



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

SENATE ECONOMICS REFERENCES COMMITTEE

Reference: Provisions of the Fair Prices and Better Access for All (Petroleum) Bill 1999
and multi-site franchising by oil companies

WEDNESDAY, 16 FEBRUARY 2000

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SENATE
ECONOMICS REFERENCES COMMITTEE
Wednesday, 16 February 2000

Members: Senator Murphy(*Chair*), Senators Chapman, Conroy, Cook, Gibson and Ridgeway

Substitute members: Senator Schacht for Senator Cook

Participating members: Senators Abetz, Boswell, Brown, Brownhill, Calvert, George Campbell, Coonan, Crane, Eggleston, Faulkner, Ferguson, Ferris, Harradine, Knowles, Lightfoot, Mason, McGauran, Murray, Payne, Quirke, Tchen, Tierney and Watson

Senators in attendance: Senators Chapman, Crane, Eggleston, Gibson, Murphy, Ridgeway and Schacht

Terms of reference for the inquiry:

- (a) The provisions of the Fair Prices and Better Access for All (Petroleum) Bill 1999; and
- (b) The practice of multi-site franchising by oil companies and, in particular:
 - (i) whether this practice allows oil companies to avoid restrictions placed on them by the *Petroleum Retail Marketing Sites Act 1980*, and
 - (ii) whether the Act should be strengthened.

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Committee met at 3.35 p.m.

CHAIR—Today the committee will conduct its first public hearing into the provisions of the Fair Prices and Better Practices for All (Petroleum) Bill 1999 and the practice of multi-site franchising by oil companies. This inquiry was referred to the committee on 12 October 1999, initially for report by 24 November 1999. However, due to work commitments the committee has sought to have the reporting date extended to 13 April 2000. The terms of reference for the inquiry direct the committee to consider, (a) the provisions of the Fair Prices and Better Access for All (Petroleum) Bill 1999; (b) the practice of multi-site franchising by oil companies and, in particular, (i) whether this practice allows oil companies to avoid restrictions placed on them by the Petroleum Retail Marketing Sites act 1980, and, (ii) whether the act should be strengthened.

At a private meeting last year the committee agreed to release all submissions as they were received during the inquiry except those to which confidentiality applies. All submissions are available from the secretariat for those interested in obtaining a set. Before we commence taking evidence I wish to reinforce for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to evidence provided. Parliamentary privilege refers to special rights and immunities attached to the parliament or its members and others necessary for the discharge of parliamentary functions without obstruction and fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by him or her before the Senate or any of its committees is treated as a breach of privilege. I also wish to state that, unless the committee should decide otherwise, this is a public hearing and as such all members of the public are welcome to attend.

[3.37 p.m.]

DELANEY, Mr Michael, Executive Director, Motor Trades Association of Australia Ltd

HARRIS, Mr Robert John, Chairman, Australian Service Station and Convenience Stores Association, Motor Trades Association of Australia Ltd

HEAVYSIDE, Mr Colin Thomas, Immediate Past Chairman, Australian Service Station Association, Motor Trades Association of Australia Ltd

SCANLAN, Ms Susan Mary, Senior Policy Officer, Motor Trades Association of Australia Ltd

CHAIR—Welcome. I now invite you to make an opening statement.

Mr Delaney—The MTAA welcomes the opportunity to appear before your committee today. If I may briefly explain, MTAA is a federation of the motor trades associations or automobile chambers of commerce in each state and territory, and the Service Station Association which is New South Wales based. MTAA thus represents the national interests of all those who sell, service and repair motor vehicles, including of course the service station operators. My two colleagues here today, my office holders, both operate service stations – Rob Harris in Melbourne and Colin Heavyside in Adelaide.

One of the most frustrating and bewildering aspects of petroleum retailing is the fact that franchised and other tied resellers are unable to access competitively priced fuel. I am not speaking here of access for farmers or mining companies or transport companies but of franchisees and other branded resellers. Resellers who are tied to their supplier 100 per cent must accept fuel at the price and on the payment terms dictated by the oil company, yet often those retailers are aware that their oil company is supplying fuel cheaper to competitors across the road. The current situation, we believe, is totally inequitable. Resellers are unable to negotiate in respect of their wholesale price, and their competitive position in the market is undermined by their business partner, their franchisor, selling fuel more cheaply to their competitors. Until there is a situation where resellers have the legal right to seek competitively priced fuel, suppliers will remain concerned about the degree of competition in the wholesale market. Of course one solution would be for the parliament to enact the Fitzgibbon bill, and we urge the committee to support that bill.

Multi-site franchising is not all that new, nor I guess is it unique to the oil industry. However, it is the scale of the current MSF operations, particularly those of the Shell company, which concerns MTAA. When Shell first introduced its multi-site arrangements, it was expected that each multi-site franchisee would operate about 10 to 15 sites each. We now have a situation where a very small number of so-called franchisees operate in excess of about 50 sites each. The fact that through that network Shell has the potential to control large geographic areas of the market is a major concern for us. Pricing decisions are now at best being made by a handful of MSF franchisees, whereas before such decisions were determined by individual dealers based on a number of influences.

Shell has said on a number of occasions that its service stations do not compete with each other, but with other brands. MTAA and its members believe that the primary motive for the introduction of multi-site franchise networks has been for the companies to avoid the restrictions placed on them in relation to the direct operation of sites by the Petroleum Retail Marketing Sites act yet, through its MSF network, Shell is able to potentially exert a great deal of influence over the market. We believe that Mobil too, through its equity interests in distributors, is seeking to avoid the sites act and at the same time to gain much greater influence or control over a greater number of sites.

The oil majors are strongly opposed to the existence of the sites act. MTAA and its members are equally opposed at the present time to the repeal of the act. We are firmly of that view because, even while the act has been in place, the companies have sought through equity and multi-site arrangements to defeat it to gain greater control of the market. We believe, therefore, that in an unregulated environment the companies would seek to secure total dominance of the market and we do not believe that to be in the longer term interests of either our members or motorists.

As to the future regulatory framework for the oil industry, we have indicated on a number of occasions that we would be willing to swap an agreed and mandated Oilcode for the franchise act. Equally though, we cannot at this time agree to the repeal of the sites act, but we do believe that it should be possible to reach a compromise position on the future of the act with the oil majors, government and the other interested parties.

CHAIR—Thank you. Where do independent petrol sellers and supermarkets purchase their fuel from?

Mr Delaney—The independents, depending on the character of their independence, typically would buy it from the major oil companies but one or two of them do import it.

CHAIR—I suppose the price from the major oil companies would be a factor in their consideration. They could buy it from Shell one week and/or Mobil the next if the price –

Mr Delaney—Probably not, but you would perhaps be best to ask the companies for the details. These are not details we can readily discover. Our understanding is that, no, there need to be fairly firm contracts, both by

duration, volume and price of a settled character between those independents and a particular oil company. If you mean by independent, however, someone –

CHAIR—But could they have more than one contract?

Mr Delaney—Possibly.

CHAIR—Are you aware of any that do?

Mr Delaney—No.

CHAIR—Any further questions?

Senator CHAPMAN—If franchisees were given the right to purchase up to 50 per cent of their fuel from other sources, do you think that their customers have a right to know the source of that fuel?

Mr Delaney—Absolutely.

Senator CHAPMAN—In practical terms, how would that be managed? Would it be kept in separate tanks and separate pumps?

Mr Delaney—If that were permissible and possible, I am sure those who wish to do it, who I think would be small in number, would be quite happy to have separate tanks and pumps. We think that the consumer sovereignty dictates that consumers know exactly what it is they are getting, the branding of it and the like, and we think that that is readily able to be provided. We do not see a great deal of difficulty in our counterpart hotels with every brand being offered. But leaving that comment aside, I guess, while we believe that, we are a bit less vigorous in our belief of its necessity for the fact that consumers at the moment get fuel under one brand that is actually another brand supplied from a different supplier and they are not told that.

We make it clear in our submission that, under the refinery exchange and borrow and loan arrangements, the fuel that you buy under one brand may in fact have been supplied by a different refiner altogether. So we wonder if there really is a great deal to the issue of knowing, though at the same time we freely concede that, if it is to be other than the brand a company stands behind, that has got to be disclosed.

Senator GIBSON—Mr Delaney, how many service stations are there in Australia, and what is the split-up? How many are under franchise; how many of those, as a subset, are under multifranchise; how many are independents?

Mr Delaney—In its submission, AIP gives some contemporary numbers which we can point to, at page 22 of the submission. Their current numbering is 8,233 in total, with which we would probably agree. The number we have most recently used is 8½ thousand to 9,000. A little while ago it was 9,300. It is declining and it certainly does fluctuate. It is proposed there by AIP – and I am not sure we would debate at great length the break-up – that there are 2½ thousand franchised; 316 commission agent; 936 dealer owned, supply contracted to refiner market; and then 3,920 dealer owned, or distributor owned, supplied by distributor. Then there are the so-called independents, adding to approximately 300 or 400, and 85 supermarkets, which is Woolworths at the moment. We would perhaps categorise these somewhat differently from the way AIP has done it, because for our purposes we would propose to you that the character of the supply agreement and the branding would alter those numbers quite somewhat.

