

**COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS AMENDMENT BILL 2011**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Simon O'Brien (Minister for Commerce)**, read a first time.

*Second Reading*

**HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce)** [10.26 pm]: I move —

That the bill be now read a second time.

The bill I am introducing today is the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011. The purpose of the bill is to amend the commercial tenancy legislation in Western Australia to improve the tenancy rights of small business and to promote an efficient and fair retail tenancy market in Western Australia.

The retail industry in Western Australia is characterised by a mix of small and large businesses participating as landlords and tenants. This characterisation can lead to inequalities in bargaining power and information asymmetry. The commercial tenancy legislation regulates this relationship and promotes equitable leasing arrangements. The legislation currently contains a number of protections for tenants, including a requirement for landlords to disclose certain leasing information to tenants prior to entry into a lease; a minimum five-year lease term for most leases; a prohibition on landlords requiring retail shops to open during certain hours; provisions regulating rent review; and prohibitions on unconscionable conduct. These protections will continue to apply; however, a review of the legislation in 2003 identified the need for further reform in some key tenancy areas. This review involved extensive consultation with more than 90 stakeholders, including key tenant and landlord representatives. Following consultation, the review committee made 61 recommendations for reform, some requiring changes to the legislation and others to be implemented administratively.

Since the time of the review, recommendations relating to unconscionable conduct have been incorporated into the act, while other recommendations are no longer relevant, given changes in the industry and the law since the time of the review. In particular, the majority of recommendations regarding the jurisdiction and powers of the Commercial Tribunal no longer need to be implemented as a result of the establishment of the State Administrative Tribunal. The review committee recommended the creation of a public lease register. The government has engaged in preliminary consultation in relation to this matter and has identified that the views of stakeholders about the creation of a lease register vary widely. The government is committed to pursuing policy development in this matter in consultation with the retail sector; however, lease register provisions are not included in this bill. Further consultation will be undertaken to examine a number of options for improving access to lease information, including the possibility of establishing an electronic database of lease information or enhancing information for new tenants through wider access to information by land valuers. This process will include a rigorous cost-benefit analysis of any lease register proposal. The bill implements most of the remaining recommendations. I now turn to the key provisions and benefits of the bill. The bill will provide extra protection to small business tenants by prohibiting landlords from passing on to retail shop tenants certain legal costs associated with preparing and negotiating the lease. At present, many retail leases require the tenant to pay the landlord's costs in preparing and negotiating the lease. Not only does this undermine the tenant's leasing costs, but it also potentially undermines the tenant's bargaining position, as tenants may be unwilling to enter into negotiations with the landlord for fear of increasing their costs. The amendments in the bill are expected to reduce tenants' leasing costs and strengthen their bargaining power. To provide extra protection for tenants who risk losing their livelihood and substantial financial investment if they inadvertently fail to or incorrectly exercise an option to renew their lease, the bill amends the act to require landlords to provide tenants with prior notification of the expiry date of their option to renew.

Rent reviews have historically been a contentious issue for landlords and tenants, as valuers have not always had access to meaningful data on which they can base their valuation reports. For the purpose of determining market rent for premises, the bill amends the act to require landlords to supply valuers to determine rental on a market review 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.

The bill includes comprehensive provisions concerning relocation clauses that may be included in retail shop leases. In relation to retail shop leases when five years of the term have not yet elapsed, a provision allowing for relocation of a tenant will be void unless it is in the prescribed form or it is approved by the State Administrative Tribunal. If five years of the term of the lease have already elapsed, a relocation provision is also permitted if it is in accordance with requirements set out in the act.

The bill also includes specific provisions prohibiting misleading and deceptive conduct by the parties to a retail shop lease. To ensure that the State Administrative Tribunal has the power to deal with all matters arising under a retail shop lease, the tribunal will be given the power to consider and determine claims for misleading and deceptive conduct.

The review committee also made a number of recommendations for improving the disclosure statement and tenant guide documents contained in the regulations to the act. These recommendations will result in greater disclosure to tenants on key tenancy issues, including options to renew, hidden leasing costs and trade restrictions.

The proposed amendments contained in the bill have been reviewed and endorsed by the Economic and Expenditure Reform Committee in accordance with the state's regulatory gatekeeping process. Although some minor transitional and compliance costs may arise associated with changing lease documentation, it is anticipated that the benefits to the Western Australian small business retailing sector as a whole will outweigh any minor cost implications. The amendments contained in this bill will provide improved protections for tenants, while balancing the need to provide a regulatory framework that is fair to landlords. In particular, the reforms will promote a more efficient and fair retail tenancy market by reducing disputes between landlords and tenants, reducing the disparity in bargaining power that can exist between parties and enhancing the clarity and effectiveness of the legislation. Coupled with the proposed establishment of the Small Business Commissioner, these amendments will go a long way towards addressing issues faced by small business in the retail sector.

I commend the bill to the house.

Debate adjourned, pursuant to standing orders.

*House adjourned at 10.33 pm*

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