

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL 2011

Second Reading

Resumed from 13 April.

MR F.M. LOGAN (Cockburn) [11.13 am]: I have only seven minutes left. The Minister for Housing has just stepped out of the house for two seconds; nevertheless I will put on *Hansard* the Labor Party's view on the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011. I had reached the point about lease registers. An amendment on the notice paper to insert new clause 21A, which will insert Part IIB into the Commercial Tenancy (Retail Shops) Agreements Act 1985, would require the landlord to maintain a register of leases in that particular operation. In this proposal access to the lease register would be available to only the tenant, prospective tenants and valuers appointed by tenants or prospective tenants.

This is a fairly conservative approach to the registration of leases and the provision of rental information to tenants and prospective tenants of a shopping centre, particularly so that tenants can compare the information about leasing of space in one shopping centre with another. A market is all about being able to compare, do research and then make an informed decision. Unfortunately, the Commercial Tenancy (Retail Shops) Agreements Amendment Bill does not allow that to occur. Not including this amendment to the act in the bill is heinous because this provision was agreed to by the Premier and the Leader of the Opposition as part of the arrangement for Labor to support the change to retail trading hours. This provision for the register of leases to be made available to tenants, prospective tenants and valuers at shopping centres was part of the agreement. In fact, the provision was also part of an earlier bill that I brought into this house for the protection and furthering of small business interests. However, the provision is not in this bill.

It is not as though the body that represents the landlords of shopping centres, the Shopping Centre Council of Australia, has got to the minister or the government and forced them to oppose this provision and drop it. This letter in my hand from the Shopping Centre Council of Australia dated 6 October 2010 is a submission to the Department of Commerce on these provisions. Copies of this letter were sent to the member for Joondalup and me. The letter makes it very clear that the Shopping Centre Council of Australia agrees with this provision. The council does not agree with Labor's original proposition to have an independent register that could be, for example, maintained by Landgate and made available generally to the public or valuers. The council does not agree with that approach. The letter cites the experience in Victoria and says that that independent lease register was not effectively used and the Victorian government is thinking of dropping it, so why would the government introduce it here in Western Australia? On this side of government we do not necessarily agree with the Shopping Centre Council of Australia on that issue, but the amendments we put are in line with the Shopping Centre Council of Australia's thoughts on the requirement for shopping centres to maintain lease registers in the terms set out in the letter to me and the member for Joondalup. Those terms are reflected in the amendments on the notice paper sought by the member for Joondalup. Some basic elements to be included in the lease register are —

- (a) the address of the retail shop;
- (b) the parties to the retail shop lease;
- (c) the lettable area of the retail shop;
- (d) the rental value of the retail shop on a cost per metre basis, or details of how the rental for the retail shop lease is determined;
- (e) any rent free periods or any other form of incentive;
- (f) the basis on which outgoings for the retail shop lease are determined;
- (g) any other information prescribed by the regulations.

That information will be available to the existing tenant or prospective tenant of a shop, or a valuer appointed by a tenant or prospective tenant. It is a fairly minor and conservative introduction of market information in the industry to place a requirement on a shopping centre owner to hold that information—they already have that information anyway—by way of a register and make that information available to tenants, prospective tenants and valuers. Should a prospective tenant take up a lease, at least they can compare the outgoings in one shopping centre with the outgoings in another shopping centre as a result of accessing that information. It is a very, very good business practice to introduce. Why the government would not agree to such a minor amendment to the bill is beyond me, particularly as the Premier had originally agreed to it. I do not think we have had any explanation from the minister for why this provision has not been agreed to —

Mr W.J. Johnston: It's a scandal.

Mr Fran Logan; Mr Vincent Catania; Mr Bill Johnston; Ms Lisa Baker; Mrs Liza Harvey; Mr Troy Buswell

Mr F.M. LOGAN: It is a scandal, as the member for Cannington said. We have had no information from the minister about why this provision was dropped. It is not because the shopping centre owners oppose it; it is the reverse. They do not oppose it. Therefore, what reason does the government have to drop that provision of a lease register from the agreement we had with it? I am waiting to hear that information.

MR V.A. CATANIA (North West) [11.21 am]: I rise to echo some of the sentiments that members of the opposition have expressed. They raised some of the issues that are of concern in the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011. As we know, small businesses are a huge part of the Western Australian economy. Something like one in three people work in a small business. It is quite amazing and concerning, as the member for Rockingham pointed out to the house, that 70 per cent of small businesses fail. I think that is alarming and needs to be addressed. We could ask why a high number of small businesses fail.

