

PETROLEUM LEGISLATION AMENDMENT BILL 2001

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement -

Mr BARRON-SULLIVAN: This is probably the most appropriate clause on which to seek further information on the constitutionality of the legislation. Obviously if the Bill is unconstitutional, a problem may arise with proclamation. I am mindful that the minister said during the second reading debate last night that he had sought and obtained advice from the Solicitor General, part of which I think he read out. I would be grateful if the minister could read out the salient aspects again because we do not have a copy of *Hansard* from which it can be quoted. When was that advice sought? When did the Solicitor General provide that advice?

Mr KOBELKE: Last night I read into the record the conclusions of the legal advice from the Solicitor General of 24 May this year, which I received only a few days ago. The clear legal opinion was that no element of this legislation could be considered to be unconstitutional because it was at variance with federal legislation. The member will see in the daily *Hansard* of 30 May the quote from that opinion, which clarifies the matter. The member may broker questioning on the issue, but I am unwilling to release that advice in full. According to fairly well-established practice, such legal advice is not made available. An exception has been made on only two occasions in my 12 years in this Chamber. I do not wish to release the full details given that legal disputation may arise over this matter, even on the basis of troublesome legal action that has no grounds, to try to thwart the legislation. We want to keep our powder dry in the interests of protecting the State and upholding this legislation. The conclusion I read into the *Hansard* last night makes clear that our best legal advice is that there is no substance to the advice sought by Caltex Australia Ltd, which tried to suggest that somehow this Bill is unconstitutional.

Mr Barron-Sullivan: When approximately was the minister first alerted to concern by any party that this legislation may not be constitutional?

Mr KOBELKE: A letter from Caltex, which was dated, was provided to me, and I assume to the member, approximately two weeks ago.

Mr BARRON-SULLIVAN: I dwell on this because Caltex was not the only company that approached me about this matter. As members know, if there is one person in this Chamber who is by no means a stooge for the oil companies, it is yours truly. As I have said previously, as a result of my work chairing the Select Committee on Petroleum Products Pricing in Western Australia I do not think I will be offered a lucrative position with an oil company after my career in politics. Caltex is not the only company that has raised this matter. Without revealing a name, the minister may be interested to know that I was advised two days ago that a company of some substance would launch legal action to challenge the constitutionality of this legislation. Although I am not familiar with the arguments it will raise, the company made it clear it has received constitutional legal advice along those lines. I am not trying to be negative; I am trying to ensure the Parliament passes watertight legislation because, as the minister explained, in 1991 BP Australia Ltd paid its lawyers to sink the legislation. The Opposition does not want to see that happen again.

As the minister is aware, concerns have been raised that the Bill may conflict with the Petroleum Retail Marketing Franchise Act 1980, and possibly even the Trade Practices Act. I am not sure whether that is the aspect to which the company that spoke to me was referring. However, it is vital that members in this Chamber feel one hundred per cent confident that this legislation has been framed in such a way that it will not be knocked out on some constitutional or legal technicality by an oil company that has just about more resources than the national budget. I appreciate what the minister is saying about the need to keep these opinions in confidence. I appreciate that he may not wish to table it for that reason. However, it would be appreciated if those members who are engaged in this debate could see the full opinion provided by the Solicitor General, even if it is on the basis that we will not quote it or that we return it to the minister afterwards. I appreciate that this may have been raised with the minister only a couple of weeks ago and, obviously, the Solicitor General had to crack the whip to get an opinion in that time. However, we need confidence that we are looking at a watertight situation. That is fundamentally important, in view of the fact that I have been advised in no uncertain terms by a major corporation that it will - it did not say "might" - take legal action to challenge the constitutionality of this legislation if it gets through.

Mr KOBELKE: I can act only on the best legal advice to me. That advice has been provided by the Solicitor General. It is absolutely clear. The judgment is that there is no basis for a constitutional legal challenge against this legislation and we have to act on that basis. I ask the Deputy Leader of the Opposition to keep in mind the

Mr Dan Barron-Sullivan; Mr John Kobelke; Mr Max Trenorden; Acting Speaker; Deputy Speaker; Mr John Bradshaw; Mr Ross Ainsworth; Mr House

behaviour of Alan Bond over a decade or more. He would spend a huge amount on lawyers to tie up matters in court to his advantage without getting a court decision simply to abuse the processes to achieve an objective without having any support in the law for the position being adopted. The member might also remember a famous case in which some accusations were made against a High Court judge, because a building company had used the processes of the courts to hold up the matter for an extended period to win some financial advantage when there was no legal basis for it. I suggest to the Deputy Leader of the Opposition that we have dealt with this matter. If any parties abuse our judicial system by tying up the State in court, we will take them on. According to the advice we have received, there is no basis for a successful court action against the constitutionality of this Bill.

Mr BARRON-SULLIVAN: I thank the minister for those fighting words. I assure him that if push ever came to shove, he would have the Liberal Party's support in that respect. I am sure the Leader of the National Party would not be far off the mark either. Again, we are dealing with something so fundamental to the success of this legislation that I would need more than a few pleasing words to convince me that we will not end up with a similar situation to that experienced in 1981. Was the advice that was obtained from the Solicitor General provided by people who specialise in the area of constitutional law?

Mr Kobelke: It is the Solicitor General's advice.

Mr BARRON-SULLIVAN: Is the minister aware -

Mr Kobelke: I do not question which officers the Solicitor General uses. The Solicitor General's signature is on it, so I presume it is the best legal advice available.

