

Ms Katie Hodson-Thomas; Mr Terry Waldron; Mr House; Mr Hendy Cowan; Mr Bernie Masters; Dr Janet Woollard; Mr Rod Sweetman; Mr John Kobelke; Deputy Speaker

PETROLEUM LEGISLATION AMENDMENT BILL 2001

Second Reading

Resumed from an earlier stage of the sitting.

MRS HODSON-THOMAS (Carine) [8.00 pm]: Earlier I made some comments about a media statement released on 23 May by the Western Australian Chamber of Commerce and Industry. The document states -

The most contentious legislation is the proposal to allow fuel retailers to be able to buy up to half their fuel from sources other than their primary supplier. The signs are that it could spell the end for petrol franchising in Western Australia.

It continues -

Oil companies which provide the site, the buildings, holding tanks and the bowsers at franchised service stations - and who subsidise their franchisees under exclusive contracts - will be forced to accommodate the sale of a competitor's product through their facilities.

Even if they agree, the companies will not be able to impose a charge or obtain compensation. It overturns property rights and commercially based contracts and poses major practical issues concerning quality control and product liability. It is inevitable the changes will drive prices up.

I have concerns regarding this issue and I hope that the minister will clarify this matter in his summation.

My other question about the 50-50 arrangement is: how does the minister believe that the legislation will calm the fluctuations in fuel prices and provide more competitive prices at the bowsers given the high cost that will inevitably be incurred by fuel retailers if they take up this arrangement? Other members have already mentioned the high cost of providing extra tanks. I am not sure whether, when the Deputy Leader of the Opposition spoke, the minister said that the retailers would not require extra tanks.

Mr Kobelke: Whether a retailer installs additional tanks will largely be a commercial decision made by him. What is more likely, and has been the case in the past, is that a retailer will free up a spare tank and use that to store fuel which he buys from another provider. Although some service station operators may put in an additional tank, normally that would be too expensive and they would not get a commercial return for doing that. It is open to the retailer to put in an extra tank, but it is not a realistic way of getting cheaper fuel.

Mrs HODSON-THOMAS: The Deputy Leader of the Opposition has already referred to the Minister for Consumer Affairs' second reading speech that states -

The Petroleum Retailers Rights and Liabilities Act also specifies that the retailer continue to have available for sale any fuels purchased from the primary supplier as well as those supplied by any other supplier during that period. This Bill does not change these arrangements in any substantial way.

Will the minister clarify whether the retailer will be duty bound to sell both his primary supplier's fuel and the substitute fuel? It sounds convoluted and impracticable and would be confusing for consumers and retailers. As the Deputy Leader of the Opposition has already asked today, how will the signage work? I understand that retailers will be required to cover the bowsers where they dispense alternative fuel. The member for Kalgoorlie has already stated that earlier today. What about signage at the kerb?

I reiterate that the 50-50 arrangement is convoluted. I envisage all sorts of problems with the application of the arrangement. I fail to understand how it will calm the fluctuations in fuel prices - something we all hope for - for the consumers or the retailers. I have empathy for fuel retailers. There is no doubt that they are hard done by and most have had to diversify, so much so that they have become an alternative to the corner store, to prop up their profit margins because their core product profit margins for fuel are dismal. I am not convinced that the 50-50 arrangement will achieve the end it sets out to achieve. I support the Bill in principle, but I have some concerns with it. I hope that the minister will clarify some of the points I have raised.

MR WALDRON (Wagin) [8.05 pm]: I support the comments made earlier by the Leader of the National Party. I am sure that my other colleagues will speak in more detail than I. The main point about this Bill that is raised by people from my region is that they cannot understand why there is such a difference between the price of fuel in the city and that in the country. I will support any measures that the Government can put forward that address the fuel price issue, especially any means that may lessen the gap in prices between the city and the country. In my electorate, people cannot understand the gap in the prices and they cannot understand why discounts that are given to those in the city usually do not go to country areas. Country people understand that they must pay extra

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because of freight charges and that the retailers in the country have a lower turnover than their city counterparts but that they must have a fair margin. They are willing to pay more for fuel than is paid in Perth, but 10c to 15c a litre more.

Between March and May, I conducted a fuel watch over five country and two metropolitan service stations to check the differences in the price of fuel. Over that period, the average difference was about 10c to 12c a litre for unleaded fuel and as high as 15c a litre on many occasions. It is a huge gap that must be reduced. I will not go over all the points made by members because they have been laboured already. Most country fuel retailers do not have the second tank about which members spoke. For the 50-50 provision to be effective in reducing fuel prices in the country, the retailers would have to be able to mix their fuels. As has already been mentioned, the bulk storage tank and equipment is usually owned by the fuel company. I do not think that those companies would give permission to the retailers to make alterations as required; therefore, that measure further complicates the process and seems to make the legislation unworkable.

I emphasise the price differential between the city and the country and the high prices people in the country pay for fuel. It has probably been pointed out already a hundred times in this Parliament that country people must travel longer distances and make more trips in their everyday lives. They travel longer distances to do everyday things like shopping, taking their kids to weekend sport, to school functions and to medical appointments. I have daughters, and last weekend I travelled 200 kilometres to get them to and from netball. In Perth I could just walk to the venue in Willetton, and that is a big difference.

As I said, I would support any measures to address this problem on behalf of the people of my electorate but, without the amendments mentioned earlier by the Leader of the Opposition, I cannot see any great benefits to country fuel consumers flowing from this Bill. Obviously, those amendments will be introduced later.

In my region, during the election and since the election, the Labor Party has created an expectation - a very real expectation, because people ask me about it all the time - that the Government will make changes to fuel prices and reduce the gap between city and country prices. The people out there are waiting.

I urge members to support our amendments so that the Bill can have real effect in country Western Australia.

MR HOUSE (Stirling) [8.10 pm]: Like my colleagues, I intend to support this legislation. However, as some members have indicated, I also have some serious reservations about whether it will work. We will find that the practicalities of implementing this legislation are far more difficult than we can begin to imagine. To that end, I am prepared to give it a go, but I am also prepared to believe that we will have to return the legislation to the Parliament within the next year to either correct the anomalies or sort out the problems that will arise so that we can make this legislation workable.

It is interesting that in an era of freeing up markets and relaxing regulations we are seeking to cap the price of one of the commodities that most of us use on a regular basis. For some reason, we have all bowed to political pressure - I put my hand up for having done that as well, so I am not casting aspersions on anybody - and made fuel the icon that is causing us trouble, so we are considering legislation to cap the price. We are not capping the price of bacon and eggs or bread and onions as we used to, if members look at the statute books. However, all of a sudden we are going to cap the price of petrol.

Mr Cowan: Or potatoes.

Several members interjected.

Mr HOUSE: Potatoes are a different matter. I think my colleagues are having a bit of fun at my expense, Mr Acting Speaker (Mr McRae), and I am seeking your protection. One thing I failed to do as Minister for Primary Industry was get rid of the Potato Marketing Corporation of Western Australia, but I do not think it will last a lot longer.

The fact of the matter is that Australia has the third cheapest petrol in the world. However, the price when the taxes are added is what is causing the problem. We are talking about capping the price before the taxes are added; nobody has suggested that we should remove the taxes as part of the capping. All we are doing is capping the price of the product that is being supplied to the bowser. We have the third cheapest fuel in the world and we now intend to cap the price! Fuel is a pretty important commodity for many of us. We will have to decide whether it ranks in importance with all the other things that we purchase and whether we will also cap the price of those commodities in the future.

Most of the problems arise at country service stations. I am interested in the differentiation between the price at which fuel is sold in the country and the price at which it is sold in the city. There is a number of reasons for the difference: first, although the freight component is small - the select committee of this Parliament said it was a

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cent or two a litre, depending on where people live, so it was not a big deal - it is significant for country people; and, secondly, the margin applied by the retailer depends on certain issues. An outlet in my electorate, the Lower King store, provides an account system with over 200 accounts, and many outlets in rural Western Australia do the same. That business provides service on seven day a week. If someone is in serious trouble late at night and needs fuel, that person will get it from that store. We pay for that service. The 200 account holders are happy to pay for that service because the store is prepared to carry their accounts. They do not search for cheaper fuel down the road; they are happy to pay for the convenience and service. I am talking about outlets that have small throughputs compared with the large operators on Cambridge Street.

I will give members another example. Walpole has two fuel outlets. Fuel sales are the key component of one of those businesses; the other outlet also sells papers and that sort of thing. The outlet that sells fuel primarily competes by cleaning windcreens, checking tyres for the ladies, providing an account and all the services that people expect if they pay a bit more for fuel. What will that business do if the price is capped? I suggest that the service station that provides the groceries and newspapers will get the business because there would be no need for people to go down the road to the other service station. One of those businesses will fall over.

I have a feeling that this legislation will not be enacted. This is a political exercise. I do not believe that the Government will be able to enforce it legally. However, having said what I said at the commencement of my speech, I am prepared to give it a try by supporting the legislation.