CHAIR—Are you able to provide something to the committee in writing in respect of that, as you are representing a different view as to the breakdown?

Mr Delaney—We certainly can.

Senator GIBSON—Just to follow up the franchise proportion: I assume they mostly own the franchise and service stations are basically owned by the oil companies. If I am correct in that assumption, seeing they own the sites why would they want to agree? It just does not make economic sense for them to want to put a franchisee in there who would have the right to sell their competitor's petrol.

Mr Delaney—On the face of it, it would not seem to make much sense at all. But, as against that, why would they want to sell us the businesses for large and valuable sums of money on the basis that they are to be privately owned and operated businesses in which we have got discretion to do most everything we want? Equally, most hotels in Australia are owned by breweries, yet the breweries are not permitted to say, 'You will only sell our product.' It is, we concede, a difficult issue; it seems counterintuitive. But we say that the acts are in place for reasons beyond our interests and the oil companies' interests, and indeed, when your party in government put them there in 1980 they were put in place for the public interest. We say that the public interest issues are still there and still very significant.

Senator GIBSON—But isn't it also true that the number of service stations in Australia will continue to go down? I do not know what your views are of how many there are going to be in, say, five years time, but it is going to be significantly fewer than the 8½ thousand that are there today.

Mr Delaney—We have for a long time agreed with AIP that the fundamental economics of the sites determines just how many there need to be and that volume is an important issue in that. There are a lot of sites that do not, these days, have sufficient volume throughput to be able to compete. Indeed, in 1994 we said to the Industry Commission, after some economic figuring, that maybe 2,000 to 3,000 needed to go. I have to say that AIP has relied upon that honest volunteering ever since.

I suppose what we were thinking of there was that back then you could point to a multiplicity of sites across intersections and places that clearly made little sense to anyone. We have never, though, conceded the point that they have to go because they are uneconomic per se in their operations, in their management or the like. They are mostly uneconomic because of the buyer price that is forced upon them. Were they able to access a competitive buying price, it may well be the number does not need to go down, but of course they cannot because there is not really any wholesale competition.

Senator GIBSON—I just query that basic assumption, though. I thought there was a fair bit of evidence around that in fact high volume sites are able to operate on margins of 4c or less per litre, whereas small volume sites require 7c or 8c or more per litre to survive. And I am certainly aware of that argument being advanced in my home state in Tasmania where there are a lot of small service stations still, because it has been slower going through the revolution, if you like, of going down in numbers than has happened in the other states. Isn't it fundamentally the case that a lot of city sites in fact operate on margins of around about 4c?

Mr Delaney—There are not many of us who get 4c.

Senator GIBSON—Isn't there?

Mr Harris—If you are lucky, 2c.

Senator GIBSON—All right, it makes the point even more, but I understand there are still a lot of low volume sites around Australia that require 7c or 8c in order to survive.

Mr Delaney—That is certainly the calculus that operates in relation to all of the sites at the moment but, if you like, it is a constrained calculus. It is arrived at on an assumption that you cannot go out and competitively bid for the price of the supply of your fuel, and what we are essentially saying is, were that possible –

Senator GIBSON—That is if you are a franchisee?

Mr Delaney—Any class, in effect. The reality of the matter is there is no competitive access available to those who retail about 93 per cent by volume, thus my reference to, 'We are not talking here about farmers, or primary industry or the like.' In essence, there is these days access to most anyone who wants the stuff for anything other than reselling it. If you are a reseller, yes, you can probably get to negotiate some terms – beyond franchisee, I mean there – but you have to tie yourself into a supply arrangement of an exclusive character for a very extended period on terms that –

Senator GIBSON—What sort of period of time are you talking about?

Mr Delaney—Five years.

Mr Harris—Senator, if I could make a comment regarding pricing, for the last three years, probably more than three years, I have been purchasing my fuel on a franchise site, and I have been purchasing my fuel for more than I retail it for, so my wholesale purchase price is 100 per cent of the time dearer than I am retailing it for. Therefore, I have to rely on price support to retail my fuel. I do not call the shots. I am an independent businessperson but, when it comes to the retailing of my fuel, I am effectively under the control of the oil company regarding the price that I sell it for even in as much as now, if I choose to go for a higher margin, for instance, if I am retailing my petrol at 73.9c and I choose to go to 74.9c and take a 3c margin instead of a 2c margin, there are instances of messages coming through the mail system saying, 'We are giving you price support to match 72.9c.' I have not heard of any instances where price support has been withdrawn, but the message is there.

Senator GIBSON—Okay, but what you are really saying, though, is that the price support in effect gives you a discount on the nominal price at which you are buying the petrol, which you say is slightly higher than your retail price, so there is an effective discount on it, and you are saying the company has no control over it.

Mr Harris—If that happened once a month or six or seven times a year you would understand it, but 100 per cent of the time, to have the wholesale price higher than the retail price, it is there for a reason. It is there for control. If my business is going to go under, I would prefer it if it was because I was a poor manager rather than because I was manipulated out of it. I find it very difficult to accept the fact that I have to buy my fuel from this source, and yet my competitors around me are buying from the same people that I am buying from but at a better price. I do not think that is fair, and I am not able to pass on those savings.

Senator SCHACHT—Which company are you with, Mr Harris?

Mr Harris—Ampol.

Senator SCHACHT—They do not have multi-site franchising?

Mr Harris—No, they are not allowed to until May this year.

Senator SCHACHT—And then they will move to multi-site franchising?

Mr Harris—They have indicated in their submission that they do not have a problem with it.

Senator GIBSON—Typically how long is a franchise agreement between you and your –

Mr Harris—I am currently on a five-year term.

Senator SCHACHT—With an option to renew?

Mr Harris—An option for another five years.

Senator SCHACHT—One more five or a couple more fives?

Mr Harris—One.

Mr Heavyside—Senator, I am actually tied up with the same company as Rob but my circumstances are slightly different. I actually own my site but I have chosen to enter into a branding franchising arrangement. That arrangement is five years in duration. It also stipulates that the terms and conditions of my purchase of fuel are that I will purchase 100 per cent of the product from Caltex – Caltex and Ampol being the same company, different brand name – and I would also support Rob's observation. Notwithstanding the fact that I operate in the market of Adelaide, I can assure this committee that in the last three months at least I have not actually retailed my fuel above the wholesale price. I have been on constant rebate all the time.

Senator GIBSON—You are talking about the formal originally invoiced price, but in fact you are getting discounts off that which would still give you a margin.

Mr Heavyside—What we are saying is that, if that is the case, no other industry operates in that way to start with. You do not go down to the market in the morning and pick up a couple of bunches of bananas and then constantly have to wait for the supplier to send you a cheque in the post just because you went back and sold them for less than what you paid for them. There is absolute evidence that there is lack of wholesale competition. As Rob points out, if it happened occasionally where you said to your supplier, 'Something's happened in the marketplace. I don't know why I'm uncompetitive but I simply need some assistance. It's in your interests and my interests to make sure that we're both able to sell this product,' then that is fair enough, but it happens every hour of the day.

Senator SCHACHT—Mr Heavyside, when you get the rebate so you can sell it retail at less than the wholesale price – the nominal wholesale price we might call it – included in that rebate is there a profit margin for you per litre?

Mr Heavyside—An implied profit margin, yes.

Mr Harris—It is even called a margin then.

Senator SCHACHT—So there is a margin in the rebate that is your profit?

Mr Heavyside—Correct.

Senator SCHACHT—Does that change or is it pretty set?

Mr Harris—No, it operates between 2.5 and 2.9 in Melbourne. If we are below a 4c rebate it is 2.9. If we are above a 4c rebate it is 2.5.

Mr Heavyside—And additionally, as Rob has described to you, if you choose to take a rebate – it is a free will payment by the company to meet competition. You do not have to take it. You can just ignore it. But if you do ignore it they withdraw it. If you wish to test your capacity to make a reasonable offer in the marketplace and take a slightly different margin, 3.5c a litre for example, they will withdraw it. We have that threat in writing. The company freely sent us a letter late last year which said there would be some changes and that these payments were discretionary but they were based on the fact that you, like the company, wanted to remain competitive and not use that mechanism as a way of bolstering your profit. So it is not an implied or understood threat. It is in writing. So your margin is fixed – that is what we are saying.

Senator SCHACHT—So the margin, even with the rebate, is fixed.

Mr Heavyside—Essentially between those two parameters.

Senator GIBSON—Pardon my ignorance but I want to understand how your business works. Mr Heavyside, if you own the site obviously you have done a deal with your oil company. I assume they have invested capital in your site, have they?