The second reading speech of the minister responsible for this bill in this place stated that a review was conducted in 2003. I am surprised that some of its recommendations were not adhered to years ago when this piece of legislation perhaps should have been dealt with. I am disappointed that some of these recommendations have not come to life. As the member for Cockburn pointed out, one of the recommendations of the review committee was the creation of a public lease register. The government pursued the policy development of this matter in consultation with the retail sector; however, the lease register provisions were not included in the bill.

The member for Joondalup and the member for Cockburn highlighted the need for a public register. The second reading speech referred to this issue, and reads —

For the purpose of determining market rent for premises, the bill amends the act to require landlords and tenants to supply valuers with relevant leasing information about retail shops in the same building or retail shopping centre. This will promote more accurate and consistent market rent reviews.

Who employs valuers, and in what capacity, in the shopping centres and strip shops on our major arterial roads or high streets? Does the small business proprietor employ them? We all know that the answer is no. Do the corporate commercial landlords and their banks or bankers employ these valuers? I encourage members to try to find a valuer to act for a tenant, either an existing or prospective one, and also find out what it would cost. They will quickly find that the valuers tend to do the bidding for those who employ them first, if not all the time. If we do a little more research, we will find that many valuers are full-time employees of the corporate landlords, and certainly not independent in the normal sense of that term. If tenants want to find a valuer, they often find a valuer who has retired to do the work because they will find it very difficult to access a valuer who is employed by the larger landlords or has some business with them. Retired valuers pretty much have nothing to gain or lose by independently looking at the value of a business for the purposes of leasing.

The member for Cockburn is right in saying that a public register is needed. The Department of Regional Development and Lands would probably be best suited to set up this public register to ensure that tenants get an independent valuation. If we want small businesses to grow, small businesses need to have access to that information before they enter into a lease negotiation. How much do people pay per square metre in a shopping centre? As I said on Tuesday night, it is often the case that when the anchor tenant in a shopping centre is a multinational, it has a fixed rate. For argument's sake, their value could be set at \$200 a square metre. When the small business owner goes into the shopping centre to set up a food stall or a small boutique, they can pay up to \$70 000 a square metre. There is a huge discrepancy in these shopping centres. That needs to be highlighted to ensure that when people are making initial inquiries or entering into a lease or renegotiating a lease, they have the evidence to back up the reasons why they should be paying the true market value. These anchor tenants are in these shopping centres. The cream for these landlords—the people who own these shopping centres—are the small business owners. There is a churn and burn mentality, which creates a financial reward when it comes to turning over small businesses in the shopping centre.

This Parliament has the perfect opportunity to create a balance and ensure that small businesses are protected and given every opportunity to take it up to these landlords in a sense of fairness to ensure that there is an open playing field so we can hopefully reduce the rate of small business bankruptcies from 70 per cent to 30 per cent. I think that would be ideal. Members opposite have been talking about it and there are amendments on the notice paper, but I think we need to go further. Perhaps the other place can look at ways in which we can ensure that this legislation supports small business and ensures that there is a public register. The member for Cockburn said there was agreement between the Labor Party and the Liberal Party. This agreement has come about through the deregulation of trading hours. I do not agree with that but at least the opposition is trying to ensure that a public register is set up. If there was agreement, that is what should occur. I would like this legislation to have been brought forward and passed prior to any deregulation of trading hours. The Liberal Party and the Labor Party have got this backwards. We should have debated this bill first to ensure that we have protections in place for small business. If the member for Joondalup's amendments are successful, perhaps another amendment should be moved to delete proposed new section 20, "Confidentiality of information gained under section 19". In order

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to strengthen the legislation and to ensure that this information is on a register that would create a level playing field we should disallow the member for Joondalup's proposed section 20 relating to proposed section 19. That would ensure fairness and a level playing field for small business in this bill. It would give every opportunity to small business to reduce the 70 per cent failure rate to a more palatable rate, given that small business is the backbone of our economy. We talk about the mining industry as the backbone, but if we did not have a strong small business economy, we would be experiencing a tougher economy now than we have perhaps experienced in the past.

As I said, I hope the members of the other place will read *Hansard* and consider in more depth an amendment to include a public register in the bill. That is the whole intent of the outcome we are trying to achieve in this legislation but the bill does not do that at present.

