

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

*Second Reading*

Resumed from 13 April.

**HON LJILJANNA RAVLICH (East Metropolitan)** [2.32 pm]: I rise to support the motion and to comment on the Small Business and Retail Shop Legislation Amendment Bill 2011. This bill, which aims to establish a Small Business Commissioner, comes at a very interesting time when the economic conditions for the retail sector in the state are particularly difficult. Many retailers are battling to turn a profit. The creation of a Small Business Commissioner will benefit those retailers who experience those difficulties. Having said that, I put on the record that I have some serious concerns about the model proposed under this legislation.

The model is certainly not in the terms that were agreed to by the Premier and the Leader of the Opposition during negotiations earlier in the year. Nevertheless, for some time there has been an expectation in this state that the position of Small Business Commissioner would be created and based on the model of the Victorian Small Business Commissioner. At the end of the day, the many people in the retail sector who want to see this happen may well be disappointed with the way in which this model has evolved; the model certainly does not reflect the expectation. As I understand, the Office of the Victorian Small Business Commissioner is established under its own statute and is appropriately funded to the tune of almost \$2.5 million. When we look at what is being proposed under this bill, we see that the managing director of the Small Business Development Corporation will assume yet another role or function as the Small Business Commissioner. The establishment of the Small Business Commissioner does not establish the commission as such. It does not sit under its own statute. When I look in the budget papers, I can see that there is a total appropriation for the 2011–12 financial year of only \$300 000 and nothing in the forward estimates. Where are the similarities with the Victorian model of the Small Business Commissioner? It will be an interesting bill to work our way through, because it falls very short of expectations.

Given that the managing director of the Small Business Development Corporation will become the Small Business Commissioner, there may well be conflicts of interest. How do we know who is wearing which hat at what time? Having said that, a commitment was made to establish a Small Business Commissioner, and in discussion with the state opposition, it was agreed that the commissioner would be established to provide low-cost, non-litigious means of resolving disputes between landlords and tenants in retail shopping centres. Many of those disputes are about leasing, franchising and lack of good faith in bargaining and negotiations that arise from the unequal power relationship between small businesses and others, mostly landlords. I am somewhat surprised that we have a lack of commitment to deal with the issue of good faith in franchising arrangements. The Franchising Bill 2010 that was introduced by Peter Abetz explores this issue. The Economics and Industry Standing Committee has hopefully tabled a report in Parliament with some strong recommendations on that matter. I fear that the commissioner may fall short in his or her ability to intervene in certain areas, so we want some clarification of that.

I turn to the heart of the commitments that were given by the Premier to the Leader of the Opposition when we dealt with retail trading reform earlier in the year under the disallowance motion that was put in the Legislative Council regarding the Retail Trading Hours (Tourism Precincts and Holiday Resorts) Amendment Regulations (No. 2) 2009. The Premier felt that it was appropriate to put forward proposals as a basis for an agreement between the government and the opposition on appropriate shopping hours for the Perth metropolitan area. In return for some crucial policy concessions from the government, the Leader of the Opposition was prepared to recommend to the Labor caucus that it support weeknight trading to 9.00 pm and whitegoods trading on Sundays.

The Leader of the Opposition wrote to the Premier on 21 June 2010 to say that —

Consistent with a Bill brought to the Parliament by the member for Cockburn we would seek support for the establishment of an office of a Small Business Commissioner. Similar to arrangements in place in Victoria, this initiative is intended to offer shopping centre tenants and franchisees a simple, cost effective and less litigious means of resolving disputes with landlords and franchisors.

One of the specific measures in that package that we would seek your support for is the establishment of compulsory lease registers for shopping centres to be available to existing and prospective lessees.

That was in the letter written to the Premier on 21 June. It finished with —

Should we be able to reach a significant level of agreement on these matters I would seek to have our respective staff urgently conclude any matters of detail.

As one would expect, the Premier wrote back, on 24 June, and I put on the record —

Dear Eric

Thank you for your letter of the 21 June 2010 regarding retail trading hours.

I welcome your support for extending weeknight trading to 9.00pm, consistent with the amendments set out in the Government's *Retail Trading Hours Amendment Bill 2009*.

The Government is also willing to discuss other policy initiatives to form part of a retail trading reform package, in particular moving in the direction of the Victorian Small Business Commissioner model.

We know that we do not quite have the you-beaut Rolls-Royce model.

**Hon Simon O'Brien:** We have got a better one.

**Hon LJILJANNA RAVLICH:** No; we do not have a better model. We have a Small Business Commissioner model for which two wheels have already fallen off. The letter continues —

**White goods**

I believe there is some merit in providing for white good trading on Sundays, however, this is a complex area and the appropriate amendment will require careful drafting to ensure that certain businesses are not inadvertently included or excluded by this provision. I have no doubt that this issue can be resolved.

Well here we are, and the issue is not resolved; therefore, there is a breach in the agreement and it is still unclear whether there is any intent on the part of the government to ensure that the conditions of the agreement, as agreed upon by the two parties, will be delivered or whether the government has gone off on its own accord and decided that there is reason to honour this agreement and that therefore there will be no accommodation made for the promise of whitegoods trading on Sundays. The letter goes on to state —

Until that time, the Government's preferred approach is to allow Sunday trading in designated precincts ...

We know that that happened—so on and so forth. However —

**Small Business Commissioner and the lease register**

The Government is currently exploring a number of policy options, including the possible creation of Small Business Commissioner, similar to that seen in Victoria.