There are something like 26 fuel outlets within a reasonable radius of Albany and their total throughput would not be as much as a couple of the larger service stations in the northern suburbs. Those outlets do not get the through traffic, but they provide the other services. If we cap the price to those service stations, the service will diminish. I suggest we will finish up with only five outlets in that region instead of the 26 we now have. We therefore have to ask ourselves whether this legislation will actually achieve anything.

What is the solution to the high cost of fuel? I have one solution that I would like the minister to consider. It is not in this legislation. I have checked the legislation with the help of my friend and colleague the member for Merredin and I cannot see where we can introduce it unless the minister introduces another piece of legislation about which he is aware. My proposal is this: if Shell decides it will provide all the outlets in the northern suburbs with a 10c a litre discount for today and tomorrow, which it often does - it slashes the price and tries to capture the business - it could be mandatory for that company to provide the same discount to all its service stations throughout the State. In that way, there would be some equity for country people. Country people would then not feel that they are second-class citizens in the price-cutting war.

Price cutting occurs primarily in the city; in fact, I have never seen it in the country. Some outlets may practise price cutting, but I am not aware of it. I can assure members that it does not occur on my patch.

Mr Kobelke: I understand what the member is getting at. Could the member explain how we would do that? I think the member would find that he would reach a solution very similar to that which this Government is trying to implement for the maximum wholesale price setting. How would the member actually do what he is suggesting? He is on target, but what mechanisms would be put in place to achieve that result?

Mr HOUSE: I have trawled through the legislation trying to find a suitable clause to amend. I repeat: the amendment would ensure that a fuel discount provided in one area would also be applied in another. My judgment is that there will never be cheaper fuel with wholesale price capping. How will we arrive at this equation; how will we set this price? Will it be set on information given to us by oil companies?

Mr Kobelke: That is already done; it is already there and it is regulated. The issue is: why is it not working? The member says that a fuel discount in the metropolitan area must be applied to the same provider in rural areas. The difficulty with that is to establish the price which the oil company is discounting - because the companies play games with it and then it has to be set down by regulation. How do you stop the oil companies devolving ownership to a different person in the country so that the connection cannot be made? There are technical problems. I am not saying they cannot be addressed, but that is what we have tried to address through the wholesale price mechanism. The member's suggestion will arrive at the same point from a different direction. If his mechanism proves to be effective, we will take it up. However, he will run into similar problems that we are experiencing.

Mr HOUSE: We might run into similar problems, but I do not think that what the minister is trying to do will work. I genuinely hope that it will work, but I do not think it will. If the minister asked me how much it costs to produce a tonne of wheat, I could give him 100 different answers. I do a budget like most farmers; I do one for the bank manager, one for the taxman and one for myself. The one I give the bank manager is a helluva lot more optimistic than the one I keep in the bottom drawer for myself. I am sure a fuel company could give the minister the same sorts of figures. The minister knows that he can conjure up any figures in a budget. When the minister

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tells Patrick Walker, or whomever he appoints to undertake this job, to set the wholesale price of fuel, he will find that that person will have a great deal of difficulty.

The Government will have a bit of trouble with the major oil companies. When they challenge the Government in the court, there will be an added difficulty, because I cannot see how it will win the case. What are we aiming for? We are aiming for the cheapest fuel that can be delivered to Western Australians. That is the objective of this exercise. If a fuel company can discount the price by - let us take an arbitrary figure - 10c a litre for a few days in the city, it can do it in the country. I am worried about the country constituents I represent. I want them to get a fair go. For the life of me I have never been able to understand why the price of fuel in a major city like Albany is higher than that in any other major city, but it is higher on a regular basis. The minister was there a few weeks ago and he saw it for himself. Those issues need to be resolved, but not to the detriment of some of those small businesses that rely on fuel sales as the major component of their income when they provide other services. I am suggesting that there is a real danger in regulating prices for those outlets and finishing up with a situation in which we do not get the service. In the bush we are usually prepared to pay for services. We will argue, fight and debate with the people from whom we buy the service, but that is up to us to do. Once the Government starts to set the price, which must be changed all the time, I think it will run into severe difficulties.

There are some minor issues with the legislation that I will raise during the consideration in detail stage. The member for Avon has already indicated that the National Party will introduce some amendments that we believe will overcome the dual access problem with regard to the ownership of tanks and bowsers. Some of the people I have been talking to in my electorate have built up a great deal of trust and understanding with the companies they deal with. Business is not always about the lowest price; it is about a lot of other things as well. Consumers indicate that when they buy a service; they take into account things apart from price. I accepted the minister's interjection, and I accept that he is doing the best he can to produce some legislation that will answer the problems all of us have acknowledged exist. I hope the Government will consider an amendment that will enable us to apply across the State the same discounts that might be applied in areas of the city from time to time.

MR COWAN (Merredin) [8.23 pm]: I will take the House back a little in history to those months or weeks prior to the February state election. As everybody knows, a number of issues were of critical importance in who would win that election. There is no question that fuel was one of those issues. Equally, there was no question that a number of commitments were made about fuel. We saw a number of headlines offering country motorists fuel prices which were a little more reasonable and which could perhaps identify the margin that should be paid for fuel in country areas as opposed to the price that was paid in the metropolitan area. That is part of the political game, and I will deal with that later.

The situation was made quite clear in October and November last year when the select committee reported on fuel prices. It made many recommendations, but the two principal recommendations were that the two Acts regulating fuel and its distribution and, to a certain extent, its price - that is, the Petroleum Products Pricing Act and the Petroleum Retailers Rights and Liabilities Act - should be amended. It was made clear at the time that it was a simple task to amend the Petroleum Products Pricing Act to ensure that there would be some publication of prices at retail outlets; that there would be a more publicly open and accountable wholesale price; and that a differential would even be added to the wholesale price to compensate for the cost of transportation of fuel from the major point of distribution, such as the Kwinana refinery. If a terminal such as the Kewdale centre were being used, a margin would be added to the wholesale price which would allow for a terminal gate price. The same thing would be done for outlets such as Port Hedland, Bunbury, Albany, Geraldton and some others. Everybody said that that was appropriate and that they looked forward to the legislation, but they also said that the Government should amend the Petroleum Retailers Rights and Liabilities Act. It is no surprise to anybody that the bulk of the Bill we are debating tonight amends that Act. It contains only two amendments to the Petroleum Products Pricing Act, and they relate to removing a loophole associated with the publication of the price of fuel at any retail outlet. In that legislation we began the process of investigating and drafting, but we indicated to the public generally that it was a complex piece of legislation. It was even more complex to draft amendments or clauses that would deliver some value to purchasers of fuel. Given that it is more than 100 days since the Government came into office, and this is the first time within the past two weeks that we have seen this legislation, I am sure that that complexity was not a furphy; it was true. I am sure it was difficult to draft legislation that would implement the recommendations of the Select Committee on Petroleum Products Pricing in Western Australia. That has proved correct. I am very disappointed that we have such a gullible population - people who voted on this issue expecting a Labor Government to wave a magic wand and achieve an outcome that in my view is not possible.

The Government will not achieve cheaper fuel for country motorists with this method, which was one of the major requirements. It will only ever achieve that if it is prepared to introduce divorce legislation, which

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would provide genuine competition between the different aspects of the fuel industry. This would allow retailers of fuel products to determine from whom they will purchase the product. That would deliver what, in theory, this legislation seeks to achieve. I ask for some licence on this matter because this legislation does not deal with the Petroleum Products Pricing Act 1983 to any great extent; it merely tightens up the provisions that deal with the publication of a price, based on the 24-hour recommendation. In effect, this sets a maximum wholesale price. That is what the previous legislation did. However, the maximum wholesale price is not the problem; the problem is the discount which is offered by fuel companies to their franchisees below the maximum wholesale price but which is not available to other distributors or retailers. That is the reason this great differential exists.

There has been a number of inquiries into the price of fuel. People say that the components associated with fuel pricing are simple to identify - the price set by the oil companies and the excise required by the federal Government. There really are only two robber barons in the whole process - the oil companies and the federal Government. I admit, and readily acknowledge, that the federal Government returns 8.68c a litre to the State from fuel taxes. That is part of the application of the goods and services tax, which normally would revert to the States. I may be wrong about the figure, but it is around 8.68c or 8.8c a litre of the 45c that is applied in excise. The federal Government must be regarded as a major beneficiary of fuel prices. This State has done nothing to place pressure on the federal Government to reduce the excise. Little has been done, which is not something that I recommend. I have heard it said on a number of occasions that the States should be prepared to reduce their fuel tax. I strongly oppose that because the States are responsible for the management, operation and maintenance of much of the infrastructure associated with transport logistics. It is wrong for States to manage with the 8.6c or 8.8c a litre while the Commonwealth takes the balance - about 36c. The States must tell the Commonwealth that if the price of fuel is to be adjusted by correcting the level of taxation, the Commonwealth, not the States, must address it.