Mr BARRON-SULLIVAN: The minister must understand the significance of this. As I said yesterday in my speech during the second reading stage, I have been almost charitable to the Government on its performance on the fuel pricing issue since the election. Although we on this side of the Chamber have niggled the Government a bit, we have given it a bit of leeway, knowing it needs some time to get this in place. We are trying to fathom, as much as determine the effectiveness of this legislation, the Government's bona fides and whether it is dinkum, whether it wants this legislation to work, whether it wants retailers to be able to choose from whom they buy fuel, and so on. We need to know that we are being presented with legislation that is one hundred per cent watertight. It is not good enough if it is just a piece of paper that the Government has brought to the Parliament so that it can say it has met an election commitment. This is an absolutely key point. We are asking the minister to tell us the nature of the advice and who provided it, so that when an oil company, or whoever, pays for expert constitutional advice, we know that we are up to the mark and can defeat that argument.

Mr Kobelke: The Solicitor General provided advice. It is my understanding that the Solicitor General is an expert in constitutional matters and generally handles such matters.

Clause put and passed.

New clause 3 -

Mr BARRON-SULLIVAN: I move -

Page 2, after line 8 - To insert the following -

3. Review of Act

- (1) The Minister shall carry out a review of the operations of this Act on each anniversary of the commencement of this Act and in the course of such review the Minister shall consider and have regard to -
 - (a) the number of retailers who have exercised their right under Section 4;
 - (b) the impact of this Act (in isolation of any other measures) on the retail price of each category of petroleum product; and
 - (c) such other matters as appear to the Minister to be relevant.
- (2) The Minister shall prepare a report based on the Minister's review of this Act and shall, as soon as is practicable after its preparation, cause the report to be laid before each House of Parliament.

The purpose of this amendment is self-explanatory. First, as with a number of issues in this legislation, and the Liberal Party's response to it, this is not just simply our idea. Numerous people have put to us the fact that this legislation should be reviewed in some format or other. I am indebted to Phillip Achurch, the Executive Director of the West Australian Small Business and Enterprise Association, the Royal Automobile Club of Western Australia, and a range of people involved in the fuel retailing industry for suggesting this. As members would be

Mr Dan Barron-Sullivan; Mr John Kobelke; Mr Max Trenorden; Acting Speaker; Deputy Speaker; Mr John Bradshaw; Mr Ross Ainsworth; Mr House

aware, a number of pieces of legislation contain simple review clauses such as this. We had discussions yesterday on whether there should be a sunset clause. I do not think this legislation merits a sunset clause, because, after all, retailers need to know they can have ongoing confidence that a 50-50 provision will be available to them. The last thing one wants is to say to retailers that, after a period, this legislation will fall into a big hole in the ground and they will not have the ability to use the 50-50 provisions.

However, we need to know that legislation is effective in a number of respects. I know the minister would have received an e-mail or letter from Mr David Moir, the RAC general manager of motoring services, saying that the RAC would like the legislation to be reviewed to ensure, if nothing else, that the legislation does not cause prices to increase. I cannot see how that would happen, but I can understand its concern. From my point of view, I would like the legislation to reduce prices and allow as many retailers as possible to use the 50-50 provisions. The only way we will be able to determine that is if someone reviews the effectiveness of the legislation to find out exactly how many retailers have taken up their option under section 4 of the principal Act. Also, some price monitoring work will need to be done in isolation of other legislative and regulatory measures to determine the specific impact of these legislative measures.

The proposed new clause is very simple. It is a standard review clause. It puts the onus on the minister to carry out a review of the operations of the Act. We are not saying that the minister should carry out a review of the two principal Acts that will be affected: the Petroleum Retailers Rights and Liabilities Act and the Petroleum Products Pricing Act. We are not saying that the minister should carry out a review of the whole Petroleum Legislation Amendment Bill. We are saying that he should review only the provisions that are contained in this Bill, specifically the 50-50 provisions and the tightening of the loophole on daily pricing.

It will be relatively easy to review the latter, but the 50-50 arrangement will require an extensive reporting and review procedure.

The Government has held this legislation up as the central plank of its fuel pricing policies; therefore, it has an extremely strong mandate from the community to implement it. It makes sense that we should have some form of review to determine whether the legislation has achieved its goals and, if so, to what extent. We are asking that this review consider the number of retailers who have exercised their right under new clause 4 and taken advantage of the 50-50 provisions.

Mr KOBELKE: I am willing to accept a review clause, but I have problems with the one suggested by the Opposition. I ask the member to withdraw it, otherwise we will vote it down. Review clauses are normally inserted towards the end of the legislation. The Opposition is seeking to insert this clause at the beginning of the Bill. We will not accept a review clause in this form. It is my advice, and the Acting Speaker (Mrs Hodson-Thomas) will correct me if I am wrong, that if this clause is withdrawn or defeated, we can introduce a new review clause later, after we have had time to draft one. This clause would require an annual review, which would commit a huge amount of resources. The general standard is for a review after three or five years. I am willing to consider a review after three years, which means one would be held before the end of this term of government. We would couch such a review clause in the form in which it appears in many other Acts. The Home Building Contracts Act contains such a clause. I am also willing to take such a clause even further than the one suggested by the Opposition. My reading of the member's amendment is that a review would inquire into only the principal Act as amended. It would not deal with the substance of the principal Act, which is the whole system. A review should encompass the whole system. The wording of the member's clause would not allow that. We will not accept a review clause in this form. It is appropriate that the review clause be included in a later part of the legislation. I do not think this debate will be finished by dinnertime. During the dinner break, we will consult with the member on the form of review. It is our intention that a review be held after three years, which means it would be completed during the life of this Parliament. Three years will provide ample time to judge the effectiveness of the system. The review should be of the principal Act as amended, not just of the amendments before us. The total package must be reviewed. We would not want to review the total package every 12 months. It would simply be too large a commitment of resources. We want to see how the system works over that three-year period and have a review committee report back before the completion of this term of the Parliament.

