



Speech by

GARY FENLON

MEMBER FOR GREENSLOPES

Hansard 20 June 2000

RETAIL SHOP LEASES AMENDMENT BILL

Mr FENLON (Greenslopes—ALP) (2.35 p.m.): I rise to support the Retail Shop Leases Amendment Bill 2000. In doing so, I must point out first of all how this particular Bill is a very important move in the direction of providing greater conciliation and provision for the parties in this very important commercial sector to come together to find settlement to disputes on a cooperative basis. This is consistent with the flavour of amendments that we have seen flow through so many areas of Government which are the subject of disputation.

Clearly it is a far better model of Government when the parties to a dispute are encouraged to resolve the matter themselves, all with a minimum of assistance. Obviously, it is one that has been in place in its perhaps most articulated form in the industrial relations area for many years. Many other areas of Government are now seeing the value of this and certainly the value flows through to minimising the costs of Government and, I believe, at the end of the day, providing for better solutions to disputes.

This is an important area of Government to deal with in the sense that it is a very important part of commerce. Commercial arrangements between businesses are extremely significant because there are many small business failures. We know that the rate of small business failures in Australia is very high. New people entering the market stand a very high chance of being knocked out within two years. So it is important to ensure that businesses, especially small businesses which may be struggling at the edge of viability, are given a fair go on the one hand and on the other hand that the owners of the shops and businesses that are being leased are also treated fairly, because they have to factor into their operations the probability of small business failure.

It is important for the health of the business sector as a whole to ensure that good relations are maintained and that all parties involved have a reasonable chance of staying in business and optimising their business opportunities. At the end of the day, in one way or another that equates to maintaining a healthy job market. The last thing that we want in our job market is people being knocked out of business when there is no real need for it. Every effort should be made to keep people in business where possible or allow them to get back to business where possible.

I want to focus on a couple of clauses of this Bill dealing with the tribunal process, which is a very central part of this Bill, particularly the ones that insert the proposed new sections 65 and 66. Amendments have been made to the dispute resolution process with the intention of streamlining the proceedings and saving time. This is in keeping with one of the guiding principles of the Retail Shop Leases Act in ensuring speedy dispute resolution. As I said, it gets them back to business as soon as possible. The dispute resolution process will now require a directions hearing to be scheduled for every dispute referred from mediation to the chief executive. A directions hearing can often resolve a dispute without having to proceed to the next stage of a tribunal hearing. Indeed, if we can avoid these processes being bogged down, that should be the first port of call for all parties concerned. We need to get these issues dealt with and out of the way to get people back to work and back to business.

The requirement incorporates a 14-day time constraint to ensure that disputes are dealt with and resolved in as short a time frame as possible. That is what it is all about. When notice is given to the parties that a directions hearing has been scheduled, a notice will include instructions from the tribunal legal member that copies of particular documents are to be provided to the tribunal legal

member and to each other party. The requirement will be a time saver because it will enable the tribunal legal member to review all the relevant documentation in advance of the hearing and ensure that all parties are clear about the basis of the dispute. Again, this is a fairly systematic but not overformalised process in order to proceed with the resolution of a dispute.

The amendments also give the tribunal legal member in exceptional circumstances the flexibility to dispense with the need for a directions hearing and to move the dispute directly to a full tribunal hearing if the circumstances justify. One would expect that that situation would arise where there is no real probability or expectation to resolve a dispute through the more conciliatory means. Where it is exercised, the discretion will also contribute to improving the time line of the process and ensure that the resolution of the dispute is achieved in as short a period of time as possible.

Parties to the dispute will also be able to formally request that the tribunal join additional parties to the dispute. In considering a request of this nature, the tribunal will weigh up whether the additional party will be of assistance in resolving the dispute. Again, this system emphasises taking whatever means and whatever options are necessary in order to finally resolve these particular disputes. Examples of additional parties who could be joined to the dispute at the direction of the tribunal include the tenants association, the lessor's agent, a body corporate and a franchisor who holds a lease and lodges a dispute on behalf of its franchisee. In this circumstance, the franchisor may apply to have the franchisee joined to the dispute to better achieve a resolution of the dispute. In essence, this is a very important piece of legislation for the general economic wealth of Queensland. I trust that it will give real benefits by providing expedient justice for all parties. I support the Bill.
