2.36 pm]: I rise to support the Retail Trading Hours Amendment Bill 2011, which will amend the Retail Trading Hours Act 1987. Once again, this is a very small amendment bill but it has some significant impact. The purpose of the bill is to amend the Retail Trading Hours Act and to change the criteria that apply to staffing caps of small retail shops. The act permits small retail shops to trade 24 hours a day, seven days a week, including all public holidays. For a shop to be classified as a small retail shop, it must meet certain operational requirements, including that it is not to have, as it currently stands, 13 persons, including the owners but excluding apprentices, working in the shop at any one time. In principle, this is a fairly straightforward piece of legislation, but I will take this opportunity to put on the public record some concerns that I have generally about what is happening in retail and small business.

A lot is said in this place and outside this place about the contribution made by businesses in this state to the gross state product and to the state's economic wellbeing. Often the focus is on the mining sector, which is held up as the major contributor to the state. There is no doubt that in terms of volume and value that the mining sector makes a most significant contribution, but it is not —

[Quorum formed.]

Hon LJILJANNA RAVLICH: Although the major resource companies are critical to the state's economy, the small business sector really does underpin the Western Australian labour market and is a major contributor to the Western Australian economy. Small businesses operating in Western Australia employ around 200 000 people per annum. They account for anywhere between 90 and 95 per cent of businesses in the state. Many retail shops are small businesses. Some are smaller than others. There is no doubt that they make a major contribution to employment.

The retail sector is doing it particularly tough at the moment for two reasons. The first one is simply because of the economic downturn. Depending on what happens with the current economic situation that we find ourselves in, it may get worse before it gets better. There is certainly a lot of uncertainty in international markets. Many people were prepared to borrow and spend on all manner of items. That does not appear to be so true now because of the uncertain future. Consequently, this is felt by the retail sector. We are seeing major chains closing down, which is, in part, a reflection of the current economic situation.

The other factor that must be taken into consideration with respect to the changes to the retail sector is the structural change that the sector is undergoing. I refer in particular to the competition from online purchasing, which is increasing all the time, whether it be for fashion or food items. In fact, the other day—it was a Sunday afternoon—I was standing out the front of my place and I saw one of my neighbours getting their groceries delivered by Colesonline.com.au.

Hon Liz Behjat: I get mine from Woolies.

Hon LJILJANNA RAVLICH: Hon Liz Behjat says that she gets hers from Woolworths online. I do not know whether it is cheaper to do that but for the many people who work long hours and who have family commitments et cetera, it would appear that it is a time saving and convenient way of going about business. What was accepted as a traditional way of purchasing has changed over time. It was almost mandatory for everybody to go shopping on a Saturday morning. That is no longer the case.

Even with these new ways of purchasing goods, retail is doing it particularly tough. We only have to look at what is happening around our own town. For example, not long ago the Betts shoe store in Fremantle closed. It shut its doors after 120 years in the port city. The other day I came across someone who, in passing, asked me whether I had been to Fremantle lately. He was amazed at the number of shops that had closed in Fremantle. I said that I had not been down there but I certainly would be interested to look at what was going on. Jeanswest has pulled out. Even if we go into Perth, we can see that there is certainly not the thriving level of activity that there used to be. There is no doubt that a number of factors have contributed to that. Jeanswest and Jay Jays have pulled out. We have also seen the closure of the Colorado shops. One hundred jobs in Western Australia were lost across a number of sites as a result of those closures. One of the stores was in the electorate in which my office is located; that is, Morley. Stores also closed in Claremont, Karrinyup, Whitford City, Midland Gate, Joondalup, Harbour Town, West Perth and so on and so forth. Obviously, it will be really hard for people who lose their jobs in retail to find new jobs in retail because a number of retail shops are closing rather than expanding. We also know that bookstores have been closing, with the closure of 12 Angus & Robertson bookstores. Consequently, that has also had a direct impact on employment opportunities but, more importantly, is an indicator of what is happening in the retail sector. Things are not right for the retail sector. I guess we

cannot and we should not underestimate the importance of that sector, not only for the overall health of the Western Australian economy but also for the provision of employment of people in this state. There is a threat of that happening.