Mr TRENORDEN: The minister said yesterday that he will continue to look at this issue on a daily basis, and I have no doubt he will. However, how will I, the industry and the general public know what the minister is looking at? What the member for Mitchell is seeking to do is right. It is his amendment and his arguments, but I agree that we all need to be involved in the process. It does not matter how right or wrong we get this, we will constantly meddle with it. My concern is that, historically, such reviews have been done by good people with the best intentions, but behind closed doors. The minister will admit that this is an issue that he does not want to

Mr Dan Barron-Sullivan; Mr John Kobelke; Mr Max Trenorden; Acting Speaker; Deputy Speaker; Mr John Bradshaw; Mr Ross Ainsworth; Mr House

be reviewed behind closed doors. He wants to demonstrate to the industry, particularly the retailers, and to the general public what is happening. How will the minister demonstrate that process?

Mr KOBELKE: The points raised by the Leader of the National Party are important. I indicated in the debate last night and on previous occasions that it is most important that this area be continually monitored and adjusted. There is no quick fix; we will not get it totally right. If we got it 90 per cent right, things in the marketplace would shift and, soon, other things would not be right and would need to be fixed. That point was also made by the Deputy Leader of the Opposition; we must continue to monitor it. To that purpose, we will re-establish the petroleum products advisory committee, which is provided for in the principal Act. The minister has the power to appoint that committee and therefore have ongoing community input into how things are going. It is our intention to re-establish that committee in the near future so that we can play a role and have public input and oversight.

The other issue is with a review clause, which I have suggested I am happy to include. We will draft it, but I am happy to let the Deputy Leader of the Opposition have the glory of putting it in. However, it would not make sense to have an annual review. The clause in the Home Building Contracts Act requires that when the review is completed, a report be sent to the minister, who is required, as soon as is practical, to prepare a response and lay it before both Houses of Parliament. Therefore, there would be a formal procedure required by the statute for a review after three years, and ongoing monitoring and review through the role of the petroleum products pricing advisory committee.

Mr TRENORDEN: At least three members of this House have a continuing interest in this process: the member for Mitchell, the member for Pilbara and me. The minister knows that interest will not go away. We have the right to ask the minister questions, and I ask him to consider giving us some flow of information in a different manner. We are on record as being committed to trying to achieve reform. I know it is a slightly unusual approach, but I ask the minister to give consideration when forming the committee to keeping at least us three members informed.

Mr Kobelke: The Deputy Leader of the Opposition, the member for Mitchell, is new to opposition. He may not have realised that we have already broken new ground by changing the process of the last Government and allowing him extensive briefings from the Ministry of Fair Trading upon request. Other ministers in the last Government refused those briefings or, when they granted them, got someone from their office to sit in on them. No-one from my office sat in on the briefings. The member had full access to the officers of the Ministry of Fair Trading. That will be extended to you and to other members with an interest in this area.

Mr TRENORDEN: That is the way it should work. If that is the case, I congratulate the minister. The minister knows that the member for Pilbara, in his absence, would be annoyed if he asked for some information from the system and was told he had to go through the minister. I want to be sure that there is an open process of communication, because we will not lose interest in this legislation.

Mr BARRON-SULLIVAN: I am on the record as thanking the minister for his cooperation with those briefings, which we appreciate. As the Leader of the National Party clearly said, we want to work with the minister to ensure this is a workable proposition.

The clause we are proposing is based on a standard review clause, of which there are a number of types. Such a review of this legislation could be done in two ways. I think that the Home Building Contracts Act, to which the minister referred, contains a different way of reviewing things from what we are suggesting. That Act states that the department or agency will carry out the review and that the minister shall then provide to Parliament a report based on that review.

Mr Kobelke: No, the minister carries out a review. It can be an independent review. What I am suggesting is that if you are happy to withdraw the amendment, it does not forgo your right to come back with a slightly different form.

The ACTING SPEAKER (Mrs Hodson-Thomas): It does not forgo the member's right.

Mr Kobelke: During the lunch break, maybe we can come to some agreement, and it can be inserted later.

Mr BARRON-SULLIVAN: I have sought advice and, having looked at other legislation, I believe there is nothing inappropriate about inserting a review clause at this stage. I accept that perhaps having an annual review is an onerous task for the minister's agency. We are quite happy to change that time frame. A number of suggestions have been put to us. People have told us they would like a review after six months. However, I think it needs more time to bite before it can be looked at.

Mr Kobelke: That level of review is appropriately carried out by the Select Committee on Petroleum Products Pricing in Western Australia.

Mr Dan Barron-Sullivan; Mr John Kobelke; Mr Max Trenorden; Acting Speaker; Deputy Speaker; Mr John Bradshaw; Mr Ross Ainsworth; Mr House

Mr BARRON-SULLIVAN: Right. I represent people who have given us advice on this matter, who have expertise in this area and who are involved in the industry. They felt strongly that a review should be conducted at least after six months or 12 months, the general consensus being 12 months. I suggest that we have a review after 12 months and then after three years. To be frank, I do not know whether a further review would be required after that. By then we would know whether the legislation was working. If the minister wished to include provision for a review after 12 months and a further one after three years, he would be assured of our support. That is the first matter. The second matter is whether the review should be of the whole system. We do not mind if that occurs, but it is imperative that there be a review specifically of the provisions in this Bill. Putting it quite bluntly, people in the industry and motorists want to know whether the 50-50 provisions work.

Mr Kobelke: The provision of 50-50 is in the principal Act. This just tidies it up and tries to make it work.

Mr BARRON-SULLIVAN: That is right.

Mr Kobelke: So you cannot review the effectiveness of 50-50 if you just review the amending Bill.

Mr BARRON-SULLIVAN: No. Let me clarify what I am trying to say. We know 50-50 is not working; it cannot work, the courts have knocked it out and so on. People tell me that they want to know whether the intent of this legislation will become a reality. They want to know whether what we are doing here is successful or whether we need to go to another stage later on and tighten things up further. That is why the review does not relate to the two principal Acts; it really relates just to what this legislation is intending to carry out.