In my opening remarks, I explained where they are principally different. There is no doubt that the people I have spoken to, the small business sector and COSBA, the Combined Small Business Alliance of WA, are very disappointed. They are particularly disappointed that no money has been allocated to the Small Business Commissioner for the next financial year, the year after that or the financial year after that. The only allocation is the \$300 000 that sits in the 2011–12 financial year. I am wondering how on earth this commissioner will operate and under what arrangements, given that there is so little money allocated. The letter goes on to state that the aim of this initiative, that is, the establishment of a Small Business Commissioner, would be —

... to establish a more proactive Commissioner for Small Business that can provide more user-friendly and timely mediation services, ...

And so on and so forth —

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.

Unfortunately, we have not —

**Hon Simon O'Brien:** You are still quoting from the letter?

**Hon LJILJANNA RAVLICH:** Yes; I am. Unfortunately, the lease register is not included in this legislation.

**Hon Simon O'Brien:** No; it is not.

**Hon LJILJANNA RAVLICH:** No; therefore we have an issue. Of the three key parts to the agreement, two are missing. I, for the life of me, firstly cannot understand how it is there can be lease registers in some other states but that for whatever reason it is impossible to have one here. Secondly, I cannot understand why a person can go to Landgate, search the price of all the houses sold in a street over the past six years or whenever and there is no problem to get up-to-date records, but we cannot have access to who is paying what rent in a commercial shopping centre. Thirdly, I cannot understand why at any point in a trading day for a market as complex as the

stock market, which is a very, very complex market, it is possible to access the price of a share. I am no financial whiz kid.

**Hon Max Trenorden:** No; that is not what they tell me.

**Hon Ken Baston:** I do not believe that.

**Hon Max Trenorden:** No, I do not believe it either.

**Hon LJILJANNA RAVLICH:** I am not, believe me. I never have any money!

**Hon Simon O'Brien:** On that basis, you would be good at rocket surgery.

**Hon LJILJANNA RAVLICH:** I am just making the point, which is: how hard is it? The point is, if there were a real will, it would not be hard. It would not be hard. I think the problem is more the lack of will. I have to say that I find abhorrent the idea that small retailers cross-subsidise the majors, the Coles and Woolworths, in suburban shopping centres. I find it abhorrent.

**Hon Max Trenorden:** Join the club; so do I.

**Hon LJILJANNA RAVLICH:** I think that that is shocking and, quite frankly, it should not go on. The only reason for it is the government's complicity in wanting to keep it a secret. It should not be a secret. People should know exactly what every other tenant in a shopping centre is paying. It should be an open and transparent market. If a person wants to rent a property at the offered price, they can rent it, and if they do not, they do not rent it. However, there should be none of the cross-subsidisation that has historically gone on and that will continue to go on unless it is addressed.

I have to say to the minister that I cannot accept that we have had no progress on the whitegoods part of the agreement. We have also had no progress on the lease register. In my view, that is a much more important issue. I think that on that issue, the government has simply made a political decision that it does not want to take on the Coles and Woolworths of this world. The government finds it easier to fight with the small business sector than it does taking on the majors. It therefore is not going to do anything about that. I believe this agreement could have been delivered had the government had the will to do so, and we will be monitoring this very, very carefully.

Notwithstanding the fact that this agreement has not been agreed to, yesterday, the Minister for Commerce introduced into this place the Retail Trading Hours Amendment Bill, with no consultation with the opposition at all. That bill is about increasing the staffing cap for small retailers from 13 to 18.

*Point of Order*

**Hon NORMAN MOORE:** Mr Deputy President, it may have escaped your notice, but the member is clearly anticipating debate on another item of business that is before the chair. We are not talking about the Retail Trading Hours Amendment Bill, which I read into the house yesterday. We are talking about this bill. Although some matters in these two bills are related, it is stretching it a bit too far to say that the Retail Trading Hours Amendment Bill is in any way relevant to the bill that is before the house.

**The DEPUTY PRESIDENT (Hon Jon Ford):** The minister's point has some merit, but there is no point of order.

*Debate Resumed*

**Hon LJILJANNA RAVLICH:** I did not want to raise it, but I felt that I needed to raise it, because this is about goodwill—good faith bargaining.

**Hon Simon O'Brien:** No. You are trying to be offensive. That is all.

**Hon LJILJANNA RAVLICH:** No. It is about good faith. The minister cannot expect good faith if he does not give good faith. All I am saying is here is another example in which good faith has been avoided, on the government's side, towards the opposition. I do not find that particularly acceptable. There was an article in the paper on 20 June in which the Leader of the Opposition made it clear that he does not find it acceptable either. He feels that he has been betrayed by the Premier of this state in those parts of the agreement not being delivered. I believe that the outstanding parts of the agreement are still within reach. I do not think that the government should for one moment feel that it no longer has any obligation to deliver on those two parts of the agreement. We will make sure that we hold the government to its word to deliver on those parts of the agreement.

I have spent some time going through the role of the Small Business Commissioner in Victoria, as a point of comparison with what is proposed in Western Australia under this legislation. I would like to canvass a number of issues. The first issue is that the Small Business Development Corporation currently deals with complaints about unfair market practices. Some comments are made in the SBDC annual report about the number of

disputes that come its way. I wonder whether the minister could provide the house with a breakdown of the types of disputes that the Small Business Development Corporation deals with under the category of unfair market practices, because that might give the house some idea of the volume of work. I am sure there is a lot of un-met demand in the community, because the corporation cannot deal with every dispute that comes to it.

