

Deputy Speaker; Mr Dan Barron-Sullivan; Mr Max Trenorden; Mr John Kobelke; Mr John Bradshaw; Mr Bill McNee; Mr Hendy Cowan; Mr Rod Sweetman

PETROLEUM LEGISLATION AMENDMENT BILL 2001

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 6: Section 4 amended -

Debate was adjourned on the clause after the following amendment had been moved -

Page 8, line 17 - To delete “different kinds, grades, or brands of motor fuel” and substitute the following -

different kinds or grades of motor fuel, but may contain a mixture of different brands of motor fuel

Several members interjected.

The DEPUTY SPEAKER: I call this House to order. I do not want to have to start naming people. I expect much better. My children behave better than this.

Mr Kobelke: I concur with your judgment, Madam Deputy Speaker. All Speakers’ judgments must be abided by. The Government will work with whoever is in the Chair to ensure this House runs smoothly. It is very difficult when on two occasions in the past five minutes the Leader of the Opposition has broken standing orders by speaking when you were on your feet, Madam Deputy Speaker. That sort of behaviour creates a problem for whomever is in the Chair. The Leader of the Opposition has shown little respect for the proper forms of the House.

Mr Barnett: A bit of consistency would be good.

Mr BARRON-SULLIVAN: As I said before that little fiasco, this clause is at the crux of this matter. If section 4 of the principal Act, which gives retailers the right to take advantage of 50-50 provisions, will not work, we may as well pass a blank piece of paper today. Although the Opposition has made it clear that it will support this legislation, it has also made it clear that opposition members will point out what they think are deficiencies in it; not deficiencies that we have dreamt up out of thin air, but deficiencies that people in the industry have pointed out. I am referring to the very people whom this legislation is supposed to help; that is, the independent operators, retailers and small businesses for whom the 50-50 provisions are designed. They are telling us that, for a number of reasons, it will not work.

They are saying that, without doubt, the main reason this legislation in its current form cannot work is this clause. On the minister’s admission, it has been revealed that retailers who want to take advantage of the 50-50 provisions must install new tanks. Most petrol stations throughout the State, particularly in small country towns and regional areas, do not have spare tank capacity on their stations. In fact, very few stations have any spare tank capacity whatsoever. The Leader of the National Party indicated it could cost \$30 000 or \$40 000 to put in a tank. The minister may be aware that on a good metropolitan site it could cost \$200 000. On a typical country site not much change would be left out of \$100 000. However, in the light of environmental constraints today, many stations will not be able to install extra tank capacity. Other operators have various constraints on their locations for planning or traffic management reasons and are unable to install extra tanks. It means that retailers selling five or six categories of fuel and autogas could be facing the cost of \$1 million if they want to take advantage of this 50-50 legislation. If they want to sell unleaded fuel, they face paying at least \$100 000. It does not end there. Under this legislation, if at the end of his contract an operator moves to another business or does not have his contract renewed, he must make good the work he has done on that site. That could mean an operator must remove that tank and make good, including satisfying all the environmental requirements that entails. In other words, he could face paying double the figure of installing the tank in the first place. The minister may need to go a long way to convince us that the 50-50 legislation will not create such a difficult obstacle that retailers will not be able to use it. To see whether the minister has really done his homework and whether he is dinkum about wanting this legislation to have the desired effect, I ask whether the minister has surveyed fuel retailers to determine how many of them have spare tank capacity?

Mr TRENORDEN: We have just had an interesting quarter of an hour or so. Before that, the minister indicated he wanted to speak to me about my amendment. I am happy to talk about it. If I can improve this Bill one iota, I will, although I am not sure how. Before I press on with my amendment, I want to know what the minister has in mind. Like the Leader of the Opposition, I had no idea the minister was seeking to adjourn the debate to make a ministerial statement. I thought he was adjourning so that he could talk to opposition members.

Mr Kobelke: That opportunity would have been available also.

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Mr TRENORDEN: That was dealt with five minutes ago. What mechanism will the minister use to explain to me how he wants to progress? As he knows I am passionate about this issue. We want a process through which we can progress the Bill, not waste the time of the House. How will the minister do that?

Mr KOBELKE: I will refer to the points made by the Leader of the National Party first because they are important. We must see this in the context of what we are trying to do. For example, BP - it could be any major company - might have paid for the installation of the tanks at one of its franchise sites and a fair amount of its capital might be tied up in that particular retail site. If it has a franchise arrangement - a fuel supply arrangement, which includes its tanks, pumps and contribution to the site; that is, the badging and promotion of the site - the oil company has certain rights under which its fuel can be sold from those tanks. We are impinging on those rights and we do not apologise for that. We are being quite specific in the areas in which we impinge on those rights. We are saying that a retailer will have the right to sell up to 50 per cent of the fuel it buys from another supplier. However, we must show respect for the franchise arrangement. We are saying that a retailer must continue to provide fuel from its principal fuel provider. That was the question the member asked earlier. It also means that if the principal provider says that it does not want the retailer to mix its fuel with another company's fuel, even though we all understand the fuel would need to come from a re-badged bowser that did not display the BP logo or that of the major provider, an issue will still arise. The major providers are saying - among other things, but I accept this point - that they have the right to not allow other fuel to be mixed with their fuel on their designated sites. That is something that the member wants to allow, but to which I will not accede. However, what I will accede to - it is now an amendment before the House - is that if a retailer has a tank, which may have been provided by the major supplier under the franchise arrangement, but the retailer's use of that tank is free because it is an extra tank on the site, and it is putting into that tank fuel from a supplier other than the major supplier, the retailer can mix fuel in that tank provided it is the same type of fuel and has the same specifications. That is what the member is saying in his amendment. I will accept that amendment. The member wants to go further, and that will be subject to subsequent amendments.