Mr Heavyside—No. It is all mine. And I have a very close relationship with the Commonwealth Bank.

Senator GIBSON—What is the situation like on a franchise site? Given that you are saying you are actually being squeezed and being tightly controlled by your franchisor, do the companies find it easy to get people to take on these five-year franchise arrangements?

Mr Harris—I think you would have to ask the company that.

Senator GIBSON—No, I mean from your perspective. Are there lots of people wanting to take on those arrangements, or people trying to get out of them?

Mr Harris—I would suggest that, if I put my site onto the market today, I would have quite a few people wanting to take it up. Whether they would fit in with the oil company views, I do not know.

Senator GIBSON—That implies that a lot of people regard that as a fair and reasonable business. Is that so?

Mr Harris—It really is difficult to answer that question, to be honest. There are not that many sites being sold. Most sites that are closing these days are going out of the industry. There is not an opportunity there for people to be coming into the industry. Most of the sites that are going out have been snapped up by multi-site operators, with Shell, BP and Mobil.

Mr Heavyside—Senator, if I may, I would like to comment on the point of rebating and pricing and terms and conditions for buying and reselling petrol. The truth is that when I bought my service station and subsequently upgraded it, and spent in excess of a quarter of a million on doing that, we went shopping in the marketplace to see where we could get the best deal. It is just so interesting that the terms and conditions offered by each of the companies are the same. There may be some very slight variations, but it is a long-term contract, you will get price support and it is conditional. Whilst the terminology they use in their contracts varies slightly between the companies, the basic mechanisms are the same. I only propose to you that once again it is evidence that competition in the wholesale market is at least weak.

Senator CRANE—As at least gentlemen on this side of the table know, we had an inquiry before Christmas that dealt with a number of issues. I just want to clarify a few points from then till now. If I remember correctly, we were told that in about 1980 there were something like 20,000 fuel stations in business. I think – and I can go back and check this very easily – the figures prior to Christmas or last October-November were somewhere around 9,000 or 9,200. You have come in with a figure today, albeit through the fuel companies, which said 8,300. Does that mean that in the last three or four months something like 700 fuel service stations have closed down? Or do you have any figures on that?

Mr Delaney—No, it does not necessarily mean that. When we composed our submission for the committee you chaired, at that stage the best material we had was about 9,200 and that was indeed the figure we gave you. What we were saying earlier was that the companies' latest count is 8,200. It might be right; we do not contest it. We have not tested the 9,200 figure in the year or so – nearly – that has passed. We would probably put it a bit higher. We usually come up with a slightly higher count than the companies. But it certainly is true that a substantial number are closing.

Senator CRANE—So the situation is more difficult, three or four months later, than it was pre-Christmas?

Mr Delaney—In terms of the exit of our members being required to leave the industry, certainly.

Senator CRANE—I do not want to traverse back over what we did then, but what I would like to ask you in terms of this legislation before me concerns something I am having great difficulty coming to grips with. I do not think the hotel situation is a good analogy, because you keep the beer separate. It is in its own keg, it comes up and you pour it out, and the liability goes back to each keg. I cannot see that it is a commercial option to go into somebody else's site, or maybe even commercially for somebody who owns the site – I think, Colin, you said you own your own site –

Mr Heavyside—That is correct, Senator.

Senator CRANE—to put other tanks in there to hold fuel. With the cost of doing those sorts of things, and the space and so on, really it is not practical in very many circumstances. So how would you handle the liability in terms of the different fuel you had in tanks at different times? That is one thing, and I think the avgas thing tells us something. Part of the avgas that is being sold in the eastern states by BP is actually Mobil fuel from Altona. We had that evidence the other day. Because BP have bought that from Mobil, Mobil then takes the responsibility. But suppose you, as an individual, go out there and buy fuel from another source when, for example, it is a BP site, BP has to take responsibility for its own fuel, but who would take responsibility for the fuel that went in there from a liability point of view?

Mr Delaney—We think that is fairly readily addressed. Indeed, we are pleased to see mention of the avgas circumstances and your other inquiries separately on that, because we think the answer is quite simply that there be promulgated an Australian standard for each grade of fuel. We have no such standard at the moment, and clearly not for avgas either. If the stuff were required to be produced and provided and delivered according to a standard, the provider then must stand behind the quality or be liable. So, while accepting that the hotel analogy does not fit entirely, we say it is not impossible.

Senator CRANE—I understand your point. I do not think it is a good analogy.

Mr Delaney—We then say the second point in our contemplation is that what you are buying at the moment is not necessarily the brand you think you are buying. So, to that extent, consumers do not know currently. Our third proposition is that for all intents and purposes the stuff is – notwithstanding, we would say, the AIP's submissions to you – the same stuff anyway. We think there are ways of dealing with the issue.

Clearly, in the case of someone like Colin, Colin would be quite happily able to afford, and be prepared, to put another pump and tank in if he were able to buy at a better and more competitive price to keep his main supplier honest, if it came to that. But he cannot. The point is that he cannot because the terms of his supplier are that he cannot do that, he should not do that, he shan't do that. If then, when he goes to shop the site around in five years time at the expiration of the agreement and says, 'Ah, but I am not going to be soulless. I am going to have my alternative supplier opportunity,' no-one will supply him. That is the point we are leading to. So we think the answer is –

Senator CRANE—Hold on, my question is predicated on if you could. There is a separate liability. It is not good telling us that you have the same manufacturing process with these fuels from the different refiners, because you do not. That is one thing I have found out about the avgas inquiry – the refining processes are quite different. If it is sold from Mobil to BP, BP then take the liability. But in the case where the individual goes out and buys some from here and buys some with another franchisee, I am asking whether that liability would come down on your head as an operator or where it would go. Once you mixed somebody else's fuel – and once again I will use BP for the sake of it – in with the BP fuel you have already got in your tank, where would the liability fall?

Mr Delaney—We are not proposing to mix it. There is no reason why we need to.

Senator CRANE—So you would put it in a different tank?

Mr Delaney—No, the tanks are not cleaned out after each load, nor are the tankers.

Senator CRANE—But you would have to mix it then?

Mr Delaney—Not if the thing is physically empty.

Mr Heavyside—A new load comes in and goes into it.

Senator CRANE—In a practical sense, how often would that happen?

Mr Heavyside—In all practical terms, there is always some residual in any tank. There is somewhere between 200 to 500 or 600 litres in the bottom of every tank that you cannot get to because the suction pipe sits above the floor of the tank. So I guess that is the problem. But there would be no problem, I would think, in taking a sample of the fuel before the tanker arrived. It could be very easily done at very little cost, and that sample could be required by legislation to be stored in a safe place. If there were a contamination issue and a liability issue with crook product, then you simply go back through the samples until you find out where it came from.

Senator, I do not ever know, despite the paper I buy it on, where my fuel comes from. Some of it is directly imported and landed by ship at Port Adelaide and transferred to Caltex, as I understand. Most of it comes from a Mobil refinery at Port Stanvac and some of it comes from the eastern seaboard, particularly if there is a problem with Port Stanvac, which there seems to have been on a regular basis over the last six to 12 months. It is common in Adelaide for the companies to certainly help each other out when we have problems with Port Stanvac. In fact, I can recall quite a number of occasions where we have literally had another brand fuel tanker – a Shell fuel tanker for example – on a Caltex or Ampol site putting that fuel in the ground. At that point, there is no comment made to the dealer, there is no sitting on the invoice that this product may have come from another source.

Senator CRANE—I understand all that –

CHAIR—Just let the witness finish his answer first.

Mr Heavyside—I am saying that my experience is that, notwithstanding your micro-concerns about what happens on liability issues on a particular tank of fuel, it happens in the industry all over the country anyway. If you are going to address it at the retail level, then surely you would want to address it at the wholesale level. I would say the costs of doing that would be extraordinary. Nobody would want to do it. In terms of practically understanding where liability began and stopped on a supply arrangement, taking a small thimbleful of fuel as

a sample, every time a tanker came in, the time before it released product into the tank would not be an administrative or cost burden for my operation. It would not be a problem. I would be very happy to do it. If I could purchase fuel at 4c, 5c, 6c and 7c a litre, in some cases it would be less than what I have to pay for it now.

Senator CRANE—I understand that. If Mobil gets their fuel from BP or Shell and delivers it to you, it is still Mobil who accepts the responsibility. In this thing you are separating that process. I put that question to you. I do not want to pursue it for hours, Mr Chairman, but I think it is one question that would have to be addressed in terms of that. In a practical sense, under the agreements that are signed under the sites act, if you sign a franchise with a particular company that is predicated on them supplying you with the fuel. We went into the multitude of agreements and arrangements that exist. In fact, the legislation proposed is asking the government to break contractual arrangements that have been signed and delivered on. Obviously, the companies have supplied the fuel and got that agreement – whoever it is with and whether it be in one owned by the company. In the case of Mr Heavyside, they would want some compensation because they would be going to lose some business out of this. How would you propose handling that transfer?