**Hon Simon O'Brien:** Have you had a briefing on this bill, because you certainly have been offered one?

**Hon LJILJANNA RAVLICH:** Yes, I have.

**Hon Simon O'Brien:** Then why are you not in possession of this information if you require it?

**Hon LJILJANNA RAVLICH:** Well, I did not ask for it then, probably. Why? Is it so difficult to get it? It is probably in the annual report. What is the problem?

**Hon Simon O'Brien:** Why do you not do your homework before you participate in the debate?

**Hon LJILJANNA RAVLICH:** Hang on! Hang on!

**Hon Sue Ellery:** It is not unreasonable to ask a minister to answer questions during the consideration of the second reading.

**The DEPUTY PRESIDENT:** The minister just took a point of order to point out that there had been some discussion that was probably not relevant to this current bill, and now we are entering into a discussion that is very irrelevant to the current debate in the house. It seems to me that we should get on with the debate.

**Hon LJILJANNA RAVLICH:** Thank you, Mr Deputy President.

I also want to ask a general question. I need to know how the Small Business Commissioner will be funded. The commissioner will be performing a new set of functions. Unlike the Victorian Small Business Commissioner, the office of which is funded at almost \$2.5 million annually, how will the Small Business Commissioner in this state be able to operate on a budget of \$300 000, and what will the commissioner be able to do with that sort of budget? I do not think that funding will buy much, frankly. That is for only one year. There is no accounting for any additional funding to be provided for the commissioner. I also want to know why the government has not established the Small Business Commissioner under its own statute.

**Hon Simon O'Brien** interjected.

**Hon LJILJANNA RAVLICH:** The minister may not like the questions, but that is too bad. The minister was nice and polite yesterday when he had his way.

**Hon Simon O'Brien:** That was when you were not being so offensive.

**Hon LJILJANNA RAVLICH:** I am not being offensive.

**Hon Simon O'Brien:** The whole tenor of your remarks today has been offensive.

**The DEPUTY PRESIDENT:** Order, members! It is only offensive in this place if it is unparliamentary. I think it would serve the Parliament well if members would get on with the substance of the debate.

**Hon LJILJANNA RAVLICH:** Thank you, Mr Deputy President.

I think that is a fair question, because this is yet another example of what this government is doing. The Mental Health Commission has not been established under its own statute, and there is all sorts of blurring of boundaries, roles and functions. The Building Commission has not been established under its own statute, and there is a blurring of boundaries. The Small Business Commissioner, once again, has not been established under its own statute, and there is yet another blurring of boundaries. I want to know why the Small Business Commissioner has not been established under its own act.

I also want to know what the relationship will be between the Small Business Commissioner and the Small Business Development Corporation. It seems to me that there is a blurring of the roles, responsibilities and functions of the Small Business Commissioner and those of the Small Business Development Corporation.

**Hon Simon O'Brien:** So, the relationship between the commissioner and the corporation?

**Hon LJILJANNA RAVLICH:** Yes. I would like to get some clarification of that. I have already put on the public record that we want to go into Committee of the Whole on this bill so that we can get some more fulsome answers from the minister's advisers on some of the matters that are of concern. With those comments, I support the second reading.

**HON MAX TRENORDEN (Agricultural)** [2.59 pm]: The National Party supports the Small Business and Retail Shop Legislation Amendment Bill 2011. We recognise the fact that during the course of the last election, the Liberal Party—not the National Party; the Liberal Party—gave a commitment to establish a Small Business Commissioner, and it would be imprudent for us, to say the least, not to allow that to occur. I do not intend to

speaking for long on this bill. The problems in the relationship between retailers and management in shopping centres are notorious.

Small business is an area that, unfortunately, I have had a lot to do with over the years in my parliamentary career. I have a bit of a passion for small business issues, particularly commercial tenancies. As the minister said in his second reading speech, the appointment of the Small Business Commissioner will provide an opportunity for the commissioner to act as a third party in the interactions between retailers and the management of shopping centres. Members spoke a few moments ago about the position of Victorian Small Business Commissioner, which was also mentioned in the second reading speech. I am happy to accept the figure mentioned in the second reading speech that 30 per cent of all cases considered in the past financial year by the Victorian commissioner were successfully resolved. We find that a large number of issues between parties can be resolved through mediation and other processes that exist for bringing parties together before the issues become more serious and require resolution by the courts or the State Administrative Tribunal. The Small Business Commissioner will also have the opportunity to be a communicator with the state government, and the state government will have access to better, more detailed and more considered information from the volatile area of retail tenancies.

I also note on my reading of the second reading speech—the minister may want to comment on this—that the commissioner will be the chief executive officer of the Small Business Development Corporation, which in this year's budget has a total appropriation of \$12 361 000. The commissioner will, therefore, go into an agency that has a surprising amount of funding. Like many members of this chamber, I have a passion for small business. I was in one myself at one stage and I like to watch the ongoing health of small business. This bill, therefore, is in the right place as far as the National Party is concerned. The bill has the capacity to allow the commissioner to operate in the manner in which we hope the commissioner will operate.