Mr Trenorden: I am not at all clear about what the minister will accept.

Mr KOBELKE: I will accept the amendment now before the House.

Mr Trenorden: Does the minister mean my amendment as it stands?

Mr KOBELKE: Yes. The member's amendment, as it stands, seeks to amend section 4(3)(h) of the principal Act. That paragraph would then read -

so far as is practicable any bulk storage that he uses pursuant to that right does not contain a mixture of different kinds or grades of motor fuel, but may contain a mixture of different brands of motor fuel;

It will allow the retailer to put into the tank different brands of fuel as long as the specifications are met. Section 4(3)(g) in the principal Act says -

so far as is practicable any bulk storage that he uses pursuant to that right does not contain any motor fuel that has been supplied to the site by his primary supplier;

That section, which we are not amending but which the member has foreshadowed he will deal with later, precludes mixing fuel from another supplier with that of the primary supplier. The amendment now before the House allows retailers to mix fuel from other providers. I accept that amendment.

I turn now to the contribution made by the Deputy Leader of the Opposition. He is going down another track with a range of issues. I will counsel him in a friendly way. He is starting to sound more and more like an apologist for the major oil companies. We are fulfilling the recommendations of the select committee, which he chaired. The matters he raised were there when his committee met. Our legislation, and things that have happened subsequent to that report, do not impinge on the questions he raised in any way at all. The present problems existed when the committee met and, to that extent, they still exist. They are not matters that are rightly subject to this amendment. If he is making his support for this Bill conditional on our answering all the questions that he could have answered when he wrote his report, it will look like he is fishing for a backdoor exit so he can support the major oil companies. He should be very careful in continuing to pursue that line of inquiry.

Mr BRADSHAW: I point out to the minister that he is wrong when he says that the Deputy Leader of the Opposition is an apologist for the oil companies. That is total rubbish! The minister indicated that because an oil company owns a service station and the infrastructure, it should have the right to put only its fuel into the tank. That is a load of rubbish. Service station proprietors rent the property, not the fuel, and that means the whole infrastructure. They are paying rent on it. The oil company is getting a return for its money. Years ago -

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within the past 18 years; not long after I became a member of Parliament - the proprietor of the Ampol garage in Harvey told me that he rented his service station from Ampol, which charged him more than it charged the agent down the road who owned his service station. I went to Ampol in Perth and told its representatives that they were being unfair by charging this person in Harvey more than it was charging a private person. Their answer was that the proprietor had fewer overheads because he only rented the place. I tried to argue with them, because that service station proprietor was being charged rent on a commercial basis; yet he was in the same position as the person who owned his premises freehold. This is a similar situation. The minister has it wrong when he says that, because the oil companies own the infrastructure and have all those costs, they should have the right to put their fuel in that tank. That is totally wrong. A service station proprietor is paying rent on the service station; he is not paying rent on the fuel in the tank. That person should have the right to put into that underground tank whatever fuel he or she wants. As I and everybody else have pointed out, this 50-50 rule will work only if there is somewhere to put the fuel on the service station site. If retailers must put in another tank, they will find it is impractical in many cases because of the cost and a lack of somewhere to put the tank. It is a pity the minister did not listen to what I said when I spoke about the rent.

Mr Kobelke: I did. There is a range of franchise arrangements and supply agreements, which all have their own legal conditions, etc. In many of those arrangements the provider receives a subsidy or a reduction in his rent on the basis that he is locked into the arrangement. Sometimes that is minimal, but it can be a condition of the particular contractual arrangement.

Mr BRADSHAW: However, retailers are normally screwed at the other end when they are charged more for fuel. That is what I pointed out in the example of the Ampol service station. The proprietor told me that people would drive up to a bowser, look at the price, abuse him and drive to another service station. He was paying more for his service station site than was the person who owned his site freehold. The oil companies play ducks and drakes with pricing arrangements, and one way or another they get even. If those oil companies have special arrangements to lock in retailers, maybe those arrangements should be changed so a proper rent can be paid for those sites.

Not all service station proprietors will take up the option of a 50-50 deal, but they will have the opportunity to do so if they wish. Members on the other side should think logically about how a 50-50 provision will work. It will not work unless retailers can get fuel onto their sites. The cost of putting in another tank is prohibitive. There must also be room on the site for that tank. Members opposite should think about it before they back the minister, because he is wrong if he thinks this 50-50 legislation will work.

