



Speech by

Paul Hoolihan

MEMBER FOR KEPPEL

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RETAIL SHOP LEASES AMENDMENT BILL

Mr HOOLIHAN (Keppel—ALP) (2.35 pm): I am not quite sure what the member for Nanango was offering, but the one thing that she cannot offer is golden beaches. They have to go a bit further north to do that and come to my electorate of Keppel. I commend the minister for attending to some deficiencies in this area by introducing the Retail Shop Leases Amendment Bill. I would like to deal with some of the problems before those efficiencies were introduced.

One of the things that we forget, or it may be some are not aware of, is that small business is the engine room of the Queensland economy. Small businesses employ more than 50 per cent of the private sector workforce and make up more than 96 per cent of all businesses in Queensland. Maybe that is why the unemployment rate in Queensland is the lowest in 30 years. The Queensland unemployment rate is five per cent and the Australian average is 5.2 per cent. In 2004-05 Queensland created 36 per cent of all jobs nationally despite having only 19.4 per cent of the population. I think this is an indication of the efficiency of small business and the way it has developed. Business investment surged 17.9 per cent over 2004-05.

Queensland overtook New South Wales in total value of investment projects for the first time in the December quarter 2005. I can understand the member for Lockyer having some real concerns about some of those figures, but the reality is that small business is the major occupier of retail shop leases. They are the people who pay the rent. They are the people who contribute to the economy of all of our electorates. They are the backbone of Queensland's employment. We should really support those small businesses. In my own electorate small business is the major employer because we do not have any major industrial capacity.

An election commitment of the government was the growing regional business initiative. That is accelerating regional economic growth in certain regions. It incorporates investment prospectuses, growth plans and an annual report to government. The investment prospectuses and web sites for each of the six regions have been completed and the first annual report was tabled in parliament in September 2005.

One of the things about these growth plans—and this is reflected with what happens with retail shop leases—is that they build on target industry sectors and opportunities are identified through the investment prospectus stage. They provide actions to focus on stipulating regional business growth through investment and reinvestment in the target industries and identify a suite of products, services and tools to achieve this. The growth plans will not be implemented until June 2007.

One of things that I can sympathise with the member for Nanango on is the way that small business has been treated over the years in relation to retail shop leases. It was only two days ago that I spoke in the debate on the Succession Bill about my experiences in practising law. On that occasion I said that there were many solicitors in practice who would probably sweat blood in relation to wills. It is not just blood they sweat when it comes to retail shop leases.

It was a major minefield until the original Retail Shop Leases Act was introduced. This has now been refined and really is going to assist small business—those small businesses who pay the rent, who pay the outgoings, who contribute to the advertising for a shopping centre, who employ local people, who plough their own money back into our local economy and our local area. One real problem has been lessors

insisting on terms of leases which are almost unable to be met by retailers. The Retail Shop Leases Act 1994 clarified many of those problems. When that act was introduced I was acting on behalf of the small businesses in two shopping centres and about 15 per cent of another shopping centre. They were all reasonably treated because, at that stage, the owner of the shopping centre was a local. When ownership of the centre passed to big business and a company outside the local area, it then became very difficult to negotiate anything in relation to retail shop leases. It was only the introduction of the act and the refinement of the act that protected those small businesses that were endeavouring to make ends meet. In this time of economic boom—and in Queensland we do have an economic boom and I would suggest, as I indicated, that that is because of the economic policies of the Beattie Labor government—it is important that those people who do all of the work be entitled to retain more of their own income rather than pay it to large shopping centre owners.

The objective of the Retail Shop Leases Act was to promote efficiency and equity for retail businesses through mandatory minimum standards for retail shop leases and for there to be a low-cost dispute resolution process for retail tenancy disputes. One issue that will be looked at with the new amendments relates to a specialist retail valuer. The act has already introduced a tribunal to try to resolve disputes between lessors and lessees. At one juncture in time I was asked to sit on that tribunal because of my background. Although many lessors are genuine in their approach, they are being unfair to lessees by the terms that they impose on them in their lease.

The major thrust of the Retail Shop Leases Amendment Bill relates to current rent. One of the constant difficulties with determining current rent was that in leases there was a basis which always seemed to favour the lessor. These changes introduce a specialist retail valuer who will be able to assist people in agreeing to more equitable rent, although I have to say to the minister that when I look at the subclauses there are still a few small areas which need some attention. A very good friend of mine owned a business and the lessee was a major bank. There were terms in that lease which were somewhat like the current process. By the time both sides had finished, the costs well outweighed whatever increase he achieved in rental.

There are going to be five new subclauses which will ensure a more transparent and equitable process, and they will be conditions for the lessees' and lessors' submissions to a specialist retail valuer. They have been expanded to allow for some assistance in making a determination of the current market rent. They will require submissions by the lessee and the lessor in writing to the specialist retail valuer, and those submissions are made within a reasonable period as decided by the valuer. The valuer keeps control over the whole process, which is very good because it is outside the control of the lessor, who is therefore unable to impose any unreasonable conditions.

A copy of the submission must be given to the other party so that each party exchanges their submissions and therefore they know the basis for the valuation and each party can make a response to the valuer about the submission. I guess it is a similar process if one knows how an artillery gun works, which fires what is known as a short bracket. You go over, you go under, you go over, you go under and suddenly you meet somewhere in the middle and you hit the target. This is about taking an average between the lessee and the lessor so that they can reach a reasonable compromise, but it really depends on the valuer as to whether that occurs. They can make a response to the valuer about the submission and the response must be given within a reasonable period of time as decided by the valuer.

One of the additional sections will incorporate the phrase 'the terms and conditions of the lease' in the matters to be considered by the specialist retail valuer when undertaking a market rent review. Most of the current leases in my experience say that the value of the lease will be what one could get for the shop in its condition as at the time of renewal of the lease. If somebody has paid big money to revamp the shop, then the value if anyone else were to go into it could be considerably higher. But the terms and conditions of the lease may well bring that back to some reasonable arrangement. It will ensure that the specialist retail valuer considers the provisions of the retail shop lease when undertaking a market rent review and the specialist retail valuer will be required to provide a written determination and specify the issues considered when assessing the market rent.

I think that gets around the difficulties indicated by the member for Nanango when she said that some lessees did not have any say and were told that that was the amount and they either accepted it or got out. Also, the lessor and the lessee share financial responsibility for the current fee for the determination of the current market rent. This does not just mean big shopping centres but also strip shops, and even stand-alone shops can be caught by the Retail Shop Leases Act. However, more of the money that is made by the lessee, who is usually a local, will be retained in the community in which they live and can be utilised to build that community instead of being paid to major national lessors. All in all, I believe that the amendment bill does address some of the problems that have arisen for small businesses. It does address some of the problems that have been imposed on lessees over the years, and I commend the bill to the House.