

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL 2011

Council's Amendment — Consideration in Detail

The following amendment made by the Council now considered —

Page 8, line 14 — To delete “comparable”.

Mr T.R. BUSWELL: I move —

That the amendment made by the Council be agreed to.

Mr A.P. O'GORMAN: The opposition will be supporting this amendment, and agreeing with the government, to delete the word “comparable” at page 8, line 14 of the bill. This amendment is about leases for comparable retail shops in the same building or retail shopping centre. My understanding is that a number of amendments were put up in the upper house, and this amendment was agreed to after negotiations between the National Party, the Labor Party and the government. This bill does not do everything that the opposition would like it to do, particularly with regard to lease registers and making information public. However, we recognise there are some good parts to this bill and we would like to see this bill enacted as soon as possible to provide protection for small retail businesses, particularly in negotiations to roll over their leases following the initial lease period. The bill provides for a number of things to come into place. The bill provides that landlords will not be allowed to pass on to tenants their legal fees. That will mean that a tenant will be able to take a matter to the State Administrative Tribunal or to a court and will not have to pay legal fees. The last time I rolled over a lease, it cost me \$500 to pay for the landlord's legal fees. In future, that sort of transaction will not happen. Landlords will have to pay their own legal fees, and tenants will have to pay for any legal advice that they need to obtain to enable them to comply with the lease. Therefore, although this is not the best piece of legislation and it does not deal with everything we want, such as a lease register, it will make things better for small businesses, particularly small retail shops, and give some of them added protection against the rather large landlords that are out there. I therefore commend the message to the house.

Mr E.S. RIPPER: I want to express my great disappointment that the government has not proceeded with its undertaking to the opposition to introduce shopping centre lease registers. Last year, I began discussions with the Premier about the conditions for Labor's support of 9.00 pm weeknight trading, in the face of government division and the government's inability to deliver its own numbers for that measure. The Premier and I agreed over about six months of discussion that Labor would support 9.00 pm weeknight trading in return for three measures. Those measures were the establishment of a Small Businesses Commissioner, the establishment of shopping centre lease registers, and the provision for Sunday trading in whitegoods and household furnishings. Members will note that only one of those three conditions has been delivered. Labor voted for 9.00 pm weeknight trading and delivered on the Premier's objective in that regard. But the Premier has delivered on only one of his undertakings to Labor, and that was to put through legislation for a Small Business Commissioner. The Premier has completely failed to deliver on shopping centre leases, and he has completely failed to deliver on Sunday trading in whitegoods and household furnishings. These were serious discussions between the Premier and the Leader of the Opposition. The outcome of the discussions was confirmed in an exchange of letters. I find it very disappointing that the opposition has not been able to take the Premier at his word and that we have not seen this legislation. I do understand that there may be some difficulties with shopping centre lease registers. The original proposition that we put to the Premier was that the state government should run a state lease register. The Premier was not prepared to agree to that and said he would prefer an arrangement that required shopping centres to hold the lease registers. That is opposed by the Shopping Centre Council, which does not want its members to have to take on this responsibility. Clearly, the best public policy outcome would be for a state system for shopping centre lease registers, probably run by Landgate or a similar government agency. However, the Premier solemnly agreed and put in writing to the state opposition that if we voted for 9.00 pm weeknight trading, he would introduce shopping centre lease registers. The Premier has completely failed to deliver on that. That is a matter of great disappointment. By not delivering on that undertaking, the Premier has let down the state opposition, and, also, more importantly, he has let down small business. There is a huge power imbalance between shopping centre owners and small business tenants. Shopping centre owners have all the lease information available to them. They know what everyone is paying. They know what the market rates are. Their negotiating partners—the small businesses—have much less information available to them, and they are at a significant disadvantage because of that lack of information.

We can never completely equalise the playing field between the shopping centre giants and the small business tenants. But we can do something in this house to make life a bit easier for those shopping centre tenants. We can do something to even up the bargaining power between those two parties. One of the things we can do is provide access to information for small businesses. So, I implore the government to get on with resolving whatever difficulties it sees with regard to shopping centre lease registers and bring that legislation to the house. We would not have had this argument in the upper house about the amendments moved by the National Party,

and supported by the Labor Party, if the Premier had honoured the word that he gave me orally, and put in writing, as long ago as the middle of last year. I repeat: it is very disappointing that the Premier has gone back on his word and has let down the opposition and, more importantly, has let down small business.

Mr P. PAPALIA: I want to take the opportunity to join the Leader of the Opposition —

The ACTING SPEAKER (Mr J.M. Francis): Before you do, member for Warnbro, I just want to make a comment about the contribution of the Leader of the Opposition. Leader of the Opposition, I gave you a very, very long bow there. We are dealing with one amendment, and that is to delete the word “comparable”. Member for Warnbro, I am not going to give you a bow as long.

Mr R.F. Johnson: Don't go down the same road, please, otherwise we'll have to keep delivering points of order.

The ACTING SPEAKER: Leader of the House, I do not need your help.