However, a 50-50 arrangement is the key to getting petrol prices down in Western Australia. The other measures might contribute to a reduction in petrol prices, but the 50-50 arrangement should be the main thing.

Mr BARRON-SULLIVAN: I will repeat the question I asked a few moments ago. We on this side of the Chamber support the amendment, and we have made it clear that we support this legislation. We have not qualified that support in any way, but we have said we will point out any deficiencies in the legislation to try to make it workable. Our intention is to implement a 50-50 arrangement that retailers can use.

Mr Kobelke: The point of your question relates to the part of the Act that is not being amended.

Mr BARRON-SULLIVAN: No; this question goes directly to the amendment. Take, for example, a BP Australia Ltd franchise retailer with four tanks, two of which contain unleaded fuel. According to the minister, this clause means that if one of those tanks can be freed up, that retailer can sell fuel from Shell Australia Ltd through that spare tank. That is the only circumstance under which this legislation would take effect. I understand that and support it wholeheartedly. My question is relevant because it will determine whether this will have any practical impact. Has the minister surveyed the retail sector to find out how many retailers have spare tank capacity? I ask this to learn not only the answer and whether this clause would have any effect - we will support it regardless, as we support it in principle - but also whether the minister has done his homework. I am taking notes, and the more questions the minister answers, the more I realise that he has not done his homework. I listened to his speech of a few minutes ago. If I had closed my eyes, I would have thought I was listening to a representative of the oil companies. I was extensively lobbied on this issue by four oil companies. The words the minister used a few minutes ago were almost verbatim the words used during that lobbying. The minister rounded on me and called me a lackey of the oil companies, or words to that effect; yet, here he is, a tape recorder, repeating what Mobil Oil Australia Pty Ltd, BP, Shell and Caltex Australia Ltd have been saying to us. If the minister is dinkum about making this work, he will support not only this amendment but also every other amendment the National Party moves today. If he is dinkum, he will undertake a firm review and a forensic audit of the oil companies. The minister is on the spot. He must now make a firm decision: is he on the side of the oil companies, or is he on the side of the motorists, the independents and the small businesses which run the small retail outlets in this State? If he turns on me with false pretences, and if he uses the language that

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the oil company representatives have used in numerous meetings with me, him and others, then he will fail this Parliament and the people of this State. I ask very nicely: how many people have spare tank capacity?

Mr KOBELKE: I think we are starting to hear the drivel about which I warned the House. This member voted against the 50-50 legislation last year. He has not changed his clothes; he has just changed his language. However, I address the very real issues the National Party has opened up about allowing the mixing of fuels. We must make sure the practice works. Members must understand that there is in place a complex set of laws that underpin certain legal and contractual arrangements. Parts of the state Fair Trading Act and the commonwealth Trade Practices Act could give the oil companies a basis on which to overturn the effect of the fuel-mixing provisions to the detriment of the retailers. The member for Mitchell says I am mouthing the words of the oil companies. If the words of the oil companies were based on commonwealth and state statutes, then I would be stupid to not see them as having substance.

Mr Barron-Sullivan: Why not change the state legislation?

Mr KOBELKE: We cannot change commonwealth law. The Trade Practices Act is a commonwealth law.

Mr Barron-Sullivan: You just said it was state legislation.

Mr KOBELKE: Yes, but the area is also covered by a commonwealth statute. Constitutional law means that commonwealth law overrides state law in this area. Both Acts refer to the misrepresentation of a product. There is the potential for action to be taken if fuels are mixed, even if they are badged as "our brand". We are seeking legal advice. It is claimed that the oil companies could stop people selling fuel on the basis of a breach of the commonwealth Trade Practices Act or the state Fair Trading Act. I do not know the substance of that, so I have sought legal advice, for which I am waiting. The point is that if a retailer mixes fuels, an argument can be mounted - of which we want to check the substance - that the retailer is in breach of the provisions of the Trade Practices Act and the Fair Trading Act about misrepresentation of a product. Those are our concerns. We want the legislation to work. I have said that I am willing to accept the National Party's amendment, even though I have not yet received legal advice, because on a commonsense basis, it seems to me as a non-lawyer that the chance of a retailer selling fuel as "my brand" and not giving a guarantee that it belongs to a major is pretty slim. However, we still need that legal advice, and that is the basis on which I accept the amendment. If by the time it gets to the other place legal advice has been received that shows that my on-the-spot call is wrong, we will have to come back and oppose the amendment.

Mr TRENORDEN: I propose we vote on the amendment. The debate in which the member for Mitchell is involved, and in which I will be getting involved, heads into the area of my next amendment. We are grateful that the minister is prepared to accept this amendment, but we still want the next amendment passed. We will debate that at the appropriate time. We should vote on this amendment now.

Mr BARRON-SULLIVAN: I also would like to deal with the rest of this clause and the National Party's amendments, but I am still waiting for an answer to my question. Has the minister surveyed the retail sector to discover how many retailers have spare tank capacity?