If the minister proposed a review of the two principal Acts, and part of that review was to specifically look at the Petroleum Legislation Amendment Act, it would be suitable. My advice is that it is imperative that this Bill - thin as it might be - itself be reviewed. However, I am happy to do that as part of a major review, provided it includes what this House and the other House have been discussing over the past couple of weeks, to determine whether the legislation has had the desired effect.

Perhaps the minister could indicate whether there are any points in this proposed review clause with which he is unhappy.

Mr KOBELKE: I suggested to the Deputy Leader of the Opposition that we could expedite this matter because I thought the Opposition wished to help us get this legislation through as a matter of priority. This is the first Bill that the Government is dealing with in government business time and we wish to have it through the Parliament as quickly as we can. I am not willing to accept the proposed review clause as it currently stands. I therefore suggest that we use the time available during whatever breaks occur between now and this afternoon - because we have question time and a matter of public interest ahead of us - to complete any drafting work that must be done. We could then have the debate if we did not reach agreement. That course is preferable to taking the time now to pick over all the possible points that may or may not be included in a review clause.

Mr BARRON-SULLIVAN: Madam Acting Speaker, if I were to withdraw this amendment now and either the minister or I were to move another amendment later on, must that amendment be slightly or substantially different from this? I presume that, having withdrawn this amendment, I cannot bring the same amendment back.

The ACTING SPEAKER: The Deputy Leader of the Opposition needs to seek leave to withdraw the amendment to insert a new clause 3; however, if leave is given, he can bring that new clause back in its present form.

Mr BARRON-SULLIVAN: Thank you, Madam Acting Speaker. Obviously, while I will take the minister up on his offer of discussions and we will hopefully come up with something that is workable and on which we have broad agreement, I am happy with the wording of my proposed review clause.

Mr Kobelke: If we cannot reach agreement, you have not forgone your right to again move in exactly this form.

Mr BARRON-SULLIVAN: I want to touch upon three points in the review clause. The first is to look at the number of retailers who have exercised their right under new section 4 - in other words, the number of retailers who have been able to gain access under the 50-50 provisions. Can the minister see any problems with that?

Mr Kobelke: I am not inclined to be so specific now, but I am willing to have discussions later about whether we need to be that specific.

Mr BARRON-SULLIVAN: The next point is the impact of the Bill in isolation from any other measures; that is, we should not look only at the impact of the principal Acts on fuel prices.

Mr Kobelke: I am not sure whether we need to be so prescriptive.

Mr Dan Barron-Sullivan; Mr John Kobelke; Mr Max Trenorden; Acting Speaker; Deputy Speaker; Mr John Bradshaw; Mr Ross Ainsworth; Mr House

Mr BARRON-SULLIVAN: They are the two key points: to establish how many people have taken up their options under the Bill, and to deal with fuel pricing. If the minister is not prepared to include those two points in a review clause, any discussions during the lunch suspension would be a waste of time. We might as well get on and vote now. That would be a disappointment, as I am prepared to come to the party on the timing of reviews. Those two key points must be in a review.

THE ACTING SPEAKER: Is the Deputy Leader of the Opposition seeking to withdraw the proposed new clause?

Mr BARRON-SULLIVAN: I was hoping that the minister might say whether he would agree to those two points.

Mr Kobelke: The offer is on the table to withdraw, discuss and come back later without forgoing any of the member's rights. Alternatively, the Government will look to moving a different review clause.

Mr BARRON-SULLIVAN: I want to put on the record that those two key points are not negotiable. I hope the minister will adopt a positive attitude to ensuring that those two points are retained.

Amendment, by leave, withdrawn.

Clause 3 put and passed.

Clause 4: Long title amended -

Mr BARRON-SULLIVAN: This clause extends the net so that the legislation does not cover just franchisees and their relationship with oil companies. Can the minister give some practical, real-life examples of the sorts of businesses and retailers that he sees as fitting the definition of "certain persons" and therefore able to take up the 50-50 provisions?

Mr KOBELKE: I do not know whether the member has a copy of the explanatory memorandum. One was made available at the time I second read the Bill. The amendments were put into the Bill last night, and it was reprinted. The member should check whether he has version 4-2 of the Bill. The member may have the old one.

This clause amends the long title of the Act, by substituting the words "Persons occupying land for the purpose of" with the words "certain persons", to reflect the change made by the Bill to include all retailers, not just franchisees or tenants of the primary supplier. The legislation will now apply to all retailers.

Mr BARRON-SULLIVAN: I realise the intention of this clause is to broaden the net to cover all retailers, so that all may now access the 50-50 provisions. I would like the minister to detail the types of retailers who would be able to access the 50-50 provisions as a result of this broadening. The legislation will now cover more than just independent franchisees, which were already covered. Specifically what kinds of businesses will now be covered? There are also multi-site franchises, people with exclusive supply contracts and so on, and I wish to know who the minister believes will benefit from this change. The net is being extended to all retailers, but which categories will actually be able to use this legislation?

Mr KOBELKE: It appears that the member for Mitchell wants me to provide the names of the people who will benefit. With this amendment the Government is opening up the scope of the Act. I am not sure if the member sees any problem with that. Some retailers may not be in a franchise arrangement, but in some other form of contractual arrangement that seeks to preclude them from using the 50-50 provisions. The Government is simply making sure that the door is open. The member for Mitchell indicated earlier that he was worried that there may be a constitutional challenge. Whatever the Government does, parties will seek ways around it by using various legal contrivances. It may be - this is entirely hypothetical - that other retailers, as part of a supply agreement, are locked into some sort of contractual arrangement that seeks to preclude them from the 50-50 provisions. If such a legal contract could be contrived, this provision will extend to those involved in it, given that they may not be seen legally as franchisees. At present some people may be able to take advantage of that. However, this amendment extends the coverage of the Act, removing loopholes and devices that might be used to frustrate its clear intent, which is to provide an opportunity for retailers to purchase up to 50 per cent of their petrol from someone who is not their primary supplier.

