

RETAIL TRADING HOURS AMENDMENT BILL 2009

Second Reading

Resumed from 19 August.

HON LJILJANNA RAVLICH (East Metropolitan) [3.54 pm]: I support this bill. It represents significant reform by deregulating trading hours. The purpose of the bill is to amend the Retail Trading Hours Act 1987 to allow general retail shops in the metropolitan area to remain open until 9.00 pm each week day. I understand it covers a substantial area, broadly between Yanchep, the Swan Valley, Armadale and Rockingham. That area is described in schedule 3 of the Planning and Development Act 2005. Currently, under the act general retail shops are allowed to trade at any time during 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. All shops in the metropolitan area are captured by these hours unless they are motor vehicle shops or come within any of the other categories in the act—that is, special retail shops, small retail shops or filling stations, or are located within a tourism or holiday precinct. Major department stores, most chain stores and large supermarkets are all general retail shops.

Essentially, the amendments in this bill will extend weeknight trading hours for general shops. That will give metropolitan consumers more choice of where and when they shop during weekdays. I am sure that will be welcomed by many consumers, especially people who work and do not have enough time during the average working day to be able to buy the things they need. It will also provide metropolitan general retail shops with the choice to trade until 9.00 pm each weeknight, and it will preserve the ability of small retail shops to open at any time and for special retail shops to open during their existing extended hours. It will not affect the trading hours arrangement for motor vehicle shops and filling stations.

As part of the opposition's support for this legislation, we have been in discussions with the government on three key issues: a small business commissioner, a lease register and durable goods. I want to put on the public record that in June this year, negotiations commenced between the Leader of the Opposition, Hon Eric Ripper, and the Premier on an in-principle agreement for retail trading reform across the metropolitan area. The Premier and the Leader of the Opposition both sought to bring greater clarity and certainty to consumers and small business operators across the metropolitan area. It was within that sort of framework, wanting to reach an agreement, that these three key issues were put on the table for negotiation between the parties. Our support for this legislation is contingent on those three things being delivered. Essentially, we sought to negotiate a comprehensive solution to avoid frequent piecemeal and discriminatory changes. If we had continued the way things were, that is exactly what we would have had. By negotiating an arrangement that would result in a win-win for both parties through this legislation, we will achieve something that is better all round for all parties concerned. In-principle agreement was reached on the appointment of a small business commissioner. The proposal for a commissioner was originally outlined in a protection package put together by the shadow Minister for Consumer Protection, Francis Logan, MLA, and me and announced on 24 September 2009.

We wanted to put forward a position paper from the Labor Party that was about protection for small retail businesses. We saw the appointment of a small business commissioner as being absolutely critical to achieving that outcome. We know from people in the small business community that they can often be caught up in litigation, which is very costly. Many problems will be resolved quickly and efficiently by the appointment of a small business commissioner.

I want to put on the public record our understanding of the agreement that has been reached between the Premier and the Leader of the Opposition in relation to the position of small business commissioner. I understand that it will be established within the Small Business Development Corporation. It will have similar powers to the Victorian model. It will replace the position of managing director under the Small Business Development Corporation Act with that of commissioner and vest new powers and functions in that position. Consequential amendments will need to be made to the Small Business Development Corporation Act, the Commercial Tenancy (Retail Shops) Agreements Act and the State Administrative Tribunal legislation. The intention is to introduce amendments into Parliament this year for the establishment of the small business commissioner. Also, although the legislation may not have passed through Parliament by the time 9.00 pm trading is introduced, the government intends to have the main elements of the small business commissioner role operating out of the Small Business Development Corporation at this time. This will include an expansion of the Small Business Development Corporation retail tenancy advisory service and establishment of a panel of mediators prior to the appointment of the commissioner.

I know it has taken a bit of time for me to get through this. The easiest thing would be to say, "We know we've got an agreement on the establishment of a small business commissioner". But I want there to be no misunderstanding about the undertakings on the three matters that have been negotiated and are clearly part of an

agreement between the parties concerned. So, it may sound as though I am labouring a point, but I am not really; I am putting something on the table to accurately record the agreement outcomes as we understand them.

In relation to the in-principle agreement that has been reached on the shopping centre lease registers, I am advised that the current act does not provide for registration of lease details. This is the government's response: the review of the commercial tenancy act in 2003 recommended that government look at an option to establish a public lease register. A number of key stakeholders, including the Small Business Development Corporation, have expressed opposition on the basis of the cost of maintaining it and the confidentiality of commercially sensitive information. The recommended alternative is to create a shopping centre register to maintain details about premises in a particular centre, with limited access to tenants, prospective tenants or valuers appointed by the relevant parties.

The government is developing a position paper for limited consultation with relevant stakeholders. A draft copy will be provided to the opposition once completed early next week. This was the situation a week ago. We have not seen that paper, but I suspect it will not be too far away. Perhaps the minister in his response might be able to provide an update. I see a document is being handed over as we speak, which means that relations are going very well! The last undertaking is that the drafting of the amendments for a lease register could be incorporated into the Commercial Tenancy (Retail Shops) Amendment Bill 2009 and introduced before the end of the year. We would very much welcome that. Commercial tenancies are an ongoing problem. Tenancy complaints represent the vast number of complaints received by the Small Business Development Corporation. It would indeed be a major step forward to address the issue of commercial tenancy. We thank the government for its undertaking on that.