Mr KOBELKE: I have not asked every service station across the State about capacity. That would change on a day-to-day basis. It is the retailer's commercial judgment as to how it uses its tanks. We are fulfilling the request of the member for Mitchell's report of last year; that is, we are giving people the opportunity, when it suits their business plan and circumstances, to be able to use a spare tank or, in extreme circumstances, as some people indicated, install an additional tank. I do not think that is very practical. However, in some cases, a business may have the opportunity to install another tank. In most cases it will be a matter for the small business or retailer concerned to decide where it will discontinue a particular line - or it may already have discontinued a particular line - to provide the storage capacity to sell fuel from another provider.

Mr McNEE: I understand the amendment and what the minister is saying. However, I remind the House that the price for fuel yesterday in my area was \$1.13 a litre. What the minister is talking about might help Bunbury or Northam, but I wonder how much it will help the wheatbelt.

Mr Trenorden: It won't help you much at all.

Mr McNEE: I understand, but I still support the member's amendment. I understand what the minister is saying. Having been in business for a long time, like the member for Avon and others on this side of the House, I understand the risks. I understand also that if we are to make something work, we must take a risk. I could be accused of being selfish by looking at rural areas. A lot of country service stations are small and the general agreement with the oil companies is that the owners own the buildings and the tanks under the ground but the oil companies own the bowsers. That gives the oil companies a very strong pull. The decision must be left to the owner of the service station whether he will buy 50-50 fuel. The owner may choose to buy, although I doubt

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very much whether any small service station owner could stand the cost of putting in extra tanks. I think it is ludicrous. I cannot think of any service station owners who would do that as it is a huge expense. There are environmental conditions to fulfil as well, and I think most business people these days would rather walk away than try to fulfil all those requirements. I think we should identify bowsers that have mixed fuel. If it has ABC company and CDE company fuel in it, it needs to be identified. As the member for Avon said, if people are practical, they have to mix the fuels. It then becomes the decision of the service station owner and motorists whether to buy the mixed fuel. The motorist decides whether to buy cheaper fuel.

Mr BRADSHAW: I will continue my remarks on this issue because it is the crux of making the legislation work. The 50-50 provision is a great idea. However, it has to be practical. The way the minister wants to do it is totally impractical. As the member who just spoke said, it is simple to indicate on bowsers whether they contain mixed fuel. To be honest, most people could not give a continental about what fuel goes into their cars as long as their cars go and they are getting it at the right price. I remember years ago when Esso had special additives in its fuel and it "put a tiger in your tank". My car did not go any better whether I put Esso or Shell fuel in it - it still ran the same. It was a little gimmick that involved a toy tiger tail hanging out of the filler tank. I do not know whether any other members are old enough to remember it, but I do.

Most people do not care what sort of fuel they get as long as they get it at the right price. I find it difficult to understand why the ratio is 50-50. If some people buy fuel at a particular station, they do so because they are getting it at a cheaper price. If fuel is being sold from one company at a cheaper price than another, what do people do? They will buy the cheaper fuel. It therefore distorts the 50-50 regime; it might in fact be 80-20 or 90-10. In fact, the 50-50 ratio is rather strange. Fuel is bought from a different company because it is cheaper and I assume it will be sold at a lower price. Service stations now have signs indicating the cost of fuel on a per litre basis. People compare prices and go to whichever station sells fuel at the lowest price. Offering cheaper fuel will get people into service stations. I think the 50-50 ratio is a bit of a nonsense because it puts pressure on the proprietor to try to work out how he will sell the other stocks of fuel at a higher price when the customers want the cheaper fuel. Bowsers only need a sign on them indicating where the fuel has come from and whether it is mixed. Most people will accept that; if they do not, they can always go to another station down the road. I do not believe that what the minister is saying is right. We should endeavour to make the legislation practical. Where there is a will, there is a way. I do not believe that the minister has the will to make it work.

Mr Kobelke: I will not refer to the comments made about my will to make things work. On face value, the member is heading in the right direction. I have received legal advice and I have a better understanding of the complexities of the issue than I had a few months ago. If this matter is pushed too far, it will provide better legal grounds for the oil companies to take up a legal challenge and to win. That is the underlying issue. On the surface, the member is absolutely right; we should provide more opportunity to sell other products. There are clear contractual and legal rights and issues about not misrepresenting the product. They are covered by federal and state law.

Mr BRADSHAW: I do not believe that the system will work the way it is proposed. Even if there is a potential legal challenge, the risk must be taken. We must progress down this path regardless as the oil companies may take up the legal challenge anyway. As much as I understand what the minister is trying to do, I do not believe the proposals will work and we must work on the assumption that there will be legal challenges.

Mr McNEE: I understand the position of the minister. All members of the House want to see a reduction in the price of fuel. I understand the legal advice but it becomes a question of who will push and who will shove. We must ensure that fuel remains offered to the public at a price that the public wants to pay, but it must be aware of the risks involved. Obviously, the oil companies want to retain their position and dominance; however, I do not know whether they want to take on the public in that way. If they do, they could win as they have something that we all need, and we are a captive market. That sort of behaviour, though, does not do much for oil companies in the eyes of the public. We must find a way to offer fuel to the public at a price that the public can afford to pay.

