




Speech By
Scott Stewart

MEMBER FOR TOWNSVILLE

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RETAIL SHOP LEASES AMENDMENT BILL

 **Mr STEWART** (Townsville—ALP) (3.46 pm): Today I rise to speak in support of the Retail Shop Leases Amendment Bill 2015. As the committee chair, firstly I thank the committee members for all their work. In particular, I mention the then honourable member for Toowoomba South and deputy chair, the Hon. Dr John McVeigh, who has now left this House. I thank the secretariat for all the work associated with this bill.

This bill provides a framework for addressing the imbalance in negotiating power and access to information between major shopping centre landlords and small retail tenants through mandatory minimum standards for retail shop leases and low-cost dispute resolution processes for retail tenancy disputes. The earlier Retail Shop Leases Amendment Bill 2014 was introduced into this House on 25 November 2014. Like the 2015 bill, its main purpose was to implement the statutory review of the Retail Shop Leases Act 1994 that had begun in 2011. The previous committee's inquiry into the 2014 bill lapsed on the dissolution of the Legislative Assembly on 6 January 2015. Subsequently, the Retail Shop Leases Amendment Bill 2015 was introduced into this House by the Hon. Yvette D'Ath, the Attorney-General and Minister for Justice and Minister for Training and Skills. The Education, Tourism, Innovation and Small Business Committee was referred the bill and received seven submissions, several of which had been submitted previously on the 2014 bill. The committee submitted its report to the House on 5 February this year, with recommendations.

The department advised the committee that the key themes of the retail tenancy submissions to the statutory review were security of tenure, occupancy costs, market transparency and disclosure, and compensation. Landlords' submissions to the statutory review focused on clarifying the operation of the legislation to promote certainty, removing unnecessary regulation and reducing compliancy costs, and confining the legislation to the principle of protecting small business operators against larger or sophisticated business operators that are capable of safeguarding their own interests.

Essentially, this bill aims to afford enhanced protections for lessees and lessors and to reduce red tape. Enhanced lessee protections include: requiring lessor disclosure to an existing lessee on renewal of a lease under an option; facilitating appropriate disclosure to franchisees; ensuring that a lessee is only liable to refurbish the leased shop during the lease term where the lease gives sufficient details of the nature, extent and timing of the required refurbishment; requiring a lessor's annual estimate and audited statement of outgoings to provide a breakdown of centre management fees; requiring the lessor to make available to the lessee a marketing plan detailing the lessor's proposed advertising and promotion expenditure; making the lessor liable for mortgage consent costs; and enhancing protection for prospective purchasers of retail businesses through assignor disclosure.

The bill also includes the following measures that enhance the protection for lessors: exclusion of all leases with a floor area greater than 1,000 square metres and the non-retail precinct exclusion; clarification about when a lessor disclosure statement cannot be taken to be defective; provision for

lessor recovery of lease preparation costs where the lessee has negotiated, but does not proceed with, the final lease after instructing for it to be prepared; and provision for a lessor's liability for compensation for business disruption to not apply where the lessor's action is a reasonable response to an emergency and flexibility for a lease to limit a lessee's compensation claim for some specific business disturbances notified by the lessor.

One aspect of the bill that may have had an impact on North Queensland businesses was clause 53 of the bill, which replaces section 53 to provide that a term in a lease that purports to oblige the lessee to trade outside core trading hours for a retail shopping centre is void. In addition, the new section clarifies that a lease that permits rather than requires the retailer to trade outside the core trading hours is not void. The department advised the committee that this amendment reflects modern shopping centre practice and mix—that is, increasingly there are lessees, such as restaurants, located on the exterior of a centre that trade outside core hours but within the allowable trading hours by agreement with the lessor.

North Queensland Airports, the NQA, noted that the bill was silent on the treatment of retail activity and trading hours on Cairns and Mackay airport landholdings which do not have restrictions on retail lease terms, including trading hours. The NQA submitted that the act and any other relevant statutes should be amended to reflect the current policy framework and retail operating arrangements ensuring that all retail businesses on Cairns and Mackay airport landholdings be exempt from any requirements that may limit hours of operation and erode existing retail lease provisions.

The committee sought additional information from the department in relation to the NQA's submission. In response, the department advised that the existing trading hours at NQA will be unaffected as clause 53(2) clarifies that a clause in a lease that permits rather than requires the tenant to open the shop for trading outside the core hours for the centre is not void. This amendment will clarify that tenants may trade outside of shopping centre core hours, but within the allowable trading hours under the Trading (Allowable Hours) Act 1990 by agreement with the lessor.

In correspondence to the Attorney-General, and copied to the committee, the Treasurer, the Hon. Curtis Pitt MP, supported NQA's submission. The Treasurer based his support on the Cairns and Mackay airports not historically being subject to the act and trading hours legislation, representations made during the competitive process to dispose of the airports which emphasised the absence of a curfew and the retail shop growth potential and the risk of restricting trading hours. The committee considered the potential effects of restricted trading hours at Cairns and Mackay airports and the impact this would have on its existing commercial dealings. As we have already heard from the minister this afternoon, this aspect of the bill has been referred to Minister Grace's department for consideration. I thank the minister for that.

This bill protects both parties, the lessor and the lessee, when engaging in a retail shop lease. The committee made several recommendations to the Attorney-General and Minister for Justice to provide further consideration or information regarding the impact of this bill. Having said that, I believe that the Attorney-General has done exactly that. I therefore commend the bill to the House.