

RETAIL TRADING HOURS AMENDMENT BILL 2012

Committee

The Chair of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Simon O'Brien (Minister for Commerce) in charge of the bill.

Clauses 1 to 3 put and passed.

Clause 4: Section 12 amended —

Hon KATE DOUST: I move —

Page 2, line 15 — To insert after “5 p.m.” —

and all of Easter Sunday

This was an issue that I canvassed in my contribution to the second reading debate last night. We had some sort of discussion and some sort of response from the minister in his reply and we canvassed the issues. I just want to go back and revisit them slightly. The reason the opposition has moved this amendment is that we understand three public holidays are currently set down in this bill when shops will not be open. There will be no trading on three particular days—that is, Anzac Day, Christmas Day and Good Friday. Each of those days is a significant day, as I discussed last night, for varying reasons—two of a religious nature and one for our military history in remembrance of those who served. So those days are in the bill. The one day that seemed to have missed out in debate in the other place is Easter Sunday, although it was raised towards the end of the debate in the other place. In our view, it is important that shop assistants should also have the capacity to have that day off during that Easter period, as it is indeed an important day. In some ways, as we have seen, it means that shop assistants would be treated differently from the vast bulk of other workers. The vast bulk of other workers have an expectation that they do not have to work on Sunday in most cases; albeit nurses are rostered to work occasionally, but that has been fairly traditional. However, those people who have worked in the metropolitan area in a general retail shop, not in Fremantle or in the city, until this change would not have been —

Hon Simon O'Brien: Or Armadale, Midland and Joondalup.

Hon KATE DOUST: But that has only been since 2009. All I am saying is that this change we are dealing with now will be a significant change for those people impacted by the change who will now have to work on Easter Sunday. In some ways the bill is saying that shop assistants are treated differently, or as a second-class type of worker, because they are expected to give up that type of day. Even though we know it is not deemed to be a public holiday, it is still a day of significance to the vast majority of people in our community. As we talked about last night, be it for religious reasons or otherwise, people regard that Easter period, and especially Easter Sunday, as a significant day. It is therefore our view that shop assistants should also be afforded the right to have Easter Sunday off when they know the shops will not be open and there will not be that expectation that they will have to work.

I know that the Greens (WA) have indicated that they will support this amendment and that they understand where we are coming from. I know that Hon Nick Goiran has already expressed that he will be supporting this amendment. I did raise this amendment with members of the National Party, who I note again are missing in action from the chamber tonight.

Hon Simon O'Brien: We presume they are on important, urgent parliamentary business.

Hon KATE DOUST: I know that even though they voted against this legislation, they did not even bother to rise in this place and put their position on the public record. I read last night an article in which Rebecca Carmody interviewed Hon Giz Watson, who was talking about the Greens' ambitions for the next election. Hon Giz Watson talked about how the National Party could learn from the Greens' work ethic, and how National Party members are so rarely in the chamber and so rarely on their feet. I would have thought that National Party members would speak on this occasion, given that they already receive the benefit of extended shopping hours within their own electorates, for which there did not have to be a heated debate. Each of their local governments can make the decision to open or close for any hours in those regions. Those members could at least have come into this place to explain why they are voting against their own coalition partners and why they have not had the compunction to stand in this place and put their reasons on the public record.

Hon Jim Chown: Good question.

Hon KATE DOUST: It is a good question. I hope that at some point they explain themselves. It is highly unusual for a coalition government partner to refuse to support a government bill. It is highly unusual and inappropriate too. They really need to explain themselves. It is disappointing, especially after we had that very interesting debate a few weeks ago in this place about retail trading hours. Hon Philip Gardiner especially went

on about the need for flexibility in the retail workplace. His definition of flexibility was vastly different from mine. I would like members like Hon Philip Gardiner to explain why the National Party does not think that shop assistants in the metropolitan area who work in a general retail shop and who will now work on Sundays because of this legislation should not have the opportunity to spend Easter Sunday —

Hon Simon O'Brien: He's voting against the bill and you're voting for it! Make up your mind. Which side are you on?

Hon KATE DOUST: I am supporting the government's bill, but I think the National Party should have to explain why it is not supporting the bill. The minister has not asked those members to explain why they are not supporting this bill. I think it is outrageous.