Amendment put and passed.

Mr TRENORDEN: I move -

Page 8, after line 17 - To insert the following -

(8) Section 4(3)(g) is repealed.

As I indicated to the minister, this is where I think we should have the debate. I am in no way unappreciative that the minister will assist retailers through some of the amendments, although the numbers will not be great. We must return to the point about not mixing certain brands of fuel.

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This is a core issue. The scenario is that the terminal gate price is established. The retailer can telephone a distributor and say that fuel can be bought at a certain price, and require the distributor to buy that fuel and deliver it to the retail outlet. The National Party wants to enable that retailer to put that fuel into his tank, no matter what it contains. I understand the argument that this could run across a few legal niceties, but all legislation will advantage some people and disadvantage others. That is what legislation is all about. A choice needs to be made in this matter, of who is to be advantaged and who is to be disadvantaged. The National Party wants to advantage the retailer and the consumer. A situation may arise in which the source of the fuel cannot be determined, but that will be a minor issue.

The television advertisements involving BP fuel are probably three years old. I do not see current advertisements promoting cleaner fuels, but if I remember those television advertisements correctly, they involved signage and the redesigning of BP sites. All the sites have been redeveloped, and are all looking very good. That promotion was about identifying the BP site and establishing product loyalty, but not about claiming that BP fuel was cleaner. Fuel supplied from Perth is BP fuel unless it was imported from Singapore two or three years ago by Gull. If the fuel is landed at Port Hedland, it is likely to have come from Singapore. Whether consumers are purchasing under the Gull, Caltex, BP or Shell brands in Port Hedland, the fuel is likely to have come from Singapore. Fuel bought in Esperance is likely to have come from the Mobil refinery in Geelong.

What is really being put at risk here? The minister has said that the Government will have to keep monitoring the situation. The National Party prefers to take the risk, and see what happens. The member for Stirling quite clearly said legal action would be launched. We are playing with the biggest boys on the block, and they will take whatever action they can. That does not, however, mean that the legislation will fail; it just means that the Government will have to revise it. The minister has already said that the Government is prepared to do that on an ongoing basis, and to include the National Party in that process, which I appreciate. If the minister is right, and he accepts this amendment, and it is nullified by court action, all that will mean is that the Government will have to come back into this place and redesign the Bill.

Mr KOBELKE: I do not wish to go over ground that has already been covered, but I will summarise and make one additional comment. The amendment passed a moment ago, moved by the National Party and agreed to by the Government, will enable fuel not bought from the primary supplier to be mixed with other fuel, but not to be mixed with the fuel of the primary supplier. The Government accepted that amendment on the basis that when that more detailed legal advice is obtained on the potential of this issue to open up disputes under the Trade Practices Act or the Fair Trading Act about the representation or misrepresentation of product, the Government may, in the upper House, have to reverse the support it gave to that amendment. For the same reason, I cannot support the amendment now before the Chair. I am sympathetic with the intent of the member for Avon to open up access to fuel from alternative sources, thereby creating maximum competition and, therefore, lower prices. I must act on the advice that is available to me; that is, there is some substance to the claims that could be mounted, which would then lead to the provision being overturned. If a major supplier took that action, the small business person would be stuck in the courts fighting it, not the Government. The Government may be able to provide assistance, and as minister I would certainly look towards doing that. However, the fact remains that action would be taken by a major oil company against a retailer, who would then incur the legal costs and trauma resulting from being caught up in that battle.

Mr Trenorden: That is the way of the world - in the end we have little say.

Mr KOBELKE: That is quite correct, but we are seeking to put in place legislation that will work. It is often the case that people in opposition - it certainly was the case when the Labor Party was in opposition - take a stand that sounds best because it appeals to people. In government, however, as the member for Avon well knows, to take the same position, advice must be taken on whether that position is workable. The best advice I have is that the amendment proposed by the member for Avon is likely not to be workable, and will open up problems. The Government might be wrong, and the member for Avon might be right. The Government is seeking further advice which may change its position, but on present indications the amendment will open up problems, and will not work. I am not willing to support it.

Mr COWAN: I find it interesting to hear the minister make those comments. My understanding is that if a retailer is able to use the 50-50 rule, and has a badged dispensing system, those badges will have to be covered. This raises the issue of liability. If a tank contains the same grade of fuel, but it is a mixed brand - notwithstanding the fact that most of it comes from the BP refinery anyway - it needs to be made clear that that fuel is going through a dispensing system that is not badged or labelled. Who is being protected here? Given that no claim is made that the product is being sold under a particular brand name, there will be no issue like the one raised by the minister as a reason for rejecting this amendment.

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This legislation has a start date of 10 February 2001. Most contracts for the supply of fuel are for five years. It will therefore take up to five years for the petroleum retailing industry to access the provisions of this legislation. That will eliminate a great number of people in the first two to three years. Furthermore, unless a retailer has a separate tank, he cannot access the provisions of this legislation. That may be acceptable for a small proportion of retailers, but most will not fit that category.