Mr Delaney—We did not understand the bill of Mr Fitzgibbon to be other than prospective.

CHAIR—That is correct. That question has been raised.

Mr Delaney— We did not think that, in its terms or otherwise, it was proposing to alter any contract on foot for precisely the reason that you would have constitutional issues.

Senator CRANE—So somebody who signed a contract yesterday would have to wait out in the marketplace for five years before they could get access.

Mr Harris—That is dead right.

CHAIR—The clarification of this point was raised in the legal and constitutional committee with Mr Fitzgibbon who wrote a letter which is contained in the documents we have distributed. It is a prospective –

Senator CRANE—I understand that. Wouldn't that then put those people who have just signed in, say, the last 12 months or so at a tremendous difficulty against those who signed a contract four or five years ago?

Mr Harris—It would probably make them more reliant on the oil company to help them. But the oil companies still want to sell the fuel, so they will support the competition in the area.

Senator CRANE—I will ask them that question when it comes up. Have you been told or are you making an assumption?

Mr Harris—It is just an assumption.

Senator RIDGEWAY—This is something I do not want to explore, but you have raised the issue about wholesale competition. I think there was some comment about the ability of oil companies to indirectly influence prices that are set. Do you have a view about commission agency arrangements? I am trying to explore whether you have a view about that as well and the direct ability of oil companies to influence prices.

Mr Harris—My view on that is that, effectively, we are commission agents. A franchisee is a pseudo commission agent because we are operating on margins. My view then is: why would I have \$50,000 to \$60,000 tied up in capital in stock under the ground when I would be in exactly the same position as a commission agent?

Senator RIDGEWAY—So you do not support the idea of commission agent arrangements?

Mr Harris—No, I do support the idea of commission agents. We are 'commission agents' now.

Senator SCHACHT—As I think Senator Crane and others mentioned, we have been around this table a few times with different chairmen and different circumstances but all the suspects are the same on both sides of the table. They never change. I am one of the longest-running suspects under the pain of this, so some of these answers I am asking are almost like Dorothy Dixers. I think I know what some of the answers will be.

Last year we were told that two industry groups, the MTAA, on behalf of the franchisees, and the Australian Institute of Petroleum, on behalf of the companies, were about 95 per cent agreed over the petrol code but could not get the last five per cent or two per cent or one per cent, or one issue or two issues out of a myriad of issues, agreed to. Was that issue that you could not agree on the issue of wholesale competition?

Mr Delaney—No, it was some other issues at the margin, but in any case –

Senator SCHACHT—Issues at the margin – I would be a bit annoyed if, between the two of you, you did not reach agreement because you bloody argued over a preposition, an at or an is or something, in the agreement. What was the substantial issue that it came unstuck on?

Mr Delaney—It was the issue that has been there all along. The government and the companies assert that the basis of the negotiations was that if you got an Oilcode both acts were repealed. To which we said, 'That was never the basis of our negotiation with you.'

Senator SCHACHT—No, I am talking about the Oilcode.

Mr Delaney—Interim agreements.

Senator SCHACHT—In the Oilcode itself, what was the significant issue in the end – and I am not blaming either side, I just want to know – because I was told and so was Senator Crane, innumerable, that they were that close to getting agreement.

Senator CRANE—I was told they were resolved in terms of the Oilcode.

Senator SCHACHT—So you did get agreement on the Oilcode; it was the issue of the repeal?

Mr Delaney—We had agreement on the Oilcode but for one last middling issue called interim agreements – whether or not there could be agreements other than fully tenured agreements – and we were continuing to talk about that. However, before we got to the point where we might have agreed about that, the government announced that the deal was: you get an Oilcode and both acts are repealed. To which we, not unreasonably, to be consistent with what we have been saying for 10 years, said, ‘Thanks very much, but no-one on our side could ever agree to this sites act being repealed,’ for the very simple reason that if you have no sites act you do not need a code because it will not apply to anyone.

Senator SCHACHT—Even if there was effective wholesale competition, as you call it, you would still want the sites act in place? If the act was amended to allow Mr Heavyside’s example that he could put an extra tank in and sell Shell as well as Caltex – a multibowser arrangement – would that obviate your concern about not repealing the sites act?

Mr Delaney—It would address it. We have gone over this ground so many times, Senator. I am trying to answer, honestly; I am not trying to hedge. I am simply saying it is a complex issue. In concept, if there were a capacity to compete at wholesale and obtain access to fuel as a reseller, at the refinery gate, you could argue there was no case for a sites act. I say that simply because that would leave Mr Heavyside free to be able to secure guaranteed supply under the normal terms of trade, at whatever is a competitive price. I would then expect that many more Mr Heavysides would emerge within our association and in the market at large, simply because they would know what capital they need to put in and they would know that they were free to go and buy the stuff at wholesale and compete.

Senator SCHACHT—Okay.

Senator CRANE—In the evidence that was given before, if I remember correctly, you said if you could get the best spot price on any given day that would satisfy your requirements in terms of access to fuel. Is that still your position?

Mr Delaney—That is one of the things we said. We would put to you, in fact, that there might be a regime where people could choose to enter into agreements of a tied price character, a spot price character, or something in between. We offered a three-part option.

Senator CRANE—Without going over the thing in detail, that is still your fundamental position?

Mr Delaney—One of them.

Senator CRANE—Thank you.

Senator SCHACHT—Mr Fitzgibbon’s bill that we have before us as one of our terms of reference talks about 50 per cent. Is the wholesale competition adequate enough for you to say, ‘The sites act, per se, is not needed?’

Mr Delaney—I am not sure. I think it would get us part way there. As I understand it, Mr Fitzgibbon has modelled his bill on Victorian and Western Australia legislation that provides for 50 per cent. That is the rationale behind it. Both those pieces of legislation were defeated under passing off and misleading and deceptive provisions to the Trade Practices Act. We would think that, in concept, if you could get 50 per cent from another supplier at another price, that would be a proxy for open and wholesale transparent price competition.

Mr Heavyside—I think there are probably two different emphases here. One is on wholesale price competition and the weakness of that in the current marketplace. On the other issue, with respect to the sites act, it is more a view that the parliament had in 1980 about the potential for vertically integrated companies to control the market in ways which were against the public interest.

Senator SCHACHT—If you had a wholesale competition, to use that phrase – which might actually be a non sequitur anyway, but we know what you mean – and you have got four or five major companies refining and distributing, and so on, you would be able to use the competition to go to one of them and get the best deal for yourself. Therefore they could not bowl you over on the site because you can go to another company and buy the petrol at a price that you think you can live at. If five of them get together to collude, to fix the price against you, then they have got strife with the ACCC. So you have got that protection, and there is a different argument about whether the protection is strong enough. I think we are gradually getting it stronger each time

we amend the act, but I think we are moving in the right direction. So it just seems to me that in one form or another we could get rid of the sites act or repeal it if you had the legislative guarantee that you could negotiate freely a wholesale price irrespective of the franchise.

This then obviously leads in the end to no franchise. Why would some company want to spend money building a nice green and gold or yellow and red site – whatever the colours are – when they know that on that site will be different bowsers selling different petrol? Is that not then the step towards getting rid of the vertically integrated industry which has bedevilled the whole thing for God knows how long?

Mr Delaney—That is our contention and, indeed, that was the contemplation in 1980. We have said – and I will confirm again in our very submissions to you and to other officers, senators and chairmen of the committees – that the sites act is there to deal with the vertical integration and it has not worked the way it was intended to by the government in 1980. If you could open the whole thing up to wholesale competition, you do not need a sites act. We would simply say that if there were contestability in that supply, the market would probably blossom. We would end up with more sites, particularly in the bush, and we think that everyone would be better off in society at large. We just make the point that it is a bit curious that, when we are going to have household electricity contestability on 1 July next year, we still do not have it and cannot get it for petrol.

Senator SCHACHT—That means that automatically the franchise act would fall over as well, because if the industry withdrew from franchising you would have the general franchising code but you would not need a specific franchising act, would you?

Mr Delaney—No. You could have an Oilcode or a franchising act.

Senator SCHACHT—You could have an Oilcode. If you had access to wholesale competition for price all the other things fall over out of the way as long as you have got a strong Trade Practices Act that stops people colluding against you – is that fine?

Mr Delaney—Absolutely.

Senator SCHACHT—In that case you end up with a more deregulated industry.

Mr Delaney—Entirely.

Senator SCHACHT—Once you allow wholesale competition?

Mr Delaney—That is right.

Senator SCHACHT—We can all go home and have no more meetings here?

Mr Delaney—That is it, indeed. At the moment –

Senator SCHACHT—You have got my vote.