Mr E.S. Ripper: On that point of order, if I may —

The ACTING SPEAKER: We are not speaking on a point of order, unless the Leader of the Opposition is going to stand and raise one. I am just making an observation about the context of what we are dealing with here, which is one amendment—at page 8, line 14, to delete the word “comparable”.

Point of Order

Mr E.S. RIPPER: Mr Acting Speaker, I want to explain that although it might be hard to see the relevance of my speech to that particular deletion of the word “comparable”, the deletion of the word “comparable” provides for more lease information to be made available to small businesses, and that is why it is related to the lease register issue. I am not canvassing your ruling, Mr Acting Speaker, and I have made my speech, but I did want to explain to you and the house how the two are connected.

The ACTING SPEAKER: That is not a point of order, Leader of the Opposition, but I thank you for your explanation.

Debate Resumed

Mr P. PAPALIA: All I was going to say is that I endorse the Leader of the Opposition's position. Albeit that you are suggesting, Mr Acting Speaker—I would not ever deign to question the Chair—that perhaps this is drawing a long bow, I must say that the observation that one of the things we can do to help small businesses is establish a shopping centre lease register is a pertinent point. Having owned a small shop in a shopping centre, I know that the disparity in power between the landlord and an individual small business is disproportionate. Anything we can do to ensure that there is a little more fairness will be much appreciated by the small business people of Western Australia. They are probably wondering what happened to the agreement that was agreed to and made public last year.

Mr T.R. Buswell: Has anyone rung you up and asked you about that agreement?

Mr P. PAPALIA: No, but the last time I walked through Secret Harbour Shopping Centre, I asked a coffee shop owner how her business was going and she made the point that she had been in a long and ongoing dispute with the shopping centre about the lease. She said that the lease was unfair and that she had employed someone to go through all her books to determine exactly how unfair the lease was.

Mr T.R. Buswell: But did she raise the agreement?

Mr P. PAPALIA: I told her that there was an agreement.

Mr T.R. Buswell: That is a separate issue.

Mr P. PAPALIA: So it is a separate issue because I told her there was an agreement! She might not have been aware of the agreement but she might have expected that the Premier of the state would keep his word and the commitment he gave to the Leader of the Opposition on something of this nature, which might have a direct impact on her wellbeing and that of thousands of small business people around the state.

Mr T.R. BUSWELL: I listened to the Leader of the Opposition talk about the power imbalance between a lessor and lessee in a shopping centre and wondered why when the Leader of the Opposition was in charge of government from 2001 to 2008 he did not do anything about that. I am assuming that it is not a recent phenomenon.

Mr E.S. Ripper: The reason might be that I am now the leader.

Mr T.R. BUSWELL: The Leader of the Opposition was the Treasurer in the former government that for eight years did absolutely nothing to address the very issues that the Leader of the Opposition just had the temerity to get up in the house and criticise the Premier for not addressing. The Leader of the Opposition did zip, nothing and naff all. The review of the Commercial Tenancy (Retail Shops) Agreement Act went on for almost the

entirety of the term of the former government. The Leader of the Opposition has some gall to stand up in here and suggest that he feels aggrieved because the government is not supporting small business, when we are. I think that the Leader of the Opposition described the power imbalance as huge. That has existed for many years and the Leader of the Opposition did nothing about it. The Leader of the Opposition has claimed —

Mr E.S. Ripper: I secured an agreement from the Premier to doing something about it and he has reneged on it.

Mr T.R. BUSWELL: This amendment removes the word “comparable”. We do not have a problem with that. It is a more than acceptable outcome that —

Mr E.S. Ripper: That was a Labor amendment.

Mr T.R. BUSWELL: It is a good outcome for people to have an opportunity to review all the leases in a shopping centre when considering their own lease. Western Australia will soon have a Small Business Commissioner. The lease register issue, as the member for Joondalup knows, is complicated. I do not have the old quotes, although I do not really need them. He knows as well as I do that it is complicated. We have committed to working through that issue and we definitely have not ruled it out. It is a complicated issue and we need to consult more broadly before we come back with a solution. It is certainly not ruled out.

The last issue that the opposition raised was the purchasing of whitegoods and household furnishings on a Sunday. I think that the opposition’s position on that is very flimsy. The member for Belmont is saying to the people of Belmont that they will have to go to Midland on a Sunday to shop at Coles. If Belmont has a Harvey Norman store, they could shop there but not at Coles; if there is a Retravisio store, they could shop there but not at Woolies; and if there is a Supa IGA, they could not shop there but they could shop at the regular IGA. The Leader of the Opposition’s position on shopping hours is absolute madness. I cannot believe that he will take that position to the next election, because he knows that he will be torn apart on that issue. The Leader of the Opposition may well feel that he has an obligation to Mr Joe Bullock of the Shop, Distributive and Allied Employees Association of WA, who I know rang the member for Cannington prior to the member for Victoria Park’s failed leadership bid against the Leader of the Opposition. The member for Cannington rang the member for Victoria Park the night before the bid and said that the two of them—Joe Bullock and the member for Cannington—were right behind the member for Victoria Park. I know also that on the very next day he was literally and physically on the doorstep —

Point of Order

Ms J.M. FREEMAN: Point of order!