The provisions in the Petroleum Products Pricing Act are important. The Acting Speaker (Mr McRae) might remember from his time working for a previous Government that many years ago a retail cap was applied in selected areas. The retail margin was 4c in the metropolitan area. I am not sure what the margin was in some of the provincial cities, but I do not think it was much greater. It may have been 5c or it may have been 6c. However, a retail cap can be applied or regulations can be gazetted under the provisions of the Petroleum Products Pricing Act. I am not, for one moment, recommending that the Government go down that path. However, this would have been a more honest move by the Government if it wanted to remove the margin between the average retail price in the metropolitan area - not the discounted price - and the average retail price in regional parts of Western Australia, if such a figure could ever be struck. The only way that can be achieved is by setting a retail cap. If the Government did that, some of the consequences referred to by my colleague the member for Stirling, such as the impact on the number of retail outlets and the employment opportunities in those retail outlets, would be dramatically altered. The Government would immediately squeeze the innocent victims in this industry - the retailers, or perhaps the distributors. The Government would not touch the oil companies or the federal Government. Prices can be set, but they are always maximum prices. They are never the prices which are acknowledged and which are sent out on an invoice by the fuel companies to distributors. Nothing will be achieved by this legislation until the Government deals with that issue.

It is easy to calculate a profitable margin for the transportation of a product. If the Minister for Planning and Infrastructure has her way and bans road trains throughout Western Australia, what will happen to the 65 000 litres of fuel that is transported in those vehicles to most parts of Western Australia? Those road tankers are dedicated vehicles and must make a reasonable return, because effectively they transport the fuel only one way. If the Government put even 5c a litre onto the transportation cost of a product, it would amount to more than \$3 000 a load for each vehicle. Most parts of Western Australia would be accessible from those distribution outlets, whether it be Port Hedland, Dampier, Geraldton, Albany, Bunbury - although I do not think that fuel comes into Bunbury; it is transported from Perth or Kwinana. On that basis, it could be argued that the price differential should never be much greater than between 5c and 7c. Most members in this House can accept that there must be a bigger retail margin because the volume of sale from a small country outlet will never equal the volume of sale in a major metropolitan area. However, the margin of 10c to 12c that is being applied cannot be justified. The reason for that margin is simple. The oil companies do not sell the product to the distributor, who in turn transports the product to a country retail outlet, for the same price that he puts it into his own franchise in the metropolitan area. This legislation does not address that issue.

My colleague the member for Avon, the leader of the National Party, has made it clear that specific provisions in this legislation effectively remove the prospect that many people in country Western Australia who are involved in the retailing of fuel can ever access the provisions of this legislation. Even if those people wanted to capture 50 per cent of their product from another source, they would not be able to comply with this legislation because the capital cost would be too great.

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I question whether the retail volumes would be great enough to counter the actions of the past; in other words, whether a company would offset those costs by placing in service stations the additional tanks and perhaps, in some instances, the additional dispensing facilities - the pumps - that would allow a retailer to take advantage of the 50-50 rule. Why would they enter into that once the 50-50 rule is enacted and the investment and contract are in place? The contracts will be valid under this legislation. If a retailer had a falling-out with the company providing the second lot of tanks and dispensing equipment, would the same rules apply as would apply to the initial contract for the supply of fuel? If the answer is no, it would be another reason that no-one would be in a position to capitalise on the provisions of the legislation. The Leader of the National Party got it right when he said that this legislation is valueless. The oil companies will always be in a position to offer their franchisees a price below the maximum wholesale price. Nothing in this legislation will prevent that. The independent retailers in country areas who sell small volumes of fuel will never see a return on their margins that would offset the capital cost associated with the installation of additional tanks and equipment to comply with this legislation, notwithstanding the comments of the member for South Perth that this will be a great way to stick it to the oil companies. Many small businesspeople will have to make a decision on the level of capital investment and the return they will get on that investment. The return will not be great, so they will not do it. That effectively means that the bulk of people in country areas will miss out, perhaps with the exception of those in the provincial cities or those who use roadhouses on the main arteries of this State, which experience substantial sales of the product because of their key location. However, many of those operators buy fuel on a card and merely use the roadhouse for the supply and pumping of the product. The account goes directly to the distributor or the oil company, which deals with any margin the cardholder might have. That effectively means that what comes through the bowser from the cash purchaser is the only real margin the roadhouse operator receives, which is about half a cent a litre for pumping the product. He receives nothing more and nothing less.

It has been said that this legislation is somewhat tokenistic. It can be supported, even if it is to prove that it is tokenistic. That is exactly how the National Party feels; nevertheless, it will support it.

MR MASTERS (Vasse) [8.44 pm]. I support the legislation and thank the Government for making an effort to put into effect the promises it made in the lead-up to the election. It is opportune that I follow the member for Merredin, because I agree with everything he said. I wish to talk primarily about what I see as the solution to this problem, which the Government should seriously consider once this legislation is passed and put into effect.

I note the comment in the explanatory memorandum that this legislation provides for the right of a retailer to nominate a primary supplier for particular kinds of motor fuel. That is fantastic; it is an excellent idea. However, if people have a "right" to do something, it does not necessarily mean that they have the "ability" to do it. As has been pointed out by other members, the ability for a retailer to avail himself or herself of the 50-50 rule in many situations will be beyond his or her financial means because of the aspects of this legislation about which I am critical; that is, the prohibition on mixing fuels. It has been pointed out that the prohibition on mixing fuels places on service station operators the requirement to install new tanks into which the 50 per cent of fuel not coming from the main supplier can be stored. Too many difficulties arise with using existing tanks as they need to be drained, and I am told it is unusual for a service station to have a spare tank that does not contain fuel or sludge. I am surprised that the argument against mixing fuels relates, to a large degree, to the issues of product quality and liability. I thought it would be within the ability of this State Government to consider a set of definitions, requirements and product sale criteria that would define minimum product quality that would, if met, limit liability to service station operators. As has been pointed out, the vast bulk of the fuel sold in Western Australia comes from one refinery, the BP Australia Ltd refinery. It is the largest oil refinery in Australia. It should be delivering us cheaper fuel than that available in the eastern States. That was not the case the last time I checked. Western Australia is one of the most expensive States in which to buy fuel. The obvious implication is that Western Australian operators have a higher profit margin which is going into the pockets of the BP oil company. If the Government really wanted to make life easy for service station operators and give them not only the right to the 50-50 rule but also the ability to take advantage of it, it would remove the prohibition on mixing fuels and instead provide minimum product guidelines so that issues of product quality and liability are resolved.

The other comments I wish to make relate to something I raised in this Parliament only last week; namely, the absence in Western Australia, and I think Australia as a whole, of legislation similar to what the United States calls antitrust legislation. I asked my research officer to prepare a discussion paper on this issue, which I am more than happy to provide to the Government. I will outline the four major Acts in America that enshrine most of the antitrust legislation and read at length from my paper, which will take about five minutes. I refer in particular to the Robinson-Patman Act 1936. It is the provisions of that Act that should be introduced in Western Australia. I contacted the Australian Competition and Consumer Commission and asked it to outline the sorts of price control and other powers contained in its legislation that enable it to try to stop the discount wars that occur primarily in Perth between the oil companies when they offer subsidies to a limited number of

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the service stations that sell their products. I have been told by the ACCC that it does not have the powers that I am about to recommend to the State and federal Governments. In the United States there are four major antitrust laws or sets of legislation. The Sherman Antitrust Act 1890 outlaws restraints on trade and commerce that reduce competition. Every contract, including any combination of contracts in the form of a trust or otherwise, or conspiracy in restraint of trade, is illegal. The Clayton Act 1914 makes illegal any practices that tend to create a monopoly or weaken and destroy competition. Practices outlawed include certain mergers, tying agreements, exclusive dealings, interlocking directorships, local price cutting to freeze out competitors, and so on. It declares that labour is not a commodity or article of commerce. The Federal Trade Commission Act 1914 outlaws unfair methods of competition and deceptive conduct in, or affecting, commerce. The Federal Trade Commission created by the Act is empowered and directed to prevent persons, partnerships or corporations, with some exceptions, from using unfair methods of competition in, or affecting, commerce and unfair or deceptive acts or practices that injure competitors or consumers. Practices outlawed include false and misleading advertising, labelling and packaging.

The fourth Act is the Robinson-Patman Act 1936. With the permission of the House, I wish to read from my notes. I am prepared to provide a copy of my notes to the Government and lay a copy on the Table if required.

The Robinson-Patman Act 1936 is an amendment to the Clayton Act. It makes it illegal for a supplier to charge lower prices to certain customers. It outlaws discriminatory pricing as well as advertising allowances, cash discounts and the like. The Act is something of an anomaly among antitrust laws, which are generally designed to promote competition as a whole. This Act was designed to protect competitors from market-dominant suppliers. The agreements on price is the first area where the Robinson-Patman Act has some effect. Price fixing is an agreement between competitors to raise, fix or otherwise maintain a price. It is not necessary that all competitors agree to charge exactly the same price; price fixing can take many forms and any agreement that restricts price competition violates the law. Examples of illegal price-fixing agreements include those which establish and, or, adhere to price discounts; hold prices firm; eliminate or reduce discounts; adopt a standard formula for price computing; maintain certain price differentials between different types, sizes or quantities of products; adhere to a minimum fee or price schedule; fix credit terms; or adopt a policy of not advertising prices.

