

**CARINE GLADES SHOPPING CENTRE — SUNDAY TRADING**

*Grievance*

**MR A.P. O’GORMAN (Joondalup)** [9.10 am]: My grievance this morning is to the Parliamentary Secretary to the Minister for Commerce. I will read a number of emails to highlight my grievance. The first email reads —

In regards to Ross Duffield and his bullying and threatening behaviour I believe I have experienced this at its worst.

Ross fined me for parking in the wrong car park which I believe he is not allowed to do.

Ross also fined me for opening up my shop to late and closing to early which im sure he is not allowed to do. When I questioned him about this he told me that he needed everyone to be doing the same hours so the shopping centre ran as a whole. When I told him that I would not pay the fine he’s reply was that it was in my best interest to pay it.

I was in Europe for six months and could not open my shop on the weekends due to lack of staff. When I returned Ross told me that he would not renew my lease because I did not open on Sundays. I pleaded with him for months and in the end run he only renewed my lease when I had been trading on Sundays and promised to do a complete refit of my shop.

...

I loved that business I had it for twelve years and had many great customers I wish I did not have to sell it.

The shop owner is selling, because he feels he has been bullied into doing so.

Another email relating to Ross Duffield reads —

Specifically we are referring to Ross’ insistence of trading Sundays, every day until 6pm and treating Public Holidays as ‘normal trading days’, I do recall in your instance an issue with Sunday trading, however in recent times our four days off a year have been reduced to only one (Christmas Day), after informing Ross of our intention not to trade on Good Friday we received a letter from Centre Management stating it was their intention not to renew our lease when it expires in July 2014.

There have been a number of accounts where other tenants have experienced his bullying behaviour, we are seeking to collect these accounts to present them to the Commissioner of Small Business, and see the matter dealt with appropriately.

I will refer to correspondence from Diva Designs, which leases a small shop in Carine Glades Shopping Centre, which is managed by Ross Duffield and his daughter Bronwyn. This correspondence is a response to Bronwyn’s letter, and reads —

Prior to receiving your letter I received a phone call informing me you had been sharing Information with other tenants and employees of the shopping centre regarding my lease and your intention not to renew, your actions are an obvious attempt to sabotage and damage our goodwill. Your behaviour is both appalling and unprofessional and I know I am not alone in questioning your ability to manage the shopping centre as you have no previous experience.

Both you and Ross have consistently tried to enforce Inappropriate trading hours on us, and on other tenants. This is in breach of the intent of section 12C(1) of the Commercial Tenancy (Retail Shops) Agreements Act 1995. This is also in breach of the lease as nowhere in the lease is public holiday trading or Sunday trading specified.

I also point out that section 12C(2) of that Act states that where a landlord does not renew a lease and the tenant believes that the non-renewal is because we did not open at specific times, I am able to apply under the Act for compensation from you.

A recent example of this behaviour occurred over the Easter weekend where you sign posted all doors of the centre stating that “All shops open, everyday this Easter”.

The effect of this is two-fold; first this was not true as I had given you notice of my intention not to trade and as such you have misrepresented the state of affairs to customers — you are making false statements to customers, a totally unprofessional practice which affects all tenants, not just us. Secondly, you are implying that all tenants must remain open over Easter which I regard as an attempt

to mandate opening hours and imply such terms into the lease. As I have pointed out above this is against the law as stated in section 12C(1) of the Act and we regard this behaviour as unlawful.

Among this there are numerous other instances you have underhandedly tried to enforce compulsory trading

April 2011

You issued notices in mailboxes one week prior informing tenants Good Friday is a ‘normal trading day’, you later retracts your ‘compulsory trading statement’ and make this year optional but verbally state next year **will be compulsory**. Your change of mind to ‘optional’ was explained by you as having trouble with a few of the bigger anchor tenants who have expressed there wish NOT to trade. You were frustrated and irritated by this, but appeared smug and confident of your intention to declare the following year compulsory and by doing so demonstrating your bullying behaviour.

December 2011

You inform tenants of trading boxing and New Years Day and you declare the statement “There is no longer a place for religion in retail”.

(Despite the shopping centre draped with its usual Christmas decorations by Centre Management).

When you are questioned why non-food does not have the choice not to trade you go on to state, food retailers are the driving force to trading the Public Holidays and despite the cost to those who do not benefit and won’t profit from trading you insultingly say ... “when you look at figures across the entire year it is washed out.” I can only surmise this to mean you believe some tenants should work longer hours for less money so that food retailers can profit.

2/12/11 notice sign on entry door to shopping centre

“Closed Christmas Day. All shops open every other day”

Absolutely no contact from centre management consulting tenants if they wish to trade, another bully attempt.

...

15th March 2012 Ross insinuates the (only) way for Diva to secure a position and a new five year lease within the shopping centre would be to accept an offer to lease the current ‘Colori’s’ position of Shop 25, for what he tried to pass off as a new vacancy for ‘consolidation reasons’. Presumably the shop is suffering in its current location and engaged in a five year lease which you allegedly asked a whopping \$25,000 exit fee from (this is surprising given your claims there is strong Interest in tenancy in the Centre).

Ross then discussed Graham Murray’s alleged intentions to take over our location and proceed on a renovation of his store including our current location. Ross stated he had no choice but to go ahead with this move as Graeme Murray would pay more for the space. Ross then stated the offer was only valid if we are to agree to trade when he say’s so.

Tuesday 3rd January 2012

Employee of another tenant tells me she asked you if we are ALL trading Good Friday, you reply yes, the employee asks what happens to your lease if you choose not to trade that day, the employee describes your facial expression as ‘smug and smarmy’, the employees interpretation of your facial expression was suggestive of an unfavourable outcome if they did not trade. It seems both you and Ross share a reputation for bullying and intimidation known amongst even casual employees of shops within the centre.