MR W.J. JOHNSTON (Cannington) [11.30 am]: I rise to make some remarks on the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011. I make the point that if we are trying to encourage the free market, the ultimate free market is the share market. It is always said that the share market is the ultimate expression of capitalism. One of the issues about the share market is the obligation to provide information and to transact business in public. There is in fact a strict obligation on companies that are listed on the Australian Stock Exchange to continually disclose issues that affect them. Every time a share is bought or sold, it is made public. All the information relating to the quantity and value of a share is publicly available. Negotiations relating to retail tenancies, however, are conducted behind closed doors and the information is not made public. A market is not free if there is no free information. When we look at the commercial tenancy amendment bill we are debating today, we can see that it is a baby step forward, but it does not go far enough. Not only does it not meet the test of the trading hours agreement entered into between the government and the opposition, but also it does not go as far as it should.

I note the amendments on the notice paper in the name of the member for Joondalup. If supported by this house and by the other house, they would clearly improve the bill. Although they would not result in public information on market rents for retail businesses in this state, at least there would be an increased opportunity for businesses to know what is happening in regard to rents. Just as every share traded on the share market is not equal, every square metre of a shopping centre is not equal. It is therefore natural that there will be a variation in rents in a shopping centre. However, if businesses knew more about the rents being charged in shopping centres, they would be in a much better position to negotiate with their landlords. A start-up business would have the ability to shop around between shopping centres and an established business renewing a lease would know what was actually happening in the market.

It was interesting to hear the comment from the member for North West about valuers. He, as a member of the Labor Party, was elected to this chamber after having been preselected by the Labor Party to contest the seat of the North West and after having defeated a National Party candidate to keep the National Party out of that seat. I, too, believe there needs to be a proper understanding of the concept of a conflict of interest.

I will compare the behaviour of some valuers with the behaviour of lawyers. The member for Armadale will be very excited at any discussion on lawyers in this chamber! If a lawyer gives advice to somebody and subsequently another party talks to them about the same issue, they will exclude themselves from involvement with that other party. They will not represent the second party, even though no action or litigation has taken place. If they have simply provided advice or an opinion to a client, they will exclude themselves from any further involvement in that matter except for advising the person who sought their advice in the first place.

Dr A.D. Buti: A very honourable profession!

Mr W.J. JOHNSTON: Indeed, as the member says, a very honourable profession.

It is interesting then to compare the behaviour of some valuers. We know that one of the key elements of the scandal involving finance brokers back in the 1990s related to valuers who provided dodgy valuations to support borrowings. They were actually in cahoots with the vendors of properties and the people seeking finance to provide false valuations for those properties. All these matters have been canvassed quite extensively. Inquiries have been conducted into these matters and court cases have arisen out of them. I am not making allegations; I am just drawing the chamber's attention to the outcomes of those inquiries. That is what occurred. There is therefore a history of malfeasance by some property valuers that must be borne in mind when examining the power relationship between small businesses and large shopping centres. Small businesses need assurance that valuers are in fact representing their interests, and not the interests of the shopping centre owners.

In discussions with small business owners in my electorate who have run into trouble, I have asked why they made the decisions they made. It is clear that the investment by a small business of between \$200 000 and \$350 000—which for me is a lot of money—is not a large sum in the great scheme of things compared with the investments of shopping centre owners such as Stockland, Westfield and others. It is clear that the owners of

large shopping centres can afford to pay for a detailed market analysis and extensive advice before they make a decision. Often, though, people entering a small business do not avail themselves of the same level of advice; one reason for that is the cost. Someone spending \$300 000 setting up a small business will baulk at spending \$20 000 or \$30 000 on detailed advice. That is tragic, because often people end up in a business that is unlikely to succeed. Often large shopping centres will demand a director's guarantee so that a person's house is on the line regardless of what happens to the business or to their savings. They might have been working as an employee in another business, built up a lifetime of savings and have equity in their own home. All these things are lost if their business goes broke. It is not just the business that is lost; it is all these other things. Clearly, the major shopping centre operators are protecting themselves, as we expect they would, because they are in a commercial operation and are trying to make money. But it does leave small operators exposed. Therefore, the more information, the more open and the more free the market is in this state for retail tenancies, the better it will be for all business in this state. Do not get me wrong; it is essential that shopping centre owners make money. They need a proper rate of return, particularly because in a modern environment in modern Australia most shareholdings in the trusts that own the physical assets of large shopping centres are often the superannuation funds of ordinary working people in this country.

This is not an argument against these large businesses making money; they should. They are essential to Australia's economic future. The question is about balance, in the same that way we have industrial relations law in Australia under the Fair Work Act. That act requires a balance in industrial relationships, and that is very important for all of us—small business operators and large business operators and their employees. It is also important that we have fairness between shopping centre proprietors and small businesses.

