



Legislative Assembly

Retail Leases Amendment Bill

12/11/2002

Hansard

Extract

Second Reading

Ms NORI (Port Jackson—Minister for Small Business, Minister for Tourism, and Minister for Women) [11.04 p.m.]: I move:

That this bill be now read a second time.

The majority of the amendments in this bill arise from the application of the Retail Leases Act to Sydney airport. Until 30 June 1998 retail leasing at Sydney airport was subject to Commonwealth legislation. On that date the Commonwealth Government withdrew its legislative coverage of retail leases at the airport. As a result, Sydney airport became subject to the provisions of the New South Wales Retail Leases Act, as well as several other New South Wales Acts. That change had the potential to have a significant impact on three areas associated with airport activities: retail activities at the airport; Sydney airport and related construction work; and Sydney 2000 Olympics. To address these issues and to ensure an orderly transition from Commonwealth coverage to State coverage, this Government introduced the Retail Leases (Sydney Airport) Regulation in 1999.

The regulation exempted from the operation of the Act premises at the airport that are not used for retail businesses, and so would not be covered by the Act were they not in a retail shopping centre complex; exempted from the operation of the Act premises within a master concession that have a total aggregate lettable area greater than 1,000 square metres; conferred exemptions from various provisions of the Act in their application to Sydney airport, which impacted on existing construction agreements and commitments in relation to the Sydney 2000 Olympics; exempted Sydney airport from provisions of the Act, or modified those provisions, to the extent that they inhibited application of the then current commercial tendering and rent determining processes applied to retail shop concessions at the airport; and was an interim measure which ceased to operate on 31 December 2000 in respect of leases entered into after that date.

Sydney Airports Corporation Ltd [SACL] sought protection from some provisions of the Act going forwarded from 30 December 2000. Under the auspices of this Government, a committee comprising representatives from SACL, the Property Council of Australia, New South Wales Branch, the Australian Retailers Association and the Real Estate Institute negotiated their way through the issues raised by SACL. These negotiations dealt with resolving the tensions between Sydney airport as an operational airport with the need to meet stringent operational requirements—including safety and security—and Sydney airport as a shopping centre complex. These amendments to the Act dealing with the Sydney (Kingsford Smith) Airport, flow from negotiations after due consideration was given to ensure the amendments were good public policy.

The amendments give a definition of "airside" at the international terminal—airside being that part of the international terminal to which access is limited to persons, other than authorised persons, who hold a boarding pass. This definition flows through to other amendments, some of which apply only to airside tenancies. Approximately 70 per cent of retail sales are made on the airside of the international terminal. The amendments provide that consent to an assignment of an airside retail shop lease can be withheld if the proposed assignee has inferior skills to the existing tenant. Airside retailers at Sydney airport need to be able to respond quickly to international changes because its competitors are other major airports such as Heathrow, Los Angeles, Singapore and Auckland—not local off-airport shopping.

An assignment of an airside shop lease at Sydney (Kingsford Smith) Airport may be withheld if the proposed assignee's skills for competing in the international airport retail market are inferior to those of the existing, assigning, tenant. The amendments exempt from the operation of the Retail Leases Act—the Act—leased premises in which non-retail activities are conducted at the airport terminals. Retailing at the airport is only an adjunct to the main business of the airport—which involved passenger movement—unlike shopping centres where the emphasis is retail selling.

The amendments exempt some leases of one or more areas within the airport passenger terminal leased by the same lessee, aggregating 1,000 square metres, or a larger area. Leases of shops with lettable areas totalling 1,000 square metres or more are presently exempt from the operation of the Act. The amendments are designed to exempt smaller sized areas forming part of a master concession at the airport aggregating 1,000 square metres or more, leased by the same lessee. The master concessions are the food concession and the duty-free concession. The amendments exempt airport lessors from paying compensation to lessees for interruptions to their businesses necessitated by airport or airline safety and security or by regulatory requirement. Airport lessors who are required to implement airport and airline safety and security measures, and satisfy regulatory requirements—which are not known when leases are entered into—need protection from compensation claims made by lessees whose businesses are adversely affected because of the imposition of such measures.

The amendments exempt lessors of airside retail shop leases from the confidentiality constraints of section 50 of the Act. Section 50 of the Act provides penalties for lessors who divulge turnover figures provided by tenants except in defined circumstances. Airside tenancies are put to tender. To ensure equality in the tendering process the previous tenant's trading figures are disclosed. The bill contains some other minor amendments. The first of these deals with amendments to the Retail Leases Act made under the Intergovernmental Agreement Implementation (GST) Act 2000. Those amendments included a provision that required an agreement between a retail lessor and lessee—for the recovery of GST from the lessee—to comply with the Australian Consumer and Competition Commission price exploitation guidelines.

These price exploitation guidelines were a transitional measure. They expired on 30 June 2002, which was the completion date for the new taxation system transition period. As a result of the expiry of this transitional period, the reference to the guidelines is removed by these amendments. The second minor amendment is to make clear that where the lessor and the lessee have agreed that the GST will be recovered as an outgoing, the outgoing is assessed as a percentage of the rent and not on a square metre basis. This amendment will ensure that a lessee will only pay the appropriate amount of GST on the rent. The third minor amendment is to ensure that the Registrar of Retail Tenancy Disputes can use a wide range of alternative dispute processes to resolve retail shop lease disputes, and that the protection of the Act applies to the person conducting the alternative dispute resolution process. As a package, this amending bill ensures that the Retail Leases Act will continue to meet the needs of the retail leasing industry. I commend the bill to the House.