The National Party has had correspondence and a lot of meetings with members of the WA Retailers Association in recent weeks. They are not happy, I have to say, but we have considered their views and, on balance, we are definitely in favour of a commissioner. The matters that the association raised are reasonable. Considering the lack of respect, the lack of trust and the intensity of argument in this industry, we can understand why members of the WA Retailers Association have some doubts. However, those doubts should not be levelled at the new commissioner but, rather, at the people they have been sparring with for a long time. I will get to that in debate on another bill on another day. Mr Deputy President (Hon Jon Ford), you do not need to call me to order on this! However, the National Party has a very keen interest in building capacity in this area, and it is very important that we do.

It is crucial that a raft of questions be answered about the interaction between small retailers and the owners and management of shopping centres. We as a party have a concern about the severe lack of balance in that arrangement and the overwhelming hand that owners and management have in dominating small operators and forcing activities that in our view are not fair. It is interesting that we are debating this legislation now. I raise the following matter, not to waste time but because it is a relevant point. On many occasions in the past, both sides have had heated discussions in meetings, with angry people and people with strong vested interests putting their views forcefully. However, the vast majority of those meetings were in better times, when people were actually making money. Interestingly, quite a few of those retail outlets are now in trouble. Those people—both management and small retailers—who have had the squeeze put on them are now worried about their future. I have found over the years, in my more direct dealings with people in management, that their attitude overwhelmingly is arrogant, to say the least; they look more at protecting their own position and do not worry too much about retailers. Unfortunately, it is a bit like country hotels. Some poor soul comes into a country town, buys a hotel, operates it for a year or two and goes bankrupt. Lo and behold, someone else comes along and buys the country hotel, operates it for a year or two and then goes bankrupt. Similarly in shopping centres, someone always seems to be able to pick up retail space and if they go bankrupt, management protects itself by relying on the next person coming along to engage in the same round of leasing, rentals, outgoings and so on. I am not totally against management. Very often we find that the management of shopping centres are the AMPs of the world and those sorts of companies that superannuate a lot of Australians. They are very keen to keep their turnover high because they are looking to be the base of superannuation for all Australians. However, that is not a good enough reason to build inequity into commercial retail tenancies.

Getting back to the bill—you, Mr President, were just about to jump up and tell me to do so—we support the appointment of the Small Business Commissioner.

**Hon Simon O'Brien:** I appreciate your observations; they are very pertinent.

**Hon MAX TRENORDEN:** We support you, minister.

**Hon Simon O'Brien:** I appreciate that observation very much!

**Hon MAX TRENORDEN:** Even though we have had some requests to oppose the bill and some requests to appoint a select committee to inquire into the proposed activities of the commissioner, our view is that we cannot

argue against the appointment of a commissioner. How well the commissioner will be resourced and how well the commissioner will operate cannot be determined unless we have one. That is, therefore, where the National Party is at. We may come to the minister in future and say that the commissioner is not properly resourced or that the responsibilities are different, but we cannot do any of those things until we have a commissioner. The National Party, therefore, supports the bill.

**HON LYNN MacLAREN (South Metropolitan)** [3.07 pm]: I rise to support the Small Business and Retail Shop Legislation Amendment Bill 2011. The Greens (WA) support the establishment of the Small Business Commissioner. This is consistent with remarks I made on the retail trading hours legislation. The principal aims are obviously good aims; both the previous speakers made note of that. Encouraging the fair treatment of small business in its commercial dealings with other businesses and with the government is a good thing. Providing support to small business in the transition to a more deregulated trading environment is essential. Reducing the vulnerability of small business to unfair market practices is, I think, the pay-off of this deregulated marketplace. To reduce the frequency and costs of disputes involving small business is a good thing. We support the aims stated in the bill.

I do note, however, the concerns of the previous speakers on whether the Small Business Commissioner will be adequately funded to complete the role. We do not know how big that role will be. The requirements of the job of Small Business Commissioner might be quite significant. I am concerned about that one-off \$300 000 funding. However, let us deal with it once we create the position of commissioner and track how it is going.

I do not want to say much more, other than that I received a briefing from the Department of Commerce on this bill and on other bills that may come to this house. The briefings were very forthcoming and answered many of the queries that I had. There are a couple of things I want to put on the record. I want to thank the minister for providing those briefings for me. Also, this is the first time I have received what is known in this place as a blue bill, which is the marked-up copy of the bill. I love this work. I would like to get that with every bill.

**Hon Max Trenorden:** It should be standard.

**Hon LYNN MacLAREN:** Yes, it should be a standard thing.

**Hon Simon O'Brien:** I will try to do that with every bill.

**Hon LYNN MacLAREN:** I think it reflected the professionalism of the organisation that it was able to provide me with this bill in the briefing, so I appreciate that.

I asked about the funding during the briefing. The response was that because the Small Business Commissioner was going to be located within the SBDC, the outlay required would be minimised. That can be argued but we need to track that. I know that other members will be raising that issue. I also asked about the offices and where they would be established. I was concerned about the impact in the regions and whether we would adequately cover the small businesses in the regions if we just centralised the service. One of the concerns I had was that the SBDC shrank from five officers to one officer in the Wheatbelt.

**Hon Max Trenorden:** That was a great disaster.

**Hon LYNN MacLAREN:** It was a big concern, and I am sure it is making it even tougher for people in the regions. I was advised that the same services are offered to the regions and they will be separately funded. It would be good to get the detail on whether that separate funding has come through in this budget and where that is. I was advised that mediators would be travelling the regions to help small businesses in the regions. It would be very handy if the minister could give me some more detail about how that will be accommodated.