It is interesting to note that large shopping centres are often the most expensive real estate in Perth. They often charge a higher rate per square metre than those of large, five-star office buildings in the city. Believe it or not, it is often the case that the smaller the footprint of the shop in a shopping centre, the higher the rental. Therefore, we have an extraordinary situation in which the owners of the little kiosk that we walk past to get to Myer probably pay rent at a rate several times higher than that of Myer. In some ways I can understand that, because the large business has a large advertising budget and it will always draw customers. However, when small business operators are considering renting such spaces, they should have information available to them so that they can judge whether the obligations they are being asked to sign up to are fair and reasonable.

In a free market, free information is very critical. We cannot have a genuinely free market if information is being hidden. If we look at the former Workplace Agreements Act 1993, one of the more pernicious issues was the fact that agreements were made in secret and that people in the employment market were unable to make a decision about whether the deal they were being offered was a good or bad deal, because they had no information. It is the same situation for small business operators; they need to be able to access information if they are going to make proper decisions about whether to invest or not.

Small business is very important to this state; it is where most people in Western Australia are employed. There is no doubt that Western Australia is a resources state and that without the resources industry, we would not be one of the richest places in the world, but it is the small businesses that share that wealth out amongst the community. The Premier recently mentioned that 76 000 people are employed in the resources sector in this state; that is actually a very small number of people in comparison with the quarter of a million people employed in the small business sector.

It is interesting to ask: what is a small business? That is a question that we all have to keep in mind, but when I talk about small business, I mean the mum and dad businesses in which the owner is involved in the day-to-day operation of the business—the mums and dads who are there every day. It is not just their investment money at stake, it is their whole life at stake. Small business operators have the least ability to be represented and to have their views put to the community because they are working at their businesses every day and do not have time to meet with organisations to ensure their voices are heard. That is why members of this chamber play such an important role—because members on both sides are always in touch with small business operators.

It is pleasing to see the government propose legislation to readjust the imbalance between the rights of landlords and the rights of small business operators. This is an important step, but it does not go far enough, which is why I commend the amendments standing on the notice paper in the name of the member for Joondalup. Quite a number of members on this side of the chamber, including the member for Joondalup, have come out of or continue to be involved with the small business sector. The member for Willagee is another such person. Indeed, members who were formerly lawyers, such as the member for Mindarie, have also been involved in the small business sector before coming to this place. The view that all members on this side of the house are ex-trade union officials, like me, is a very old-fashioned and 1950s view. We now have a very wide variety of people on this side of the chamber, and that is reflected in the fact that many members on this side have a small business background. It is also a reflection of the depth of talent on this side of the chamber. I commend the member for Joondalup for his

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work on this legislation; I know that he is constantly in touch with small business representative organisations, and that is very good.

As I say, this is not about being against shopping centre operators; it is about being in favour of an open, free market. That is supposed to be the basis of our economy, and the more information that can be provided to people operating in the market, the better the market will operate. Indeed, if we look at the report of the Economics and Industry Standing Committee into domestic gas prices in Western Australia, which was tabled only a couple of weeks ago, a number of the recommendations are for the creation of an open market in Western Australia for wholesale gas. In that regard, we can draw a straight line from wholesale gas to the issues I am raising about the operations of markets. Markets need proper regulation, because they do not function without proper regulation. Some people describe regulation as red tape; others describe it as a proper framework for the activities of the private sector to generate wealth for the state.

These are important, small steps, but they will be improved by the amendment standing in the name of the member for Joondalup. They could be improved even further if there were more public documentation, but I understand the position of the Shopping Centre Council of Australia; if this is all we can achieve, it is all we can achieve on this occasion.

I draw attention to the question of how conflicts of interest are managed by valuers; that is a very live and real issue. Quite frankly, if a valuer has provided advice to a shopping centre operator at any point, that valuer should not be involved in providing advice to small business people contemplating going into the same shopping centre or transacting business with the shopping centre operator. Just as would be the case for a lawyer, they would be subsequently conflicted for those transactions. With those words, I commend the bill and the amendment.

MS L.L. BAKER (Maylands) [11.47 am]: My contribution to this debate will be similar to all those that have gone before in that I have two major concerns on behalf of small business: one is the lease register issue, and the other is the possible duration of leases that might be common practice in the industry at the moment. In talking about the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011, I point out that I have had many conversations with small business owners in my electorate; I am sure all members, like me, have personal friends who are involved in small business. Since the global financial crisis has taken its toll over the past few years, particularly in the area of retail, I have often sat up late into the night over a glass of champagne with personal friends —

Mr A.P. O’Gorman: I thought you were a chardonnay socialist!

Ms L.L. BAKER: Not drinking champagne necessarily, but talking with friends in retail small business as they lament the situation in which they have found themselves. We talk about the two-speed economy, and I frequently say, “Things are going really well; what’s the problem?” It is very clear that there is a very big problem, particularly in the retail sector in our state, which is not catching up.