I am also led to believe you have told some tenants in no uncertain terms they are to trade every day except Christmas Day, and if they did not like it, they were to find another shopping centre.

Non-renewal Notice

Your letter is not a non-renewal notice under clause 13.2 of the lease and as such I regard your letter as something designed to intimidate me and an attempt to put on the record facts that are plainly incorrect.

It is very difficult to get tenants of shopping centres to come forward and give us such black-and-white information in writing. Alisha and Kerry, the owners of Diva Designs at Carine Glades Shopping Centre, feel very intimidated by Ross and Bronwyn Duffield. They want this issue to be dealt with in an appropriate manner.

They complained to the Department of Commerce, but they were fobbed off and told that maybe it was in their best interests to open on a Sunday.

**MR J.M. FRANCIS (Jandakot — Parliamentary Secretary)** [9.17 am]: I thank the member for Joondalup for bringing this matter to our attention and for giving me advance notice of the details of this matter last night, which gave me a great opportunity to get more information.

Firstly, although I do not doubt the accuracy of what the member read out, if what he said is in fact true, I would be alarmed about the conduct of Mr Ross Duffield. I start by making it perfectly clear what the legal rights of small tenants are and what the government’s position was going into the Sunday trading debate and where it is now under the legislation that this Parliament passed with the support of both sides of the house. Legislation is in place to protect small businesses. It includes the Commercial Tenancy (Retail Shops) Agreements Act 1985 and the Small Business Development Corporation Act 1983. We have appointed a Small Business Commissioner and given him additional powers through alternative dispute resolution. In addition, Australian consumer and labour relations laws and industrial relations laws and agreements come into the mix when dealing with the rights of small tenants in shopping centres—indeed, of all tenants in shopping centres.

The existing protections for retail shop lease tenants are covered by the Commercial Tenancy (Retail Shops) Agreements Act 1985, which provides that tenants of a retail shop cannot be required to open specific hours or times. The act sets out—this is very important—standard trading hours, which are used for the purpose of allocating operating expenses by a shopping centre. Those hours are 8.00 am to 6.00 pm on Monday, Tuesday, Wednesday and Friday; 8.00 am to 9.00 pm on Thursday; and 8.00 am to 5.00 pm on Saturday. Retail trading legislation permits retailers to open at times outside the standard trading hours in certain circumstances. When the government went into the debate on deregulation of trading hours, it made it perfectly clear that Sunday trading and extended trading hours were all about choice. The deregulation of trading hours is about choice for not only consumers, but also business operators. We have always said that if retail store owners want to open on a Sunday between 11.00 am and 5.00 pm, that is their choice. If they choose not to, so be it, but they should not be penalised. If a shop owner chooses to open, the new trading hours legislation allows the shopping centre owner to calculate expenses relevant in proportion to that particular trading day. For instance, in a bigger centre in commercial areas, extra security, extra electricity and a car park attendant might be needed—whatever it might be—and those extra costs would need to be shared. However, the shop owner can only be put into that mix if they choose to open. If a tenant believes that a retail shop lease was not renewed because the tenant did not open at specific hours or times, they can take a case for compensation from the landlord to the State Administrative Tribunal. As I said, if what the member for Joondalup has told me is correct, it is wrong for Mr Duffield to act in that manner. Generally if the landlord has engaged in unconscionable conduct, the tenant can seek remedies, as I said, from SAT. The Commercial Tenancy (Retail Shops) Agreement Act contains a number of factors that can be taken into account in relation to unconscionable conduct, including whether any undue influence or undue pressure was exerted on, or any unfair tactics were used against, the tenant by the landlord.

I was told this morning, as far as the implementation of Sunday trading in the metropolitan region has revealed, that the Small Business Commissioner has received seven complaints. I may stand to be corrected on that, but I understand about seven complaints have been lodged from shop owners who believe they have been unduly pressured into opening or have been asked to pay additional fees. Obviously someone who rents a shop, whether it be a small boutique in Karrinyup glades, I think the member said —

**Mr A.P. O’Gorman:** Carine Glades.

**Mr J.M. FRANCIS:** Carine Glades, sorry. Such a tenant would pay rent 24/7 regardless; it is like renting a house where the tenant pays rent whether or not it is occupied. It makes absolutely no sense in the idea of fairness for a shopping centre owner to charge more because the tenant opens on Sunday. And, as I said, it is absolutely wrong to force a tenant to open on Sunday if they do not want to. I want to make that perfectly clear. A tenant cannot be forced into trading in any way. They cannot be leaned on and cannot be pressured to open if they choose not to. The law is perfectly clear in that regard.

Getting back to the Small Business Commissioner, I understand he has had seven complaints and is conducting one investigation. I can commit today to the member for Joondalup that I will talk to the Small Business Commissioner, and I suspect he may conduct another investigation. As I said, if what the member for Joondalup said is correct—I have no reason to doubt him—I would be alarmed at the conduct of that particular shopping centre owner. It is not what the government intended, it is not what is permitted under law, and I will make sure that the Small Business Commissioner gets to the bottom of this matter.

**Mr A.P. O’Gorman:** I have asked for all that documentation to be tabled here.

**Mr J.M. FRANCIS:** And I will give it straight to him. I will make sure that he has a look at this issue. I thank the member for Joondalup for raising this issue. As I said, we have had only a few complaints since the

implementation of Sunday trading. I think that is a good sign that most shopping centre owners are doing the right thing by their tenants. But it is important, if someone is acting unconscionably in this area, that we get to the bottom of it as soon as possible to look after the rights of those small shop owners.