I understand that if this amendment does not get up, the next amendment on the notice paper will fall away because it is contingent on this one. I felt that we just had to put our case. Even though I am not as widely travelled as some of my colleagues around this chamber and in other places, I note that in other parts of the world Easter Sunday is treated differently from how this government proposes to treat Easter Sunday for retail workers. Many capital cities of the world that have a flourishing tourism trade do not have shops that open on Easter Sunday, because they regard that as a very significant day in their community and religious calendars and they do not accept that shops should be trading and that people should be working on that day. I hope that the government will reconsider its position and give shop assistants who are working in the situation I have described and who will be impacted by these changes the same opportunity as other workers. We know that our workplaces are evolving, that people's needs are changing and that people want to shop at all times of the day or night. That is one reason this government has been so keen to move on with this legislation. We understand and accept that. I did not mention this last night but maybe we need to give consideration to it, given that shop assistants are being put in a situation in which they will be unable to plan for their family lives or spiritual lives on these significant days because they may be compelled to work; that is, I wonder when we are going to get to the point that government trades seven days a week. When are we going to get to the point that we can purchase a driver's licence, birth or death certificate, or firearm's licence on a Sunday? I know that sometimes it is a gradual change, but I offer this as an alternative. I know that shop assistants would say to the minister, "Why can't the government work seven days a week?"

Hon Simon O'Brien: Haven't you had your preselection yet?

Hon KATE DOUST: I do not need to worry about my preselection, minister.

This is a significant issue for people working in the retail sector. We ask that the government reconsider its decision and grant to workers impacted by this change the right to have Easter Sunday at home with their families or celebrating their faith, whatever that may be, without the concern that they may be expected to turn up to work on Easter Sunday.

Hon LYNN MacLAREN: As Hon Kate Doust has indicated, the Greens do support this amendment. I just want to make a couple of points, though, because the foundation of our support might be slightly different, although I did appreciate the description by Hon Kate Doust of the purpose of this amendment. I have already articulated in my contribution to the second reading debate that there is a strong economic argument against Sunday trading on any Sunday. Here, we are looking at a specific day, a Christian holiday, being Easter Sunday. Sundays are traditionally a day of leisure. This particular Sunday, like any Sunday, is a great opportunity to spend time with one's family. I reflect on the Easter long weekends that I have enjoyed, such as weekends in the bush. Those four days even give people time to get a major house renovation done. It is the time when one paints the bathroom. It gives you plenty of time to get to Bunnings, to scrape the paint off the wall and to sand it down. Then, by the end of the Easter weekend, you have a brand-new bathroom. Easter Sundays and Easter long weekends are precious to all Australians, I would predict, and not just those Australians who recognise that Easter is a special time.

I wanted to bring to the attention of the chamber the statistics on religious affiliations in Australia and, in particular, in Western Australia. It is fair enough to note that the census data should be updated this week or next week, so we might have some more accurate figures on this, but the figures I could get from the 2006 census indicated that 30.5 per cent of Australians either have no religion or have not stated their religion in the census. That is important to remember. In Western Australia there are at least 20 000 followers of the Buddhist religion, the Hindu religion, Islam and Judaism. As members would imagine, in our multicultural society there are quite a few followers of other religions. For instance, the Church of Jesus Christ of Latter-day Saints, which I believe does not recognise Sunday as their religious day but Saturday, has about 5 000 followers in Perth. There are the orthodox and progressive synagogues of the Jewish religion, Baha'is and Hindus. There are many fast-growing religions in our multicultural society, all of which have different religious days that we may like to recognise through an exemption to the Retail Trading Hours Act. If we were to really govern for all Western Australians, we would look at all these religions and try to exempt those days. I made it clear in my contribution to the second reading debate that we should give employees the option to not work on those days that are religious days

for them. If there was some guarantee that we could do that, that would be a good way forward to acknowledge the multicultural and diverse culture that we have in Western Australia.

In this instance, if we are talking about trading on Easter Sunday, it is part of a long weekend. We know that Western Australians love their long weekends. In this case we want to include Easter Sunday as one of our special non-trading days, and there is no question that we would support not having these big corporate retailers open on those days.

Hon Simon O'Brien: Corporate? That must mean it's naughty and evil, does it?

Hon LYNN MacLAREN: Corporate sounds scary, does it, Minister for Commerce?

Hon Simon O'Brien: Are you scared by that?

Hon LYNN MacLAREN: I am not afraid, and I do not want the minister to be afraid. There is no fear; we do not want the minister to be afraid of anything. We want him to just think about whether it is fair enough to have one day, of all the Sundays that could possibly be open for trade, as an exempt day.