Mr Delaney—At the moment, the language that is employed is that the government wants to deregulate this industry, and what we say is, ‘Look, it is not deregulation in the conventional meaning of that word; it is increasing vertical integration and, if you like, private regulation.’ We are saying that at the moment the only public interest measure that is keeping us in the business and some competition is the sites act and the franchise act. If the government does not want either, wants to fully deregulate the thing and have transparent pricing at every point in the structure, fine, just do to petrol what you have done to telecommunications, electricity, gas, water and television licences.

Senator RIDGEWAY—Mr Harris, I just want to follow up on the commission agency arrangements, and perhaps the answer to the question was dealt with in the last vote. It is not jelling for me, but when you talk about supporting commission agency arrangements but not supporting multi-site franchising arrangements, what do you see as the distinctions between those in the context of creating wholesale competition, particularly given that all we are talking about is the ability of oil companies to influence directly and indirectly in both circumstances? I am trying to understand how you make distinctions between them both if the end result ends up being the same?

Mr Harris—Sorry, I am a little bit confused with the link between commission agency and multi-site relations.

Senator RIDGEWAY—I am talking about the oil companies’ ability to influence prices by direct agreement, as opposed to multi-site franchise arrangements where there is an indirect ability to influence prices. You say that you support commission agency arrangements but not multi-site franchising. How do you achieve a benefit through the commission agency arrangements in the wholesale sector?

Mr Harris—I am looking at it from my perspective. My perspective is that I am paying \$35,000 for a load of fuel that I cannot retail for the price that I want to be able to retail it for. I am retailing it for the price that the oil company would like me to retail it for. Why would I pay \$35,000 if I had the option of going as a commission agent and not paying that \$35,000? It is as simple as that.

Senator RIDGEWAY—Okay.

Mr Heavyside—We are not so much suggesting that commission agency arrangements would provide a more competitive environment; we are talking about the reality of living in a regulated environment such that we have now and what actually happens on a daily basis. Rob is quite right, even though I am independent I am contracted, a free will contract, but nonetheless the price on my board is governed every minute of the day by the oil company. They would say, ‘No, that’s not right, he can opt out of the price support system,’ but then I go broke.

Senator SCHACHT—Then you are dead.

Mr Heavyside—So, in reality, I am not free to opt out. A commission agent simply would get a phone call, I guess, from the oil company rep saying, ‘Look, move to that price.’ We just have it done electronically at the moment. So there is, in effect, no price. We are not suggesting a commission agency would enhance competition.

Senator SCHACHT—As I understand the commission agent, the real difference is that if you are a franchisee you have got to put your money up front to buy the juice whereas if you are a commission agent you don’t, it is delivered, and every litre you sell you will get an agreed price. But you do not have to put your money up front. So if you sell only 10 litres rather than 100,000 litres, you are not losing dough, you are just getting a commission. You may want to make your money on the franchise shop selling popcorn or whatever.

If a variation of Mr Fitzgibbon’s bill went through, it does not prohibit commission agents, does it? You would live with that as an industry. In a free, properly deregulated market with wholesale competition, some companies might still have commission agents operating?

Mr Harris—Yes, commission agents.

Senator SCHACHT—You are happy; you are not going to squeal about that?

Mr Harris—Commission agents operating. That is effectively what we have been asking for.

Senator SCHACHT—Yes, I know. The third one is multi-site franchising. The act, as proposed by Mr Fitzgibbon, does not prohibit multi-site franchising per se. If the company did a deal with someone to have half a dozen franchisees in multi-sites, 10, 15, whatever the number is, and that operator freely signs a contract to accept that it will only sell their company’s petrol at a certain price, including all the rebate, you do not have any problem with that, do you, because as an independent, even an individual franchisee, you would have the power to go and get your share elsewhere and get competition on the wholesale price? You will not complain about the multi-site franchising?

Mr Delaney—No.

Senator SCHACHT—But the person who runs that group, or any individual who signs their own contract for good, bad or ugly reasons to sell the price as it exists at the moment in a normal franchise arrangement, if that operator wants to take the chance operating in that way, ‘buyer beware.’ Is that fine?

Mr Delaney—If you are predicating that on open competitive wholesale access, absolutely.

Senator SCHACHT—Yes, that the others have got the right to go and negotiate the price.

Mr Delaney—Absolutely.

Senator SCHACHT—Okay, fine.

Senator CRANE—I just have three questions. Firstly, I have to say with regard to the last time that Senator Schacht certainly wanted to get it resolved, I did and I think you did and the oil companies did; we just did not quite get there. In terms of the repeal of the sites act as well as the franchising act – and we did talk about this privately, Michael – what amendment or what addition would be required to the Oilcode to actually create a situation where there was open access? Have you given that question any further thought?

Mr Delaney—It cannot be done under the code.

Senator CRANE—It would require an amendment to the Trade Practices Act?

Mr Delaney—Yes. There is a model legislation there – it is in the telecommunications access legislation. It has been done once, for telecommunications. We know it is not working all that well, but it has been done.

Senator SCHACHT—They have got one gorilla, you have got five, you might say.

Mr Delaney—It needs to be done in the competition policy context. All we are saying is you have done true deregulation for everything else, or at least you have tried, but you have not done it for this one, and people do not even talk about it. In essence, the present talk about deregulation in oil is a blind; that is not what is going on. If anything, it is private regulations tying it up further.

Senator CRANE—So, using that as the model, you would be prepared to go into further discussions or deliberations with regard to –

Mr Delaney—Absolutely. If there is a duty to supply, provided it is on commercial terms and there is a statutory arbitrator in there somehow and you can contest the price you are being offered, sure – who cares?

Then the market can look like whatever anyone wants to make it look like. We do not care. It just means that there is no barrier to entry or exit.

Senator CRANE—Is that the only outstanding issue?

Senator SCHACHT—It is ‘the’ issue.

Mr Delaney—That was the issue in 1980 and it is still the issue now.

Senator CRANE—It is no good us going and getting that result and then finding out another one jumps out from between the goal posts.

Mr Delaney—But there is no other one.

Senator CRANE—Okay, that is fair enough. There is no other outstanding issue.

Mr Delaney—If you do that, anyone can come along and if they can get local authority approval and meet the environmental imperatives they can put a site up and they can put it up knowing that they cannot be locked out of the market or refused supply on unreasonable terms.

Senator CRANE—I will put these on the record and you can answer them later. At the time of our last hearings there was a very strong push from a lot of franchisees – not all, and I had some tell me that – that they wanted the opportunity to transfer to become commission agents, and that was agreed to. Is that still the in principle position?

Mr Delaney—It is something that most of them would want to do, but it is their second or third preference. They would much rather have open competitive wholesale access. What they are essentially saying, as you have heard, is they are de facto commission agents now, they would much rather not have to invest the capital in the stock or the fuel, and they would be better off with a guarantee commission rate than what happens to them as franchisees. But that is not possible under the act at the moment.

Senator CRANE—No, but I just wanted to clear that point up. There were some problems with the independents in terms of being bound by the Oilcode and they wanted to be able to have different contractual arrangements with regard to signing agreements and security of tenure, if I remember correctly. The government said ‘tough’; we said at the time that there was no way that we were going to go to the next stage and have some people out of the system and some in, because a lot of the problem now is that that has created different problems.

Mr Delaney—On that question, peace broke out. The government, AIP and our side said, ‘Tough, they’ve got to be in.’ That is where matters were left, if there was a code.

Senator SCHACHT—We agreed to that.

Senator CRANE—I just wanted to get that clarified and on the table at this point in time. We may have to get these people back.

Senator SCHACHT—I want to get this point clear, while I have got them at the table under oath.

Mr Delaney—Under oath?

Senator SCHACHT—Well, it is. It is a privilege, mate. If you start telling pork pies to us you run the risk of being before the full Senate.

Mr Delaney—It is just that I did not see any Bible.

Senator SCHACHT—Well, if you want to swear on the Bible we will produce it. We forced Telstra one day, on exactly the same argument, to swear on the Bible to make the point – and they did, with great trepidation.

CHAIR—I think it is fairly clearly understood that the evidence given here –

Senator SCHACHT—The one thing is that if you have got legislation through the parliament about wholesale competition – therefore the other things could go – obviously, in that competitive market, some of your small petrol operators will hit the wall. Right? You are not going to say to us, ‘We now need another major scheme to buy these people out, to help them out, et cetera, because this is all too tough; the free competition is too tough –

Mr Delaney—No.

Senator SCHACHT—and your association will not come back asking –

Mr Delaney—We can put that in writing. My officeholders, I am sure, will confirm that we could decide that, declare that, and convey that to you, simply because over the decades they have been arguing this. They have not looked for a ‘protect us in business’ arrangement or the preservation of small business arrangements. That is not what they are saying. They know how nasty this market is. They know that there are not guarantees available. They are just simply saying that if it were properly deregulated in the terms you have talked about they could survive and open up afresh.