Mr BARRON-SULLIVAN: I thank the minister for that global explanation, and I understand it. However, I am trying to establish whether, to put it bluntly, the minister has done his homework in this area, and has gone out to industry to find out who is likely to take advantage of 50-50 legislation. I do not ask this to drag out debate, but because the Opposition knows of a number of people involved in petrol retailing and wholesaling - the small business end of the market and the independents - for whom this legislation was intended to provide an opportunity. Some already have 50-50 provisions in their supply contracts. Those people have said that they do not think that this legislation is workable. I am trying to ascertain who in the industry the minister believes will

Mr Dan Barron-Sullivan; Mr John Kobelke; Mr Max Trenorden; Acting Speaker; Deputy Speaker; Mr John Bradshaw; Mr Ross Ainsworth; Mr House

be able to take up their rights. This goes further than the Government seeking to extend these rights to anyone who wishes to take advantage of them and not wanting to see the legislation knocked out on a constitutional technicality. I want to know if the Government has canvassed retailers, and asked them if they think this legislation is workable. When legislation is being pushed through like this, the Government must be certain that it will achieve its objective. This is done by a process of consultation; that is, talking to people about the Government's intentions and seeking input and reactions. Retailers should be asked if they will take up their 50-50 options under the Act. For example, has the minister had a discussion with the owner of a service station in Innaloo who runs the business with his wife on an exclusive supply basis, and who is really excited at the prospect of being able to shop around for their fuel? I hope the minister has done his homework, because I am going to keep putting him under the pump to make sure this is workable legislation. The changes look good on paper, and I agree with the legislation's broad objective. Specifically, which businesses will now be able to take advantage of this provision?

Mr KOBELKE: The member for Mitchell sounds like he is saying that the select committee report got it wrong. He wants the Government to go back and do the work that was done by the Select Committee on Petroleum Product Pricing. I have discussed this matter with a whole range of people, including the oil companies, the independent retailers and the Motor Trade Association. I spoke at a breakfast attended by about 100 members of the Motor Trade Association, and this is one of the issues that was canvassed. I have spoken with independent distributors and retailers, both face-to-face and on the telephone. I have spoken to only one person who actually wanted to use this provision himself in the metropolitan area. I have spoken with retailers in Albany, and next week I will be speaking with people involved in fuel retailing in Esperance and Kalgoorlie. I am talking to as many people as I can. It is not a matter of identifying particular people who are going to use this provision. The select committee established by the previous Government recommended it, and the present Government agrees with it and is implementing it. The fact that the oil companies are so implacably opposed indicates that they suspect that retailers will want to use the provision

Clause put and passed.

Clause 5: Section 3 amended -

Mr BARRON-SULLIVAN: For the first time this clause specifically introduces liquefied petroleum gas, or autogas, and it is part of the provisions in this legislation which will ensure that autogas will be subject to the 50-50 provisions. In the minister's speech last night he said the Government was pushing ahead with 50-50 provisions for autogas, even though a maximum wholesale price provision did not exist for that product. I am still coming to terms with the argument he put forward for that. People in the industry - the independents and the retailers - are saying to the Opposition that the 50-50 provision on LPG is desirable, but that they would like to see a four-pronged attack on fuel pricing, and to see it all come together. Although the clause relates to the 50-50 provision, this is an appropriate time for the minister to give us a firm idea, or a date when the maximum wholesale pricing arrangements will be put in place for autogas. Another part of the package that relates to LPG, in addition to this 50-50 measure, is the capping of country LPG prices. I wonder whether the minister could give the House an indication of when that will take place. They are separate issues, but they have a direct bearing on the overall pricing package and fit in with the extension of the 50-50 provisions to cover LPG. In a nutshell, when will maximum wholesale pricing for LPG take effect? When will country LPG prices be capped?

Mr KOBELKE: The matters concerning LPG will take effect when the other parts of the maximum wholesale price begin operating. I cannot give the member a clear date as to when that will be, but it is our firm intention to do that. However, the market for LPG is small and raises issues that are separate from those that relate to petrol. The setting of a maximum wholesale price for LPG will follow on from embedding the maximum wholesale price of petrol.

The other question the member asked concerned putting a retail cap on LPG prices in regional centres. As the member is aware, and as I have announced, that will flow on from a number of matters, one of which is ensuring that fuel is available at the maximum wholesale price. If retailers cannot acquire fuel at the maximum wholesale price, it could be to the detriment of retailers in regional centres. That is a fight we will win eventually, but we have yet to win it. Secondly, procedures are required to set that retail cap. In the near future, I hope to be able to release the model for consultation. The Government will enter into consultations with the affected parties so that we can develop a model that we know will work and that has been ticked off by the various players, particularly the retailers in regional centres. The model will be ready, but it will be conditional on the flow of fuel being available at the maximum wholesale price.

Clause put and passed.

The DEPUTY SPEAKER: I draw the attention of members to clause 6. I understand that there was a clerical error in the reprinting of the pro forma Bill. The first line on page 9 of the Bill should read -

(11) Section 4(4) is repealed and the following subsection is inserted instead -

That error will be corrected.

Clause 6: Section 4 amended -

Mr TRENORDEN: At some stage, I would like the minister to define the term “50 per cent” in the same way that clause 5 defines the primary supplier. It is unclear whether 50 per cent will be averaged every year, on the day or whatever. The minister must clarify that issue. Other than that, I am happy to move the amendment in my name. I move -

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

This is an important part of the Bill. In his address yesterday the minister spoke about the ability to sue under the Act. A decision must be made about whether people will be allowed to get a discount in the price of fuel. The constituents that I am substantially interested in - those in rural and regional Western Australia - do not have the capacity to put in second tanks. It has been suggested that the retailers drain their tanks, and then put in more fuel from another supplier; for example, they could put unleaded petrol into the tank. How will it be established that the tank had been drained? Who will prove that it was drained? It could be argued that 10, 50 or 100 litres was left in the tank. That issue is of paramount importance.