I do not really have any other concerns with this bill. It is the end of a long sitting. I think the information that has been provided to me has answered many of my queries on establishing the Small Business Commissioner within the Small Business Development Corporation. The government is doing a good thing and an essential thing by creating this position. The deregulation of retail trading hours means that it will be a tough environment out there, and small businesses will need all the help they can get to be competitive in that environment. The very least we can offer is a free service, mediation and access to the State Administrative Tribunal for those small businesses. With those remarks, I support the bill.

**HON SIMON O'BRIEN (South Metropolitan — Minister for Small Business)** [3.12 pm] — in reply: I thank members from all sides of the house for their contributions and also for their support for the Small Business and Retail Shop Legislation Amendment Bill 2011. I am glad that we can all agree that there is a need for a Small Business Commissioner to deliver the services that are contemplated. I note that there is a desire to ask one or two further questions in the Committee of the Whole. We will proceed to that shortly.

In closing the second reading debate, I would like to do justice to the thoughtful contributions that have been offered and to address some things that I was specifically asked to address during the second reading contributions from members. I will do that now. Hon Ljiljanna Ravlich, as lead speaker for Her Majesty's loyal

opposition, expressed not quite as much enthusiasm for my bill as I thought she might have. We have known each other for a very long time; we are very dear friends. She is obviously having a bit of a bad day but I will see what I can do to ameliorate that. She referred to a number of areas relating to the whole field of small business activity. She raised a couple of the issues of the day, which I will now touch on in response. That is fair enough to do that because she was able to tie them together in the context of discussions between the Premier and the Leader of the Opposition about a year ago, almost to the day, on retail trading hours and expressions of condition that the Leader of the Opposition offered, upon which the support of the Labor Party might be obtained. They specifically related to whether the opposition would support or allow to pass some of the legislation of the day relating to other matters if the government took some actions about a Small Business Commissioner along the lines of the Victorian model. I recall that that was primarily in the specific context of a facility to deal with retail tenancy disputes. Also up for discussion at the time was the possibility of stores opening on a Sunday that were not grocery related but instead sold what have variously been described as whitegoods, bulky goods or durable goods. There was some reference to that in the paper this morning, and I was described as a bulky good. If we read between the lines, the view was expressed that I am surprisingly durable, there being an element of surprise that I should achieve durability. With that faint praise from the author of that —

**Hon Peter Collier:** They had me letting down Liz's tyres.

**Hon SIMON O'BRIEN:** I hope the minister has apologised for that! It is purely coincidental that this debate has come on today.

The other matter that was raised related to the lease register. I will touch on each of those areas now and indicate what I believe the state of play to be. During her contribution, Hon Ljiljanna Ravlich, who has just come back from urgent parliamentary business —

**Hon Ljiljanna Ravlich:** You don't have to give a full account.

**Hon SIMON O'BRIEN:** Now that she is back, I will start again.

**Hon Ljiljanna Ravlich:** No, that's all right.

**Hon SIMON O'BRIEN:** Good. Hon Ljiljanna Ravlich recounted a discussion between the Leader of the Opposition and the Premier about these matters. She also made reference to an exchange of letters between those two gentlemen about this matter—that is, a letter from the Leader of the Opposition to the Premier describing his understanding of the parameters of the discussion and a letter in response by the Premier. It is indicative to look at the terms that have been used because the honourable member also referred to a newspaper article from the other day in which the Leader of the Opposition was reported as expressing his disappointment that undertakings had not been honoured or promises broken, or sentiments to that effect. I listened very closely to the words that the honourable member was reading from her copy of the Premier's letter. I jotted down the expressions that I heard her repeat because they indicated to me the nature of the discussion or what had been concluded or thought to be concluded between the Leader of the Opposition and the Premier. I have heard the Premier say publicly that there was no agreement; it was more of an exchange of letters. I was interested to hear the content of the letters and the context of the words chosen. The words I jotted down from the Premier were in agreeable terms and were a positive response to the Leader of the Opposition. The Premier undertook that the government would move towards establishing a Small Business Commissioner, and we are doing that. I think the Premier said words to the effect that the retailing of whitegoods was a complex area and that careful drafting would be required to not disadvantage one sector over another. The Premier also said that it would be complex, expensive and difficult to maintain a lease register but that the government was willing to explore the options. They are the words that I picked up from the Premier's letter, as it was reported. This is not the reflection of an agreement that has been prepared by lawyers and signed in blood; this is an indicative exchange—an exchange of letters, as it were—to undertake certain courses of action, but not in absolute terms.

When I describe, as I will now, the actions that we either have taken or will take, I think members will see that the government is honouring the spirit as well as the letter of what the Premier wrote to the Leader of the Opposition. Briefly, we have a bill before us to establish the Small Business Commissioner. I will come back to that because it is the main part of the debate, but I will touch on some other matters first. The retailing of whitegoods or durable goods is a very complex matter. My department was looking into it before I became the Minister for Commerce and I have encouraged it to proceed with this matter with all dispatch. It is no secret that I want to see retail trading hours in this state freed up, including on Sundays, so that businesses have a greater degree of flexibility about when they can choose to open and consumers can be better served by being able to access the outlets they want to access when they want to access them. I certainly am not opposed to the principle of durable goods shops being open on Sundays. However, a lot of work has been done by the department into this very complex area and it has found that changes may well create an uneven playing field and more bureaucracy, inequity and counterproductive overregulation than it fixes. The government, understandably and rightfully, wishes to tread cautiously in this area. I will tell members now, for what it is worth, that it is not

Hon Ljiljanna Ravlich; Hon Max Trenorden; Hon Lynn MacLaren; Hon Simon O'Brien; Deputy Chairman

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through any lack of activity by either me or my department that this matter has not progressed further. We will discuss that in more detail in due course, because that is not what this bill is about.