It is highly likely that people in small businesses that provide a part of the market with some sort of service have been doing it tough for some time. Certainly, my friends have told me that they have been drawing down on their savings for at least three years in order to simply pay the bills and keep their doors open. It has been a long time since they have drawn wages and have been able to spend any money to more actively build their business. It puts them in that dreadful conundrum of being so tight for dollars all the time that they cannot actually invest in the development and recovery of their business. Sure, the economic rationalists among us might say—I certainly understand the argument—that if a business is not sustainable, it will fail. However, the reality is—we have heard the same story from many of my colleagues—that these are often mum and dad small businesses and the whole family is supported by the business. My friends have been in business for more than 20 years and in the past 18 months they have said many times, “We never thought that at this age we would be in dire straits. We thought we were building a strong, sound, economic basis for raising our families and hopefully a business to hand on to the kids, even.” Sadly, it just does not seem likely that that will be the case anymore.

I tell the house these stories about my personal experience and that of my friends because they relate directly to the issue of commercial tenancy. I will refer to two instances of friends in business who are in a commercial tenancy. One is in a very big shopping centre complex. In fact, it has been mentioned many times during this debate but to preserve the confidentiality of my friends I will not go into details. When I mentioned points like the minimum five-year lease term for the lessees of these big commercial tenancies and the provisions that we have put forward in this bill to ensure that tenants are notified of when a lease or an option is due, one of my friends just laughed at me and said, “We haven’t had a lease option in our tenancy for 14 years. We’re in here on a five-year lease and then we get a call saying, ‘Okay, your lease is up. What do you want to do?’” The evidence one of my friends gave me is that when their lease, which usually goes up in line with the consumer price index or maybe by five per cent each year, was up for renewal, it had doubled.

Another friend has just moved her business, shut down shop, after having established a brand-new, very upmarket business in a highly sought after commercial tenancy in Subiaco. She refitted the store, set it all up and

employed about 15 apprentices but had to shut the whole business down and walk away from it because when the three-year lease was due for renewal, the owners quadrupled the rent—quadrupled! That is absolutely unsustainable. She said to me that they sat down and pulled their hair out. They did all the figures. They had spent a fortune fitting the store out because it is in the luxury end of the market, so it was a very expensive fit-out, and she and her partner had apprenticed a lot of people, but they had to walk away from it all. Fortunately, they were able to take a couple of the apprentices with them and they have been able to find jobs for the other apprentices in similar businesses around metropolitan Perth. Surely, this is the sort of issue that this bill should try to address; it should try to protect small businesses from this really aggressive mind-bogglingly ruthless attitude that some landlords have to tenants. I am not in la la land, I am not naive and I know that business is business, but it is simply not in the long-term interests of anyone to treat small businesses in this uncaring and completely unsustainable fashion.

Going back to one of the business owners I spoke to who said that options are just a joke and that he has not had one for years, his plea is that the minimum five-year term will not help all that much in its current form and we should try to encourage seven-year lease terms. For instance, his lease—as I said there is no option—as of December this year will have two years to run. Given that his business has been very, very tight over the past few years, how does he then turn around and basically sell a two-year lease? No-one will buy that; it is just not competitive. As we have heard from other members during this debate, that is why people simply shut the door, turn the key and walk away. I think the member for Kingsley referred to that in her grievance earlier this morning. How many times do we hear that? It is simply dreadful.

Another point that I have collected from small businesses is the need for lease transparency. Again, when I mentioned the idea of a lease register, there was a real sense of, “Oh my goodness! Is there even a possibility that we could actually have some transparency when we go out to negotiate a lease? I don’t believe that that is ever going to happen because people are too frightened to do that. Landlords are too frightened. The government’s just way too frightened to even go there.” However, other states have been doing that very successfully for a long time. What is wrong with this government that it cannot see that this is an absolutely essential part of this bill? We have a golden opportunity to provide for a lease register in this bill. I know that the government has stated that it is consulting on it. Consulting is fine, but it will not save some of the business owners in my electorate who I have spoken to. For instance, someone I know in a large commercial tenancy said that they accidentally got mailed one of the big anchor tenant’s statements. As happens in business, the person opened the envelope and put it straight in the file to be read with all the other incoming mail. They were later flicking through the mail and saw the square metre rates stated. It is absolutely jaw dropping. This person has been in business for a long time but was devastated to realise that his tiny small business was paying about \$500 a square metre whereas the big anchor tenant was paying about \$50 a square metre. I was staggered when I heard that. I thought how incredibly demoralising it must be to see that in black-and-white. I know all the good stuff about having anchor tenants in a commercial tenancy and how essential they are, but for a tiny, tiny mum and dad business that is already struggling, to see that reality in black-and-white is devastating.