Hon Simon O'Brien: What's wrong with all the other Sundays? Why aren't they given equal status?

Hon LYNN MacLAREN: I argued that all Sundays should be exempt, but this amendment deals with Easter Sunday; can the minister focus on Easter Sunday? That is the day we are trying to have exempted from this bill. It is a very worthwhile amendment and I was pleased to see some support for it from the backbenchers of the Liberal Party. I am looking forward to seeing whether Hon Nick Goiran will support this amendment but, even more than that, whether the National Party will, concurrent with its rationale that we should have no trading on Sunday here, take the option to have a particular Sunday exempt from trading. I think it is worthy of support, and I appreciate the opportunity to do so. I hope that the Nationals, too, will see the merit in this worthy amendment. It is an amendment that we think we would see people standing to fight for and support, as I am doing now. So what say the Nationals?

Hon Max Trenorden interjected.

Hon Simon O'Brien: You convinced me a while ago, but now you've talked me out of it!

Hon LYNN MacLAREN: If the minister could think back to when I had him convinced and please support this amendment, it would be appreciated. We want one day—Easter Sunday—when the shops will not open. I support this amendment.

Hon SIMON O'BRIEN: By way of brief response, one of the things about people in this place responding to a question is that they have to identify what the question is before they seek to tell us the answer. A view has prevailed in recent comments that if we do not believe in this amendment and vote on it accordingly, then everyone in the world is somehow going to be condemned to working in shops or some other form of slavery on Easter Sunday that they otherwise would not be. That is blatantly not a reflection of reality. The vast majority of retail outlets are able to open on Easter Sunday now if they wish.

Hon Kate Doust: This is about general shops, minister, not special shops; this is about general shops.

Hon SIMON O'BRIEN: Mr Chair, I am addressing you.

The vast majority of retail outlets in the metropolitan area and right across Western Australia are currently, and have been for a very long time, entitled to open on Easter Sunday—full stop. That is the fact at the moment, and to suggest that we are going to somehow take that away and people will not be able to spend time with their families or support their sporting clubs or be able to go and observe the religious significance of the day —

Hon Max Trenorden: I totally agree with that; that is absolutely right!

Hon SIMON O'BRIEN: — is absolute hogwash. I hope members will take comfort from that.

Let me just remind members that a small retail shop can be open 24 hours a day, every single day of the year, including Christmas Day and Easter Sunday. A special retail shop can be open from 6.00 am to 11.30 pm every single day of the year, including all Sundays, Christmas Day and Easter Sunday. Any sort of filling station, including any business that sells motor fuel, can trade every hour of every day. A shop in a special trading precinct—Perth, Fremantle, Joondalup, Armadale or Midland—including general stores, can open on Sundays, including Easter Sunday.

A retail business that is north of the twenty-sixth parallel, regardless of what the retail business is, can open 365 days of the year, 24 hours a day, including Easter Sunday; it has ever been so. A retail business outside the metropolitan area and south of the twenty-sixth parallel is in one of up to 29 regional trading regions where variation orders under my hand or that of a previous Minister for Commerce are in existence. Of those 29 local regional shires or cities, 23 permit general retail shops to trade on Easter Sunday. I have already told members about all the other shops that can be open anyway. I think I have made the point.

In relation to how we treat Easter Sunday, we recognise that Easter Sunday is, for most people, part of a four-day special weekend. It is a time of observance, whether it be of intense religious significance for some or whether it simply be a time for families to get together or to recreate, or some combination of other purposes. That is clearly not going to change. The vast number of people who are already involved in working in any of the retail establishments that I have already mentioned somehow manage to juggle working or not working on an Easter Sunday with the rest of that weekend, with some people liking to work and claim extra penalty rates or overtime when they can; others seem to quite easily negotiate a way to have the whole lot off and go away, if that is what they want to do. We have been doing it for years and years. This is not my speculation; it is what happens now, as we all know. The Retail Trading Hours Amendment Bill 2012 will not change any of that.

In relation to the specifics of Easter Sunday, are we somehow failing to recognise that Easter Sunday has a special significance? I think not. I think I expressed the view earlier in this debate that each Sunday—whether 52, or in some years 53—has significance.

Hon Kate Doust: But not the same as Easter Sunday, minister, and you know that.

Hon SIMON O'BRIEN: Why does Hon Kate Doust interrupt? Do not be rude, please!