The second area of action under the Robinson-Patman Act is vertical price fixing. This is where a supplier and a dealer fix the minimum retail value of a commodity; doing so is an illegal action. There is some possibility for manufacturers to adopt a policy of desired resale prices but agreements on maximum resale prices are evaluated as to whether they are of benefit to consumers. Obviously if they are not, they are deemed illegal.

The third area of the Act's effect is price discrimination. This section has the greatest relevance to the issue at hand; namely, the volatility of fuel prices in Western Australia and, in particular, the differential in prices between country and city areas. A seller charging competing buyers different prices for the same commodity, or who discriminates in the provision of allowances, may be breaking the law under the Robinson-Patman Act. Giving favoured customers a market edge may hinder competition and therefore it may be illegal. However, some price discriminations may be lawful, particularly if they reflect the different costs of dealing with different buyers. To establish a price discrimination claim in the United States the following 10 criteria must be met: there must be a discrimination in price; there must be at least two consummated sales; there must be a difference in the price quoted by the same seller; it must involve sales to two different purchasers; at least one of the sales must cross State lines - this would not apply to Western Australia; the sales must be contemporaneous or occur within a reasonable time period; the sales must relate to commodities rather than intangibles such as services; the goods must be of like grade and quality; the goods must be used, consumed or resold within the country; and there must be a showing of an adverse effect on competition.

Two different levels of unlawful competition are considered. The first is primary line injury, which involves predatory intent and predatory pricing where a company may choose to sell below cost for a certain period while driving its competitors out of the market. The company can then raise its prices to recoup its losses. The second level of unlawful competition is secondary line injury. This involves competition between the purchaser, who receives the benefit of the alleged discriminatory price, and companies that compete with the purchaser rather than the seller. Defence in price discrimination cases may be argued for cost justification, meeting competition, changing conditions, availability and functional discounts.

The fourth area where the Robinson-Patman Act applies is bid rigging. This is the illegal raising of prices by manipulating competing bids. Outlawed practices include bid rigging, bid suppression, complementary bidding, bid rotation and agreements to subcontract as part of bid rigging schemes. The fifth area of the Act's effect relates to market division. Market division or allocation schemes are unlawful agreements in which competitors divide markets among themselves. Competitors may agree to sell only to customers of a particular type or from a particular geographic area or they may quote intentionally high prices to those outside their agreed area. The

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final area of effect relates to conditions available to collusion, which are: few sellers or a fairly large group of sellers within a small group of major sellers; other products cannot easily be substituted; the product is very standardised; purchases are repetitive; and competitors know each other well, especially if they share the same building or town.

If members consider the comments I have made in respect of the Robinson-Patman Act, it can be seen that many of the restrictions placed on suppliers in the United States could be applied in Western Australia to the various oil companies that are operating to create very unhealthy competition in the Western Australian market. By artificially giving certain parts of the oil distributorship chain discounts and price subsidies, price wars exist in Perth, and there is fierce competition in theory but not all the service stations are able to take part. Due to various factors that I will not go into now, the price wars and subsidy schemes are not extended into rural Western Australia. I drove to Perth yesterday and noticed the prices displayed by various service stations along the route from Bunbury to Perth. The lowest price was 90.6c a litre, yet in my area of Busselton, only two days earlier, the price was 104.6c a litre.

Mr Bradshaw: In Harvey it is 108c

Mr MASTERS: The difference is 14c to 18c a litre when the transport cost, additional to the normal purchase price from Perth to either Harvey or Busselton, is perhaps 1.5c or 2c a litre. The bottom line is that by purchasing their fuel supplies at a non-discount price, but at the normal price the oil companies supply to them or require them to pay, country Western Australians are effectively subsidising Perth users of those products. If the Robinson-Patman Act (1936) were incorporated into Western Australian legislation and applied with the vigour that I hope the Government would apply this legislation, we would see an end to price wars in the Perth metropolitan area. In turn, that would mean higher profitability for the oil companies. I do not resile for one second from accepting the need for all companies involved in this chain of supply to be profitable. They must be. However, it would mean higher profits for oil companies and service station operators. Because there would be no price wars and competition would be at the retail level rather than the wholesale level, final retail prices could be reduced a little. At the same time enhanced profitability within the oil companies could be expanded into metropolitan areas of Western Australia so that they could reduce the profitability they seek from country Western Australians.

In conclusion, I refer to a media statement provided by the Western Australian Chamber of Commerce and Industry of Western Australia dated 23 May. It is entitled "Foolhardy petrol price controls: Time for a reality check by MPs". As a rule, the Chamber of Commerce and Industry is expected to support action to encourage competition. However, it seems to believe that this legislation will not assist competition. I do not agree with the Chamber of Commerce and Industry. Rather than attacking the detail of its comments, I will comment on its media statement. It has completely ignored the needs of regional Western Australians. The fifth paragraph of its media statement states -

The Government says the legislation has 'calmed' petrol prices. But the discount cycle was, in fact, competition at work which the legislation has stifled.

Historically, the discount cycle has applied only in the Perth metropolitan area; it has not applied in rural Western Australia. I am therefore forced to express my disappointment that the Western Australian Chamber of Commerce and Industry has not seen that a bigger picture is at stake.

The next paragraph of the media statement reads -

Almost all petrol distributed in WA is purchased under price contracts, which retailers prefer because it provides certainty of supply.

I am sure these price contracts provide certainty of supply, but we are talking about the benefits that should ultimately go to not only petrol distributors and retailers but also petrol consumers. In other words it is competition at the retail level that is important. This media statement from the Chamber of Commerce and Industry seems to have ignored, deliberately or otherwise, the fact that there are more steps in the ladder than the distributors and the retailers. At the end of the day we are trying to provide benefits for the consumer. Two paragraphs further on are the following words -

... - and who subsidise their franchisees under exclusive contracts - ...

The CCI is referring to franchise service stations. That gets under my skin. It is an admission by the oil companies that they subsidise their franchisees under exclusive contracts, which they have authorised the Western Australian Chamber of Commerce and Industry to reveal. However, they do not offer that same subsidy to rural Western Australia. In other words, this is a very narrow focussed media statement and I am disappointed that the Chamber has seen fit to address such a narrow picture.

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The first paragraph of page 2 of the media statement refers to price rises caused by international factors. From talking to people in my electorate I have no doubt that they believe the price of petrol in Western Australia is high due to parity with international crude oil prices. My background in industry is as a geologist and I have been involved in both mining and petroleum over the years. I explain to people that international crude oil prices apply in Australia so that we can maintain our degree of self-sufficiency; that is, about 70 per cent. Without international pricing parity we would have to import our petrol. If we kept our prices of crude oil in Australia significantly lower than prices overseas, why would the exploration companies that find oil in Western Australia sell the raw commodity here in Australia when they can get significantly higher prices overseas? By paying international prices for crude oil and therefore higher prices for refined products, Australians are strengthening the economy and reducing the amount of crude oil or crude oil products required to come into Australia. People in my electorate nod acceptingly in response to that explanation and accept that having import parity prices for crude oil is a desirable policy of the federal Government.

The issue in my electorate and country Western Australia, therefore, is the disparity in pricing between Perth and country fuel. The Robinson-Patman Act to which I referred earlier is needed to allow those disparities in fuel prices between the city and the country to be overcome.

Finally, I quote four words from the second page of the media statement: "judgment and good sense", which is what the Western Australian Chamber of Commerce and Industry is calling on state members of Parliament to exercise. I endorse that statement, but I am disappointed that the Chamber of Commerce and Industry has not applied its judgment and good sense to this fuel pricing issue so that all Western Australians can have their concerns reasonably and fairly met by both government and industry.

DR WOOLLARD (Alfred Cove) [9.08 pm]: This legislation has emerged from the Select Committee on Pricing and Petroleum Products in Western Australia, chaired by the member for Mitchell. Some of the comments made in the House opposing this legislation were hypocritical. I refer to the Chairman's foreword in the report, "Getting a Fair Deal for Western Australian Motorists" -

The marketing and pricing of fuel is fraught with deeply entrenched problems which seriously restrict competition, resulting in market manipulation and excessive prices, especially in country areas.

... small business people ... are trying vainly to compete for a living in an environment where the major oil companies dominate and where the normal rules of free enterprise no longer apply.

... in the metropolitan area ... during the six months of this enquiry, we uncovered an industry desperately lacking in healthy, genuine competition.

... the oil companies' domination at every level of production ... means that nothing short of sweeping reforms will succeed in creating a truly competitive environment.

Recommendation No 9 of the committee was -

That the Petroleum Retailers Rights and Liabilities Act 1982 be amended to ensure that the discretionary 50 percent purchasing objectives are met.

That the Petroleum Retailers Rights and Liabilities Act 1982 be amended to also apply to LPG autogas.

