

**RETAIL TRADING AMENDMENT BILL 2015****Second reading**

**Ms GLADYS BEREJKLIAN** (Willoughby—Treasurer, and Minister for Industrial Relations) [4.23 p.m.]: I move:

This bill be now read a second time.

As many in this place know, the Government went to the electorate committing to reform retail trading laws to provide more certainty and choice for consumers, retailers and employees. I am pleased to note that the upper House has supported this bill with amendments. The Government has accepted all the amendments moved. I acknowledge the role of the Christian Democratic Party, Reverend the Hon. Fred Nile and the Hon. Paul Green. The amendments they put forward substantially enhance and strengthen the bill and not only ensure consistency on Boxing Day for retailers and consumers but also give workers comfort that they will not be forced to work. Strict penalties will apply for employers who force or coerce employees to work and for big businesses that force smaller businesses to open their doors. The amendments ensure these provisions in the legislation.

This bill is a necessary piece of legislation. The current retail laws are outdated and increasingly out of step with contemporary patterns of work, leisure and shopping. New South Wales has been the last State to reform retail trading on Boxing Day. This anomaly will now be rectified with the passage of this bill in this place. The Government is pleased that the amendments include a voluntary provision which will ensure the rights of workers and retailers. The State can only regulate business trading hours, and that is what the Retail Trading Act does. It requires shops and banks to close on Good Friday, Easter Sunday, Anzac Day until 1.00 p.m., Christmas Day and Boxing Day and banks are also closed on weekends and all public holidays. The last major reform of trading laws was in 2008. Disputed exemption determinations and amendments to the Retail Trading Act in subsequent years suggest that a consistent scheme that balanced the needs of consumers, retailers and employees was lacking in this State. The Government is pleased that the passage of this bill will ensure consistency.

Currently, the retail trading regime, especially as it relates to Boxing Day, is complex, inconsistent and administratively burdensome. It is unfair and inconsistent that currently retailers in the Sydney central business district [CBD], Bondi Junction, Moore Park and Broadway can open their doors on Boxing Day and are exempt from the requirements to close their doors but retailers in suburban Sydney cannot. On Boxing Day people can shop in the Sydney CBD or the eastern suburbs but not in Parramatta, Campbelltown or Penrith. One-third of regional New South Wales is in so-called exempt zones, which means they are able to trade on Boxing Day. In Wollongong mall the shops are closed on Boxing Day but 20 minutes away in Shellharbour they are open. Shops in Wyong can trade but not those in Newcastle. This not only stifles growth in the State and denies opportunities for consumers, retailers and staff, it skews the marketplace and creates inconsistency.

Prior to the passage of this bill, the people of Western Sydney have converged on the Sydney CBD to shop on Boxing Day. People in regional New South Wales have had to travel long distances if they choose to shop on Boxing Day. The bill is about choice. It ensures that people have the choice not to work on Boxing Day, retailers have the choice to open their doors and the community has the choice to shop in their local communities. To small business owners and local communities the reform means local dollars in local shops. It provides an opportunity for local businesses to open their doors on a major day of trading. Until now, arbitrary lines drawn on maps determined what was regarded as a tourism precinct and this led to inconsistencies. Small business is the backbone of many local communities and a major provider of local jobs, and it should be up to them whether they open their doors.

Small business knows full well that they are obligated to ensure that the workers who are employed on their premises on Boxing Day do so voluntarily. With the advent of online shopping 24 hours a day, seven days a week, retail outlets in Western Sydney or in other parts of the State are disadvantaged by not being able to open their doors on Boxing Day. It makes sense for consumers who want to shop on Boxing Day to do so at their local shopping centre or regional place of business rather than going elsewhere. I turn now to the provisions in the bill and the amendments moved in the other place. The Government's bill allows trading across New South Wales on Boxing Day. It allows shops such as supermarkets, department stores, small retail businesses and banks throughout New South Wales to open on Boxing Day on the condition that staff have freely elected to work without coercion or threats made by or on behalf of the retailer.

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It means that trading on Boxing Day can occur across the State, not only in certain designated areas, as is the case now. This will ensure that the law is fair and consistent for everyone.

This legislation protects workers' rights by enshrining in the legislation that it will be an offence, punishable by up to \$8,000 per employee who is forced to work, to trade on Boxing Day or other restricted trading days if a store's employees have not freely elected to work. I stress this point because the Government amended the legislation to stipulate that the fine will be applied in respect of each employee forced to work on Boxing Day or other restricted trading days. A clear definition in the bill sets out that staff have not freely elected to work if they work because they have been coerced, harassed, threatened or intimidated, or have been rostered or are required by the terms of an industrial instrument to work on that day. This is to ensure there is no ambiguity.

The bill also gives existing workers rights on Boxing Day that they currently do not have. At the moment, the freely elect to work law does not apply to shops that are exempt and which can currently trade on Boxing Day in the designated Sydney central business district [CBD] and eastern suburbs areas. Many people work in the CBD and in the eastern suburbs of Sydney on Boxing Day and they do not now have the right not to work. This legislation gives them that right. It means that shops in this designated part of Sydney will be subject to the same conditional exemption—that is, their employees have freely elected to work—that applies to all other shops wishing to open on Boxing Day. The bill offers extra protection for staff who would prefer to spend time with their family or to do something else on Boxing Day. Again, that is an important improvement in the bill.

The Government has also committed to prioritise significant resources to ensure compliance. I thank all the stakeholders, including many church leaders and others, who gave the Government their feedback. The Government will allocate resources to boost business education activities ahead of Boxing Day to ensure that people are aware of their obligations and to boost compliance and investigation resources in regard to Boxing Day trading specifically. We will ensure that everyone is doing the right thing. I take this opportunity to acknowledge representatives from the Shop, Distributive and Allied Employees' Association and the Financial Sector Union, whom I met with and who raised concerns about this bill. I appreciate the concerns they raised, and the amendments go some way to addressing them. However, I also acknowledge that they oppose the bill in principle.