Hon Kate Doust: Because you are posing a question.

Hon SIMON O'BRIEN: Please do not be rude; I am halfway through a sentence.

We have 52 or 53 Sundays a year, and they all have significance, as was recognised in the Sunday Observance Act 1676. Sunday continues to be recognised as a special day for industrial purposes and for community purposes from the basis that we started by saying that it is a day that everyone should have off, while recognising that some essential functions still have to go on.

In relation to Easter, we do not have one day off; we have two. We have Easter Sunday, which, because it is a Sunday, is primarily, as a starting point at least, a day off. It is part of a four-day break, and it has a special significance because it is in the middle of that. Recognising that it is a day that ought to be a public holiday, but under another guise it is a Sunday that we would have off anyway, we get another day off as a public holiday for which we also receive penalty rates if we work, as plenty of people already do. That is called Easter Monday. That is why there is an Easter Monday; it is the public holiday we would have had if Easter Sunday did not fall on a Sunday, which we already have off anyway. With all that in mind, I think the world will be safe without agreeing to this amendment. I respect those who wish to pursue it, but I would urge the chamber to vote against it.

Hon LYNN MacLAREN: There is just one thing in the minister's response we need clarification on, because it seems to be a point he keeps repeating; that is, there are really three types of people we are talking about in relation to opening up trading hours: there is the boss, there is the worker and there is the shopper. Clearly, if the shopper wants to follow some religious restriction or point of respect not to shop on Easter Sunday, they have the freedom to do that, and we acknowledge that in our society. They can shop or they cannot shop, and that is their choice. There is the boss, and the minister tells us that these businesses can choose not to open on Easter Sunday, and that is fair enough. If the boss decides not to open the shop on Easter Sunday for some reason or another—he wants to go and have a long weekend or he wants to celebrate in his spiritual development—fair enough; he has that option. The people who do not have the option and whom we have not considered in the entire debate on this bill are the workers. The workers have no choice. If the boss says, "We are open on Easter Sunday", are we sure that that worker has a choice? I put to the minister that if that worker honours the Christian religion and Easter is their special day and they do not have that option of not working, we are passing a law that we should not have respect for. I put to the minister that if someone has the choice not to work on Easter Sunday or the choice not to work on any Sunday or any religious day that they feel is special to them, there is no problem; let us go for it—let us pass this bill in a minute. The minister cannot continue to put the case that, just because the boss has an option not to open his door, the worker has an option not to work. I need that to go on the record; we need to acknowledge that they are not one and the same thing.

Several members interjected.

The CHAIR: Order, members!

Hon SIMON O'BRIEN: At this stage of the debate this is really a futile point. If the member has not done her homework yet, there is not much I can do to convince her. I suggest she looks at the relevant industrial agreements, which have all been canvassed, that do provide protection to people against being required to work on Sunday, whether it is Easter Sunday or some other day when they do not want to, particularly if they have a religious objection to doing so. But again, why does the member deliberately ignore all the people who are not shop employees and who are not retail workers but who actually might be required by roster to work on Easter Sunday or on Christmas Day, whether they like it or not?

Hon Alison Xamon: According to you, they have protections. Do they have protections or not?

Hon SIMON O'BRIEN: Hon Alison Xamon does not know much about the world, does she?

Hon Alison Xamon: Answer the question.

Hon SIMON O'BRIEN: No; she does not.

Hon Alison Xamon: Answer the question.

Hon SIMON O'BRIEN: There is no-one at risk; this relates to retail workers and they have protections. But how do police or nurses who are required to be rostered on on Easter Sunday manage to cope? Is the member saying that this is some evil that runs through our society? What a load of rubbish!

Hon Lynn MacLaren: Retail is not an essential service, minister.

Hon SIMON O'BRIEN: What a load of rubbish!

Hon Lynn MacLaren: It is not an essential service.

Hon SIMON O'BRIEN: And you are an inessential service too. What a load of rubbish!

Several members interjected.

The CHAIR: Members, order!

I do not know what else I can really say about this, but Hon Lynn MacLaren is a member for the South Metropolitan Region and I wonder whether she knows that the City of Rockingham is in her region. I wonder whether she goes down there and I wonder whether she ever patronises general retail outlets in Rockingham, because if she does, she might tell me whether they were open last Sunday. Were they open last Sunday with the people who were working there, by their rights, probably there by choice, because they were being paid significant penalty rates? Were those shops open last Sunday? The member does not even know. Will they be open this Sunday? Apparently not.