I would like to draw the attention of members to comments in this House on 16 November 2000, when *Hansard* recorded the following exchange between the former member for Eyre, Mr Julian Grill, and the former member for Geraldton -

Mr Grill: Will you support an amendment to bring in the 50 per cent legislation?

Mr BLOFFWITCH: Yes, I will support it; it is essential. The original Bill will be redrafted with that provision included. If that is not done, the Government will not be treating the select committee report with the respect it deserves.

Bearing in mind the environmental impact on the price and usage of petroleum products, I ask the Government what it intends to do about some other recommendations of the Select Committee on Petroleum Product Pricing. Recommendation No 3 states -

That remote communities dependent on diesel for power generation be assisted to transfer to more economically viable fuel sources over a five year transition period.

That these communities be entitled to the Commonwealth Diesel Fuel Rebate during the transition period.

That the State Government establish a scheme to assist with conversion costs.

Recommendation No 5 states -

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The State Government should:

subsidise the conversion of private vehicles to LPG Autogas in accordance with the principles outlined in this report;

consider other conversion incentives including but not limited to reduced vehicle registration fees for LPG converted vehicles;

convert at least two thirds of the State Government's care fleet to dedicated LPG within three years;

develop a strategy to achieve further LPG use within the private and public sectors generally, including corporate agencies such as the Water Corporation and Western Power;

implement these LPG promotion programs in such a way as to create a substantial unified market for LPG enabling more secure and lower prices to be negotiated; and

implement an extensive community education and promotional program in conjunction with industry in relation to LPG use for motoring, promoting the fuel's environmental attributes, its price advantage, and its widespread availability.

Recommendation No 6 states -

That an effective subsidy scheme be introduced to alleviate the cost of bottled gas for seniors.

That an extensive price monitoring and promotion process be carried out in regard to bottled gas prices and service fees, including the widespread publication of prices designed to facilitate consumer choice.

MR SWEETMAN (Ningaloo) [9.14 pm]: I want to backtrack a little on this issue and get to the heart of it. We are talking about a very small component of the price of a litre of fuel. Most of our problems, and the things that irritate us the most, are federal Government excise and, to a lesser extent, the State franchise. The federal excise is about 36c a litre, and the State currently collects about 8.2c, so the total excise and franchise collected is in excess of 44c. The State took a hit on the federal fuel taxes returned to the State. Prior to the High Court decision, the state franchise was about 9.56c. We have had to go without, as a result of the way the federal Government averaged the returns to the States. On top of that, world parity pricing has been the straw that has broken the camel's back. I am a little disturbed that most of the focus is on the fuel companies' end of the business, and has rarely touched on the parity pricing and excise issues. Debate has concentrated on what I believe is roughly the 20c that it costs to get oil from the well head to the bowser.

I do not want to be an advocate for the fuel companies, but I recall going to Barrow Island three years ago and talking to the WAPET people there. At that time, only some of the wells on Barrow Island returned a profit. The world oil price at that time was about \$US11.20 a barrel. In about February of the year before last, that was still the price of oil. It topped out in excess of \$US35 a barrel within 12 months, and over the past 12 months has traded in the range of about \$US26 up to about \$US32. That is a significant difference. I can recall, on the exchange rate prevailing at the time I was on Barrow Island, based on the price of \$US11.20 a barrel, that the company was receiving \$17.50 a barrel for its oil. While the company did not say how much it was making, officials said that the only product on which the company was making a profit was light fuel oil. It is high-grade oil, and does not need a lot of refining, so the company earned a premium for it. The movement in the world oil price, and then the decline in the value of the Australian dollar against the US currency, has had a compounding effect. Whereas the price in Australian dollars was \$17.50 about three years ago, it has been up to between \$50 and \$60 for most of the time since. That is really the root cause of most of our problems.

To relate this to my electorate, and to country Western Australia generally, I want to see prices in regional Western Australia come down, but it is not the massive issue in country Western Australia that everyone believes it is. In the past two years I have had more complaints to my office about high fuel prices from visitors to the area than from residents of my electorate. Prior to the rise in fuel prices, visitors complained about the price of bread and milk. Things are dearer in the country generally. Visitors are outraged, when they have been paying about 80c to 85c a litre for fuel, and they come to Carnarvon where the price is \$1.09 or \$1.14, and then go on to Exmouth and pay up to \$1.26. One of the irritations to local people in country areas is that now, with the FuelWatch web site and the commercial television channels running the FuelWatch prices each night, country people get a constant reminder of the cheaper city prices. At bars, barbecues and sporting clubs the conversation turns to the difference in the price of fuel between Perth and the country.

Mr Kobelke: Do you want the Government to impose a television blackout on your electorate so that you do not have to put up with this problem?

Mr SWEETMAN: If we could have a discussion behind the Chair, it would probably head in that direction.

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I have some concerns, and I think it is unfair for the member for South Perth and the member for Alfred Cove to say that the Opposition is hypocritical in its position.

We have been consistent. If I believed that somehow the price for fuel could be capped at a lower price at the bowser in the city and country, I too would have voted for the Labor Party. We got lost in the argument because we tried to explain the facts to people. No amount of facts or information will ever wash with people when a rampant Opposition, in a taper to an election, says that it will solve the problem. Our argument did not wash with the public. We could not get our message through.

We are not being inconsistent. We support the Government's legislation and wish it well in implementing one of its endorsed promises. We do not expect the legislation to have worked in six to 12 months, although, we hope that it will. I have some difficulties with my conscience in trying to cap prices by regulation as prescriptively as this legislation does. I agree with the comments of the member for Stirling. Will we set the price of bacon and eggs next? When do we regulate Woolworths or Michael Chaney's salary of \$2.5 million? I do not think any Wesfarmers shareholders would want to cut Michael Chaney's salary after what he has managed to do to the shares over the past 12 months. Whether we like it or not, that is how our system works. The fuel companies are entitled to a reasonable return. They are in a unique position. They are not a normal business or franchise.

We should concentrate on the wholesale price. The Government must persevere with the wholesale or terminal price, so that we can then get a reasonable price at the bowser. If all that is achieved I am confident that prices in regional Western Australia will drop, but I am concerned that the city motorists will pay more for their fuel. If retailers can be guaranteed a wholesale price, it should not be difficult for us to get our heads together and achieve something for the greater public good. Fuel companies would look at it as the average business person would; that is, if they can make a couple more cents a litre on the price of fuel at the bowser in Perth, I roughly estimate that 6c a litre would be taken off the bowser price in country Western Australia. City motorists would not accept that though.

I do not want city motorists to pay a higher price for fuel at the expense of delivering cheaper fuel for people in country Western Australia unless a form of cross-subsidisation has taken place in the past, which is what we have feared. No price support is offered to country outlets, whereas we know it is offered in the city. Cross-subsidisation could have occurred from country to city. The Perth motorist would then have to accept that a rise in the cost of fuel would be fair and reasonable, and I would help sell that argument.

I wish the minister well. The Opposition supports the legislation but it is adding a precautionary note. I do not think that we have been inconsistent in our principles or statements made previously. We wish the minister well with the legislation, and genuinely hope that the minister is able to reduce the price of fuel.

MR KOBELKE (Nollamara - Minister for Consumer Affairs) [9.23 pm]: I thank all members who contributed to the debate. Many of the points raised are important and will be considered by the Government. I will now try to respond to as many of those points as I can. I am sure that in the consideration in detail stage tomorrow, we will draw out more specific details relating to some of those matters. I also thank the government members who have approached me on this matter and have expressed their strong interest in the issue. They have not exercised their right to speak, in the interest of getting this Bill through, because it is nominated as one of the Government's urgent Bills. I thank them very much for supporting us in that way.

The Bill contains two main issues. The first is to close the loophole concerning the 24-hour notice for retail prices. Few comments have been made about that and it seems to be generally accepted by members. The second is to provide for retailers to be able to purchase up to 50 per cent of their fuel from a provider who is not their main supplier. That appears to be a contentious issue about which some members have some concerns. Some members do not have great confidence that the measure will work and they are not sure what it will achieve. That is a measure of people's expectations and also of the practicalities of how the legislation might move towards achieving those expectations.

The second series of issues raised relate to the problems that arise from the technicalities surrounding the provision of 50-50 legislation. I will firstly give members an overview of those concerns, because this issue must be clear in our minds. I thank the member for Alfred Cove, who tried to get us back to the heart of the matter by referring to the report of the Select Committee on Petroleum Products Pricing in Western Australia. Although the member for Ningaloo found some of the things the member for Alfred Cove said offensive, I think she was spot on. People have forgotten that this is a Labor promise, based on fulfilling most of the recommendations in that report.

Mr Barron-Sullivan: I heard the word "most".

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Mr KOBELKE: Some of the recommendations relate to the federal Government, including parity pricing, to which the State Government did not commit. We will implement those recommendations that are clearly under the control of the State Government. The reference made by the member for Alfred Cove about the chairman's foreword of that report was spot on. I was going to go through that, but I will not take up the time of the House at this hour.