The Government is committed to ensuring that the resources are available within the NSW Industrial Relations to ensure that any complaint made in regard to an employee being forced to work or a shop being forced to open this Boxing Day is investigated. The NSW Industrial Relations will allocate five full-time staff to compliance activities around Boxing Day this year. They will be 100 per cent devoted to ensuring that any complaints are investigated. Additional resources will also be identified over coming weeks so that they can be allocated, if required, to ensure that any complaints receive the attention they deserve. That is extremely important. It is not only about having the law; there must

also be compliance.

The Government is not expecting to be overwhelmed by complaints. However, it does expect everyone to obey the intent of the law and to treat workers and small businesses fairly on Boxing Day. This legislation will deliver the resources to ensure that that occurs. As I said, the NSW Industrial Relations will significantly increase education activities in the lead-up to Boxing Day so that employers and employees know their rights and responsibilities. We will ensure that we provide as much information as possible, given that Boxing Day is not far away.

The amendments to the legislation made in the other place provide that small businesses cannot be forced to open their doors. No shop will be required to open for trade on Boxing Day or other restricted trading days as a result of this legislation, even if they have a lease that requires them to open on other days. The bill maintains the requirement that any provision of a lease is void to the extent that it requires a shop to be open on an otherwise restricted trading day. In addition, a fine of up to \$22,000 will apply to any lessor who forces a business to open. If a small business operator in a mall or a franchisee feels that they are being forced to trade, the person or organisation forcing them will incur a hefty fine of \$22,000.

I appreciate that a number of members know that their communities will enjoy benefits as a result of the passage of this legislation. I acknowledge the member for Orange, who is at the table. I know that he appreciates what this legislation will mean for his community. I also acknowledge the members for Davidson, Ku-ring-gai and Cootamundra and members opposite who have come to the Chamber to hear this debate. They are here because they appreciate the significance of this legislation. I give those members and those elsewhere an ironclad commitment that no further expansion of retail trading hours will occur. A commitment was given to the Christian Democratic Party and to the broader community that nothing in this bill changes the status of Boxing Day as a public holiday. Therefore, employees retain their rights under the Commonwealth Fair Work Act and relevant awards and agreements that apply to them. That is an important point.

Boxing Day remains a restricted trading day. Shopkeepers cannot be compelled by their landlord to open their doors. If they do not have staff members who freely elect to work or if they simply do not think it is appropriate or even worthwhile to open on Boxing Day, any lease arrangement or agreement that compels them to do so is void. I also make it clear that the Government will not remove restrictions on retail trading around other public holidays, such as Christmas Day, Easter Sunday, Good Friday or Anzac Day morning. This is an ironclad, unequivocal guarantee. I thank Reverend the Hon. Fred Nile and the Hon. Paul Green for their considered and conscientious approach to this bill. At every step they had the interests of their constituency at heart. I acknowledge the amendments they made, which the Government has accepted because of their strong advocacy and feedback and because the amendments strengthen the bill and improve it. I place on the record my appreciation for their efforts, particularly given the terrible taunting they endured.

The legislation has been amended to prohibit the unpacking of goods or the preparation of goods for sale on Good Friday, Easter Sunday, Anzac Day morning or Christmas Day. That is an important amendment. The Government believes that key benefits for communities, businesses and workers will flow from the opportunity for shops in all areas to trade on Boxing Day. It therefore is prepared to accept these amendments. They strengthen the intent of the legislation and support people who do not want to be forced to work on Boxing Day. The amendments also clarify that fines for businesses that force employees to work are imposed per employee. There was some ambiguity in that regard, but the legislation now makes it clear that if an employee is forced to work, the person offending will incur a fine of \$11,000 per employee. If the breach involves a large employer, that employer will be required to pay the fine for each worker whose rights were abused. The legislation also introduces a fine of up to \$22,000 if a business is forced to open.

The Government trusts that the majority of employers and lessors will do the right thing. However, it also understands the importance of having a strong deterrent. People must be assured that the Government is doing everything in its power to secure the rights of workers and small businesses. It will also publicly name businesses prosecuted for opening on Boxing Day with staff who have not freely elected to work. There will be a naming and shaming process. The Christian Democratic Party amendments also provide that a review will be undertaken of the changes to the Act that occur as a result of this bill. After two Boxing Days have passed a sunset clause will be triggered placing the onus on the Government to extend the policy following the review.

The Government has accepted an amendment requiring the Minister for Industrial Relations to appoint an independent reviewer to examine activities on two Boxing Day holidays and report back. The onus will be on the Government to continue the Boxing Day trading arrangements. The Government has made strong commitments around protecting the rights of workers and shop owners, and it intends to work hard to ensure that those commitments are upheld every step of the way. It is sensible that the changes that occur as a result of this bill are reviewed after some time. Therefore, the Government is happy to accept that amendment.

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In summary, this bill amends the Retail Trading Act to provide for fair and consistent rules around retail trading on Boxing Day; greater choice and convenience for shoppers; protection for all workers and greater protections for those who currently work on Boxing Day than they have had up to this point; and protections for shopkeepers so they have a choice whether to trade, levelling the playing field between bricks and mortar retailers and online retailers. I again thank the Christian Democratic Party in the other place. I also thank all the stakeholders and church leaders who took the time to explain to me their legitimate concerns. The Government was very pleased to listen to those legitimate concerns and to act upon them by supporting the amendments moved by Reverend the Hon. Fred Nile and the Hon. Paul Green in the other place. On that basis, I commend the bill to the House.