

**PETROLEUM PRODUCTS PRICING AMENDMENT BILL 2000**

*Dissent from Chairman's Ruling - Ruling by President*

Resumed from an earlier stage of the sitting.

**THE PRESIDENT** (Hon George Cash): I want to deal with an earlier dissent motion in respect of a ruling by the Chairman of Committees in respect of amendment 5/NC to the Petroleum Products Pricing Amendment Bill 2000. Hon Mark Nevill's dissent has two grounds: First, that it is not the case that the amendment is proposed to the Petroleum Retailers Rights and Liabilities Act 1982; and, secondly, that the chairman's ruling misconceives the intent of the amendment and proposed section 22G. The member submits that each of them is concerned with matters of access rather than pricing.

I can dispose of ground 1 by saying that although the member may have gained the impression, because the ruling commenced by saying that it applied to both sets as numbered, that everything that followed applied equally and in all cases, I am satisfied that the ruling severs the amendments and applies to them according to context.

In dealing with ground 2, I need to dispose of questions relating to the statutory intent of the amendment and section 22G. When the member uses "access" to characterise the two provisions, he means it in the sense that there is greater ability to obtain something than was previously the case. If enacted, section 22G will not afford greater access by resellers to the motor fuel available from a declared terminal. It may be the case that no terminal becomes a declared terminal. What it does, in my opinion, is to prohibit a declared terminal from discriminating between members of the same class of purchasers on other than objectively-assessed grounds under subsection (3). I believe my view is assisted by proposed section 22A(3), which completes the "offer and acceptance" aspects of supply.

The amendment, as I read it, makes a statutory modification to "tied" agreements that are formed after 22 November - that is, as of yesterday - if such an agreement prevents a reseller from purchasing a greater percentage of its supplies than the agreement allows from another supplier. It relies on other provisions in the Bill to determine the "lowest displayed price". However, the "50:50 split" is a result, rather than the cause, of the amendment's intent. It is the prospective modification of supply arrangements that allows the 50:50 split.

I therefore agree with the Chairman of Committees that the Bill concerns itself principally with the pricing of petroleum products. Proposed new section 22G is directed towards providing a consistency of approach to the application of the pricing regime introduced by that part of the Bill. In my view, the amendment introduces a new principle; that is, statutory modification of enforceable agreements. Arguably, the modification may affect adversely property rights. I cannot find any provision in the Bill under consideration that operates on existing property rights. As the Chairman held, the Bill is not concerned with the place of purchase and, as I would hold, matters of "access" as I have described them. Proposed new section 22G is ancillary to the pricing regime created by the Bill, and cannot be read as a stand-alone provision unrelated to division 1. Additionally and separately, the member's amendment would introduce a matter that, on any reading, is not now present in the Bill. I therefore cannot uphold the dissent.

*Committee Resumed*

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon N.F. Moore (Leader of the House) in charge of the Bill.

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Hon TOM STEPHENS: The Opposition wanted to create a different result. We cannot amend this Bill in a way that would enable it to do the job it needs to do. This Bill probably does half the job it is supposed to do; it is deficient. Even at this late stage we wanted to explore avenues for opening up opportunities. However, it appears nothing is available to us that would require the Government to amend this legislation to better protect the consumers of fuel within our community. The end result is that the Bill will advance without the amendments that would have improved it dramatically. Having said that, the Opposition supports the legislation.

Hon NORM KELLY: Serious problems have been created, given the President's ruling against the proposal to include a new section relating to the 50 per cent rule. Oil companies can now see the possibility of change, if not now, maybe in a few months. I know that there are very serious concerns throughout the retail oil industry that oil companies will now move swiftly to tie up their contracts with franchisees, owner-dealers and commission agencies - the different varieties of petrol retailers in this State - so that future legislation does not trap them. Hon Mark Nevill's amendment on the Supplementary Notice Paper, which proposes to identify a date from which any further contracts will be signed, is very worthwhile. I will be interested to hear the minister's

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response regarding what the Government has planned. The Government said earlier tonight that it had not been able to work out exactly how to deal with the 50 per cent issue. However, I hope it will introduce legislation early next year, if it is in government; and if it is a different Government, hopefully the Australian Labor Party will do the same. Any legislation introduced next year should reflect the fact that this issue was first officially raised in the Supplementary Notice Paper of 22 November. Therefore, any future legislation that frees up franchisees and the like to access 50 per cent of their fuel from other than the franchisor at the lowest displayed price should refer back to 22 November.