I urge members to read that report. It refers to the position that the major fuel companies occupy with respect to the distribution of fuel in Western Australia. It refers to the fact that there is not a competitive market, but a total dominance by the major fuel companies. There has been a failure to put market forces in place. That is what the report was about, and the Gallop Government will try to address that issue. Members should be well aware, if they had read any of the report, and from their experiences, that the problem is not unique to Western Australia; it is a problem throughout the world.

The major oil companies market their fuel by using global marketing policies, and Western Australia is only a small fry. The majors have deep pockets to take us on and try, in a number of ways, to maintain their total dominance of the market. It will not be an easy fight, and we never said that it would be. Most members would recognise that, and that is important. When we consider the detail, which is important, we must be careful that we do not trip over it. We must understand the bigger objective; that is, to get some degree of control of the market forces in a controlled non-competitive marketplace, and to deliver lower prices to consumers. That is simple, and we all agree with it. Members must recognise that it is in that context that we take on a fight with the major fuel companies.

Let us not consider the details as being obstacles that cannot be overcome. Time and again, in this dispute with the oil companies, they will raise the problems that they can put in the way to stop that goal being achieved. We must work cooperatively in Parliament and throughout Western Australia to ensure that we succeed. It is important that motorists throughout Western Australia use the power they have as consumers to ensure that petrol companies understand that they will not put up with the market being rigged as it has been in the past and largely still is. We will overcome that problem. If we work together, we have a very good chance of succeeding.

Two weeks ago, when the price of fuel was around 93c or 95c a litre in Perth, it was suddenly increased by Shell to 104c or 105c a litre. There was no movement in international fuel prices to cause that increase. The exchange rate was going in the opposite direction, yet Shell claimed it was the movement in the international oil prices that had driven the price up 10c a litre overnight. No-one believed that. It demonstrated that Shell was driving a marketing policy to suit its interests that have nothing to do with competition. Shell wanted to up the price in the market. It became the leader for the majors and the rest followed. Within a few days, all of the majors had increased the price of fuel to around the dollar mark. Last weekend, many sites were down to around 91c or 92c, and some were down to 89c.

All the consumers in Western Australia know that market manipulation is causing those price changes, and that is what this Government is about fixing. In putting that to members, I accept that the regime currently is not working in an effective manner. We can see little wins here and there - greater transparency as a result of FuelWatch is giving us a lot more understanding and that understanding leads to power to enable us to do something about the situation. Clearly, we are a long way short of winning this battle.

We have to take account of the practicalities. Many members raised practicalities that have to be overcome and it is crucial that we address them. We are talking about a complex marketplace with a whole range of interrelationships between different players; we must take account of the technical difficulties, and all those matters must be dealt with as part of the solution.

I hope members contribute to the debate tomorrow to ensure that we do the best we can to properly deal with those practicalities so we can take this matter forward, but I warn members: do not raise the difficulties about the practicalities to try to thwart what we need to do. Oil companies will try to convince members that all these practicalities simply make it impossible to do anything. I ask members to think carefully before they swallow hook, line and sinker the various arguments that are run out by the oil companies and people who are working on behalf of the majors. Some of those people, such as the Australian Chamber of Commerce and Industry, are fellow travellers. I thank the member for Vasse for pointing out the inconsistencies in its letters. The ACCI is clearly about protecting big business. That organisation does not represent petrol retailers, nor does it represent consumers; it represents big oil companies.

Other people will argue the case for the oil companies who are not in their camp, such as small businesses in some cases which are simply caught in the vice created by the oil companies; those businesses are being squeezed and they call out because they are in pain, but that pain will not be fixed if we give up the fight. The

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pain created by the oil companies has been there for many years, and the oil companies will use it to turn the small players into victims and to turn them back on the Government or on the whole of the Parliament to say the system is not working; but if we do not continue the fight and do not win through, those small players will continue to be at the mercy of the oil companies. We need to recognise that when we see the complaints they bring forward. I am not dismissing those complaints; I am not even dismissing the views put by the oil companies. This Government is continually listening to those complaints and trying to make judgments about the validity of the various issues they put before us, because if we do not we will not be facing up to the practicalities.

I move to a matter raised by a few members - the suggestion that the Gallop Government, when in opposition prior to the election, somehow created false expectations and false promises. I do not believe it did.

Mr Cowan interjected.

Mr KOBELKE: That is what we will do.

Mr Cowan: You will try, but you will not achieve it.

Mr KOBELKE: That is the judgment of the member for Merredin. I have already said, before he came back into the Chamber, that we have a long way to go, but with the support of this House we have a good chance of winning the fight, and I am committed to that fight.

People were sick and tired of what was happening; they wanted the Government to provide a lead, and the Court Government implemented a number of the recommendations of the select committee. That was seen as a good step in the right direction and this Government fully supported that, but the last Government lost out on this 50-50 issue. I never saw the 50-50 issue as a fix-all, and I have said that many times since I became minister. When the oil companies said that this was a no-go zone, that they would not accept 50-50, the Court Government backed off. That Government did not have any good arguments, it just backed off, so that coloured the public perception that the Court Government was not willing and able to take the fight up to the oil companies. The Gallop Opposition and the Gallop Government has continuously said that it will not step back. When the Court Government was told by BP that it would walk away from its Kwinana refinery, the Court Government gave in. When we came into government and again BP tried it on and said it would close down the refinery at Kwinana, we took that company on and it backed down. That is the important difference: this Government gave hope to people that it would not resile from the fight, that it would take it through on every front, and on that basis they had confidence that this Government would do something about it.

Mr Cowan: There is a story about an elephant, and a flea that lived on the elephant's back. When the elephant crossed a bridge it nearly collapsed; and the flea said, "Gee, we certainly made a difference, didn't we?" That bridge was very close to falling down, and that is about where this Government is - the Labor Government happens to be the flea.

Mr KOBELKE: The member for Merredin has many good stories. He turns to his good stories when he thinks I have the goods on him; I think I have in this case. He was a member of the Government that was walked all over by the oil companies, and he now has a Government that is willing to fully take up the fight. I now move on to some of the details about the 50-50 legislation.

Several members interjected.

The DEPUTY SPEAKER: Order! The Leader of the House has indicated that he wishes to continue the debate.

Mr KOBELKE: I will take appropriate interjections, but I do not want to delay the House. I will take more interjections later, but I want to get on and answer the many good questions that were asked by members opposite. Page 49 of the report outlines why the select committee thought it was appropriate and recommended that the Petroleum Retailers Rights and Liabilities Act be amended to ensure that the discretionary 50 per cent purchasing objectives were met. The committee picked that up and recommended it. That committee was chaired by the now Deputy Leader of the Opposition. The Deputy Leader of the Opposition has not made a statement suggesting that he got it wrong. I have not heard an utterance from members of that committee indicating that they have now reconsidered that recommendation and have found that they got it wrong. As far as I am concerned, that is what we are all holding out as offering a further part of the program we need to put in place to assist in lowering fuel prices. Of itself, it will not change the world, but it is part of the recommended package and should be fulfilled.

The legislation of 1982 provides all the mechanisms for retailers to purchase up to 50 per cent of their fuel supply from someone who is not their major supplier, someone with whom they do not have a franchise agreement. The details about signage and cleaning out tanks are all in the legislation. The changes this Government is making to those issues are minor, to try to tidy them up and make them a little better; we are not

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changing those provisions in any major way. Members need to understand that the amending Bill now before the House does not in any major way change the provisions that were put in place by a Liberal Government in 1982.

Mr Cowan: Why did it take the Labor Government four months?

Mr KOBELKE: Because this is the first week we have been dealing with normal business in the Parliament. This is the first Bill to have been brought on as part of normal business.

I should go back and explain what happened regarding the 1982 legislation. I refer to a decision made in the Supreme Court in *Dragoon Holdings Pty Ltd v BP*, which related to a Perth service station back in the 1980s that was buying fuel from someone who was not its main supplier. BP did not like that and took the company to court and won an action to close that company down. Dragoon Holdings, or the service station that operated under that company name, had painted the bowsers and had fixed the required statutory notices to the bowsers and were calling it "Our Gas". They were up and running. To my knowledge it was meeting all the requirements that members are saying cannot be done. It was stopped by BP Australia Ltd through the Supreme Court action. This change is simply undoing that, so anyone else who wants to buy fuel can now do it. That is all it is about. My understanding is - I am not a lawyer, so people will need to check it - that the reasons for the decision in the Supreme Court action were to the effect that a franchisee had the right to use the primary supplier's tanks and dispensing equipment for fuel from another supplier. However, in that decision, the Supreme Court said that the 1992 Act did not give that retailer the right to acquire fuel from another supplier contrary to the terms of its franchise agreement. It was that legal point that closed down the company and it is that legal point that we are addressing with this amending Bill.

Mr Cowan: You will not break an old contract. This legislation has no impact on existing contracts.