The last in-principle agreement reached was Sunday trading for durable consumable goods including whitegoods. In response to our concerns, the government has advised of the following: firstly, a paper is being developed to facilitate limited consultation on defining the term "durable goods"—which chiefly means household furnishings and whitegoods—to help comprise a definition of what goods can be sold on Sundays and the means by which this can be achieved. Secondly, the paper uses the term "durable-bulky goods" but outlines the problems with this term for an indeterminate category of goods, and identifies the various methods by which those goods may be identified in the law. This will facilitate the use of the preferred term "whitegoods and household furnishings". Thirdly, the discussion paper will have a limited release and comment period. The likely time frame for release is mid-to-late September, with a two to three-week comment period. A draft copy can be provided to the opposition. We will take that, thank you very much, Leader of the House. Fourthly, the Department of Commerce will then analyse the submissions and provide advice to the government on options for amending the act. Fifthly, drafting and introduction of an amendment is conceivable before the end of the year dependent on the complexity of the drafting required to deliver the final proposal.

Having said all of that, this is clearly a very good outcome. It is a very good response from the government. The government could have taken the approach of burying its head in the sand and not responding to the concerns of the opposition. Quite clearly, there are many other areas that we would like to see attention given to in the protection of small businesses. We think this is a good start. We have identified our key concerns and put them on the table. The government has responded to those concerns. It has given us some very clear commitments; in fact it has even wrapped a time frame around the delivery of some of those commitments. We thank the Leader of the House and the government for that.

The agreement that has been reached is a good agreement. The legislation before us will indeed provide some additional certainty in the whole issue of extended retail trading hours. Once again I put on the public record that at the same time as we extend retail trading hours, we need to take into consideration people who work in the retail industry, and recognise that they are family people. It is important that we ensure that the working conditions of families are protected. I specifically refer once again to the question of shops opening on New Year's Day and Boxing Day. The minister gave a commitment on that when we dealt with the two previous cognate bills in respect of retail trading hours, and it would be appreciated if he could also give the same undertaking in his response to the Retail Trading Hours Amendment Bill 2009. We firmly hold the view that on New Year's Day and Boxing Day shops should not open and people should have the opportunity to spend time with their families; in particular those people who work in the retail sector. Having made those comments, Labor will be supporting the bill.

HON LYNN MacLAREN (South Metropolitan) [4.09 pm]: I rise to support the Retail Trading Hours Amendment Bill 2009. I would like to make a few comments on sustainable economies, retail trading and the retail trading sector. Then I would like to talk about the evidence that we see that supports this change in trading hours, express an appreciation for the government's response to the concerns that have been raised, and talk about competition in shopping centres, which we, too, are concerned about, as Hon Ljiljana Ravlich has pointed

out. I believe that some planning system reforms are still needed, and anti-monopoly legislation needs strengthening.

I begin by reiterating that the changes that we are contemplating now will not apply outside the metropolitan area; we are just looking at extending trading hours to 9.00 pm in the metropolitan area. I will quote from the policy of the Greens (WA) on a sustainable economy, which is always available on our website if any members want to seek further details. Briefly, the Greens believe that the current single-minded focus of big business and governments on economic growth and increased resource consumption is not sustainable in our finite world. We need to shift our priorities from short-term economic growth to the building of an economy that can deliver sustainable improvements in quality of life and the health of the planet. It is in that context that I make the following remarks about the changes before us. I made similar remarks on the previous bill in relation to rampant consumerism.

The evidence we have before us is that the public supports this change. In the many briefings that we have had over many months, the government has provided survey results that indicate that there is increasing and ramping-up support for these changes. Sixty-five to 75 per cent of people who were surveyed are in favour of the extension to nine o'clock. If members want to look at more detail about how these changes have impacted on other economies in Australia, they need look no further than the South Australian experience. There was an independent review into the South Australian experience in 2003. It is worth noting that South Australia had a similar extension to nine o'clock on weeknights. The independent review concluded that a satisfactory balance was struck between the competing interests of the various sectors of the retail industry and the larger interests of the community. Although they noted that there was an impact on small business, there was reflection in the analysis that indicated that, overall, the impact struck a good balance.

As I have indicated, several researchers have looked into this issue over the time that we have been struggling with the idea of whether to extend trading hours. One of them is ACIL Tasman. We also have the report of the 2006–07 review of the Shop Trading Hours Act in South Australia. Of course, our own local Chamber of Commerce and Industry of Western Australia put out a paper in September 2007 called “Retail Trading Hours in Western Australia”, which possibly kicked off this latest attempt to change retail trading hours. I have also consulted papers compiled by the University of Western Australia and the Committee for Perth in an alliance known as FACTBase, and I will refer to some of the research that it has recently completed. In fact, its fact sheets are dated June 2010.

The executive summary of the ACIL Tasman report titled “Performance of independent supermarkets and grocers: Assessment of how Australian independent supermarkets and grocers have performed under liberalised trading hours” states —

In the campaign leading up to the 2005 trading hours referendum in Western Australia, the independent grocers body made a number of claims about the damage that trading hours liberalisation would inflict on independent supermarkets and grocery stores.

These dire predictions are not borne out by the performance of the retail sector in other States. Most indicators show that the impact of trading hours reform is overwhelmingly positive for both the retail sector and consumers. The independent supermarket and grocery sector is in robust commercial health.

Finally, the executive summary states —

The evidence is that liberalised trading hours have increased competition and created an even more vibrant and robust retail environment, with customers the principal beneficiaries.

Debate interrupted, pursuant to temporary orders.

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Sitting suspended from 4.15 to 4.30 pm