Hon Sue Ellery: Is it Easter Sunday this Sunday?

Hon SIMON O'BRIEN: Hon Sue Ellery is also a member for the South Metropolitan Region and she wants to know whether general retail trading shops in Rockingham may open —

Hon Sue Ellery: I know they are open on Sunday, but I think you were making the point about Easter Sunday.

Hon SIMON O'BRIEN: On which Sunday are they open?

Hon Sue Ellery: They are open on Sunday; Rockingham is open on Sundays.

Hon SIMON O'BRIEN: Is it?

Hon Kate Doust: They are open 13 Sundays a year.

Hon Sue Ellery: They are regularly open on Sunday.

Hon SIMON O'BRIEN: They are regularly open, are they?

Hon Sue Ellery: They are and you know they are.

Hon SIMON O'BRIEN: I do, but Hon Sue Ellery apparently does not. The members for the South Metropolitan Region apparently do not know when the shops are open. But the question apparently is: are they open on Easter Sunday? And the answer is, yes. And has the sky fallen? No. That is in the members' electorate. Have members made representations? Have they taken up some of their petitions to ban the general retail stores in Rockingham being open on Easter Sunday? Apparently not. The only other point to be made is about what other guarantees there are for people who want to, for example, go to church, as I am sure the honourable member might want to do from time to time, on Easter Sunday. That is why this government proposes the compromise and the middle ground that the Western Australian community wants, expects and will accept for trading by general retail shops on a Sunday, which would be for them to trade from 11.00 am to 5.00 pm. One of the reasons 11.00 am was struck was so that there would be plenty of opportunity for people who do wish to go to church on Easter Sunday to do so, regardless of their rostering arrangements. I think that deals with all the member's problems and I suggest she vote against the amendment.

Hon NICK GOIRAN: I had not proposed to speak this evening on this matter; I think I have spoken more than my fair share on this bill. However, I now stand to speak because the implication was just made that Hon Lynn MacLaren had not done her homework and that was why she was proposing to support this amendment. As a member of this place who is also proposing to support this amendment, I take some umbrage at the implication that I have not done my homework. With respect to this matter, I do not propose to add anything new to the debate other than to say that if it is the case that the golden catch-all argument about why we should oppose the amendment of Hon Kate Doust is that there are certain people in the categories of nurses, police and prison

officers who are required to work on Easter Sunday because they have a roster, then I say, with the greatest of respect, that the point has not been understood. The point is that the people who work in those jobs fall, for those who have done their homework, into three categories of people who perform works of mercy, works of necessity and works of piety. In case some members have not done their homework and are unfamiliar with what those three terms mean, I will briefly explain them. Works of mercy cover nurses. They are there out of compassion to help those who are sick. They work on roster because it is necessary for them to do so, and it is categorised as a work of mercy. With all due respect, shopkeepers do not fall into that category.

Police officers and prison officers fall into the second category, which is known as works of necessity. We need to have the prisons manned 24 hours a day, seven days a week, public holidays, not public holidays, sacred observances or not. It is a work of necessity. That is why prison officers are rostered on. The same falls for police officers. The third category I referred to is called works of piety. That refers to those people who work in religious orders—for example, a minister of religion who naturally has to work on a Sunday and is able to do so. My point is that I will be supporting the amendment by Hon Kate Doust because the case has not been made as to why shop owners would fall into any one of those three categories. That is the homework that has been done and has led me to support the amendment that is before us now.

Amendment put and a division taken, the Chair of Committees (Hon Matt Benson-Lidholm) casting his vote with the ayes, with the following result —

Ayes (13)

Hon Matt Benson-Lidholm	Hon Adele Farina	Hon Sally Talbot	Hon Ed Dermer (<i>Teller</i>)
Hon Robin Chapple	Hon Nick Goiran	Hon Ken Travers	
Hon Kate Doust	Hon Lynn MacLaren	Hon Giz Watson	
Hon Sue Ellery	Hon Ljiljana Ravlich	Hon Alison Xamon	

Noes (16)

Hon Liz Behjat	Hon Wendy Duncan	Hon Philip Gardiner	Hon Helen Morton
Hon Jim Chown	Hon Phil Edman	Hon Nigel Hallett	Hon Simon O'Brien
Hon Peter Collier	Hon Brian Ellis	Hon Col Holt	Hon Max Trenorden
Hon Mia Davies	Hon Donna Faragher	Hon Robyn McSweeney	Hon Ken Baston (<i>Teller</i>)

Pairs

Hon Jon Ford	Hon Michael Mischin
Hon Helen Bullock	Hon Norman Moore
Hon Linda Savage	Hon Alyssa Hayden

Amendment thus negatived.