I want to quickly touch on the question of retail trading reform. We have before us yet another bill. It makes another amendment, albeit a small amendment. It is yet another piecemeal amendment made by this government. I have already said on the public record that there was an agreement between the Leader of the Opposition and the Premier relating to Labor's support for the Retail Trading Hours (Tourism Precincts and Holiday Resorts) Amendment Regulations 2009. In return for some of those crucial policy concessions from the government, the Leader of the Opposition was prepared to recommend to the Labor caucus that it support trading to 9.00 pm, and whitegoods trading on Sundays. Members might remember that the whole agreement did not come to much because the Premier did not honour key parts of that agreement. For example, there has been little advancement on whitegoods trading. The question of the lease register has been problematic. Legislation has gone through this place that should have dealt with the lease register but did not. We have still not seen an appropriate response from the government to honour its commitment —

Hon Simon O'Brien: Which bits have not been honoured? We have canvassed this before and you have tendered correspondence between the Premier and the Leader of the Opposition.

Hon LJILJANNA RAVLICH: We have not seen a proper lease register in this place. We have not seen legislation to establish a lease register.

Hon Simon O'Brien: You were talking about another matter as well.

Hon LJILJANNA RAVLICH: The minister should let me finish.

Hon Simon O'Brien: Durable goods, I think it was.

Hon LJILJANNA RAVLICH: Yes, durable goods.

Hon Simon O'Brien: How have we not covered any of that before? We canvassed this before in the context of correspondence you introduced. I challenge what you are saying.

Hon LJILJANNA RAVLICH: The minister can make some comments later. He should let me complete what I am saying.

We also had an issue with the Small Business Commissioner that we did not feel had been addressed in the proper manner that we expected it might be addressed, in terms of the Small Business Commissioner being established under its own statute and appropriately funded. From that point of view, we see that there are still some parts of that agreement that are in fact wanting, minister, and we hope that we will address some of the outstanding parts of the agreement in time.

I really just wanted to put those matters on the public record. We were briefed on the detail of the legislation before us and the argument that was put forward was that larger IGA stores really wanted to get prepared prior to the introduction of deregulated trading hours, depending on the outcome of the next state election. The minister has made it clear that he will take to the next election a policy of fully deregulated trading hours, and the IGA stores have, as I understand, approached the government about increasing the number of people who can work in a small retail shop from 13 persons to 18 persons. To that effect, the opposition has agreed that it would support this bill. Having made those comments, I am happy to support the bill on behalf of the opposition.

HON LYNN MacLAREN (South Metropolitan) [2.52 pm]: I wish to speak on the Retail Trading Hours Amendment Bill 2011, which, I must say, is a tricky bill. In one way it invites support, and quite easy support at that. Having already extended our trading hours in earlier legislation, there is a risk—but we hope it is not actually happening—that big businesses are benefiting from those changes to extended hours. In particular, this bill addresses the businesses that are just slightly below those large businesses—those businesses that have more than 13 members working on the floor. I think this legislation definitely addresses the problem that IGA is having in competing in the extended retail trading hours market. The government's response to those changes, by trying to address the inequity that has resulted, is to free up the IGAs—among other businesses that may fit in that category, of course—by raising the staffing cap. At one level that is fairly uncontentious; nobody would argue that we need more than the duopoly of supermarkets that we currently have, and it mitigates the impact on smaller businesses and gives them access to the capacity to grow, which is something we also want to encourage. We want to encourage businesses to go from that middling stage to a big business stage without being subject to those regulated trading hours that we have just put in place for big businesses. I guess the government would argue that it is helping small business, but there is another way to look at this proposed change.

We know, as Hon Ljiljanna Ravlich has described, that the bill changes the definition of a small business. It states that a business with 14, 15, 16, 17 or even 18 people working in a shop at any one time would no longer be

considered a small business. Now, that is the complication of it, is it not? Where do we draw the line of what is small and what is not small.