The inclusion of extra protection for small business tenants by prohibiting landlords from passing on certain legal costs associated with preparing and negotiating leases is fantastic. I applaud that. I can cite an instance of a small business tenant who when negotiating a lease agreement was basically told that, yes, the lease had to be done by the landlord and, yes, they would have to pay a \$4 000 fee for it. What they actually got was a pro forma standard lease contract with their name written into it.

That service cost them \$4 000 of their operating costs. That is a dreadful abuse, again, of power on the part of landlords. I wanted to give members the actual dollar figures, because it is important that members understand what the reality is for small businesses, particularly mum and dad businesses that employ fewer than eight people. It is a huge impost.

I certainly welcome parts of this legislation. However, I cannot begin to tell members how incredibly important it is that they support the amendment that we have placed on the notice paper for the establishment of a lease register. I encourage the government to work out a way of fast-tracking the establishment of a lease register. The government should look closely at this amendment. It should not back away from it. It is too easy to say it is too hard. Does that sound familiar? The government needs to get on board and look at this amendment.

In closing, while we are on the subject of truth and honesty and transparency, I want to correct something that was said by the Minister for Transport last Thursday. The minister tried to discredit some information that I had given to the media about infrastructure in my electorate. I want to table the newspaper article that I drew my information from. I was there during the election campaign in 2008, so I am pretty aware of what the Liberal Party was claiming during that election campaign. I understand that it might be very effective to use selective information when we quote from the media. But, frankly, I would not do that. I think it is dishonest and deceitful. The minister chose to quote parts of that article. I want to quote the opening line. It says —

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Liberal candidate Ainslee Gatt has promised to double the number of parking bays at Maylands' train station if elected.

That is clearly a statement. That is Ainslee Gatt saying it. It is very clear.

Mr T.R. Buswell: That is not her saying that. That is not a quote. That is the paper saying that.

Ms L.L. BAKER: It is absolutely clear that that is what this article says—double the number of parking bays.

Mr T.R. Buswell: That is not a quote.

The ACTING SPEAKER (Mr J.M. Francis): Minister for Transport, and member for Maylands!

Ms L.L. BAKER: Mr Acting Speaker, may I lay this on the table?

The ACTING SPEAKER: I know what the member for Maylands is going to ask, and I am going to say no. The member can guess why I am going to say no. No matter how long a bow the member for Maylands wants to draw, this has absolutely nothing to do with retail tenancies.

Ms L.L. BAKER: Then I will hold it in my hand and not lay it on the table.

The ACTING SPEAKER: And I will ask you to come back to the bill before the house.

Ms L.L. BAKER: Thank you.

MRS L.M. HARVEY (Scarborough — Parliamentary Secretary) [12.03 pm]: I want to speak briefly in support of the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011. I also want to urge a note of caution on the proposed amendment that has been placed on the notice paper to establish a lease register. There has been quite a lot of conversation in the community, and certainly in this house, about the benefits that may flow to small businesses from the establishment of a lease register. But I would urge caution about legislating on the run, which is pretty much what I see this amendment to be. A consultation process is in train. I am not convinced at the moment that there will not be a flow-on negative effect on small businesses in this state should a lease register proceed. In this place we are very fond of—indeed, it is our role—introducing legislation that seeks to protect members of the community as they go about their various pursuits, and to protect society as a whole. But we need to be very, very careful about the potential unintended consequences of what we do in this house. Until the small business community has been consulted about the possible benefits or dis-benefits of a lease register, I would put to members that it is premature to include this amendment in the bill before the house. It may well be that the introduction of a lease register for small businesses will result in an indirect cost to those businesses. Someone will need to gather that information and maintain that information, and the cost of that, regardless of whether it is borne by a government agency or a shopping centre management firm, will realistically flow to tenants as part of their lease arrangements. That cost, and the impact of that cost on small business, has not been determined yet, and the willingness of small businesses to bear that cost has not been investigated yet.