Clause put and passed.

Clauses 5 to 7 put and passed.

New clause 3A —

Hon KATE DOUST: I move —

Page 2, after line 10 — To insert —

3A. Section 10 amended

In section 10(4) after paragraph (b), insert —

; or

(c) the retail shop meets such other conditions that are prescribed in relation to a special retail shop.

This is about amending the clause in the bill to insert a new paragraph that would essentially enable the minister to provide for regulations to be made. One would hope the minister may prescribe a regulation that would enable a shop that traded on a Sunday to be granted a special certificate to trade on a Sunday on the basis that they allowed their shop assistants to have the choice to work on a Sunday. I might explain that a bit more.

I note that in a couple of other jurisdictions, in the Queensland Parliament in the Trading (Allowable Hours) Act 1990 and also in the British Parliament's shop hours legislation of 1996, similar provisions were made, which meant that a person who was going to be impacted by these types of changes would be able to opt out of working on a Sunday. The British Employment Rights Act 1996 allowed for provisions to be made. It covered not just shop workers but also workers in a betting shop, which was treated slightly differently. It basically meant that once the legislation came through and if the shop owner decided that they were going to trade on Sunday, people in their employment could sign a document that indicated that, yes, they were prepared to work on the Sunday or

no, they were not. It just meant that everyone knew where they stood. If a person opted not to work on a Sunday, then the employer would accept that and obviously invite others or make other arrangements.

Part 7, "Offences and proceedings", of the Trading (Allowable Hours) Act 1990 in Queensland provides protection for current employees. As we all know, as has happened in the past when there has been a significant change in trading hours, what normally happens is that new employees are employed under an arrangement where they automatically will be offered a roster that would include the new set of arrangements. As happened in 1988, anyone who was employed prior to the date of change was offered a range of options for rosters and actually had the capacity to not work on a Saturday afternoon. Granted, that has changed over time, but back then the arrangement was that all new employees employed after the date of the change would not have that flexibility. If they were offered a roster that included the Saturday afternoon or, in this case, a Sunday, that would be the set of conditions they would agree to when they took their job. When the Queensland legislation went through, it allowed current employees in a retail shop to state whether they wanted to work on a Sunday. Therefore, it is really about giving those people who for whatever reason will not be able to work on a Sunday, the capacity to say no.

As we discussed last night, some people for a range of reasons—more than likely the majority will be family reasons—will have that restriction placed on them and it will become quite burdensome for them to have to work a Sunday roster in a shop. What we are trying to do is enable, albeit by regulation, some sort of protection for those people so that they can genuinely make that decision and be afforded the appropriate protection under the law. We have clauses in various enterprise bargaining agreements or the old shop and warehouse award—I forget the current name of it but I know it has been updated; I cannot recall what it is called now because I have not had to use it—that will have similar provisions. Although arrangements are in place through EBAs and awards and quite often companies will have statements or various practices, sometimes we will find that on the shop floor certain types of pressure will be exerted on workers whom a manager might want to work on a Sunday because they are quite often a very good employee and they want their best employees working during their peak trade. Anyway, in my experience various grades of pressure are applied, be it overt or otherwise, to persuade people to make that decision, even though it may be detrimental depending on their circumstances. All we are trying to do is to provide that additional layer of protection for shop workers so that they can freely make that choice, depending on their own circumstances, to work on a Sunday if they are a current employee. I am arguing this protection for current employees; I am not arguing this for people who would be employed after this legislation has gone through, because I know that circumstances are different. People are employed on the basis of those different circumstances and they accept that. It is just like when members came into this place, whatever the pay and conditions for a member of Parliament were at the time we commenced, that is what we accept. A new set of arrangements would be different, but all we are saying is that some sort of additional protection is needed for those existing workers. This is about trying to find a mechanism to enable that protection. I may not be on the right track with this, the minister or his adviser may have a different way of doing this and I know that advice was provided that it could not be done in the bill, but there must be a mechanism. If the Queensland and British Parliaments found that mechanism, it cannot be beyond us to enable an additional layer of protection so that people can make a genuine and well-informed decision about whether they work on a Sunday, dependent on their circumstances. It just means that people, as I talked about last night, who may have childcare issues or other commitments who find that they are in a real bind because they know their boss really wants them to work, but cannot, can have that genuine free choice.