The minister said earlier that the Government did not include such clauses in the legislation because of the enormous task of deciding how this situation could be brought about, and because it did not know whether the threat in BP Australia Ltd's letter to close the refinery was real. I want the minister to tell us what the Government has planned. Is the Government planning to put forward legislation containing the 50 per cent provision? If so, is it willing to make a commitment that any legislation introduced next year will impact on contracts signed from 22 November?

Hon MARK NEVILL: I will not dissent from the President's ruling, but I note that the long title of the Petroleum Products Pricing Act refers to the regulation of the prices or rates charged for petroleum products, or certain services related thereto, and for incidental and other purposes. This Bill has been drafted very narrowly. The scope of the Bill has also been interpreted very narrowly. The truth of the matter is that the fuel companies have organised themselves in such a way with franchises that they can get around the intent of the federal legislation, which states that they should have a limited number of service stations. They have set up holding companies with a whole array of franchises, some of which they operate themselves and some of which are operated by others. It is disappointing that the Government is not prepared to take on the fuel companies.

It is not true that the Kwinana refinery has ancient equipment and is just about ready to be phased out. It is a modern refinery. It is tuned to refine rather dirty Middle East crude oils. That is where it has a competitive advantage. All our clean oil from the North West Shelf goes straight to Japan; it does not go to Kwinana. I do not think there is any prospect of Kwinana closing down. One cannot judge the profitability of BP or Shell Australia Ltd by what they say is the operating margin of Kwinana or other refineries. It would not be very healthy because the margins for refineries around the world are very lean. We must look at their overall profitability, and it has not suffered. In fact, the recent spike in oil prices will see them returning very healthy profits.

I am disappointed that the Government has not bitten the bullet and included the fourth component of this package, which must be included for the legislation to have any effect. The positive impact on country fuel prices resulting from this measure will be dissipated. The absence of this 50:50 rule means that small retailers will be required to buy from their current supplier. The suppliers will not be put on notice; no consequence will flow from their discriminating between fuel retailers. They will be able to continue to do that.

The rejection of this amendment - based as it is on a very narrow reading of the legislation - will result in our not reaping these benefits. The legislation will now have only a modest effect.

Hon N.F. MOORE: I do not propose to continue repeating myself ad nauseam. The Government has made a decision not to implement the 50:50 rule at this time. I have already indicated that we will monitor the effect of this legislation. Unlike members opposite, members on this side believe the effect will be significant. It will provide transparency in pricing structures that determine how much motorists pay for a litre of fuel at the bowser.

As I said, the Government will look at the 50:50 rule, not only because BP has said it might close down the refinery but also for many other reasons. Obviously, restricting the rights of cartage in respect of contracts must be carefully considered. For many reasons people say we should introduce legislation that will achieve what seems to be politically advantageous. However, a range of other principles arise. The question of the Government's interfering in the marketplace is important. While BP might be having us on, any Government that did not take such a letter seriously would be derelict in this duty. I would be very interested to see what would happen if this amendment were put and passed. What would happen if BP closed the refinery? Who would take the blame?

This is a serious issue. This Government is wary of being involved in legislation that interferes too much in the marketplace. That is part of this Government's basic philosophy. It has made a decision, although it is not the most politically smart decision. It would be far easier to introduce legislation providing that fuel must be sold for 50¢ a litre. That would send everyone broke, but that is beside the point. The Labor Government tried that in 1983 - it recalled Parliament urgently to fix the price of petrol. The legislation was passed before the signature on the writs was dry.