I refer now to the lease register and the remarks of Hon Max Trenorden as well as Hon Ljiljanna Ravlich. There have been calls for the creation of a lease register. I believe that we have honoured the Premier's undertaking to explore the options. In September last year, not long after these letters were exchanged, my predecessor as Minister for Commerce, Hon Bill Marmion, issued a discussion paper among the sector proposing a particular model of lease register. The reports came back, and in about November last year Minister Marmion provided feedback to the public about the process of seeking submissions. The then minister tabled a paper in the house and I inherited the issue in December. The response to the lease register proposal was underwhelming, to say the least. It showed the fractured views of the stakeholders in the area, whether it is shopping centre management, prospective tenants, or small businesses. It is very hard to reconcile those divergent positions.

**Hon Max Trenorden:** It might actually be impossible.

**Hon SIMON O'BRIEN:** It might be impossible, but we will persist. Given the information that came back, we will have to consult further on some of the alternative suggestions that were supported by one sector or another. To do that, a further consultation process will be embarked upon so that we can decide what is acceptable to the community and work out what costs might arise so that everyone will be fully informed when we debate this issue in the future. I will make more comments about that next week because I have already approved a further discussion paper, but that is a matter for another day. The point is that demonstrates that action is being taken on this matter. Significantly, if a lease register regime were to be introduced by legislation, it would be under a separate bill—the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011—which I read into the house this week and which we might debate next week. I will leave further debate on that to the appropriate time. I think I have dealt with the question of whether we have done anything or whether we are doing the right thing.

Hon Ljiljanna Ravlich also touched on the question of the dollar allocation to the Small Business Development Corporation, and I will come back to that in a moment. The lead speaker for the opposition also asked specific questions about the number of complaints about unfair market practices. I can advise that in relation to retail tenancy matters generally, the SBDC received more than 2 300 inquiries from small business tenants and landlords in 2009–10, although they were not all dispute related. More recently, in the four months from 1 November 2010 to 28 February this year, the SBDC's commercial tenancy advisory service received 1 000 client inquiries regarding retail tenancies, including 206 related to retail tenancy disputes. I do not know whether that is all the information the member wanted, but it is what I have to hand. The question of how this office is to be funded also arose. The SBDC, of course, already exists. I think that what the SBDC is required to deliver and what it does deliver is a success story, and I am very pleased to be the minister with responsibility for this area. The SBDC will be the support mechanism for the Small Business Commissioner. It is true that there is a line item of \$300 000 in next year's budget specifically allocated for the Small Business Commissioner. They are supplementary funds that I asked the Treasurer to include in the budget, very late in the budgetary processes, I might add, because there were cabinet changes not long before the budget was being put to bed, and he has done that. That is only an interim measure. I have already discussed this matter with the Treasurer, and he agreed with me that there was a need to provide that \$300 000 in the budget. Quite frankly, I can tell members that it was inserted fairly late in the piece at my instigation. With regard to the question of why it is not shown in the out years, I will be fairly blunt. I think we will need more than that in the out years, but I do not know exactly how much we will need. After this office has operated for its first full year or a large part thereof, we will have a much better idea of what supplementary funding will be required, and that will appear in next year's budget. That is not quite as neat as the honourable member would perhaps like to have it, but it is the way that it will happen. As Hon Max Trenorden pointed out, the Small Business Development Corporation is an agency with a budget of \$12.636 million, at the moment.

**Hon Ljiljanna Ravlich:** Hang on, are you not robbing Peter to pay Paul? Basically, if the SBDC becomes a support mechanism for the new commissioner's functions, clearly it will do less of its traditional work and more in the way of supporting the commissioner. Therefore, you are really robbing Peter to pay Paul.

**Hon SIMON O'BRIEN:** Yes.

**Hon Ljiljanna Ravlich:** Yes; that's right! You are dead right.

**Hon SIMON O'BRIEN:** I said yes in acknowledgement of the member's interjection. I now get it when I hear her say that she has been talking to the Council of Small Business of Australia, because that is exactly what it says.