I am interested to hear from the minister and there may be further discussion about how this could be better managed. I noted with interest that it has been picked up in other legislation. I personally do not know the extent to which it has been applied in other places, but I thought if it had been dealt with via legislation, surely that is something we could look at here in Western Australia. If we want to ensure that people come freely into the workplace on Sundays and that those who cannot are not put under undue pressure, they should be afforded that level of protection. There might be a way to do that if not in the bill, via regulation. If a general retailer wanted to trade on a Sunday and be given that capacity, there might be a special retail shop certificate or something that they have to get that means they will comply with giving people the freedom of choice to work on a Sunday. That is the general gist of where I am trying to go with this. It is simply about providing that additional tier of protection so that people can genuinely say yes or no without fear of retribution if they do not comply with what their boss asks.

Hon SIMON O'BRIEN: I understand what the honourable member seeks to do and she has explained that. I respect that and admire her motivations. As I already indicated, I do not necessarily share her fears. I think in practice what will generally manifest is that not all people will be required—most general retail operations will not need a full staff complement—to work on a Sunday and because it will cost more to employ people, shops will tend to run with only essential staff. It will be as it is with the nine o'clock weeknight trading. Members

might notice that there are no more staff around in the supermarkets; there might be a few people restocking shelves and maybe someone to keep just one checkout open. That is the sort of thing that seems to happen.

Hon Kate Doust: I think you'll find Sundays will be different.

Hon SIMON O'BRIEN: Indeed, Sundays will be different. I predict that Sundays will be very busy for turnover. Nonetheless, I think that the member will find that the focus will be on making the staff presence as efficient as possible, having regard for extra remuneration requirements and the like.

However, be that as it may, it does not mean that we should not examine the question of protections that Hon Kate Doust referred to. There is nothing wrong with the belt and the braces, so let us just do that briefly. There was some public contemplation of this earlier in the debate, which, as the member knows, has been going on for years. What I remind members of—if they are not immediately aware of it, because I just refreshed my memory—is, basically, whether an employee can be required to work on a Sunday will depend on their specific industrial arrangements. Whether a state government enactment, particularly by regulation, can set aside the provisions of a state award, I think is very, very unlikely. I think that most of the retail employees that would be affected because it is only those in the general retail sector and generally we are talking about the large shops—Myer, Harvey Norman, Coles, Woolworths, Target and so on—would generally all be covered under federal awards and enterprise agreements. Therefore, any legislating that we do here would not apply in that federal jurisdiction.

Hon Kate Doust: But, minister, we are about to pass a bill that would enable those same companies to operate in a different scheme of hours.

Hon SIMON O'BRIEN: That is very true, but in the case in point it is an industrial relations matter, not a trading hours regulation matter. Sure, they touch upon each other, but this bill amends an act that is about the regulation of trading hours; it is not an industrial relations debate. I do not think that we should seek to apply that here, and that is something I have been consistent about in considering other matters, such as occupational health and safety, and whether they belong in standalone acts or as part of an industrial relations scheme.

There are a heck of a lot of different circumstances out there and I do not think it is practical to try to canvass them all now because an employer's specific industrial arrangements will vary. I understand that Coles and BILLO have an enterprise agreement whereby their existing employees would have to consent to working ordinary hours on a Sunday before they can be rostered for ordinary hours. Members either understand what "ordinary hours" means in a rostering sense or they do not. Let us say, for the sake of argument, that we were able to entertain the sort of proposal that is before us, just to come back to the matter before the Chair. Hon Kate Doust proposes to insert the words "the retail shop meets such other conditions that are prescribed in relation to a special retail shop." Nothing else; just other conditions that may be prescribed —

Hon Kate Doust: Which could vary.

Hon SIMON O'BRIEN: It could be about anything; it does not say anything about whether people can be required to work on a Sunday. Again, I think that is a weakness, if that is what we are trying to apply. I say that as part of a legitimate critique, I am not saying it critically, but I think it is a weakness to legislate at this eleventh hour. I put it to the member: let us say that this provision, if included, was used to prescribe matters about whether employees could or could not be obliged to work on a Sunday. Would the member really want some future minister—they may not all be kind, benevolent and warm like me!—to have the power to just prescribe whether people work on a Sunday in certain circumstances? Because that is what it would be.