Yesterday, the minister talked about some rights that could be lost as a result of this amendment; for example, the capacity for people to sue because of an impurity in the fuel. The minister gave an example in which some people from the eastern States had put a substance into the fuel in order to cheat. The situation in that example would not pose a problem. A retailer who tipped something into his tank and cheated would be liable for it, whatever this Bill says. I am more concerned about whether a retailer could be sued because the fuel that is delivered is impure. I am interested to know whether the minister or his department have done any work to ascertain on how many occasions that has occurred.

Mr Kobelke: Remember the avgas disaster.

Mr TRENORDEN: We are not talking about avgas.

Mr Kobelke: When was there a problem with avgas prior to the last problem? They are unexpected spasmodic events.

Mr TRENORDEN: I will give the minister an example concerning avgas. If a person drove down Canning Highway and his motor cut out, he would not kill 200 people, or even one person. It happens every day of the week because people forget to put fuel in their tanks.

Mr Kobelke: The point I make about avgas is the huge commercial cost.

Mr TRENORDEN: It is not reasonable to compare avgas and motor fuel. The reason that avgas is such a highly contentious issue is that once one gets above the ground and stops, one has some difficulty coming down.

Several members interjected.

Mr TRENORDEN: It is not the coming down that is the problem, it is the sudden stop at the end. All of that aside, the difficulty with motor fuel is nowhere near as great as it is with avgas. There has been a history of motors being damaged by fuels. The issues that apply to avgas are different from those that apply to petrol. I will allow the minister to make a comment.

MR BRADSHAW: I will add to what the member for Avon said. The only way that the 50-50 rule will work - there may be an exception - is if retailers can put the fuel in the same tank. If that cannot be done, the cost of putting in a new tank and the other associated costs are beyond the ability of most retailers to pay. They must also have the land to do this. Therefore, I believe the 50-50 rule is impractical. As much as I thought it sounded good when I first heard it, the practicality of it is not so good. The only way that it will be successful is if a retailer is able to put two fuels in the one tank. As the member for Avon has pointed out, the number of times that there is crook fuel is very rare. The minister referred to the avgas issue, and it is sad when those things occur. However, every now and then in this life there is an exception to the rule. Therefore, something must be put into the legislation so that the poor proprietor does not get whacked by costly crook fuel. This problem must be overcome otherwise the 50-50 rule will be impractical and will not be adhered to because of the practicalities of putting in a tank if there is room to put it in. The 50-50 rule will be a nonsense unless the fuel can be put into one underground storage tank.

Mr Dan Barron-Sullivan; Mr John Kobelke; Mr Max Trenorden; Acting Speaker; Deputy Speaker; Mr John Bradshaw; Mr Ross Ainsworth; Mr House

Mr AINSWORTH: I support the amendment moved by the Leader of the National Party. Despite the good intentions of the Government and the minister in introducing this legislation, it really is impractical and unworkable for smaller service stations that do not have the existing tanks to take on fuel from two different suppliers without mixing them. They certainly do not have the capacity financially, or even in some cases physically, with the site they are on to put in additional tanks. In talking about avgas, the minister was dragging a large red herring across the trail. Any contamination of fuel from one supplier or another would be most unlikely to be applicable to all the fuel from that supplier. In other words, if a retailer changed suppliers from Shell to BP and took a load of BP fuel into his tank, the likelihood that all the BP fuel in that batch from the terminal was contaminated would be extremely small. The most likely contamination, if there was any at all, would be the in the single load that was delivered. In the case of avgas, that was fuel that was being delivered all over Australia, apart from Western Australia, and the contamination occurred because of changed processes at the refinery. I suspect it would be unlikely, but if a similar problem occurred at a service station with a fuel company dumping a load of fuel on top of the remains of a fuel from a different supplier, the problem would not just be confined to that one service station. It would be spread right across the State or the whole nation as in the case of the avgas example. It would clearly show up at service stations that exclusively used the company's product as well as those service stations at which there was the potential for admixture. Therefore, any legal liability would soon be sorted out because it could be clearly demonstrated that the problem was caused by a particular brand of fuel when other stations, which did not have a mixed load of fuel, were experiencing contamination. It would not be difficult to deal with any major legal problems. However, I think the chance of that happening would be infinitesimal.

Mr Kobelke: When I referred to the avgas calamity, I was not saying that it would be repeated with motor vehicle fuel. I was making the point that such incidents occur spasmodically and they have huge cost implications and a big legal fight can ensue. Therefore, we have to make sure that we provide protection so that there is product reliability, and we provide some method of handling product reliability problems that may flow on the odd occasion when something does go wrong.

Mr AINSWORTH: They are laudable sentiments minister and I agree that it is an issue for people in business. The minister is making more of a problem than really exists. In using this, even in a most well-meaning way, as a reason not to allow small operators to purchase fuel from separate suppliers and put that fuel on top of remaining fuel from their main supplier because there may be some litigation at a later stage is making more of the issue than needs to be made. It would be detrimental to the retailers concerned if they were not able to use a single tank for their fuel from whatever supplier they choose.

Mr TRENORDEN: There are a couple of constants here. As I drive along the road, I will fill up my car wherever I feel like it. If I sue someone because of a problem with the fuel that is in my tank, I have got to prove where it came from. That is a difficult thing to do, as most of us do not buy just Ampol and BP fuel. The fuel companies today say that loyalty is all over the place. It can be argued that fuel cards, for example, will take a motorist to Shell. However, many fuel cards will take motorists to any service station. How many members could say that they definitely have only one fuel in their tanks right now? I cannot say that, because I know I have fuelled up twice and did not drain my tank of fuel before I put the next lot in. That question should be put into context, like the member for Roe said. The fuel comes from the same source. How many legal cases have there been of a motorist being required to go to a fuel retailer to find out where the fuel came from so a that successful legal action can be launched? I do not know of any cases; no-one has approached me about any. I suggest to the minister that it is highly unlikely that there are any. I am not saying that it will not happen, because it will. However, in this place we are constantly passing legislation and changing the rules that advantage some and disadvantage others. The Opposition is stating clearly here that its constituents would prefer to have the advantage of a lower price for fuel than the odd chance of being able to successfully sue a fuel company. The chances of that happening are very remote.

