

**HANSARD 12 APRIL 2011**  
**SMALL BUSINESS AND RETAIL SHOP LEGISLATION AMENDMENT BILL 2011**  
Second Reading

**DR M.D. NAHAN (Riverton)** [5.20 pm]: I would like to say a few things in support of the Small Business and Retail Shop Legislation Amendment Bill 2011 just to highlight its importance. It initially arose, if my memory is correct, when we started the process of further deregulation of shopping hours.

It was clear to us at the time that in the process of stripping away certain restrictions on who could and who could not open, there would be potential for shopping centres to exploit their positions and to force shops to open, or to force shops who chose not to open to pay to meet the cost of opening.

In the various legislation that was put through this house, it was agreed, I think, by both parties that that behaviour would be ruled out. The concern was that the imbalance of power between small business and shopping centres was such that the shopping centres could extract these liens on the small companies just because of their superior negotiating ability.

Therefore, we needed a third party to come in and have the power to assist small businesses and to look at the disputes that they would have with the shopping centres and other business partners and assist them at low cost and to ensure they had access to some sort of mediation and justice. That is what the Small Business Commissioner is, and that is the major intent of the bill.

The model in this legislation is derived from Victoria, where the Victorian Small Business Commissioner has been in place for a number of years. It was put in place by the Bracks government, and it has been highly successful.

Of course, the deregulation of shopping hours in Victoria took place many years before the introduction of the Office of the Victorian Small Business Commissioner; nonetheless, the issues of the imbalance between the shopping centres and small business remained, and Victoria responded to the ongoing problem of access to justice for small business, which, as we have heard from many of the speakers, are usually mum and pop businesses. They enter into business and they are highly geared.

They focus on operating their businesses and they simply do not have the cash or the skills to access justice. Justice is very expensive. The Office of the Victorian Small Business Commissioner was set up to assist small business in disputes. In Victoria, this was set up in a certain way so that the Victorian Small Business Commissioner acts to assist small business but in a neutral manner. It is not a judge. It is not the final arbiter of the decision; it assists. The data coming from Victoria shows very high rates of resolution of disputes; it was very positive, and therefore it was a good model for us to use.

I now want to comment about the Small Business Development Corporation. It is evident that when people enter into small businesses, whether it be franchises or other small business, they have a great deal of optimism. Some people have a great deal of experience and knowledge of the industry, the franchise and the business in which they are entering into—maybe they buy it and have done this before.

In fact, most members in this place would know people who have had long careers in small businesses because they have the skills, they have learned the business and they buy one business after another; they sell them and make a quid on top.

However, many people enter into small business with a lack of information. Many people enter into small business excessively geared, with their houses as security. Many people enter into small business, whether it is a franchise or other business, without a great deal of knowledge about the business, and therefore the failure rate of small business is very high. I understand that the failure rate of franchises is lower, which is one of the benefits of franchising, but there are other problems in getting into franchising.

One of the important things that the SBDC has done in the past, and hopefully will continue to do, is to provide an information and advisory service to small business. You can lead a horse to water, but you cannot necessarily make it drink: we cannot force small businesses to acquire information, particularly legal information, in advance of buying it, but at least we can have it there for them and encourage them to take it and develop the skills necessary to be a successful business. That is what the Small Business Development Corporation has done historically, from its origin, as one of its major focuses. I hope that when the Small Business Commissioner becomes the chief executive officer of the Small Business Development Corporation, that body is funded to continue to provide those allied services. I am sure it will be.

I also want to emphasise that we have had debates in this house about the specific problems of franchisees and franchisors. I am the Chairman of the Economics and Industry Standing Committee, and the Legislative Assembly has instructed the committee to inquire into the Franchising Bill 2010, so I will not talk very much about that because the inquiry is underway. All I can say is that from the public hearings, one of the major ways of resolving whatever comes of the bill is that the Small Business Commissioner could play a major role, addressing not just small business generally but also the imbalance of power between the franchisor and franchisee.

I hope and trust that the process of deregulation of shopping hours will continue further. As we unroll and peel back the regulation that has acted as barrier to competition, it will expose anomalies and therefore there will be problems of the nature that the member for Cannington outlined. I would hypothesise—I do not know—that perhaps one of the problems in Carousel Shopping Centre is the trading precincts elsewhere that are absorbing people. That is occurring in my area, and people are going to other areas to shop, particularly from my area to the city.

Whatever we do as we peel back and change the regulation of shopping hours, the competitive tensions will change and will impact on different small businesses in different ways in different places. Therefore, as those regulations peel back, there will be tensions, and this provides the capacity for exploitation and for disputes to arise. Therefore, it is very important to have the Small Business Commissioner in place during the process of deregulation.

I congratulate the government for this piece of legislation. I encourage the government to keep some of the Small Business Development Corporation's advisory capacities going, and, on evidence from Victoria, this legislation will make a great contribution to small business in Western Australia.