Hon Simon O'Brien: Let the statisticians worry about it, rather than lose sleep over it!

Hon LYNN MacLAREN: Yes, but I do not think the minister consulted the statisticians on this point.

Hon Simon O'Brien: Certainly not, no.

Hon LYNN MacLAREN: It is an arbitrary line. Historically, that line was always arbitrary and the staffing cap was previously raised from 10 to 13, at which point the Greens (WA) supported it. I just wanted to draw attention to how arbitrary that number is and that it is not scientifically derived. In reality—this is a bill that deals with the reality of the Western Australian trading situation at the moment—we are trying to make it a little bit fairer for IGA to compete in the deregulated trading hours market we now have. On that basis, the Greens will also support this move to increase the staffing cap from 13 to 18, but we do want to signal our concerns about these sorts of moves. It seems clear that this change has been driven by pressure from the IGA chain. The IGA chain is a network of, as we have discussed, smaller businesses compared with the large supermarkets. I am comfortable suggesting that the vast majority of IGA stores cannot be seen as small businesses in the true sense, and they are getting up to that point of being a medium, if not a big, business. But in passing the bill, I want it to be clearly understood that although the government is reducing the competitive advantages held by large businesses, and therefore helping smaller businesses—that is, “smaller”, but maybe we could call them medium-sized businesses—it is not necessarily helping all small business.

Hon Ljiljanna Ravlich interjected.

Hon LYNN MacLAREN: That is the point that Hon Ljiljanna Ravlich made; there is an argument that the bill is creating three strata of businesses, or at least creating an even more obvious three strata of businesses, by legislating for it. Once that line is put there, businesses will operate to that line. That is the core of the debate. I would like to ask the Minister for Commerce how the government is going to address the concerns of now having three strata of businesses and needing to look after genuinely small businesses. This is a good opportunity for the government to provide some information about how last year's reforms have played out in and impacted on the marketplace. As members know, we were very concerned about the impact on small business; I guess we would like to know also if IGA has felt the pinch because of the changes that we made. If the Minister for Commerce would like to enlighten us, I would like to hear about how the changes that have been in place for several months now have affected small and bigger business.

What plans does the government have to address the risk that this bill will give IGA a competitive advantage over other local businesses? I have mentioned before that I dearly miss the local deli or local corner shop. Do we have any way to protect the local corner shop? More generally, has the government been collecting evidence about the impacts of last year's reforms? I believe I made it clear before we passed those reforms how important it would be to chart their impact on the marketplace.

What will happen with these reforms that we are passing today? In the second reading speech the government quite openly flags its intention to take new shopping hour reform propositions to the next election. It indicates that at this stage it is likely to involve seeking a mandate to allow all metropolitan shops of all sizes to trade on Sundays. We might support this particular bill, and although I supported last year's reforms, I would correspondingly signal to the government that it is likely the Greens will not support full Sunday trading. The party, of course, will have that debate when we see the options on the table and we will be ready for that in the election. But I suspect that the consensus will be that that is a bridge too far. As I said, we have not had that debate. If we end up with that view, it will not likely be about denying choice, of course, but about protecting some niche markets for smaller businesses and, importantly, signalling that we are not living in a society of consumers but of citizens. With those remarks I support the bill before us.

HON MAX TRENORDEN (Agricultural) [2.59 pm]: The National Party also supports the Retail Trading Hours Amendment Bill 2011. There have been a range of confusing issues around retail trading hours for some time now. The debate is sometimes structural and sometimes emotional. This is a very simple bill that amends the basic definition under which retail stores can trade by changing the number of employees from 13 to 18. These are arbitrary figures, as is always the case in these sorts of debates. But we support the bill, although we have our concerns, as members will have seen a couple of weeks ago with another bill concerning commercial retailers.