The minister said yesterday that few people will benefit from the Bill. We are trying to increase the number who will benefit from the Bill by providing a capacity for stations to mix the fuels. That is why I asked the question about section 5, because whether fuel is being mixed will depend on the definition of the 50-50 ruling. Is it 50-50 over a year or is it 50-50 on-site at any given day? That application of the 50-50 ruling will be important. When the Opposition was briefed on this matter, it was told that the 50-50 ruling had to be on-site - when one walked onto a site, one had to demonstrate that 50 per cent of whatever the fuel was had come from the current supplier. That would be difficult for retailers. The minister spoke yesterday about averaging it over 12 months or even six months. It would make it far more reasonable for a retailer to prove that over a six-month period of operation, he purchased better than 50 per cent of his particular grade from the contracted supplier. We believe these are absolutely core issues for our constituency and for the metropolitan area as well.

Mr Dan Barron-Sullivan; Mr John Kobelke; Mr Max Trenorden; Acting Speaker; Deputy Speaker; Mr John Bradshaw; Mr Ross Ainsworth; Mr House

Mr KOBELKE: I am inclined to support the amendment moved by the Leader of the National Party, but I will not go as far as he may intend. We do not wish to interfere with the arrangement between the primary supplier and the retailer in other than some specified ways. If the primary provider has spent a huge amount of money on the advertising and promotion of its fuel and has made a big issue about the quality of its product and that it is better and cleaner and all the rest of it, then we must take account of that issue when that provider says, "You can't mix other fuel with ours." That is different from the service station owner who is using the 50-50 legislation and on one of the bowsers he is saying that this is brand X, Yellow brand or My Fuel; he picks up spot purchases of whatever brand and puts them into a separate tank and, provided it meets the correct specifications for ULP, it is marketed as the local home-grown brand. That is the member's intention and I do not have a major problem with that. As already indicated, mixing already occurs. I do not want to extend that to mixing with the primary brand of fuel which is promoted by the major supplier. That is already covered by the preceding clause. Paragraph (g) on page 8 of the amended blue copy of the legislation -

Mr Trenorden: If the minister looks at my amendments, we are seeking to remove that from the Act.

Mr KOBELKE: Is the member amending paragraph (g)?

Mr Trenorden: Yes, we are seeking to remove it from the Act.

Mr KOBELKE: I will not accept that amendment, because that makes clear that we would not allow that mixing of fuels with the fuel from the major provider.

Mr House: Why not?

Mr KOBELKE: BP, for example, spends millions of dollars promoting its fuel and its image. All its sites have a particular presentation and a quality. The member is saying that other fuel could be added to the BP tank. The company sees that as contravening its supply agreement in a major way. We are contravening the supply agreement in certain ways, but that goes one step further than the Government or I are willing to go. This would open up a huge issue about the reliability of the product and issues of liability. We have to be very careful in this area. If we try to go too far we will provide some legal support for the potential legal challenge against us. I am very conscious of this. We spoke earlier about the threat of legal challenges by certain parties against this legislation. If the member says that that is of no account - the millions of dollars that companies spend promoting and researching its product so that there is no contamination etc - we are creating a major problem.

Mr Cowan: That fuel would not be sold under the BP label. Retailers only have to ensure that it is not sold under the BP label.

Mr KOBELKE: The issue is that we are segregating fuel supplied by the major provider from fuel which is supplied under the 50-50 legislation.

Mr HOUSE: I accept that that is the logic the Minister has laid down in the legislation. We have looked through this legislation very carefully and, as someone who represents people in rural Western Australia, if the Government does not accept these amendments - this is the first - I say that this legislation will not work. Many outlets in rural Western Australia receive fuel perhaps once a week - maybe not even that frequently. They are not replenished on a regular basis as is the case in the city because they do not have the throughput. As I said during the second reading debate last night, we will run into many other difficulties. If we do not allow those retailers to accept fuel from other companies, I cannot see how the Government can regulate the price the way it wants to and be fair to these people. We are in danger of doing what I think has happened in the banking industry. We have belted the banks as public figures so often, they do not care any more, and anything the public says about them goes straight over their heads. If the fuel companies are the next icon that we start belting around the ears, we will not resolve this problem; we will finish up in the same situation.

We are aiming to achieve an equitable situation with a balance between price and service. For the life of me, given the contracts of small country operators, I cannot see the Government, without its accepting this amendment, achieving what it wants to achieve.

Finally, we will get legal challenges, anyway. The Government must be realistic about that. These companies are big boys, playing big games, and a lot of money is involved. They will challenge this legislation, anyway. We will have to get it as right as we can this time around or we will not resolve the problem.

Mr BARRON-SULLIVAN: This clause deals with a section of the principal Act that forms the crux of the whole 50-50 issue. I concur entirely with the comments made by my colleagues from the National Party and the Liberal Party that we have to make sure this works. This amendment deals with section 4 of the principal legislation, which is without doubt the most important single provision in the 50-50 issue. How is section 4(3) of the principal Act intended to work? It could work in two ways. It was explained to us at a briefing that that

Mr Dan Barron-Sullivan; Mr John Kobelke; Mr Max Trenorden; Acting Speaker; Deputy Speaker; Mr John Bradshaw; Mr Ross Ainsworth; Mr House

section means that if I am a retailer and I sell unleaded, lead replacement and diesel fuel, I must continue to sell those three fuels, branded by my primary supplier, even if I take advantage of the 50-50 rule. If I have a fourth tank somewhere and I am running Shell in that tank, and I am a BP retailer, I have to keep selling BP unleaded, BP lead replacement and BP diesel for the whole time that I have this alternative fuel sitting in the other tank. This is crucially important. Is that the case, or can I run dry my BP unleaded fuel and fill that tank with Shell fuel so that for a period, although I am a BP retailer, I have no BP unleaded fuel in my tank? The minister's answer to this will decide which way the Liberal Party votes on these amendments.