Hon Kate Doust: My preference would probably be to have something in the actual legislation, but the advice I've received is that it is too complicated to actually put it into the bill. That's why you'd look at doing something via regulation. That's the only reason.

Hon SIMON O'BRIEN: I am sure the observation I have just made would give the member pause to think, "Hang on, perhaps the amendment currently before us, despite all the intentions that are recognised, is maybe not the way to go". Furthermore, it applies to section 10(4) of the act, which deals with special retail shops. I therefore do not think this would give any comfort at all to the people we have been arguing about for the last half hour or so—that is, those who are employed in a general retail store. General retail stores will soon be able to open on Sundays, if they are not already allowed to do so; whereas, by definition, special retail shops for emergency, convenience or recreational goods are already able to open from 6.00 am to 11.30 pm on every day of the year including Christmas Day and Sundays, so I guess this is not the right place for this amendment to go.

I think perhaps we need to draw this discussion to a close; I am speaking respectfully in addressing the member and acknowledging what she is trying to do, but I think she can see that this is not the way we should do it. The proposal that the words to be inserted be inserted cannot be sustained, and I suggest we vote against it, even

though members may wish to apply themselves in future to considering other ways by which they might achieve the same end.

Hon KATE DOUST: I thank the minister for managing that in the way he did. He is right; it is slightly confusing, and I suppose it comes back to the discussion we had last night about the need in the future to reconsider the current categories of shops. This is a very complex issue, but the minister is probably right that, given the way this amendment reads, this is probably not the best place to put it. I know exactly the type of shop we are dealing with now and I know the type of special retail shop to which the minister referred. As it was explained to me, in establishing a regulation to deal with this category, we would essentially be saying to a general retailer, "If you want to operate on a Sunday, we'll create this classification of a special retail shop. To be able to obtain this classification you have to agree to the regulations that stipulate that your workers would have the right to say yes or no to working on Sundays. If you agree to that, yes, you'll get the certificate for that special retail shop and be able to trade between 11.00 am and 5.00 pm on a Sunday."

Hon Simon O'Brien: Yes, and that would just introduce a whole lot of complexity.

Hon KATE DOUST: Yes, that is right, but it is worth flagging that there needs to be something done so that people can be afforded that choice. Maybe this is not necessarily the correct vehicle, but I still believe that this is going to be an issue for people working in the industry and I think it is going to be a significant issue for the vast bulk of women working in the industry who have families. I know also that there are a lot of single fathers working in the industry, and it would be a difficult call for those types of workers to be put in a position of having to work on a Sunday. Although the minister says it probably will not happen, I can say from my experience of working in the industry that it does.

Hon Simon O'Brien: I will just acknowledge that whatever rules or laws we pass here, there will always be some isolated and very poor managers who will violate others' rights; it doesn't matter how much we legislate.

Hon KATE DOUST: I know, and I thank the minister for saying that, but all we are trying to do here is have the government acknowledge that, in some way, there could be an additional layer of protection so that people can make a genuine choice. I think we should put this to the vote now.

Hon LYNN MacLAREN: Noting the time, I will be brief with my comments, but I just want to respond to the amendment moved by Hon Kate Doust. She has been very courageous and creative in trying to address a very serious lack of protection in this bill. A very serious omission from the Retail Trading Hours Amendment Bill 2012 was the protection for workers to be able to choose not to work on a Sunday. Hon Kate Doust put forward this suggestion, and I must say that I cannot support it because I do not think it is the best way to deliver that protection, and she was honest in acknowledging that it may not be the best way to go forward. However, I feel that the minister had a responsibility to include that protection in this bill. This bill should have had a consequential amendment to other legislation that deals with an employee's right to choose not to work on a particular day. That indicates to me that the minister has not done his homework and has not delivered to us legislation that we can support, knowing that no-one will lose out on a job if they choose not to work on a Sunday. Yet again, we have piecemeal legislation to amend our retail trading hours legislation, which will deliver us another problem of trying to protect those workers who choose to not work on a Sunday from being unfairly dismissed. Unfortunately, this bill will go through in its current imperfect form. I think we had an opportunity to push that protection in this bill, so I do not accept the minister's response to Hon Kate Doust that it was not appropriate to put it in this bill. The Greens (WA) do not support that amendment as it stands, but we do support the intent to protect workers to enable them to choose not to work on a Sunday.

New clause put and negatived.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.