Yesterday in this house we debated the impact of the retirement villages legislation on people who are in long-stay arrangements in caravan parks and retirement villages. The introduction of that legislation triggered almost a wave of panic in the industry, and a lot of people who had thought that they were secure in their park homes ended up being put in an untenable position with regard to their leases and their concept of permanency. I therefore urge members to view this amendment with caution and not engage in legislating on the run. As I have said, no cost–benefit analysis has been done for the establishment of a lease register. Small businesses have not been asked how they would feel about having their confidential lease information made available to people on request. A small business operator may have set up a particular type of retail shop in a shopping centre, and a competitor who wants to get into that same market may go to the owner of that shopping centre and say, “I want to get a lease in this shopping centre to do exactly what this business is doing, and I need to find out what the cost per square metre and what the outgoings and the arrangements are for that business.” That may well start a bidding war, and it may push the value of the lettable space in that shopping centre up, not down. Many people are saying that a lease register will bring down the costs for small retail tenants. We do not know whether that will be the case until there has been consultation, and until a cost–benefit analysis has been done of the potential impact of such a register on small businesses. Until that has been done, we will not be able to put this amendment through with confidence that it will not have a negative and adverse impact on small businesses by imposing another layer of red tape and regulation, and that it will not make life harder for the very people whom we trying to protect and empower through this legislation.

With those comments, I commend this legislation to the house, and I urge caution about the proposed amendment for the establishment of a lease register. I am pleased to support this legislation as it stands.

Mr Fran Logan; Mr Vincent Catania; Mr Bill Johnston; Ms Lisa Baker; Mrs Liza Harvey; Mr Troy Buswell

MR T.R. BUSWELL (Vasse — Minister for Transport) [12.08 pm] — in reply: I want to make some comments in closing the second reading debate on the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011.

Mr M. McGowan: I think the Acting Speaker assumed that your colleague the member for Scarborough was closing the debate. But that is fine.

The ACTING SPEAKER (Mr J.M. Francis): You have the call, minister.

Mr T.R. BUSWELL: Thank you, Mr Acting Speaker. That is an assumption that probably should be correct but is not. I have the pleasure of having the carriage of this bill through the house. The member for Scarborough was making her comments as a person with a good deal of background in small business. What those comments highlight are divergences of opinion on the issue of a lease register, and I will talk about that in a second.

Member for Maylands, I apologise for coming back into the house late. I will review the member's comments in *Hansard*. I was attending a function with representatives of the Salvation Army in relation to a homeless facility that the Salvation Army is building in East Perth, I think it is, on the corner Aberdeen Street and some other street there.

Ms L.L. Baker: With a view to funding it?

Mr T.R. BUSWELL: The state government has already publicly announced its commitment to assist, as we did with the St Bartholomew's House project in Lime Street. They are both very important. I was engaged in dealing with that matter.

Ms L.L. Baker: You are excused.

Mr T.R. BUSWELL: I liked to be there because it is an important issue, given some of the factors canvassed this morning by Anglicare. But that has nothing to do with the bill!

We are dealing with the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011. I am keen to remind the house that this is the completion of a very, very long process. As I recall, the review process that eventually generated this bill started in 2003. That just goes to show how long it takes and how difficult it often is to change legislation. I again pick up a point made by the member for Scarborough; it is relatively easy to deal with legislation, but once it is in place, it becomes very difficult to change it for a range of reasons. Bad legislation has to be dealt with by a lot of people for a lot of reasons for a long time before it can be changed. I often reflect, member for Scarborough, on the joyous passage through this house of the Hairdressers Registration (Amendment and Expiry) Bill 2010, under which we abolished the Hairdressers Registration Board. That took two years. It took four or five goes by former governments and our government to move that legislation through the house. The point I make is that it is often difficult to undo bad legislation. It is easy to make changes to legislation that make it less than optimal. We have to be very careful that we do not do so in this case.

As I said, the review started in 2003. At a subsequent stage, the former government introduced some changes to the commercial tenancy regime in Western Australia. Those changes picked up some of the recommendations of the review; some others were left out. When we came into government, we dealt with the vast majority of those recommendations. As the member for Joondalup may quickly remind me, that review process recommended a form of lease register. I think we need to be very clear; the government has not ruled out a lease register. This is a significant change in Western Australia. I acknowledge that lease registers may exist in different forms in other jurisdictions. We will continue to consult with the business and property sectors on that issue. We are not saying that, through the passage of this bill, we are ruling it out; we are just saying that we need to do some more work on it. It is certainly my view that the introduction of any lease register should be done on the back of a very thorough regulatory impact statement, so that we fully understand what we are doing. Despite everybody's best intentions, it is often the case that legislation and/or regulations are passed by this house that have unintended consequences. The entire purpose of the regulatory impact statement is to weed out or identify and cost those unintended consequences.

Mr A.P. O'Gorman: Is that underway now—the economic impact statement?