**Hon Ljiljanna Ravlich:** Common sense would tell you that that is right.

**Hon SIMON O'BRIEN:** The trouble with commonsense is that it is not always as common as it needs to be!

That leads us to Hon Ljiljanna Ravlich's next question; that is, why we do not have a separate statute for a Small Business Commissioner? We have one; the bill before us today establishes it. There is a separate statute for the Small Business Development Corporation. It is an act that was created in 1983; that already exists. There is no equivalent in Victoria. Victoria had to invent its own; it brought in a bill for a commissioner, because it did not have anything. We are augmenting what we already have to make it better and I think that that is a good way of going about it. If we do not spend outlandish sums of money, if we do not create whole new bureaucracies unnecessarily, I think that that is a good thing as well. Why not create a separate commission? Because we already have the fundamentals that we need tailored almost to a tee to support the new Small Business Commissioner position, and that is in the form of the SBDC, which already exists. The honourable member asked whether there was likely to be a conflict. I would say that by having a Small Business Commissioner and a Small Business Development Corporation they can coexist as one, and that is a very good way of avoiding the sort of conflict she is concerned about. She also asked what the relationship between the commissioner and the SBDC would be. Some very close synergies will exist between the two. The Small Business Commissioner will also be the CEO of the SBDC. That provides for a very close relationship and ensures that there will be the closeness of operations that we believe is necessary to ensure that we have the outcomes that we need. It is true, as the honourable member said just now by way of interjection, that the SBDC already does a lot of things that are very similar, directly similar, to what the commissioner will be involving him or herself in. That is all to the good; it means that we have an experienced organisation with a structure in place, which is there now, to take on some of the roles that will transition to the commissioner and that, of course, we are to support in developing the additional roles that are contained within this bill.

I would like to thank Hon Max Trenorden for his contribution. He alluded to his concerns and they will be dealt with when we look at another bill, possibly as early as next week, and there are matters within that bill that touch on what we deal with in this place. But, those are issues for another day. I thank Hon Max Trenorden for the demeanour with which he delivered his observations. I think it was very helpful to the debate.

I also acknowledge the contribution of Hon Lynn MacLaren, who, with her colleagues, supports this bill and the overall proposal. This is the sort of bill that ought to be supported by all sides of the house and I think that it is only right that that is the case. This bill is about encouraging the fair treatment of small businesses and their commercial dealings with other businesses and government bodies. It is about providing support for small businesses, reducing the vulnerability of small businesses to unfair market practices and reducing the frequency and cost of disputes involving small businesses. We will do that by creating a new office supported by an, admittedly slightly changed, existing agency, which has already demonstrated that it can perform strongly in this area. I thank members for their support and look forward to the passage of the bill through its other stages.

Question put and passed.

Bill read a second time.

*Committee*

The Deputy Chairman of Committees (Hon Jon Ford) in the chair; Hon Simon O'Brien (Minister for Small Business) in charge of the bill.

**Clauses 1 to 17 put and passed.**

**Clause 18: Section 15 amended —**

**Hon LJILJANNA RAVLICH:** Clearly, in proposed section 18B the independence of the Small Business Development Corporation is at question given that it can be directed by the minister, as stated in proposed section 18B(1). Can the minister provide the chamber with some assurances that that provision will be used only in extreme cases? I also wonder whether the minister could give an example of the circumstances in which it might be used, because, it certainly does not look good that a provision in this legislation would allow the so-called independent Small Business Commissioner to be directed.

**Hon SIMON O'BRIEN:** It is a good question. I have with me a marked-up copy of the act incorporating the changes. Members are familiar with the format, and members participating in the debate got a copy.

**The DEPUTY CHAIRMAN:** I think there is some confusion in that members are referring to clause 22, which inserts proposed section 18B.

**Hon SIMON O'BRIEN:** I see. Yes, of course.

**The DEPUTY CHAIRMAN:** Unless there is a question before that, I could move to clause 22.

**Clause put and passed.**

**Clauses 19 to 21 put and passed.**

**Clause 22: Sections 18A to 18C inserted —**

**Hon SIMON O'BRIEN:** Clause 22 proposes to insert some new sections. Amongst them is proposed section 18B, which is the one the member was asking about. It is a fair question. I say that because when I was contemplating earlier drafts of the bill, I noted that there were some wholesale changes to the structure of the principal act. When members refer to the marked-up act, they can see that just about everything is deleted, inserted or varied. Only a few bits have not been changed. Much of that, of course, is because of the way the legislation has been formatted to restructure it. The current provisions are substantially still there. This is one thing I went looking for when I saw that existing section 11B, "Minister may give directions", which is on page 14 of the marked-up act, was being deleted. I thought, "Hello, what's all this about; it is trying to wriggle out from under my thumb!" I was greatly relieved to see that we are indeed inserting proposed section 18B, which simply replaces section 11B. The response to the member's question is to compare proposed section 18B with the current section 11B. It is basically the same power. I will give the member the assurance she seeks, although not in the words she sought. I think she was asking whether this would be used only in extreme situations. I do not know about extreme situations, but it will be used with the same discretion and restraint with which it is currently used. I have never issued a direction to this agency. I have issued the odd direction to other agencies in the past, but, again, that was only in extraordinary circumstances. Although there is no change in the minister's relationship with the corporation, the point is that there is a question of independence. I reckon this commissioner position is actually going to be of great influence. I think any minister, whether a future minister or the present one, would have to think long and hard about giving a direction to the commissioner to do something against the advice of the commissioner. I do not foresee that happening. The relationship I have always had with the CEOs of my various agencies, both now and in a previous portfolio, has been one of cooperation. Ministers generally do not resort to giving directions. I hope that discussion reassures the member. If it does not completely reassure her, I can say that it is basically the same provision that currently exists.

**Hon LJILJANNA RAVLICH:** That does not reassure me. The current provision relates to the corporation. It is one thing to provide an instruction to the corporation and it is another to provide an instruction to the so-called independent Small Business Commissioner. This is where, I guess, the combining of the roles has maybe thrown up an unintended consequence. The government cannot have it both ways; it cannot say that it is establishing an independent Small Business Commissioner but, by the way, there is a provision for that commissioner to be directed by a minister. I would be somewhat more comfortable if I knew that any direction would have to be recorded in the annual report. Is that the case currently?