Mr KOBELKE: The member for Merredin is an intelligent man and if he listens, I will get to that. I am trying to lay this out quickly without taking up the time of the House. I will get to that in a moment. The main element of this amending Bill relating to the 50-50 aspect ensures that the right that people had in 1982 is present. The other parts are minor tidying-up issues. However, the details about signage and tanks basically remain the same, and I will come to those issues in a moment. It means that we must recognise the power of the oil companies, as was found in the case of *Dragoon Holdings Pty Ltd and BP Australia Ltd*. It simply went to court, found a technicality and stopped the potential for the retailer to buy from another supplier. We all know that these are international companies that are vertically integrated. They can shift their costs to various centres. They can put a huge price on shipping, so when it lands here they can say there is no profit. They can play all sorts of games.

The Deputy Leader of the Opposition has made much about forensic audits. We said that we would like to do that and we are in discussions with people who can possibly provide the service. However, one must know what one wants to do with it. If it is to be part of a prosecution, and the evidence is required to back up whether a company has a basis for not supplying, the forensic audit needs to do that. If the forensic audit is about how companies work their profits, we can try to do that. However, given the multilayers of these companies and the transfer pricing between companies internationally, people will not spend tens or hundreds of thousands of dollars on a forensic audit if they have not clearly targeted what they want. We will take that step at an appropriate time when it forms part of our bigger strategy. We are conscious of that and are keen to pursue that element of the issue when it fits our strategy. That may be soon; we need to see how other matters stack up. Again, the suggestion has been made to us in recent days that the major oil companies are threatening to withdraw from Western Australia. They are saying that they will get out of Western Australia altogether.

Mr Barron-Sullivan: Does that worry you?

Mr KOBELKE: The threat worries me, but it will not stop me pursuing this line. Those companies are saying that there is no profit in it for them, because they have moved their profits further upstream - or downstream, whichever way one looks at it. The issue is that they are in the business of retailing fuel. They do not want to give up their retailing outlets; that is why they are vehemently opposed to the 50-50 legislation. The member for Merredin raised the issue of divorcement, and I think he is right. It is my understanding - he may wish to correct me - that we cannot do that; the federal Government must be involved in any system that gives divorcement. I certainly think it is worth looking at. The fuel companies are worried that the 50-50 legislation is a step down that road. Although the number of operators likely to be involved is quite small, they see it as the thin end of the wedge. That is why they are vehemently opposed to the 50-50 legislation.

I return again to the fact that we are here to fulfil the recommendation of the report as one element. As I have indicated, I do not think a huge number of sites will benefit from this in the next year or two, and perhaps the Deputy Leader of the Opposition did not recognise that when he and his fellow committee members made that report. I looked into it when I became minister because I had concerns, and I will briefly relate them. I was

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elected in 1989, which was nine years after the Fraser federal Government's petroleum sites legislation. That sites legislation addressed the problem in the early 1980s of high petrol prices and the fact that the retailers were again getting the long end of the stick from the majors, particularly with their licensing or franchise arrangements. The federal Government tried to include in that legislation an element of divorcement between the majors and the retailers, and it limited the number of sites. The franchise arrangements were a mechanism by which the companies got around that legislation in large part. The idea then was to give some certainty to the small businessperson who was the retailer. The companies said that the site licence arrangements had to run for at least nine years. Often there were renewals after every three years, but the franchisee had to give at least nine years to the retailer. When I was elected in 1989, service station proprietors came to me because, at the end of the nine years, they found that they were on a hiding to nothing with the major oil companies. I understood then that that was continuing to roll on; so nine years on is 1998. In 1998 the overwhelming bulk of those retailers again signed leases for nine years, and I think one of the companies has leases for 10 years. I knew we were only in the early stages of the next round. The only way we would capture them all was to make it retrospective. I thought about the possibility of making it retrospective. Does anyone here who has any sympathy for small business want retrospective legislation to undo those contractual arrangements? Does anyone support retrospective legislation with contracts? I take it that the answer is no. Does the Deputy Leader of the Opposition support making the legislation retrospective?

Mr Barron-Sullivan: I have already made the point that the way you have done this -

Mr KOBELKE: No, does the Deputy Leader of the Opposition support making it retrospective in principle?

Mr Barron-Sullivan: I have already said that in this case the practical way to deal with this aspect is the way that you have done it in this legislation.

Mr KOBELKE: So the Deputy Leader of the Opposition thinks it should be retrospective?

Mr Barron-Sullivan: No; as you have it in this legislation in this case.

Mr KOBELKE: He does not; we agree on that. I thank the Deputy Leader of the Opposition for that. The concern is that if it is retrospective - in extreme cases Governments of all persuasions will use retrospective legislation - we will interfere in an existing contract between the small retailer and the major oil company. We would mess up an existing contractual arrangement. That would leave the major oil company in a position in which it could use its considerable legal power and deep pockets to take up the fight with the small retailer, and we know who would win in that situation. Even if our legislation gave rights to the small retailer, if it came down to a legal battle between the major oil company, which was seeking to uphold its rights under the contract, and the small business retailer, the major oil company would win. There might be an avenue through which the State Government could interfere, but we would be interfering in a contractual dispute between two parties. We could be on weak ground, depending on how the company fought it. If we understand small business and want to look after it, we would not be doing it a service if we made this legislation retrospective.

Mr Trenorden: Do you know whom you sound like? You sound like the member for Merredin four months ago, and you criticised the hell out of him for saying precisely that.

Mr Cowan: Don't worry; you will be able to live that down!

Mr KOBELKE: I thank the new Leader of the National Party. I will have to think about that at some length to work out whether that was a compliment or whether he was putting me down.

The situation is that it will apply to some service stations that are moving out of franchise arrangements. It is a threat to the fuel companies when they move into a new round of arrangements. They rightly see it as the thin end of the wedge. That is why it is the important element in the total package. It sends a clear signal that we will not back off on this particular element, even though the number of service stations or providers that will be immediately factored in will be quite small. We acknowledge that.

In closing, I will try to take up some of the key points raised by members opposite during their contribution to the debate. One member asked questions about the 50-50 rights and the maximum wholesale price. They are different issues. They are interrelated because if the maximum wholesale price is operating and if fuel is available, it opens up the potential for more service stations to go to another provider. However, they are separate issues. The member had the two issues confused when he asked for detail.

The issue concerning liquefied petroleum gas was also raised. This Bill covers LPG because it was a recommendation of the Select Committee on Petroleum Products Pricing in Western Australia that the same situation should apply to LPG. However, the maximum wholesale price for LPG will happen later. The maximum wholesale price for unleaded petrol must operate before one for LPG, given that LPG is only about

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one per cent of the fuel market and has special problems. The Government must make sure that the other matters are embedded and working before it moves on to LPG, which it will do.

Questions about mixing fuels and technical details were also raised. One question concerned the extent to which tanks must be emptied before more fuel can be added. All those issues, and they are myriad, relate to the fact that product reliability is crucial. There were cases in the eastern States of companies putting toluene into tanks and selling diluted fuel to avoid tax. There is an issue about the reliability of the fuel that people are using. There is also the issue of liability if something goes wrong. That is why clear standards must be set. The standards will address that issue. Some people have told me that in a particular town, the major oil companies supply fuel to another company and different trucks might come at different times. Even though a truck has a label on it, this does not necessarily tell the casual observer from which company the fuel came. Franchise arrangements contain requirements in the supply contract for insurance and forms of indemnity. Those matters are largely covered. However, there is a clear question of liability in situations in which, for instance, a BP Australia Ltd franchisee is operating a tank with fuel from another provider. If something happened to a vehicle that bought fuel from that franchisee, and this was attributed to some form of corruption of the fuel, whom does the owner of the vehicle sue? General rules must be laid down to prevent a huge bunfight.

The Government is happy to move on those rules and to talk about how it changed them; however, members should keep in mind that the objective is to provide a fair framework for liability issues. The difficulties that arise are challenges to be overcome; they are not obstacles to stop the whole thing from working. This is a matter of giving that assurance. Those assurances are contained in the 1982 legislation. The Government will tighten them up to a small degree if that helps; however, those problems should not be made into obstacles to prevent this matter moving forward.

The issue of a six-month period also is a part of that technicality. The whole impetus of this amendment is to give the retailer the opportunity to buy up to 50 per cent of its fuel from a company that is not its prime supplier. There must be a way to measure that 50 per cent. It has been suggested that the basis for this judgment should be measured by an audit of the previous six months business of the retailer. The details can be worked over, but the objective is clear. The franchise has prominence. There is a requirement that, of the fuel being provided, up to 50 per cent can come from a source that is not the prime provider. Those issues can be taken up in detail tomorrow. The objective should be kept clear. It is easy to deal with the details. Members should not make mountains out of them that cannot be climbed over.

The next suggestion was that these matters might be unconstitutional. That perhaps arises from a letter from one of the petroleum companies. The Government suspected that this was yet another obstacle being placed in its way by an oil company, that the company was trying to put whatever complaints it could in the way of the Government to prevent it proceeding with this legislation. That matter has been sent to the solicitor-general. The conclusion to that legal advice is that -

Having considered each of the three arguments raised by Caltex, I consider that the amendments proposed by the Amending Bill are not inconsistent with the Commonwealth Act within the meaning of s. 109 of the Commonwealth *Constitution* and thus, would not be invalid. Further, I can see no room for argument that the Amending Bill is invalid on other constitutional grounds.