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Hon Mark Nevill: Parliament was recalled to deal with a firearms legislation amendment.

Hon N.F. MOORE: We were recalled for many extraordinary reasons in those days. The bottom line is that it did not achieve much. Members opposite are now saying that somehow the State Parliament of Western Australia can have an impact on the price of fuel. Our effect is marginal at best. Members know that the price of fuel is determined by the price of oil. The price of oil is determined by people who have far more clout in the world than we have. It is time that was recognised. I get a little irritated when, for political purposes, people like the Leader of the Opposition try to blame the State Government for the price of petrol, when in fact it has a very small input. I did not hear him complaining that there should be much lower prices when the price of oil was between \$11 and \$15 a barrel.

I have already indicated that the Government has decided not to implement recommendation 9 for the reasons I have outlined. However, through a cabinet subcommittee, it will monitor the effectiveness of this legislation. If it is necessary to do something about the 50:50 issue further down the track, the Government will reassess it on the basis of the experience it gains from the implementation of this legislation.

Hon TOM STEPHENS: Before this debate finishes, it is important to set the record absolutely straight. There was multi-party support for a select committee report that said that the combination of State and Federal Governments and Parliaments could have an interface with this issue and could have a substantial impact upon the price of fuel within our community. That is the recommendation of my parliamentary colleagues and those of the minister, and it is the conclusion in the select committee's report. It does them, the minister and his colleagues a disservice to try to reinvent that reality. There is a way to advantage our community; that is, to accept the recommendations of that select committee.

Hon W.N. Stretch: That is your judgment.

Hon TOM STEPHENS: And the judgment of Hon Bill Stretch's colleagues who served on that select committee, so he should not attack them.

Several members interjected.

The CHAIRMAN: Order! The Leader of the Opposition has the call, not the Attorney General.

Hon TOM STEPHENS: An opportunity was available to this Government, which it has chosen not to accept. It could have had a significant impact upon the price of fuel within our community, but it has chosen not to do so. When presented with a unanimous report of that select committee, the Government basically blinked in the face of threats from the industry, which the Government should not have taken on board. It should have taken into consideration the interests of all the citizens of Western Australia. Instead, the Government has looked after that section of the community it always looks after - the big end of town.

Hon J.A. SCOTT: I mentioned the shape of the Bill in the second reading debate, but I do not think it was addressed. One of my concerns with the Bill is that it will take out a range of petroleum products and put them in the first schedule. How many of those items are produced in WA, and if they are sold in this State what will the Government do to ensure that the cost is not shifted from fuel onto these products in the first schedule? That would just shift the cost to another section of the community.

Hon N.F. MOORE: There is no change to the products that are excluded from the definition of "petroleum product", except that it is intended to bring liquefied petroleum gas into the current definition. I hope that answers the member's question.

Hon J.A. SCOTT: It does not answer my question. The first schedule of the Bill specifically excludes those matters from the pricing arrangement set up by the Bill. How will we ensure that the products in the first schedule do not become the beneficiaries of a price shift to make up for the amount lost on petrol, especially products that are produced and sold at the terminals? As I pointed out, many of those products are fertilisers and so on. No great benefit will be achieved by reducing the price of fuel to farmers in regional areas if the cost is shifted onto fertilisers such as urea, and so on.

Hon N.F. MOORE: The definition of "petroleum product" was taken from a commonwealth Act which has been repealed. I do not know the answers to the other matters raised by the member. We can talk until the cows come home about how we might encourage people to use other products. The point is that we are trying to pass a Bill that will give relief from high fuel prices. It would be helpful for a briefing to be arranged for the member if he has a string of questions he wants to ask about parts of the Bill.

Hon J.A. Scott interjected.

Hon N.F. MOORE: The member can vote against the Bill. The Government has put forward a proposition to the Parliament. If the member does not want the proposition, he can simply vote against it. I shall give the

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member an explanation to the best of my capacity. However, he asks some rather obscure questions from time to time that do not go to the main thrust of the Bill and it takes a little while to get the answers.