**Hon SIMON O'BRIEN:** The member has sought a little more reassurance. I am from the government and I am here to help, so I will have another crack at it and see if I can do that! Firstly, the power to give direction to the corporation remains as is. The power to give direction to the commissioner is added, because a minister must, albeit in extraordinary circumstances, be able to give a direction to an agency or, in certain cases, to a created office as a key part of a minister's accountability to this place and to the general public. In so doing, the direction has to be reported to the Parliament. I advise the member that the text of such a direction given to either the corporation or the commissioner is required to be laid before each house of Parliament within 14 sitting days and is to be included in the annual report. That was the specific question the member asked. The question of independence and accountability is one that I have now introduced into this committee process. It is important that the committee understand that the two go together. It is the minister who will ultimately be accountable to this Parliament. Therefore, it is important that there be some line of accountability, in this case from the commissioner. If there is no power for the minister to interact in the way that is contemplated in this legislation, and is reflected in other legislation as well, there would be no accountability on the part of the commissioner. That is a degree of independence that we would all agree is undesirable. How much independence is desirable? I predict that the incumbent in this commissioner position will wield enormous influence. In discussing this matter publicly, I noted that the experience in Victoria was that some 34 per cent of cases of dispute between businesses were resolved not only without going to a tribunal or a court, but also without going through a mediation process simply because the commissioner or his office had become involved or had expressed an interest in the dispute. That was enough to do that. Similarly, I think that members individually will find it useful to interact with the Small Business Commissioner in due course in serving their communities. We are a very positive agent of influence. The commissioner will have at least the amount of independence that the SBDC currently has and, given what we are talking about now, probably a bit more. How much independence is that? Let me give members one example. Members here are all involved in standing committees. An inquiry was done by a committee in the other place and I understand that a report was tabled today.

**Hon Ljiljanna Ravlich:** Which report?

**Hon SIMON O'BRIEN:** The seventh report of the Economics and Industry Standing Committee, titled "Inquiry into the Franchising Bill 2010". The Department of Commerce, one of my agencies, was asked to make a

submission and submitted it to the standing committee through my office, as we would expect an agency to do. The department came to me with the submission before sending it on to the standing committee. The SBDC also put in a submission when invited to do so about that same matter. The difference is that the SBDC responded by putting in the submission directly to the standing committee and dropping me a courtesy copy to let me know what it had done. That is the sort of level of independence of this organisation, and I think that is appropriate.

**Clause put and passed.**

**Clause 23 put and passed.**

**Clause 24: Section 19 replaced —**

**Hon LJILJANNA RAVLICH:** Clause 24 deletes section 19 and inserts a new section 19 on the establishment of the Small Business Development Corporation account as an agency special purpose account under the Financial Management Act 2006. I want to ask a general question about the operations of the committee. I note that there is capacity for fees and charges to be imposed. Will the activity of the Small Business Commissioner operate on a cost-recovery basis; and, has there been some analysis of the estimated revenue that will flow into this account from fees and charges?

**Hon SIMON O'BRIEN:** As the member would be aware from the bill, the account will be credited with revenue from a number of sources from not only state government appropriation, but also fees and charges. The intention is that the vast majority of the services provided by the commissioner will be free of charge. In the case of formal mediation being entered into, there is obviously a charge for those services to be engaged. There will be a heavy level of subsidy roughly equivalent to the model under which the Victorian Small Business Commissioner operates. The moneys from those relatively smaller charges will be deposited in the account and used for the operations of the corporation.

**Hon Ljiljanna Ravlich:** Is there a projected figure?

**Hon SIMON O'BRIEN:** We anticipate that the subsidy for a party will be about \$195 and the subsidy for the government will be perhaps a little over \$500. I know that the quantum of cases that will be dealt with is not 100 per cent satisfactory to the member, but this is probably reflected in what she saw in the budget. We have made some provision for the first year of operations, but frankly it remains to be seen how successful this process will be. We are anticipating a best-guess estimate of 300 cases, but we will have to work out what makes the commission a success. If the commission gets a large number of cases, that is one indicator of success and confidence and would relieve pressure in other quarters of the system. I will quickly give the member further information; in the Victorian Small Business Commission's first full year of operation in 2003–04, it dealt with 527 disputes and 94 per cent of those disputes related to retail tenancy. Our commissioner will involve himself and also help work through other disputes. The remaining six per cent related to market disputes. Given the disparities in the size of the economies of the retail sectors in the respective states, we think that 300 is a reasonable estimation for the commission's first year of operation.

**Clause put and passed.**

**Clauses 25 to 34 put and passed.**

**Title —**

**Hon SIMON O'BRIEN:** We have already contemplated clause 4, which replaces the long title, but I do not know whether we must take any further action. Do we simply adopt the question that the Deputy Chairman has put?

**The DEPUTY CHAIRMAN (Hon Jon Ford):** This question refers to the title of the bill.

**Hon SIMON O'BRIEN:** Yes.

**The DEPUTY CHAIRMAN:** This question refers to the title of this bill and not the amended title.

**Hon SIMON O'BRIEN:** Of course.

**Title put and passed.**

**Bill reported, without amendment.**

Leave granted to proceed forthwith through remaining stages.

*Report*

Report of committee adopted.

*Third Reading*

Bill read a third time, on motion by **Hon Simon O'Brien (Minister for Small Business)**, and passed.

