

SMALL BUSINESSES — SHOPPING CENTRE LEASE ARRANGEMENTS

Grievance

MS A.R. MITCHELL (Kingsley) [9.25 am]: My grievance is to the Parliamentary Secretary to the Minister for Small Business. I spoke about some of these issues earlier in the week, but I want to take this time to go into more detail. As I said on Tuesday night, in my area there are a number of small businesses that are family-owned and run by one or two people. These businesses are not parts of chains or franchises; they are genuine small businesses. The businesses are wonderful and the owners are super people who make great contributions to the community, they care about their customers, they look after their products and they know their products well.

This is not true of all locations, but at different times different owners from one particular shopping centre have made comments to me. The owners made these comments very reluctantly because they felt that this was something that they needed to deal with, and they were not sure whether they were putting themselves at greater risk by bringing it up. They occasionally get together at management meetings to compare notes and see what is going on, but those meetings are not conducted in a very open way. I brought the owners together for a meeting and I was surprised at what came out and the concerns they had. I felt that some of these issues needed to be raised separately. As I said, not all shopping centres will be in this situation, but I guess when we walk around shopping centres, it is not unusual to see shops turned over very quickly and vacated. I suspect that this situation is endemic at least around the metropolitan area.

I will give the parliamentary secretary a couple of examples of the issues that I am concerned about. For example, back in April 2010, the small business owners received a very large increase in their water bill and that was because, obviously, the shopping centre management received a very large increase in its water bill. When the shop owners requested an explanation from management on the increase in the water bill, it took a very long time for an explanation to be given. It took an even longer time for an investigation to take place into why this increase in water charges had been received. It was worked out that the problem was with the management part of the shopping centre, not with the small businesses. Now, in April 2011, even though it has been acknowledged that the problem is not with the business owners and therefore it should not have been spread out, the small businesses have not received that money back. The owners know that they will have another water bill coming very soon. I referred to that matter the other night.

Also, owners are being told that they will have to pay for additional security and electricity for late-night trading. These are stores that have chosen not to open past a certain time. I am often in the centre at six o'clock at night, which is the time that the owners have chosen to stay open until. The small business owners are being charged and told that they have to pay, because their contract is in line with the anchor tenant contracts signed previously when the extended retail trading hours were not in place. This causes the owners to be fearful about whether their contracts are null and void or what they should be doing. Are the small businesses operating outside their contracts because they signed pre-extended trading hours legislation? The small business owners are really not sure how to deal with this or where to go, and they are concerned about signing new leases and where they stand and whether they are in breach of their lease.

The other matter that came up over the last couple of nights is the renewal of leases. I know that we are debating the relevant legislation at this time, but the fear factor these people have is about how they are going to renew their leases. The message I get is that tenants just sign the lease and walk away later. The way it is being done puts them under pressure. I have heard words like "bully"—people say that the process is not a negotiation; it is just straight bullying. They are told that the landlords do not care; they do not care that the tenants have their houses mortgaged against their shop. Believe me, these business owners care a lot. I have not been to Whitford City Shopping Centre lately, but I hear that tenants just sign the leases and walk away, because it is easier than trying to deal with people in a process that they are not familiar with. This issue is endemic and we need to have a very good look at it. I am aware that the legislation about the role of the Small Business Commissioner is going through Parliament. I believe that once we can get that role into action, it will be great. In the meantime, people are really struggling.

One business owner took this issue about leases to the State Administrative Tribunal. It took two years; he received notification at five o'clock last Friday afternoon. The small business owner had to deal with the situation for two years while it went through SAT. That sort of pressure on business owners does not help a business run well. This is not the way to treat our small businesses. They are valuable to our community. I mentioned that the other night and I mention it again today. Small business owners are very good people. They try very hard, they work very hard and they want to be successful. They are not necessarily out to make millions of dollars, but they want to be successful and provide a good service. They understand what it is to be part of a community. I ask the parliamentary secretary some specific questions. How do we ensure that these small businesses receive the accurate information that they need to negotiate with the management companies? We as

government need to make sure that we get that information out in a better way so that it is available to business owners.

Mr A.P. O’Gorman interjected.

Ms A.R. MITCHELL: I am sorry; I will not take an interjection from the member for Joondalup.

How can we provide support for businesses in their operations if we believe that they need it? What must we do to ensure that small businesses remain a viable and dynamic part of our business community?

MRS L.M. HARVEY (Scarborough — Parliamentary Secretary) [9.32 am]: I thank the member for Kingsley for bringing these issues to the Parliament, for her obvious concern for small businesses in her electorate and for the proactive approach that she takes in trying to resolve some of the issues. I am pleased to say that there are steps that can be taken immediately to assist these small businesses and small business operators. There are also some significant remedies, which the member has alluded to, coming on stream in the near future.