June this year saw the greatest number of foreclosures in small business in Australia's history. Things are tough; there is no question about that. It is not just a matter of trading conditions being hard. We need to recognise that trading conditions have changed. The nature of the western world has changed since 2008 and, as people look to change legislation, it is important they look at not only the vested interests of the people involved but also the planning aspects of a brave new world. People are saving money—certainly Australians are—at a level

unprecedented in our history. That has not been over just a few months; it has now been over several years. Many respected columnists and people who study the psyche of Australians and the western world are saying that that behaviour is more permanent than temporary. The decisions we make about whether to go clothes shopping or to Bunnings for retail therapy are changing. I must admit that I keep on saying to my wife that I think she is a fantastic Australian; she is propping up the retail industry all by herself. Others are doing the dead opposite, and that is not going to change.

In thinking about how we allow retailers to operate, which is what this amendment bill is about, we need to think about what consumers want. We have had a referendum on that issue, but this bill is not about that, so I will not go into that. I am just making the point that we held a referendum not that long ago. A raft of people come to us as legislators saying that they want a particular outcome, but that outcome is probably built on a foundation that does not exist any more. There is a new world out there that is not only about how people wish to go about their lives; it is about the reality. Just look at the riots in England right now. All we have to do is get on the phone and say, “All turn up at the David Jones shop in Claremont and we’ll smash it in and raid it”, and 1 000 people would turn up. The power of the internet is immense. I have family members who do a substantial amount of shopping on the internet. Personally, I feel a little nervous about hitting that button and whether the product will turn up, and if it does and is not what I ordered, whether I can send it back. But thousands of Australians do not have that fear, and internet trading has grown by more than 40 per cent.

Hon Liz Behjat: Courier companies are making a fortune.

Hon MAX TRENORDEN: Exactly. Hopefully, some Australian companies are jumping in and trying to drag that back because 25 per cent of that 40 per cent increase represents overseas purchases, and that is something we need to think about. It involves billions of dollars. Members can ask: how does that relate to IGA? Already people who are game to do so can order their daily groceries through the internet, and if they are prepared to do that, the retailer will deliver it to their door. Members might all remember a few years ago—I have not seen the ads in recent times—ads about a fridge that could let the owner know what goods he has taken out and automatically reorder them! I am not in that world; in fact, I do not quite understand it, but other people do.

This legislation is a small step, minister, and it has the support of the National Party. Even though we caused the government a bit of grief a few weeks ago, we do not want to go there.

Hon Kate Doust: Do tell; what was the grief?

Hon MAX TRENORDEN: It was the voting on the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011.

We want to be in that space and talk about a new world and a new outcome and where we believe we are coming from and where consumers and retailers can live in a brave new world. The National Party supports the bill.

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [3.06 pm] — in reply: I sincerely thank members from all sides of the house for their contributions and for their support for the measures proposed in the Retail Trading Hours Amendment Bill and, indeed, for the constructive way they have made their contributions, considering that the operative of the bill is to change the figure 13 to the figure 18.

Hon Ljiljanna Ravlich: How did you get to that?

Hon SIMON O'BRIEN: I will get to that. This bill raises some wider issues and members noted that. In large part, some of those issues are for another day. I want to respond briefly to some of the matters that have been raised, and provide some further discussion to assist the house. Hon Ljiljanna Ravlich provided support for the bill on behalf of the state opposition, and I thank her for that. She also made a worthwhile contribution in discussing the current state of play for small business. In particular, I think she used the expression that “small business is doing it tough”. She gave us a number of examples of businesses, including some well-known businesses around the town, whose circumstances have changed, whose doors might have closed in some locations and who are dealing in different ways with evolving economic circumstances. I think it is a theme of the age in which we live that the world is a dynamic place and that the pace and quantum of change we are experiencing is greater than that which many generations before us have perhaps collectively experienced. What is more, the upcoming younger generation is going to experience change in technologies, social developments and so on at a greater rate than even our generation has.

It is true, as Hon Ljiljanna Ravlich pointed out, that there have been some fairly dramatic and ongoing evolutions in shopping patterns around this time. These are due to changes in consumer activity, to be sure. Also there is the challenge from the retailer’s point of view of internet-based retail versus bricks and mortar retail. Change, as I say, is rapid, and there are uncertainties about the future, as there must be in any time of rapid change, without even considering the quite extraordinary global circumstances that are occurring every day at this time in August 2011.