The Government's legal advice is that this is a furphy. It is not unconstitutional.

The Leader of the National Party raised matters about the capping of retail prices in country towns. That matter is not contained within this legislation. However, the Leader of the National Party rightly raised that issue because it is a part of what the Government is doing to keep fuel prices down. This matter is delicate. The Government has legislative power, by regulation, to adjust the cap. I am concerned that small country towns might have only one petrol station, which is an important business in that town. That petrol station could be closed down if a ceiling were imposed.

Mr Trenorden interjected.

Mr KOBELKE: I will take interjections in a moment. The legislation allows for, and will apply, a maximum retail price in regional centres. The regional centres are nominated in the regulation. When that is up and running, which is some time off, and it is adjusted by the Government, it may be found that it does not work in some regional centres and that it must be withdrawn. On the other hand, the Government may be requested to extend it to smaller centres. That is not the Government's intention. The Government will see how it works in major regional centres that have 10 or 20 service stations and where there is an element of competition. On the basis of that judgment -

Mr Cowan: You can put a retail cap on at any time you like.

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Mr KOBELKE: The member for Merredin is correct. This relates to the existing legislation. The member for Merredin may have mentioned 4c. The old pricing system was an import parity-type price with 7.1c on top. It is the Government's judgment that that was way above a reasonable profit margin. That is why it has gone to this new model to set a maximum wholesale price to which the extra costs are added. This may relate to a particular town if there is small throughput, which would mean that capital costs were higher for each litre of fuel, and transport costs might be higher. All those factors can be taken into account. It is the Government's judgment that that is a more flexible model and that the old model did not give the most competitive prices. I say to the Leader of the National Party that the Government is open to discussion on that. However, the Government is also conscious that it does not want to close petrol stations in small towns by placing that requirement on them. It should be seen how it works in major regional centres before that happens.

I have covered the key points that were raised and I thank members for their contribution to the debate. I hope that this House will progress the Bill through the consideration in detail stage with an attitude that allows it to get the details right and that it does not make the details into obstacles that cannot be overcome. The 1982 legislation contains the bulk of the detail with which members have issues. No-one has taken issue with it before. A service station used it and another service station provider told me that he tried to use it some years ago; however, he was simply pushed out of business by the major companies. While only a small number of service stations will be able to use the 50-50 rights, it is the Government's sincere hope that people will take them up and that they will be another element in creating real competition in fuel retailing in Western Australia. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Pro forma Amendments

On motion by Mr Kobelke (Minister for Consumer Affairs), resolved -

That the amendments listed on the Notice Paper to the Petroleum Legislation Amendment Bill 2001, in the name of the Minister for Consumer Affairs, be made.

Amendments agreed to pursuant to the foregoing resolution were as follows -

Clause 5

Page 4, lines 17 and 18.

To delete "registered under section 3A at the relevant time for" and substitute the following -
"

from whom the retailer would, but for this Act, be obliged to purchase more than 50%
of

"

Clause 6

Page 5, line 11 to Page 6, line 4.

To delete the clause.

Clause 7

Page 9, line 11.

To delete "\$10 000." and substitute the following -

" \$20 000. "

Page 9, after line 11.

To insert the following -

"

(10) After section 4(3) the following subsection is inserted -

"

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(3a) For the purposes of deciding whether a person has, as required by subsection (3)(a), ensured, so far as is practicable, that motor fuel that the retailer is obliged to purchase from the primary supplier is available for sale at the site, the lack of availability of storage is not relevant.

”.

Page 11, line 5.

To delete “\$10 000.” and substitute “\$20 000.”.

Page 11, line 9.

To delete “\$10 000.” and substitute “\$20 000.”.

Clause 8

Page 12, after line 18.

To insert the following -

“

(3) Section 5(3) is amended as follows:

(a) by deleting “14” and inserting “28”;

(b) by deleting paragraph (b) and inserting the following paragraph

“

(b) refuse to give permission, or give permission subject to any condition, and state the ground upon which permission is refused or any condition is imposed.

”.

Page 12, line 26.

To delete “subsection is” and substitute “subsections are”.

Page 13, lines 3 to 13.

To delete the lines and substitute the following -

“

(4b) A retailer who, under subsection (3), is given permission to exercise a right under subsection (1) subject to any condition -

(a) is deemed to have been given that permission unconditionally if -

(i) the person who gave permission concedes that any condition was unreasonable; or

(ii) the Commissioner has determined under subsection (9) that any condition was unreasonable without specifying conditions to which the retailer and the person giving permission have agreed;

(b) if the Commissioner has determined under subsection (9) that any condition was unreasonable but specifies conditions to which the retailer and the person giving permission have agreed, is deemed to have been given that permission subject to those conditions.

(4c) A determination of the Commissioner does not take effect for the purposes of subsection (4a) or (4b) unless -

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- (a) the time within which an appeal against the determination may be made under subsection (10) has elapsed without an appeal having been made; or
- (b) although an appeal against the determination was made under subsection (10), the appeal has been withdrawn or has been finally disposed of without a finding that the refusal or condition that the Commissioner found to be unreasonable was reasonable.

”.

Page 13, before line 15.

To insert the following -

“

- (6) Section 5(5) is amended by inserting after “have been given” the following -

“nor contrary to any condition to which the permission is subject ”.

- (7) Section 5(6)(a) is amended by inserting after “manner” the following -

“and, subject to this paragraph, in accordance with any relevant proposal given under subsection (2)”.

”.

Page 13, line 19.

To delete “\$10 000.” and substitute “\$20 000.”.

Page 13, after line 28.

To insert the following -

“

- (9) After section 5(7) the following subsection is inserted -

“

- (7a) Where a retailer exercises a right under this section with the permission of another person the retailer has no claim or suit against that person in relation to any loss or damage which the retailer or another person may suffer by reason of the workmanship or materials employed in the exercise of such right or arising in respect of or from the use of the bulk storage or dispensing equipment, as the case may be, affected by that exercise.

”.

- (10) Section 5(8)(a) is amended by deleting “the landlord or primary supplier may reasonably require;” and inserting instead -

“ is prescribed by the regulations; ”.

”.

Page 13, line 29.

To delete “5(8)(a) and (b) are each” and substitute the following -

“ 5(8)(b) is ”.

Page 14, line 2.

To delete “\$10 000.” and substitute “\$20 000.”.

Page 14, after line 5.

To insert the following -

“

(12) Section 5(9) is further amended by inserting before “shall” the following -

“

or to the reasonableness of a condition subject to which permission is given

”.

”.

Clause 9

Page 14 after line 16.

To insert the following -

“

(2) Section 6(1) is further amended as follows:

(a) by deleting “50 per cent” and inserting instead the following -

“ 100% ”;

(b) by inserting after “equipment” at the end of the subsection the following -

“

while it is being used for the dispensing of motor fuel supplied otherwise than by the primary supplier

”.

”.

Clause 10

Page 14, line 25.

To delete “\$10 000.” and substitute “\$20 000.”.

Clause 13

Page 15, line 16.

To delete “\$10 000.” and substitute the following -

“ \$20 000 for an individual or \$100 000 for a body corporate. ”.

Clause 19

Page 18, lines 10 to 21.

To delete the lines and substitute the following -

“

(3) The regulations may include provision for the Commissioner to be notified if a person ceases, temporarily or not, to be required by regulations under subsection (1)(a) to notify in respect of all motor fuel or any kind of motor fuel.

”.

New Clause

Page 18, after line 22.

To insert the following -

“

20. **Penalties amended**

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- (1) Under the provisions identified in the Table to this subsection “Penalty: in the case of an individual, \$4 000 and, in the case of a body corporate, \$10 000.” is deleted and the following is inserted instead -

“ Penalty: \$20 000. ”.

Table

s. 11(1)	s. 21
s. 14(1)	s. 22B
s. 14(2)	s. 22C
s. 15	s. 22D
s. 16(1)	s. 22E
s. 17	s. 22F
s. 18(3)	s. 27(5)
s. 19(1)	s. 27A(5)
s. 20(1)	

- (2) The penalties specified under the provisions identified in column 1 of the Table to this subsection are amended by deleting the amounts shown in column 2 and inserting instead the amounts shown in column 3.

Table

<i>column 1</i>	<i>column 2</i>	<i>column 3</i>
provision	amount deleted	amount inserted
s. 25(1)	\$4 000	\$20 000
s. 26	\$4 000	\$20 000
s. 33(1)	\$10 000	\$20 000

- (3) Section 34(a) is amended as follows:

- (a) in subparagraph (i), by deleting “\$1 000” and inserting instead -
“ \$20 000 ”;
- (b) in subparagraph (ii), by deleting “\$2 000” and inserting instead -
“ \$100 000 ”.

”.

House adjourned at 10.00 pm