Senator SCHACHT—So they are not going to argue that under competition policy, with Woolworths having petrol stations at supermarkets, that that is just a development of the free market?

Mr Delaney—That is right.

Mr Harris—I will just re-emphasise something. I think we would have a lot of members that would be very distressed if, in that market environment, multi-site operations were allowed to expand because, effectively, we would not have franchisees –

Senator SCHACHT—No, but you will not have franchisees, anyway.

Mr Delaney—That is right.

Senator SCHACHT—If you were already an existing individual franchisee for BP, if you get access to wholesale competition and they refuse –

Mr Harris—I am sorry, in that scenario.

Senator SCHACHT—In that scenario you can go and buy the petrol somewhere else and still be competitive and they cannot collude against you.

Mr Heavyside—In relation to multi-site franchising, we are talking of the character that we currently see in the marketplace, vis-à-vis Shell, which we have some views about which we have tabled in previous inquiries. We will no doubt do so. We have some other stuff for the committee. But we do not have a problem with multi-site franchisees that are prepared, out of their own funds and their own endeavours, to run a multiple site operation. Whether they want to buy 10 franchises, 15 or 20, I do not have a problem with that. We have a problem with these arrangements of convenience called multi-site franchises which are, in effect, not funded out of the franchisee's own funds.

Senator SCHACHT—Are you saying that the company provides further assistance –

Mr Heavyside—Of some scope and form and quantum that we cannot know.

Senator SCHACHT—And that you cannot get access to.

Mr Heavyside—But all I know is that –

Senator SCHACHT—In a proper free market that would not worry you because you would be able to get a competitive price.

Mr Heavyside—Correct. And those systems would break down.

Senator CRANE—Can you substantiate that? You made these claims at our last hearing. We tried to get some substantiation and we did not quite get there.

Mr Heavyside—I will defer to Mr Delaney on that.

Mr Delaney—We invited you to invite us in confidence to provide the material we had but we did not hear anything. I have got it here. If you want us to hand it over, I will write and provide it on terms –

CHAIR—You can do that on a confidential basis and we will receive that evidence as in camera evidence and consider it. It might also be useful from the committee's point of view, given the discussion in part through questioning, et cetera, that has taken place here today, that you might provide a further submission in writing, addressing some of the form of the discussion that was taken here, outlining your position and writing in response to some of that discussion. That might be helpful.

Mr Delaney—I will do that forthwith, Mr Chairman.

Senator CRANE—Thanks for providing that. We would almost certainly need to call you back to discuss some of that.

Senator SCHACHT—Would you agree, at some stage, to sit at the table with the representatives of the AIP because of this charge and countercharge backwards and forwards. I have found that the most useful way to deal with that, as a member of the committee, is to not argue individually with you but to have both at the same table at the same time under oath, countercharging each other and we can adjudicate who is telling the biggest pork pie.

Mr Delaney—That is a good idea.

CHAIR—Let me say to my colleague with the greatest respect that will be a matter for the committee to work out. It might well be that if, at the end of the day we need to organise a roundtable discussion, we will certainly look at that and we will discuss that with the witnesses. Thank you to the MTAA representatives.

[4.40 p.m.]

MACPHERSON, Mr Ewen Duncan, Deputy Director, Australian Institute of Petroleum

STARKEY, Mr James Christopher, Executive Director, Australian Institute of Petroleum

CHAIR—I welcome Mr Jim Starkey and Mr Ewen McPherson representing the Australian Institute of Petroleum. I now invite you to make an opening statement.

Mr Starkey—Thank you, Mr Chairman. AIP is an industry association representing the petroleum products industry. Our participation in this inquiry is on behalf of the four refiner marketer member companies of the institute, BPAmoco, Caltex, Exxon Mobil and Shell.

Senator CRANE—Can I just interrupt? I need to have a word with you, Mr Chairman, privately, with regard to where we are at now. I think I should raise it with you.

Proceedings suspended from 4.40 p.m. to 4.42 p.m.

CHAIR—I have asked the secretary to contact the deputy chair and ask him to come back to the committee. But for the purposes of the exercise, at this point in time, we will just continue as we are. I now return to inviting you to make an opening statement because we have got a time limit. These people have come probably a long way to present their submissions to the committee. Mr Starkey, I invite you to proceed with your opening statement.

Mr Starkey—We are actually based in Canberra, so it is not so far to travel. The committee's inquiry is directed at two matters: the provisions of Fair Prices and Better Access for All (Petroleum) Bill introduced by the opposition last year and multi-site franchising in the context of the Petroleum Retail Marketing Sites Act. Our submission addresses the issues arising for the refiner marketer companies in some detail and I would like to just draw out some of the key points in these introductory remarks.

Our estimates are that there are about 8,000 service stations in Australia. Of these, approximately 2,500 are franchisees of the refiner marketer companies, and it is these 2,500 sites that are covered by the opposition's bill. As we understand it, these franchisees would, at the end of their present franchise terms – and these terms can be anywhere from six months to nine years – be able to enter into new agreements that allow them to shop around for half their fuel supplies. The proposed amendment to the Trade Practices Act would impose a similar condition in future supply agreements negotiated between resellers and their oil companies. The claim is that this would allow franchisees and other resellers to access more competitively priced fuel – the benefit of which will be passed on to consumers.

For a number of reasons, we believe the draft legislation is flawed. The bill postulates that there is a lack of competition at the wholesale level of the petroleum products market. There is ample evidence to demonstrate that the market is highly competitive at both retail and wholesale levels. It is borne out by analysis undertaken by the Industry Commission and the ACCC. It is also supported by data published by the International Energy Agency, which in recent quarters has shown Australian pre-tax petrol prices as the lowest in the OECD countries. Recent IEA data is included in our submission at appendix 2. The competitive nature of the industry is also shown in the analysis done by the ACCC in November last year, which showed that retail price rises occurring in 1999 were lower than would be supported by the significant increases that had occurred in world crude oil prices.

The bill also assumes that petrol and diesel are homogenous products and that branding is unimportant. This is a misconception. Increasingly, the refiner marketing companies are seeking to differentiate their products. The examples include Shell's half lead and its high density petrol, Optimax; the recent initiatives announced by BPAmoco and Shell to introduce lead replacement petrol and prospectively different products and strategies relating to low and ultra-low sulfur diesel. Another example is the practice of two companies in New South Wales of blending ethanol into petrol. In addition, imported petrol and diesel can include components that are not included in the products of the Australian refineries.

A further factor is that, in recent years, the petroleum products market has been adversely impacted by the fuel substitution activities of unscrupulous operators. These activities have included adding heating oil, kerosene, used lubricating oil and crude oil to diesel. There is also now clear evidence that some unscrupulous operators are importing toluene and xylene chemical compounds specifically for the purpose of blending it in with petrol in excessive quantities. The oil companies stand behind the products sold from their franchise sites. To do that, they must be able to know and control what is being sold through those sites. Product reliability and quality are clearly important from the motorists' viewpoint.

The bill also assumes that insertion of an alternative supply option would not affect other provisions of franchise agreements. In fact, the bill would destroy franchising because it would be unrealistic to expect any company to invest millions of dollars in a franchise site only to see half the products sold through the site sourced from competitors. With fuels mixed at the service station, the franchising company would be unable to

guarantee product quality, the franchisee price support arrangements would be unworkable, buyer loyalty schemes would be impractical, and the cost of retailing would rise with the introduction of competing fuels and duplicated facilities at franchise sites.

In the course of discussions in 1998 and 1999 of the government's reform package for the industry, we addressed the concerns raised by the resellers, including the franchisees, about access to competitively priced fuel. We put forward a set of principles that would apply in the negotiation of fuel supply agreements with franchisees and other resellers. The detailed proposals were set out in a letter of 14 September 1999 to Senator Minchin, which is attachment 3 to our submission to the committee. We believe the principles set out in the letter are a sympathetic and reasonable response to the concerns raised by franchisees and other resellers about access to competitively priced fuel, and we have not heard any arguments to the contrary.

I would now like to turn to the other issue before the committee, that of multi-site franchising. This franchising format, where one franchisee operates a number of franchise sites, is common in many areas of franchising, including fast food and car rental as well as petroleum retailing. Multi-site franchising offers advantages to both franchisor and franchisee in fuel retailing, particularly where the franchise business also includes a variety of other business such as fast food and convenience store retailing.

Two refiner marketers, Exxon Mobil and Shell, have introduced multi-site franchising formats. The third, BP Amoco, is in the process of establishing multi-site franchises. The formats vary between the companies. However, they have as common objectives improvements in efficiency and reduction in costs of operating retail networks. Improved efficiency and lower costs were recognised as the likely outcome of multi-site franchising in the detailed investigation of the practice undertaken by the ACCC in 1996. The ACCC conclusion from its study was that no action was needed on its part in relation to multi-site franchising.