I acknowledge and appreciate that the Minister for Consumer Affairs has expanded the number of people covered under the legislation by accepting the amendment put forward by the Leader of the National Party because that allows another category to access this legislation.

We are legislating to cater for about 10 per cent of the petroleum retail industry. Why are we wasting our time? It is nonsense that we should do this. Our task is to enable as many retailers as possible to access the provisions of this legislation. If the minister is concerned about the Trade Practices Act or if other suppliers of the product are concerned about what type of fuel is in the tank - notwithstanding the fact that it comes from the same refinery, and will be no different - the retailer should enter into a contract that contains a waiver that states that he will not be liable. If the minister's view is that because a proprietary brand name fuel was being pumped and the minister wanted that taken out so all the dispensing units were covered up and that proprietary brand name pump was not used to dispense fuel, there is still the capacity for the retailer to enter into a contract that might contain a waiver that says that he will not be liable for this product if it is mixed. That happens all the time. It is a standard commercial arrangement. If the retailer wants, he can take out insurance to indemnify the business against any contamination. The retailers should make that decision, not the minister. The minister is making decisions that deny more and more people access to this legislation. That is not appropriate. I do not like dealing with legislation that will be worthless.

Mr BARRON-SULLIVAN: The member for Merredin has raised some salient points. Why has the minister not received legal advice on this matter? This is the most fundamental question concerning the 50-50 legislation. Will fuel be allowed to be mixed in tanks? If I were a minister, the first thing I would have done is ask my chief executive officer to find out the technical ramifications and legal implications. It smacks of the minister not having done his homework. I wonder whether the Government is dinkum about enabling the 50-50 legislation to work. I would like a further explanation for why the minister did not ask for a detailed legal explanation on the ramifications of mixing fuel if the Government allows the 50-50 provision.

It begs the obvious question about whether fuel mixing is going on already. The Leader of the National Party has already referred to the fact that people fill up their cars with different fuels. Independent retailers very often have a tank that is one quarter full with a particular brand of fuel and they fill it with fuel from another company. It will be interesting to know whether there have been any legal problems. Are there any legal implications as a result of the mixing of fuels that currently occurs? We on this side of the House are saying that we should let small businesses and retailers get on with business and take advantage of the 50-50 legislation, even if that means mixing fuels.

It would be good if the Government gave a firm commitment that it would defend the retailers against the oil companies if they appointed lawyers to prevent a retailer from using the fuel on technical grounds. For example, the mixing of fuel would create problems for motorists by causing damage to engines. It would be good also if the Government made a stand for the retailers to be able to mix the fuel and take advantage of the 50-50 legislation and pass on the price reductions to motorists throughout the State. The Government should support the retailers by fighting any legal action. These are the things the minister should have thought about before this legislation was drafted and before it was brought to Parliament.

Without repealing section 4(3)(g), the subclause reads -

. . . does not contain any motor fuel that has been supplied to the site by his primary supplier . . .

That means that the tank must be run dry and left without any fuel or sludge. Without allowing some form of mixing or modification to this legislation, we will, in effect, be supporting a blank piece of paper.

Mr Kobelke: Read the first phrase. The member left out the first phrase, which is important.

Mr BARRON-SULLIVAN: The first phrase states -

so far as is practicable . . .

I would like the minister to give me an example of the size of a tank and tell me precisely what volume of residue or sludge will be allowed to be left in it. That is what oil companies' lawyers will look for. They will argue about that meaning.

Mr Kobelke: That was the legislation as it stood when the Select Committee on Petroleum Products Pricing in Western Australia reported.

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Mr BARRON-SULLIVAN: The minister said that last night. The legislation is 20 years old. The member for Merredin raised the question of signage, which I was going to raise later. The problem of multi-point bowsters did not exist 20 years ago. A motorist may pull up at the bowser that has two or three handles, perhaps with autogas. The retailer would need signage to show that one bowser contained BP fuel and another contained fuel from an independent supplier. That situation did not exist 20 years ago. These practical and legal considerations should have been thought about before the legislation came to Parliament so that we do not have to vote on a blank piece of paper. I am floored that we did not have that legal advice earlier.

MR BRADSHAW: A few years ago, I went to a Shell service station in my electorate. At the time, I had a car that ran on Shell fuel so I pulled in and filled up the petrol tank. When I tried to use my Shell card, I realised that the service station had changed its fuel. I had not taken any notice of the signs outside the service station. I am sure that when it changed from one fuel to another, the retailers did not bother to empty the tank and refill it with the new fuel. Some years later, it reverted back to Shell and the new retailers probably did not do that either.

That is what occurs among some of the retailers who have freehold ownership of their premises. Another chain of service stations is called Kwikfuel. I do not know of any other service station in Western Australia with that name. It is a freehold, independent service station that buys its fuel at the best price it can. It is not BP, Shell, Ampol or Caltex. I will bet any money that that operator does not pump out the tank when he gets a different brand of fuel. It is nonsense to say that fuels cannot be mixed. There might be the odd exception when the fuel is dirty. I have been around for a few years, unfortunately - I would rather be 30 years younger - and I have not had dirty fuel in my car during the time I have been driving. With regard to the legal issue, the other day someone told me he got legal advice from one lawyer, opposite advice from another lawyer and now he is going to a third lawyer. Members can bet that that legal advice from the third lawyer will probably be different from the advice from the other two lawyers. Legal advice does not mean a lot. What counts is what the courts say. The Government should not be worried about what the legal advice is; it should try to get this legislation to work properly and let the courts decide, if the matter gets to that stage.