Mr KOBELKE: The supply of designated fuel from the major supplier must be maintained.

Mr Trenorden: What does that mean?

Mr KOBELKE: Under a franchise arrangement, a franchisee cannot decide to stop selling unleaded petrol from its major provider.

Mr Trenorden: Do you mean on a daily basis?

Mr KOBELKE: Some of that fuel must be maintained at any given time.

Mr Trenorden: If I drive onto a site once this 50 per cent legislation is in operation, does 50 per cent of that supply -

Mr KOBELKE: No, that is different; it is covered in the existing Act. The member for Avon alluded to that earlier. The Government is not changing that. The Government is saying that when a franchisee is locked into a franchise arrangement, he can purchase up to 50 per cent of his fuel from someone other than his primary provider. The franchisee cannot get out of the franchise arrangement; he must still purchase fuel from his primary provider. This legislation is simply saying that up to 50 per cent of fuel sold by a retailer can come from another provider over a six month period. However, he must still retain fuel for sale from his primary provider.

Mr TRENORDEN: I want the National Party's position on this matter to be clear to the minister. The Government will put up a terminal gate price and a retailer in rural Western Australia will say, "You beauty, I can now buy that fuel at that terminal gate price." The National Party wants that retailer to be able to pick up that fuel and take it to his site. The minister is saying that the retailer will not be able to put that fuel into his site because the unleaded tank must contain fuel from the primary supplier. The retailer will not be able to access the terminal gate-priced fuel. The only way that the retailer can access fuel at that price is by putting in another source of storage, which will cost \$40 000 to \$60 000 depending on the size of the tank. I appreciate what the minister is trying to do, but I want him to understand the position of National Party members. The National Party is saying that the Government will be successful and will put the terminal gate price up in lights. However, country people should be able to purchase that fuel and put it in their tanks. The minister has said that country retailers will not be able to do that. I wanted to make that point.

Mr BARRON-SULLIVAN: I know the minister wants to adjourn the debate, but this is possibly the most important part of the legislation. The minister has said that we are on the verge of determining whether it will work. On that basis, the legislation is absolutely and utterly unworkable. This is a crucial stage. Some vital amendments must be made, which will receive unanimous opposition support; yet the minister is about to adjourn proceedings on what he considers to be the most important legislation before this House. Can the minister give a reason for the adjournment of proceedings?

Mr KOBELKE: The Deputy Leader of the Opposition is a bit precious. He is trying to find a way out. He does not believe what he signed off in the report. He clearly committed to that report. The Government believes this legislation will provide some benefits and it will proceed with it.

In response to the points raised by the Leader of the National Party, I have always understood that it would not be commercially viable for many fuel retailers to put in extra tanks on a spot market. It was never intended that this legislation would have a wide application. If a retailer decided that it was no longer worth selling premium fuel, and this provided a spare tank, he could make use of it. This opportunity is only available in those special circumstances. At a later stage I will discuss in detail the issues addressed by the member for Avon.

Finally, a range of issues impinge on the potential for a country retailer to send a tank to pick up fuel at the maximum wholesale price. For instance, one of a number of franchise agreements that I have seen states that if there is a change in general market prices, the price set in the supply agreement or franchise arrangement can be renegotiated. Doors are opened with the availability of a maximum wholesale price. This area is obviously important and the Government will not finish the debate here. The Government gave an undertaking to the Opposition that it would provide a ministerial statement at this time. It is an appropriate time to adjourn this debate, but the Government has not finished with these important issues.

Extract from *Hansard*
[ASSEMBLY - Thursday, 31 May 2001]
p818b-828a

Mr Dan Barron-Sullivan; Mr John Kobelke; Mr Max Trenorden; Acting Speaker; Deputy Speaker; Mr John Bradshaw; Mr Ross Ainsworth; Mr House

Mr Trenorden: When will you resume the debate?

Mr KOBELKE: In approximately three-quarters of an hour. The House will debate this matter this afternoon during whatever time is available.

Adjournment of Debate

Mr KOBELKE: I move -

That the debate be adjourned until a later stage of the sitting.

Question put and a division taken with the following result -

Ayes (33)

Mr Ainsworth	Mr Hill	Mr McRae	Mr Templeman
Mr Andrews	Mr House	Mr Marlborough	Mr Trenorden
Mr Bowler	Mr Hyde	Mrs Martin	Mr Waldron
Mr Brown	Mr Kobelke	Mr Murray	Mr Watson
Mr Cowan	Mr Kucera	Mr O’Gorman	Mr Whitely
Mr Dean	Mr Logan	Mr Quigley	Ms Quirk (<i>Teller</i>)
Mr D’Orazio	Ms MacTiernan	Ms Radisich	
Dr Edwards	Mr McGinty	Mr Ripper	
Dr Gallop	Ms McHale	Mrs Roberts	

Noes (18)

Mr Barnett	Mrs Edwardes	Mr Marshall	Mr Sweetman
Mr Birney	Mr Edwards	Mr Masters	Dr Woollard
Mr Board	Mrs HodsonThomas	Mr Omodei	Mr Bradshaw (<i>Teller</i>)
Dr Constable	Mr Johnson	Mr Pental	
Mr Day	Mr McNee	Mr Sullivan	

Question thus passed; debate adjourned.

[Continued next page.]