So far as the existing legislation is concerned, both single-site and multi-site franchising is subject to the franchise act. Franchising, whether single-site or multi-site, is not direct retailing by the oil companies. For direct retailing to take place, the oil company would have to sell the fuel with the franchisee only acting as agent. Multi-site franchisees purchase fuel from the oil companies in the same way as single-site franchisees. They retain the same price risk and the same upside reward. Multi-site and single-site franchisees should, in our view, continue to be treated the same as far as government regulation of the industry is concerned.

Again, in the course of industry discussions in 1998 and 1999, reseller organisations expressed concern about oil companies' intentions for their service station networks following implementation of the government's package of reforms. In response, the four companies set out their resell and network plans in letters to the resellers. Those letters were tabled in the Senate Rural and Regional Affairs and Transport Committee during its hearings last year. We have attached them again. They are in the letter we sent to Senator Minchin and attachment 3 to our submission.

The restructuring and rationalisation of the petroleum products marketing industry is proceeding. The process will continue on a basis that is fair to all of the industry participants and will provide the best outcome for consumers if there is a more flexible regulatory regime. That outcome will not be achieved by further constraining the basis on which the oil companies can operate their businesses through the addition of more regulation to the existing outdated and increasingly irrelevant regulatory regime.

CHAIR—Thank you, Mr Starkey. A consumer would see regulation which actually brought about a freer market as being not necessarily regulation but just protecting the market and protecting the consumer to ensure that the wholesaler was able to purchase a product at a competitive price and then sell it to the consumer at a competitive price. In effect, that is what competition policy has been about. What would be wrong with that?

Mr Starkey—Absolutely nothing. I think consumers are doing very nicely at the moment. It is a very competitive market, both at the retail end and at the wholesale end.

Senator SCHACHT—All the callers on talk-back radio are going berserk about the price of juice at the moment.

Mr Starkey—Absolutely.

Senator SCHACHT—You may say that is not your fault – and you are probably right – but I can tell you that they are hot under the collar about it.

Mr Starkey—Yes. It is a fact that prices are going up, and the reason they are going up is that crude oil prices world wide are going up. I mentioned the ACCC report last year. In fact, it showed that the prices were not going up by as much as would be supported by a full reflection of those crude oil price movements. People complain vigorously – and it has always been thus – but the fact is that consumers in Australia are doing remarkably well.

CHAIR—If I can just go to the points the ACCC made – and ones that you referred to – they also made a point that it was possible in a world, as we know it currently, for major fuel suppliers to control the market. They made that point and they said that they would continue to monitor that.

Mr Starkey—Anything is possible, but the fact is that they do not. They compete vigorously with each other. There are independent marketers in the game now. They have been invited in, effectively, by decisions taken by the ACCC itself. Ultimately, the Australian refining marketing industry has to compete with product that is available for import in huge quantities from the South-East Asian market. There is absolutely no doubt they are under tremendous pressure. They compete vigorously for market share. If they don't, they lose business and the refineries will close. There is no question about that.

CHAIR—An issue that seems to have been fairly significant is the one relating to having different fuel companies fuelling the one tank and who is responsible, et cetera. Another, as I think you pointed out, is the fact that fuel companies are now producing different product and have different product mixes. From an environmental point of view, I have to say that at the moment I have a car that runs on unleaded fuel and when I go to the petrol station I pull up at the bowser that says 'unleaded'. I do not necessarily go to the one that has premium unleaded, because it is too expensive. What is unleaded fuel, is unleaded fuel, is unleaded fuel.

Mr Starkey—That is true for most motorists, but I suggest that when Shell is sitting where I am you ask them whether or not their Optimax product has been a success.

CHAIR—Absolutely, I will come to that point. If a product were produced that had an attractiveness to the marketplace – even if it were regardless of the price – would it not be the case that the seller, the person who has the option of retailing it, would want to identify it? If it is something that the consumer wants to buy because it has environmental benefits or it makes the car go faster or it makes the car use less fuel, if those are the benefits from a consumer's point of view, won't the retailer want to actually identify the product, sell the product and the keep the product separate?

Mr Starkey—Yes.

CHAIR—Okay. If it were the case – not only with regard to the contamination question – that a retailer purports to be selling Optimax Shell fuel but in fact is selling Gull second-grade or something, what would be the problem with the industry having a mechanism of spot checking? It happens in other areas. If you are saying that the problem would be knowing what fuel is being sold under the banner of BP or Shell or Caltex, et cetera, whether the consumer is actually getting the product that the retailer is purporting to be selling, couldn't there be a mechanism for spot checking so that severe fines or penalties could be attached, as in other industries?

Mr Starkey—Theoretically, that is fine. There are 8,000 service stations. The people who are indulging in this fraudulent practice of dumping low excise product into unleaded petrol and diesel are not holding their hands up.

CHAIR—What is stopping the oil companies from doing something right now?

Mr Starkey—We cannot do it. We do not know who is doing it. You do not know, because you do not see it.

CHAIR—Why can't you do it?

Senator SCHACHT—If you won't pursue it, how do you know it is being done?

Mr Starkey—The tax office has a team of sleuths on the game, and the customs people are doing the same. The latest problem is the importation of toluene and xylene. It comes in as zero rated for customs purposes, goes across the wharf in tankers and suddenly finds its way into petrol stations. We do not know how it is happening.

Senator SCHACHT—That is a matter of how many resources Customs have to enforce it. If they catch them, they will ping them, won't they?

Mr Macpherson—Just on that point –

Senator SCHACHT—If there is a deficiency in the customs law about that, you will come and tell us about it. That is a different issue, and we will amend the act to make sure we ping them properly and they pay a penalty.

Mr Macpherson—About two years ago a fuel marker scheme was put in place to stop just this process and I think there were 16 officers dedicated by Customs to check 8,000 service stations. It was found that in fact they did not even have the right to go onto the service station to check, if they were not given the approval by the operator of the service station, making it totally valueless.

Senator SCHACHT—That is a legislative problem. If we choose to give them a customs power, they can actually go in there without even a warrant, seize everything on the site and walk off with it for the next 10 years; they can arrest people. The parliament can give the power under the Constitution to Customs officers on the issue of excise to do what they like. The fact is they probably in the past had too much power, and there is a civil liberties argument, but I can assure you it is a matter of the act being amended if there are those difficulties and I would be interest to hear your submissions on it.

Mr Starkey—We will make sure you get them. We have been working on the marker issue for more than two years and prospectively there are still problems.

Senator CRANE—It is a pretty draconian way, though, to solve competition policy.

Mr Starkey—Exactly.

CHAIR—You heard the submission from the MTAA that, if there was a consumer attractiveness to it, some of them may be prepared to put in additional tanks, et cetera, for the purpose of being able to identify the various products. As I asked you before, if a fuel company has manufactured a particular brand or type of fuel that has a consumer benefit and that the consumer wants to buy, why wouldn't the seller or the potential retailer want to make sure that they had it and were selling it?

Mr Starkey—I am not sure what the point of the question is.

CHAIR—You made the point that there was a problem about identification of the various types of fuel, and that some manufacturers have different additives, et cetera. I do not know that I do understand all of that, but I try and understand it. You gave Shell Optimax as an example. If Shell Optimax was, for all intents and purposes, very appealing to the petrol consumer because it was better for the car or whatever the case might be, they would want to buy it. I know consumers are like that; consumers do choose, they do differentiate even between petrol products and some people buy only one brand of petrol. So if you were a retailer, you would not only be in the marketplace from a competitive point of view but you would want to be selling a product that the consumers want.

Mr Starkey—Yes.

CHAIR—I want to raise one further point. You said price support would not exist. If I understood the submission of the MTAA, in their view, at this point, if you had an open competitive wholesale marketplace then maybe price support would not be needed.

Mr Starkey—This really depends on how the pricing works with the service station. If we went to a point where we had a franchise site and he is getting 50 per cent of his fuel from his franchise company and 50 per cent from somewhere else, then the arrangements that apply between the franchisee and the franchisor for 50 per cent of the fuel would not apply to the other 50 per cent. If their submission is that in fact the franchisor would change his ways with them and that, instead of having a wholesale price with a scheme of rebates, he would just match what the fellow could buy from the alternative source, then that is another matter. But there is no suggestion that we have seen from the companies that that is the way they want to go.

What they see is that, having spent a lot of money on their site – the company owned site – to set it up as a franchise, the franchisee now wants to have the right to use half of the equipment with petrol supplied from somewhere else. That totally destroys the relationship between the franchisor and the franchisee and, obviously, the whole thing would have to be totally reworked. What exists as part of the franchise now could not possibly exist under the new arrangement. It is just a totally different business concept.

Senator CRANE—If, in fact, you could come to some sort of arrangement, if you like, in terms of where you could have multisupplies of fuel coming off the one site but you still had the franchise arrangements, what do you think that will do to the rentals or the charges in terms of operating on that site? Have you done any work on that at all?