Hon J.A. SCOTT: I do not know whether the minister understands what I am asking.

Hon N.F. Moore: No, I regret I do not. It is not the first time I have not understood the member's questions.

Hon J.A. SCOTT: I do not know whether that is the minister's fault or my fault.

Hon N.F. Moore: It is my problem. I am not an expert on this legislation.

Hon J.A. SCOTT: I understand the definition of the products in schedule 1 may have come from another Act and may be excluded from the definition of "petroleum product". Are those products produced in Western Australia and, therefore, excluded from the Bill? For instance, if BP Australia Ltd is producing anhydrous ammonia in this State, it could shift the amount it loses from petrol onto the cost of that product; therefore, consumers would not be much in front. I wonder whether, firstly, it produces these products in Western Australia, because if it does not, it cannot shift the cost. However, if it does, is any monitoring intended by the Bill, or in any other way, to prevent oil companies from shifting the price differential loss onto another product? Obviously it cannot be done with LPG as that is included in the definition of "petroleum product".

Hon NORM KELLY: I shall go back to the issue of the 50:50 legislation.

*Point of Order*

Hon N.F. MOORE: I do not want to curtail debate; however, much of the debate on clause 1 has been about what is not in the Bill. It has already been determined that any amendments in respect of a 50:50 clause are unacceptable, yet we are having a long debate about that issue and I believe it is out of order.

The CHAIRMAN: I will listen carefully to the comments by Hon Norm Kelly.

*Committee Resumed*

Hon NORM KELLY: I will speak about three things that relate to the Bill. The Bill contains transparency, access and monitoring provisions. However, it seems that the Government might be creating a three-legged chair because there are no provisions in this Bill - sometimes referred to as 50:50 provisions - to allow retailers to seek the lowest possible price at which to purchase petrol. As much as the Opposition welcomes those first three legs, it has a serious concern that this legislation will topple over because it is not supported by the ability for retailers to seek cheap fuel. I am not one to labour these points, so I will move to my next point.

Hon N.F. Moore: You have made the point about 17 times - no-one is listening.

Several members interjected.

Hon NORM KELLY: I am sure that the minister's interjections are an attempt to spur me on to keep talking about this point, but I will not be tempted! I mentioned during the second reading debate that this Bill lacked a proclamation clause. It was explained that the Bill would receive assent and, through the Interpretation Act 1984, it would be proclaimed after 28 days. I would like to know when the Government expects to have regulations prepared and in place for the implementation of this new scheme.

Hon N.F. MOORE: I am advised that the Government hopes to have the regulations in place by the end of January.

**Clause put and passed.**

**Clause 2 put and passed.**

**Clause 3: Section 3 amended -**

Hon J.A. SCOTT: The definition of "petroleum product" is provided on page 2 of the Bill, which states -

**"petroleum product"** means a product derived from petroleum, but not petroleum itself, except that it does not include -

- (a) a product listed in Schedule 1; or
- (b) a product that is excluded from this definition by an order under subsection (4), and it includes LPG (whether motor fuel or not, and whether or not the LPG is petroleum);

Does that cover LPG that is not extracted from petroleum, but is extracted from natural gas? If that definition does not include LPG extracted from natural gas, it might mean that it is not covered in the Bill.

Hon N.F. MOORE: My advice is that it does not matter where the LPG comes from - it is included.

**Clause put and passed.**

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**Clauses 4 to 7 put and passed.**

**Clause 8: Part IIIA inserted -**

Hon NORM KELLY: I understood the Minister would be moving an amendment to this clause. This clause relates to the price fixing and retailers needing to inform the commissioner of the price at which they intend to sell petrol the following day. I understand this is fraught with problems, and I am surprised that the Government's position seems to be changing faster than a retailer can change his petrol prices.

