

RETAIL TRADING — OPERATING EXPENSES

**165. Hon PHIL EDMAN to the Minister for Commerce:**

Are there protections for retail tenants in shopping centres against being charged for operating expenses outside of standard trading hours?

**Hon SIMON O'BRIEN replied:**

I am glad this question has been raised because it is extraordinarily providential. The perspicacity of this member is growing in leaps and bounds and I compliment him on his foresight.

It was only today that a motion was debated in which—towards the end of the debate when there was not an opportunity to clarify the matter—it was raised in this house that retail tenants in shopping centres will be at a parlous disadvantage because in the future they will have no discretion as to when they open, and that they will have to meet the outgoings of the shopping centre even if they do not want to open and do not open. The question asked by Hon Phil Edman gives me a chance to address this question, because that premise, in fact, is completely wrong—completely wrong. It makes me wonder how much else of this and the related debate is being fuelled by false assertions, but when they are raised in the Parliament there is a need to correct them.

The fact of the matter is that the Commercial Tenancy (Retail Shops) Agreements Act specifically provides that a provision in a retail shop lease that requires a tenant to open at any particular hour is void. Furthermore, there are other protections in the same act. That act sets out standard trading hours and defines them for the purposes of allocating operating expenses—also known as outgoings or variable outgoings. They are 8.00 am to 6.00 pm on Monday, Tuesday, Wednesday and Friday; 8.00 am to 9.00 pm on Thursday; and 8.00 am to 5.00 pm on Saturday. They are the standard trading hours. If a retailer opens within those hours, then obviously they can be required to pay the centre's outgoings, and if they choose not to open during those hours, they can be required to pay the centre's outgoings. But if—this is the proposition—a retailer chooses not to open outside of those standard hours, a number of provisions apply. Firstly, they cannot be required to contribute to the operating expenses of the centre if they do not open outside of those standard trading hours. I want to make that absolutely clear, because this is a misconception that has been repeated again and again and I want to nip it in the bud now. Obviously, if they do open, a calculation of expenses based only on their lettable floor area can be applied, and rightly so. I thank the honourable member for the opportunity to correct the misunderstanding that was exhibited by someone involved in a debate earlier today.

**The PRESIDENT:** I was listening to hear what “perspicacity” meant.