Mr T.R. BUSWELL: No, the RIS is not underway. The RIS would commence only after a formal acceptance of the model of the lease register, and that has not yet happened. We introduced the regulatory gatekeeping unit; it is a wonderfully termed area of government! Its role, within Treasury, is to keep an eye on the different regulations proposed by the government to make sure that we do not introduce things which will have unintended consequences and for which the cost of introducing them would outweigh the benefits. The member for Joondalup has raised some issues about the lease register. We will tease those out as we consider his amendment during the consideration in detail stage. I have to say that, at this stage, it is most unlikely that the government would be in a position to support that amendment. However, in doing that, we are not ruling it out; we are just saying that we have an alternative process we would like to follow. I will seek some clarification

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from the member for Joondalup as we move through. I just reread the amendment on the notice paper. It seems to me to be saying that the responsibility for the establishment and maintenance of the register sits with the common head lessor of a shopping complex. Is that right? That is how I read it. I only raise that matter today so that the member can clarify that point when the amendment comes on for debate. The member for Joondalup made some public comments on this issue in October last year. He said that a register of retail shop leases held by shopping centre management would be the equivalent of putting Dracula in charge of the blood bank. I want to make sure that the member is not referring in his amendment to shopping centre management, although I suspect he may be. That is one point we will clarify. I raise that now for the member's advice. The government previously circulated a position paper on the issue of a lease register. My understanding is that 31 submissions were received and five supported it. However, we are still working through that process.

A couple of other interesting issues with rent were raised. The member for Maylands outlined the impact on the business of friends of hers from unanticipated rent increases. I look forward to canvassing those issues with the member during the consideration in detail stage. The member raised a valid point. Such things, when unanticipated, can have a significant impact on businesses.

It is important to note that, more broadly, a number of provisions in this bill will be beneficial to tenants in particular. The bill has been designed to provide extra protection to business tenants in a range of ways. One that I am particularly pleased about is that it stops landlords from passing on to tenants legal costs that they incur. In other words, if I have to engage a lawyer —

Mr A.P. O’Gorman: I was just nodding.

Mr T.R. BUSWELL: I was just shocked! If I have to engage a lawyer to assist me, as landlord, in my negotiations with the tenant, the tenant then has to pay for it. That situation occurred with a Novacare retirement complex in my electorate. There was a dispute between residents and management and the residents were told that management would send them its bills for legal costs. We were able to sort that out with a bit of commonsense. That is a positive.

An extra protection will be provided to tenants who previously may have inadvertently forgotten or failed to exercise lease renewal options. Putting that onus of notification on landlords is another positive step. I point out these things to highlight for the record that, in our view, this is a good bill. I think all of it will be supported across the house. What we will really be debating is an exclusion. The issue of rent reviews and the provision of information to valuers to assist in that process is a positive step forward. The provisions for relocation are very important. Forced relocations are a significant issue, particularly for people in shopping centres.

I also point out for the information of the house that when I visited the Victorian Small Business Commissioner a year and a bit ago, we discussed the source of most of the complaints they received in relation to tenants and landlords. I cannot remember the exact figures, but they received roughly the same number of complaints about landlords of strip shops as they did about landlords of shopping centres, which I thought was interesting. Upon reflection, we can understand why for a range of reasons. They were different sorts of complaints.

Mr J.E. McGrath: Strip shops?

Mr T.R. BUSWELL: Let me rephrase that; shops on shopping strips!

Mr A.P. O’Gorman: Choose your words carefully!

Mr T.R. BUSWELL: The reason I was comfortable using those words was that I had no idea that they would have any other meaning, member for South Perth. The member may wish to enlighten the house.

Mr A.P. O’Gorman: Just call them street-frontage shops.

Mr T.R. BUSWELL: Street frontage, yes; strip shops.

Mr M.W. Sutherland: Strip shopping.

Mr A.P. O’Gorman: You are getting the member for Mount Lawley all excited.

Mr T.R. BUSWELL: I always get excited when the member for Mount Lawley bursts into action. I will move on because, where he comes from, this could have an entirely different meaning again—I mean Mt Lawley!

Provisions in the bill prohibiting misleading and deceptive conduct are, again, positive. The members for Armadale and Cockburn raised valid arguments and, as I recollect, the member for Cockburn had a great pile of paper that was, I think, a single lease document. Those documents are confusing. Information is important; and information that can be comprehended and understood is very important. Therefore, those disclosure provisions will, I think, be well regarded and accepted by tenants.

Mr Fran Logan; Mr Vincent Catania; Mr Bill Johnston; Ms Lisa Baker; Mrs Liza Harvey; Mr Troy Buswell

I thank all members for their contribution to the debate, and I look forward to teasing out some of the contentious and non-contentious issues as we move through consideration in detail. This bill is an important step forward in finishing a process that started back in 2003.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.