The honourable member also made reference to some related matters that, in themselves, are perhaps issues for another day. We are on the subject of a bill about changing an aspect of retail trading hours, so it is quite legitimate that she do that. I acknowledge her remarks about durable goods, the lease register, the Small Business Commissioner and so on. I do not wish to bog down the house by now introducing other matters in relation to those remarks, but I acknowledge what has been said. The honourable member was right to raise those matters in a reflective way as we consider this bill.

The Productivity Commission released a report the other day. As members know, the Productivity Commission is wont to release reports from time to time. Not that I would ever do it myself, but I have observed people react to these reports by welcoming them warmly and seeing them as support of unimpeachable competence for any view that they happen to agree with, whereas if the Productivity Commission releases a report in terms that the individual does not agree with, it is perhaps seen as an unnecessary interference in Western Australian affairs. The Productivity Commission, for what it is worth, provided some supported views, with the data that underpins those views, just the other day. Without necessarily offering my view about that, the commission found that small business constituted around 90 per cent of business in the retail industry in each jurisdiction, regardless of the trading hours regime extant in the various jurisdictions. It also found, I believe, that there has been a greater substitution of online retailing for traditional retailing—which I referred to a moment ago—in jurisdictions where shopping hours are more restrictive. I guess, on reflection, that is not really surprising, as people in this day and age search for greater options and flexibility in their hours.

Just briefly, because I do not want to make it a point of argument now, in respect of discussions that were held last year between the Premier and the Leader of the Opposition, legislation establishing the Small Business Commissioner has been enacted. We dealt with that legislation recently in this house and, as everyone knows, as minister for responsibility for the matter, I prioritised that legislation. I have also provided to the house, under my watch as minister with responsibility since Christmas, extensive information on how we are progressing the matter of a lease register. Further consultation is now being undertaken on that particular matter. I have also reported separately on the investigations into Sunday trading hours for durable goods retailing. As I say, many of those matters are issues for another day, but I thank the opposition for its support.

Hon Lynn MacLaren also made a thoughtful contribution, and I thank her for that, as well as the support for the bill that she expressed on behalf of herself and her colleagues in the Greens (WA). She took a little time to discuss the question of what makes a small business in terms of the number of employees. There are some statistical benchmarks. I believe the Australian Bureau of Statistics tends to use a cut-off point of 20 employees to define a small business, not that there is anything legally binding in this regard. My attitude as the minister with responsibility since Christmas for the newly created portfolio of Small Business is that I do not have a cut-off point; it is more a case of self-identification for small business. For example, members will never see an agency of mine, such as the Small Business Development Corporation, receive someone who is seeking information or assistance as a small business and then turn them away from the door upon learning that they have 22 employees. It is more a case of self-identification. Hon Lynn MacLaren would be interested to know that when I made the announcement about the proposed change in the bill before us today, I did so at an IGA store on Scarborough Beach Road in Doubleview. The operator of that store was very supportive, as one might expect, of the measure that is proposed in this bill. Indeed, I would have been awfully disappointed if she had fronted up to the cameras alongside me and said anything else. She gave some very good reasons why this change will be a positive thing for her business, her current and potential employees, and customers. She said that it will mean that she can provide a better product range for her customers and more options for hours for her employees, and take on more employees. People observing or even participating in this debate might think that that means that if someone currently has up to 13 people on the floor of their business at any one time, they will now be able to have up to another five people. In fact, it is a lot better than that. That store in Doubleview, which was restricted in its ability to grow and provide the product range that it wanted to provide—it was a pretty substantial store—actually employs about 75 employees, yet it remains under the 13-person cap. This bill will have a substantially wider effect than one might realise. Hon Lynn MacLaren and Hon Ljiljanna Ravlich asked why the figure 18, which has been proposed, has been selected. Is it purely arbitrary? No, it is not arbitrary, but I cannot show any definitive science in support of it. It has to be a value judgement. But it was a considered judgement after seeking the advice of various stakeholders and government operatives.