The ACTING SPEAKER (Mr J.M. Francis): I will assume that I know what the member for Nollamara will say, and I probably do not need to hear her say it. Member for Vasse, the bow I have given you is getting longer than the bow I gave to the Leader of the Opposition. I ask the minister to come back to the point in question.

Debate Resumed

Mr T.R. BUSWELL: I am making these comments as the minister representing the Minister for Commerce, not necessarily in my role as the local member. Notwithstanding that, as a minister of the crown, I am merely responding, as I think I should in closing the debate, that the Leader of the Opposition’s position on retail trading hours —

Mr E.S. Ripper: You’re not closing the debate; I’ve got another five minutes left to speak after this.

Mr T.R. BUSWELL: I am continuing the debate. I am merely adding some fuel to the fire—perhaps I had better use a different term!

Mr E.S. Ripper: You’ve just riled me up. I can feel another speech coming on!

Mr T.R. BUSWELL: I am happy to engage the Leader of the Opposition because I think that he is all over the shop on this issue. Notwithstanding that, I think the Leader of the Opposition would agree that in the spirit of bipartisan cooperation we have arrived at a landing point. Notwithstanding our different points of view about certain agreements that may or may not have been given—I have 32 seconds to make up for riling the Leader of the Opposition—I think we are at a landing point, and that is that we will delete the word “comparable” and enable retail shops more broadly to be considered. Let us not forget that we are dealing with the clause that deals with the other leases a lessee may view in the process of considering their own lease. I think that is a fair outcome and we are happy to support it. I am sure that with very little additional debate, the house will support it too.

Mr E.S. RIPPER: Once again the Minister for Transport may be wrong. On the question of the deletion of the word “comparable”, the minister asserts that we have arrived at a suitable landing point. He is correct to this extent: we will support the amendment and the legislation. However, it is wrong to suggest that this is the most desirable landing point. The most desirable landing point is a publicly run shopping centre lease register, the

second most desirable landing point is a system requiring shopping centres to run their own lease registers, and the third most desirable landing point is the one we are at. There are at least two better options than the option that the house has reached, and one of those two better options, albeit not the best, is the one that the Premier agreed to support in writing with me as the Leader of the Opposition. I thought I should make that observation to correct the position put by the minister. While I am on my feet, I will just content myself with this observation: the numbers in this house are available for Sunday trading in household furnishings and whitegoods to begin immediately should the government take up the agreement that the Premier and I reached. However, it would appear that the government does not want to take up that agreement and that it would rather put off the whole matter until after the next election.

Mr A.P. O’GORMAN: A number of people have complained to my office that it is very difficult to get a valuer in this state who is not already employed by a shopping centre to do a comparison between the retail shops. As I said previously, that is because most of the valuers in Western Australia are on a retainer from the large shopping centres. Since the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011 was passed in the upper house, I have had a number of calls from interstate organisations that have said that ideally they would prefer WA to have a public lease register and for the confidentiality clause—proposed section 11A—to be deleted from the legislation so that the information contained within that proposed section can be gathered and published on a website. A number of interstate organisations are waiting for this bill to be passed before they register in this state as valuers to provide independent valuations for small retailers. That is a positive move forward. I hope the Minister for Commerce, in the autumn sitting of Parliament which starts in February, will bring in a lease register proposal. I know he is looking at it. It is complex; there are a number of organisations that complain and do not want all that information made public. We need to try to level the playing field so that small retailers have solid information available to them. That would be a great move forward. Hopefully we will start to see the rental rates per square metre coming down in this state. From the global financial crisis in 2008 right through to now, I can virtually guarantee that every single leaseholder in this state has paid increased rents, either through a market rent review or through the normal consumer price index process plus percentage, which happens. There have been complaints from the retail sector that, as well as paying a price per square metre and an outgoings rate, once they get above a certain level of turnover there is another clause that adds another percentage. I have asked that we make it illegal for organisations to glean that information from landlords or tenants. They say it is about maintaining the mix within shopping centres. Small retailers in shopping centres say, “No; it is about scamming more money out of us.” “Scamming” is probably not the right word, but “skimming more money out of us and taking profits from us”. They said, “As soon as my business, as a small retailer, gets to a level and I am starting to make a profit, the landlord comes in and scoops that extra profit out for themselves.” I know it is difficult as well for the larger landlords, particularly with the major lessors, Coles and Woolies, because they drive them down. I had a chat with an officer from Lend Lease who told me they are caught short with those organisations; they want them in there because that is what brings the foot traffic through. For that, they drive down their price per square metre. Sometimes they refuse to pay for the advertising the shopping centre does because they say, “We do our own advertising.” Those inequities are there. There are three players in this: the landlords, the major lessors, and the small retailers. We have to look after the small retailers as best we can. This bill goes some way towards doing that. A lease register in some form, preferably a public one at Landgate, would be fantastic for small retailers.

Question put and passed; the Council’s amendment agreed to.

The Council acquainted accordingly.