I do not think it matters what we do; the oil companies will try to stymie the legislation one way or another. We should not try to decide what the legal position will be. The Government should not take notice of its legal advice because it is as worthless as whatever the next lawyer says. We should try to do our best for the people of Western Australia to bring down the price of petrol as far as we can.

Mr McNEE: My experience with legal advice is that it is expensive and some of it is good and some of it is terrible. Perhaps it is not really relevant, but in my area, when farmers buy fuel, they buy it in bulk. I cannot imagine the member for Merredin saying to the person delivering the fuel that the load of fuel he is buying will be mixed with the fuel he has in the tanks. That is what happens. Of course, we have to be careful when we go from summer diesel to winter diesel and those sorts of things, but that is a different matter and has nothing to do with what we are talking about. I cannot understand why there is a problem if the member for Merredin or anybody else buys fuel in bulk and mixes it. I cannot see the difference.

Mr Kobelke: The member raises a very important point. Trouble arises when something goes wrong and liability becomes an issue. Using summer and winter diesel as an example, the member might go to a new supplier who gave him winter diesel, or something that was supposed to be winter diesel, when it was summer diesel, and that would create a problem for him. If the member knows the supplier and needs to take action because it has cost him money, then he knows where to go. The main issue is when there is confusion and the two fuels are mixed - one drum of summer diesel and one drum of winter diesel - and they are from different people; then there is a different problem.

Mr McNEE: I understand what the minister is saying.

Mr Trenorden: There was a major crisis about this issue and a lot of people were very upset last winter.

Mr McNEE: If my car is half full of petrol and I pull into a service station, I do not take any notice; I just fill up. The next time I fill up I will use a different service station. It happens all the time.

Mr Cowan: Plume Motor Spirit and Vacuum Oil Company Pty Ltd, for those who have been around too long.

Mr McNEE: I still have a sign on my gate, which says, "Shut the gate. Thanks for the Plume", or something. That is dreadful. I wonder whether we are not mixing the practicalities with what we should be doing.

Mr TRENORDEN: We stand on the side of the consumer. The minister has one last chance. He really should accept this amendment. The minister is arguing for 0.5 per cent of the action or 0.25 per cent of the action, and we are arguing for 99 per cent or whatever of the action. The minister is in that position, not us.

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Mr KOBELKE: I use the example raised by the member for Moore of winter and summer diesel and the interjection made by the Leader of the National Party that there was a major problem. That is instructive, if we consider who copped the problem and what was the method of redress. When it is the small businessman - the farmer - who cops the problem, he is in a position to take legal action to get redress.

Mr Cowan: No, he is not.

Mr KOBELKE: It is not worth the money; it never is. However, when the boot is on the other foot, when it is in the interests of the oil companies to pursue the matter about fuel being mixed, it is a very different issue. If that helps the fuel companies achieve an objective, they will contribute hundreds of thousands of dollars of legal fees towards achieving what they want. That is my point.

I agree with a lot of what the member for Merredin said, but I want to differentiate between two different aspects of this problem - the quality assurance and the liability. When the member was in the House the other evening, I addressed the issue of the Government taking account of that when addressing the legislation because the establishment of those standards is important. That is one aspect of the issue. The other aspect is that which I addressed a moment ago following the interjection by the Leader of the National Party; that is, if it is in the interests of a large corporate entity to use those requirements as a trigger or a basis for enforcing its position, it will do that. That is a different matter.

My unwillingness to accept that amendment is not an attempt to establish the standard so much, but it is my understanding - I am seeking further legal advice and I may stand corrected - that it could create a basis for the oil companies to take action against the small business person, who would bear the brunt of that action. On that basis we will not accept the amendment until I receive that legal advice. If that legal advice indicates that the basis on which I am making the judgment is not correct, we will be happy to revisit that in the other place.

Mr Trenorden: The tendency of Parliament is to preserve the status quo, and the minister is arguing for the status quo. The message that we are trying to get through to the minister is that we are talking about moving on; the minister is talking about the status quo. The minister should think back four months and ask himself whether he would have put that argument then. He is in a difficult position.

Mr KOBELKE: We are about moving on in a way that will work. I will not accede to the member's request for this amendment to be passed because the advice to me is that we run the risk of its being totally unworkable and it would undo what we are trying to achieve. I accept and agree with the member's modus, and on my judgment and the advice available to me it will not succeed.