Hon Max Trenorden: So it's a climate change figure?

Hon SIMON O'BRIEN: No; it is far more accurate than that. It is a figure which, on best judgement, is about right. We did consider within government a whole range of potential figures. I will not bore everyone by talking about 16, 20, 20.5 or anything like that. The figure 18 has been offered not at random and not in a purely arbitrary way, but I cannot provide definitive science to back it up. It is a best estimate that this will provide the benefits that I alluded to in the second reading speech, while preserving the integrity of a currently regulated trading hours regime.

Hon Lynn MacLaren also said that it was taken for granted that this change was driven by the IGA chain. No, it was not, actually; it was driven by me.

Hon Kate Doust: The last one was.

Hon SIMON O'BRIEN: I thank the member.

Hon Kate Doust: The last lot of changes to the number of staff were due to the IGAs.

Hon SIMON O'BRIEN: The IGA group does welcome this. One of the first things I did when I came into the portfolio and assumed ministerial responsibility for the policy around retail trading hours and a range of other things was to do a stocktake to get across the issues, which is what one does when one gets into anything new.

Hon Max Trenorden: You would need more than 13 people to do a stocktake.

Hon SIMON O'BRIEN: I will leave it to Hon Max Trenorden to go along that particular tangent. However, it is a big portfolio and I sometimes wish there were 13 ministers to go around! In making an assessment of where we are going with the lease registers and all of the other things on which I wanted to be briefed, it soon became apparent to me that here was something that had not been publicly debated but would provide a significant benefit to a large number of small to medium-size businesses in the context of the ongoing debate about market share, retail trading hours and all the rest of it.

Hon Max Trenorden: It probably would be fair to say that not all IGA stores will qualify.

Hon SIMON O'BRIEN: That is another important point. Mr Deputy President (Hon Jon Ford), I will entertain that brief interjection because it did cover an important point. Some people have asked whether the figure should be, for argument's sake, 25 or 27. The question is asked from the point of view of an individual business that has more than 18 employees, so it will still not qualify as a small retail shop. My response to that is simply to say that we have chosen a figure of 18 to provide an across-the-board benefit that is proportionate, and that we do not legislate, and neither should we legislate, for the convenience of one business or a select group.

Hon Kate Doust: Given that this figure for the number of staff on the floor will be increased to 18, at what point would you see the difference in classification between the definition of a small shop with 18 staff on the floor and the definition of a general shop with its unlimited number of staff on the floor kicking in?

Hon SIMON O'BRIEN: I think the point of the question is the point at which the figure, which is one of the criteria to define a small retail shop, becomes meaningless. That is the sort of thought that went into the figure of 18. That is why it is not any higher than that. People could make arguments for the figure to be 19, 20 or 21, but it is certainly not this government's intention to go anywhere beyond this figure of 18. I guess that this is the point beyond which we are not intending to go. That leads to the other point Hon Lynn MacLaren raised. She asked what would be the disadvantages of the measure for small businesses. I hope I have been frank about it in my public comments. The fact is that whenever a regulated system is changed, there will be winners and losers. Some smaller shops or outlets could be in competition with a local IGA or other independent small supermarket or shop. However, that debate was had many years ago when the figure we were looking at was around two or four. That was when we were talking about the privileged protection available to the proverbial mum and dad corner shop.

Hon Kate Doust: That was in 1984.

Hon SIMON O'BRIEN: That is right. That was when decisions were made. It would have been controversial at that time to say that bigger shops could operate 24/7.

I thank Hon Lynn MacLaren for her comments. I also thank Hon Max Trenorden for his support. I assure him that there are no problems with any changes that the house wishes to make to the commercial tenancy bills. It just encourages me to work out better ways to meet the views expressed by Hon Max Trenorden and to perhaps bring back the bills for a little more tweaking so that we can finalise that matter. However, that is for another day. I conclude the second reading debate by thanking members in advance for their support.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Hon Simon O'Brien (Minister for Commerce)**, and transmitted to the Assembly.