First, I encourage the small business retailers mentioned in the member’s grievance to contact the Small Business Development Corporation. The SBDC is an independent statutory authority that advocates on behalf of small business. Included in its wide range of services is a specialist commercial tenancies team. That advisory service is free and confidential, and is available to both tenants and landlords. Those advisers are trained in all the aspects of the Commercial Tenancy (Retail Shops) Agreements Act. The member mentioned the Small Business Commissioner. The Small Business Commissioner will be introduced to interrupt processes such as the one that the business operator that the member spoke of is currently engaged in, in which they have been waiting for two years to have their case resolved by the State Administrative Tribunal. We hope that when the Small Business Commissioner comes online, these disputes will be resolved through the mediation service that the commissioner will provide. The commissioner will also be able to provide hands-on assistance, information and guidance on retail tenancy legislation. Further down the track we would like to see the education role of the commissioner expanded to help better inform small business operators of their rights prior to starting their businesses and signing these leases that sometimes ultimately put them in an awkward position. I advise the small business operators the member mentioned in her grievance to contact the SBDC on its 131 BIZ line—131 249—and to seek assistance from the commercial tenancy advisory team. The team will be able to better inform business owners of their rights and protections under the existing commercial tenancy legislation. When the amendment to the Commercial Tenancy (Retail Shops) Agreements Act goes through, there will be stronger protections to protect small business tenants in these disputes with landlords.

This issue with the water bill is particularly interesting. In April 2010, the member mentioned that the water bill far exceeded normal usage and was wrongly apportioned to tenants and procedures have been put in place to try to recover that money. I understand that the large water bill was the result of a leaking water pipe, which is usually the responsibility of the landlord, and that those excess water charges were incorrectly recovered from tenants. Those tenants can make an application to SAT to recover that money. If there is any doubt about which operating expenses are recoverable from tenants under the Commercial Tenancy (Retail Shops) Agreements Act, SAT can make a determination on that.

In relation to tenants being charged for additional security and electricity, even when they have chosen not to open for extended trading hours, again, immediate steps can be taken to remedy this situation. Under section 12(1)(c) of the Commercial Tenancy (Retail Shops) Agreements Act, a landlord cannot recover operating expenses from a small business tenant incurred outside standard trading hours if the tenant’s retail shop was not open during the extended trading hours. Standard operating hours under the act are 8.00 am to 6.00 pm Monday, Tuesday, Wednesday and Friday; 8.00 am to 9.00 pm on Thursday; and 8.00 am to 5.00 pm on Saturday. It is illegal under the act for a landlord to recover operating expenses from a tenant who does not trade beyond standard trading hours. If the landlord refuses to refund the payment, the tenant can apply to SAT to recover the amount. I find in these situations that quite often small retail tenants do not understand that they have protection under the existing legislation and this is perhaps due to a feeling of disempowerment in being able to take claims to the State Administrative Tribunal. Under the existing act, tenants cannot be forced to sign leases requiring them to open when the major retailer is open. This is illegal under section 12C of the Commercial Tenancy (Retail Shops) Agreements Act. Tenants can open and close their business at times of their choice, and the landlord cannot refuse to renew a lease because a tenant does not open their business as required by the landlord.

With regard to the renewal of leases, it is true that some small retailers may feel intimidated when negotiating lease agreements with larger, more commercially powerful landlords. I understand that there is an issue with SAT that has taken over two years to resolve. In determining the market rent value for a shop lease, a licensed valuer is required to consider section 11(2)(a) Commercial Tenancy (Retail Shops) Agreements Act; which states —

that market rent shall ... be taken to be the rent obtainable at the time of that review in a free and open market as if, all the relevant factors, matters or variables used in proper land valuation practice having been taken into account, that retail shop were vacant and to let on similar terms as are contained in the current retail shop lease;

It is important that small business tenants are aware of the provisions in the act that set out the process for resolving disagreements over the reviewed rent amount. Under section 11(3) of the act, further action can be taken if either party does not agree with the new rent amount. If an agreement cannot be reached between the two parties, section 11(5) of the act provides that the market rent can be determined by SAT.

I strongly encourage the tenants that the member referred to in her grievance to immediately make contact with the SBDC and to better inform themselves of their rights and of the responsibilities of their landlords under the existing act. I look forward to the Small Business Commissioner coming online. The tenants will then have the right to go to the Small Business Commissioner and hopefully have their disputes resulted in more timely manner.