Mr COWAN: It is a momentous occasion for the minister, who was so vocal some months ago, to effectively acknowledge that he is on the side of the oil companies on the pretext that somebody has a liability for delivering a poor quality product and that nobody wants to accept that liability. That is the oil companies' story. Anybody who wants to get involved in selling fuel at a cheaper price by exercising their rights under this legislation would be weighing up that risk and taking appropriate action. I look forward to hearing the legal advice that the minister receives and I have no doubt that, like all previous advice, it will be based on caution and will talk about those issues of liability or the potential for liability. The effect of the advice will be: "Minister, do nothing." This is what the member for Avon and the Leader of the National Party is talking about - the preservation of the status quo.

Government is usually about the implementation of change and the Parliament has a tendency to seek to preserve the status quo, but we are now in a different situation. The National Party and the Opposition are seeking to change the status quo and the minister is seeking to preserve it, mainly because there may be some liability in terms of quality. We know that the oil companies are very large, we know that the small business proprietor is very small, and the small business proprietor may get belted. That may well be the case, and I am sure that will be the advice given to the minister by his lawyers. However, in this case the critical issue is that the minister is having this issue researched. The minister should ensure that he is not the person preserving the status quo, that he moves on, and that he is not moving on in a way that limits the accessing of this legislation to a few people. This legislation allows people to take the option and take the responsibility associated with that option. Those people can take the responsibility and the necessary action that they are permitted to take in order to utilise the provisions of this legislation; otherwise, it has no validity. Few people can afford to put in a separate tank, which is a requirement of the legislation. Notwithstanding that, the Government has moved a fair step to this side of the House about -

Mr Kobelke: You moved to our side. You voted against us last time.

Mr COWAN: I will take an aside if the Acting Speaker (Mr Dean) permits. The minister should cast back his mind to the time that this House debated the Petroleum Products Pricing Amendment Bill 2000. The minister sought to introduce changes to a different Act at that time. That was wrong, under the operations of Parliament

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and the legislative process. The member for Nollamara was told at that time that the Government would deal with the petroleum products pricing legislation at that stage and, upon re-election, it would deal with the Petroleum Retailers Rights and Liabilities Act 1982. The previous Government always said that and I stand by that commitment. That is what the minister is doing now. This Bill contains two small amendments to the Petroleum Products Pricing Act 1983, but effectively, the Bill amends the Petroleum Retailers Rights and Liabilities Act. This is the course of action that the previous Government indicated it would take. Whether the actual provisions would have been the same - I suspect that they would not - is another story. The minister must be more intrepid. He must accept this amendment and give people an option. He should allow people to take that option and to accept responsibility for their actions.

MR SWEETMAN: Before the debate on this amendment is finished, I will raise a further point with the minister. I know he will go off and get further, and perhaps better, legal advice. The provision of additional or separate storage vessels has been discussed. The National Party's amendment on the storage of different brands of fuel in the same on-site tank was passed. This legislation also seeks to vary the conditions of contract when those contracts fall due. The fuel companies will not immediately rush off and take legal action against franchisees with whom they are not happy. Contamination will be one of the biggest hurdles that the Government and franchisees will have to overcome. I have cleaned up fuel sites in the Gascoyne area for Shell Australia Ltd and BP Australia Ltd. They are the two companies for which I have done this work. It is a massive issue. Who will be liable for any contamination if fuel from another source is stored in a company's tank? It is almost impossible to dispense fuel without spilling some. Members can imagine what play the fuel companies will make of any in-ground contamination, whether the tank has collapsed, has leaked slowly over time or fuel was spilt at the time the tank was loaded. That will be the issue. Fuel companies will not need to rush to litigation; they will sufficiently scare off their franchisees from putting other fuel into company tanks by explaining that their franchisees will share the cost of any clean-up. I bet it will not be a pro rata cost for the period that the fuel was held in those tanks because the fuel company will argue that if there is 50-50 legislation, it should be a 50-50 share in the clean-up. The clean-up bill for a site can be between a quarter of a million and half a million dollars.

Amendment put and a division taken with the following result -

Ayes (22)

Mr Ainsworth	Mrs Edwardes	Mr Marshall	Mr Trenorden
Mr Barnett	Mr Edwards	Mr Masters	Mr Waldron
Mr Birney	Mrs Hodson-Thomas	Mr Omodei	Dr Woollard
Dr Constable	Mr House	Mr Pandal	Mr Bradshaw (<i>Teller</i>)
Mr Cowan	Mr Johnson	Mr Sullivan	
Mr Day	Mr McNee	Mr Sweetman	

Noes (27)

Mr Andrews	Mrs Guise	Mr McGinty	Mr Ripper
Mr Bowler	Mr Hill	Ms McHale	Mrs Roberts
Mr Brown	Mr Hyde	Mr Marlborough	Mr Templeman
Mr Dean	Mr Kobelke	Mrs Martin	Mr Watson
Mr D'Orazio	Mr Kucera	Mr Murray	Mr Whitely
Dr Edwards	Mr Logan	Mr O'Gorman	Ms Quirk (<i>Teller</i>)
Dr Gallop	Ms MacTiernan	Mr Quigley	

Pair

Mr Board

Mr Carpenter

Amendment thus negatived.

Debate adjourned until a later stage, on motion by Mr Kobelke (Minister for Consumer Affairs).