Hon N.F. MOORE: The Government gave some consideration to amending clause 8 to improve it. However, as the member will be aware, the Legislative Assembly has risen and will not be returning. The Assembly made the decision to adjourn on the basis that these amendments were ruled out of order; therefore it did not wait around to see whether we would amend this Bill. Any amendment to this legislation now would mean that it did not proceed further. I am not in a position now to amend clause 8, because if I did it would mean that the Bill would not proceed. I would prefer to proceed on the basis of this legislation being not quite as good as it could be with an amendment to clause 8. The same would apply if Hon Mark Nevill's amendment had been in order and agreed to by the House - we would have had the problem of the Assembly's not being in session to consider that amendment, in which case the Bill would lapse. I think the member will agree that it is better to make sure we get in place what is in the Bill rather than nothing. The member raises his eyebrows and all the rest, but -

Hon Norm Kelly: It seems silly that the Assembly has passed the legislation for us. We may as well just pack up and go home.

Hon N.F. MOORE: I was hoping the member might think it is a good idea shortly. I do not get any satisfaction out of this either. When it was determined earlier that the amendments on the Notice Paper were out of order, and it was about six o'clock in the evening, the Assembly decided to adjourn on the basis that there would not be any amendments to the legislation. The Assembly could have waited all night to see what we did with this legislation, but on the basis of the information available at the time it assumed there would not be any amendments and adjourned. I do not like that process; I have argued against it in the past. However, that is the nature of this place. It is a pity we are rushing through this Bill at this time, but if we were to take it any slower we would be beaten over the head by people such as the member who said we took too long to get it here anyway. People such as the Leader of the Opposition would be out in the electorate claiming that the Government was dragging its feet. That is the dilemma we are in. There is no point proceeding with the amendment because that would have the effect of ensuring the Bill did not proceed.

Hon NORM KELLY: As much as I appreciate the minister's explanation, it seems somewhat bizarre that this important legislation, which the Government appears to be admitting is flawed, will not proceed because the Assembly has risen. It was my understanding that the Assembly could be recalled to deal with this matter.

Hon Mark Nevill: Of course it can be recalled.

Hon NORM KELLY: That was my understanding; and it was also my understanding that not all the amendments were ruled out of order. I believe the amendments were numbered when they were read out, so 4/8 was not actually ruled out of order. Some people in the other place may not have fully understood what happened in this Chamber. Hopefully, the fact that the Assembly has risen will not have a major effect on the legislation -

Hon N.F. Moore: I am advised that the problem that was sought to be overcome by the amendment of clause 8 can be overcome by regulation.

Hon NORM KELLY: I was keen to see the amendment passed, because I realised that by including the proposed amendment the prices commissioner will have greater flexibility in implementing this regime. It is disappointing, but this is the sort of sloppy legislation that gets passed at this time of the year. It is being hurried through and there is no desire for the Government to say that the process should be slowed down as there are problems that need to be addressed in order to fix the legislation, whether it be by passing the proposed amendment or including a 50:50 provision, as discussed before. Both Houses could easily rise for two weeks and come back and sit for a day in mid-December, get it resolved and provide good legislation for the State rather than push through this sloppy legislation.

Hon N.F. MOORE: The problem that the amendment to clause 8 was designed to overcome can be overcome largely by regulation. It is not a question of what is sloppy and what is not. The bottom line is that the Government is trying to get in place what it regards as a good first step towards doing something about the price of petrol. It has been decided not to go the whole hog - we argued about that all night. If the member does not agree with the Government, he can vote against the clause. The Government has made a decision about the direction in which it wants to go. It is now up to members to decide whether they agree with the legislation. We

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have to deal with circumstances as they are. This is not the first time we have had to do this sort of thing. Hon Tom Stephens and I discussed the other night how many pre-Christmas periods we have spent in Parliament - there have been a lot of them. I have been in Parliament for 24 pre-Christmas periods. The end to this session is much more genteel and less robust and less likely to produce bad legislation than most of the 24 sessions I have already been through.

**Clause put and passed.**

**Clauses 9 to 14 put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*

Bill read a third time, on motion by Hon N.F. Moore (Leader of the House), and passed.