Mr Starkey—We have not done any work but, in theory, the franchisor would have to recover his share of the proceeds from the operation of the site through half of the sales. Whatever he is getting from 100 per cent of the sales he has to track back to half of the sales. Clearly, it is going to change the economics of the sites altogether.

CHAIR—Why would that be the case? If he is charging, for argument's sake, \$300 a week rent for the site and he is supplying 100 per cent of the petrol, if he only gets them to supply 50 per cent of the petrol he still charges \$300 rent for the site. The franchisee would pay the \$300 because he would still be selling 100 per cent of the petrol even though he gets 50 per cent of it somewhere else.

Mr Macpherson—Because generally franchisees work on a royalty on sales and on shop sales. There is no standard rental just for the rental of a site. It is based on a package of returns based upon sales.

CHAIR—Yes, but the cost to the franchisee would remain the same, would it not?

Mr Macpherson—Cost to the franchisee or to the franchisor?

CHAIR—To the franchisee. Isn't he the person who pays the royalty?

Mr Starkey—Yes.

CHAIR—If he has some arrangement which is a royalty arrangement, the royalty arrangement has incorporated in it the cost or rent of the site. Is that right?

Mr Macpherson—It is a package of returns, basically. The royalties are set to return to the franchisor, overall, a return on the site. There is no rental separate component.

Senator CRANE—With the scale of the operation, if you have two lots of deliveries coming, or three lots of deliveries bringing different fuels and what have you, there certainly would be additional operational costs in terms of running that particular site. There would be a loss of income, by virtue of the fact of a lesser amount of each type of fuel.

Mr Macpherson—Yes, that is correct.

Senator CRANE—At our last hearing you sat up here with all the fuel companies and you gave an overview. The fuel companies, and some of them are sitting here, put down statements of principle of where they would stand in terms of progressing the reform in the fuel industry. Can you find out from the fuel companies whether or not those statements of principle of last October or November are still the same? Have there been any changes or any variations?

Mr Starkey—Yes, we can do that. Obviously, when the government withdrew the reform package the companies would have gone to do something else. So it is possible that there have been some changes in what they expect to do with their networks over the next couple of years. Yes, we will get them updated.

Senator CRANE—They are set down in principle, and they were very precise statements, if I say so, as did the NTAA put down some pretty precise statements in terms of their position. It would save us a lot of additional work if we could get it confirmed, or any variations, because it is all there on the public record.

CHAIR—I would like to go back to the question of the franchise. I want to clarify something in regard to the discussion we were having. In terms of the franchisee, who puts up the money in terms of a multi-site franchisee arrangement?

Mr Starkey—I do not have any information on that. You will have to ask the individual companies. It will vary between the companies. I do not know that.

CHAIR—I would like to get that information because I always understood that if it was a McDonald's or a KFC franchise you would have to put up a fair lump of money if you wanted to have the franchise. The other question is that in providing that information about when the franchisee buys a franchise or multifranchises, what do they put up and what do they get for it?

Mr Starkey—We will get the information.

CHAIR—Thank you.

Senator CRANE—At the last hearing I asked a question about the myriad of different franchise arrangements that exist – there seem to me to be thousands, just like share farm agreements, as I said at that particular time – and I suggested that maybe we should look at eight or 10 models and then have each one structured within those. I got a very firm and resolute ‘No, we are not interested. It is up to a contract between the two individuals as to how things operate.’ Is that still the case?

Mr Starkey—Yes.

Senator CRANE—You said that the industry is highly competitive and we have heard that also. We heard from Mr Heavyside, I think it was, or at least from one of the previous witnesses, that there could be an overall competitive situation in the industry but that they, as individuals, are locked into the franchise and the agreement they have signed even though there are changed circumstances – and, as we know, it is very different from what it was six or eight years ago. Do they really have access to the advantages of that broader competition across the top?

Mr Starkey—We believe so. Mr Heavyside made the comment that all four were very similar; that he had shopped around before he took up his contract with Ampol but, having done that, there was not a lot of difference between them. Our comment would be that that is not unexpected. They are all competing for the same piece of business, and if any of them are off the pace they are not going to get any business. They need access to the sites to sell their product. But more recently I think the game has become a little easier for people who own their sites in the sense that there are other opportunities for people to source their fuel. There are independent marketers out there who are looking to expand their opportunities for wholesaling into the retail networks.

CHAIR—But the long-term nature of the agreements that the companies seek does not lend itself to the competitive opportunities very much.

Mr Macpherson—For owner-dealer sites, five years would be a long-term deal. I have seen them as low as one year. There is a whole range, basically. You can do any deal you want as far as that goes. You can ask for what you want, and maybe that will or will not suit the company. But owner-dealers can certainly go well below five years.

Senator CRANE—I am now going back in history to ask this question. We were given evidence that five, six, seven or eight years ago – maybe even less – price support was for about 20 per cent of the time and that for 80 per cent of the time the franchisees were able to operate. That was a conclusion that I think we, as a committee, came to from the evidence. I certainly did. It could have been 70:30 or 85:50 – it does not matter – but there was a large period of time, certainly three-quarters of the time, when price support was not required; whereas today we heard Mr Harris say that he is now 100 per cent on price support. I came to the conclusion last November from the evidence given here and also from all the phone calls I got from people that for 80 per cent of the time, at least, they were on price support and for only 20 per cent of the time were they able to be out in the market making a quid. Doesn't the fact that they have this pressure from the top all the time that they have to be topped up really change the relationship between the franchisee and the company and the ability of the franchisee to be able to take advantage of that overall competitive thing? How can that be addressed?

Mr Starkey—I do not know for what time people were under price support, but I guess, judging by the volatility in the major metropolitan markets, you would have to say that the percentages you are talking about are probably right.

Senator SCHACHT—Can you take that on notice to the four companies?

Mr Starkey—Yes, sure.

Senator SCHACHT—I would like to know the latest figure, on average, for when price support is and is not operating. I agree with Senator Crane: it does seem that this is a fundamental change.

Mr Starkey—What it seems to reflect, though, is the increased competition in the market. The entry of new players is putting more and more pressure on both the retailers and the wholesalers.

Senator SCHACHT—Changing the franchising.

Senator CRANE—We would like whatever information we can get on that. I certainly had private representations following that, and the pressure for being able to change over to commission agencies came from the city. I had people come all the way from Western Australia to see me – and from other states – who said, 'If there is an arrangement where you change over to commission agencies, we do not want to be forced to do that. We are doing perfectly all right with our franchising arrangements.' I think that is very important.

Mr Starkey—Yes, we will follow that up.

Senator CRANE—The other question I want to ask you is in regard to competitive access. Mr Delaney raised this. Was it in attachment A where your principles were set out?

Mr Starkey—It is in attachment 3.

Senator CRANE—I do not need that for the purpose of this question, but in the repeal of the sites act and the matter that was raised there, he suggested that Telstra was a model we could follow in terms of progressing deregulation and getting around, or rid of, or repealing, the sites act. Could you, if you have not already done so, have a look at that proposition? Maybe you can answer it now and we will follow up –

Mr Starkey—No. We will take that on notice.

Senator CRANE— and see whether there is a mechanism by which we could work through this. It seems to me that at the end of the day with the concessions that have been made and the development of the Oilcode, which is fundamentally finished, rather than that one point that has been identified we are stuck on this one point in terms of the progression. I understand it is still your view that, in fact, it is imperative that the fuel industry in this country close down, otherwise we are looking at the closure of refineries, et cetera. Is that still correct?

Mr Starkey—That is correct.

Senator SCHACHT—You are closing Mobil in Adelaide anyway. You can stand back or sit on the fence irrespective of this stuff. That is what they have basically told Nick Minchin, so that leverage over me as a South Australian has hit the fence because you have already said the refinery is going so we paid the price.

Senator CRANE—I just wanted to get that on the public record to make sure that we are still in a consistent position. If you could follow that one up in terms of the Trade Practices Act –

Mr Starkey—I will.

Senator CRANE—Thank you.

Senator SCHACHT—As I said to the others, Mr Starkey, good to see you again across the table.

Mr Starkey—You, too.

Senator SCHACHT—God strike me! I think my grandkids will be 80 before we get this fixed at the rate we are going – but nevertheless I do not have any grandkids yet. You had the advantage of hearing what Mr Delaney said when I put a number of questions to him. It strikes me that you want to get rid of the sites act. You want to get rid of the franchising act, but you still want to maintain a control over your franchisees at the

retail level. They have basically said that they will put up – we will get rid of the franchise act and the sites act – as long as they get access to wholesale competition, the Fitzgibbon bill, 50 per cent.

But they also accept that you will go on having multifranchising and agents all operating in the marketplace. So you will still have BP's green and gold garage selling only BP, et cetera. You will still have enormous flexibility. That is why I asked a subsequent question that when a few of them hit the fence they will not ask the government for subsidies to pay them out. They said they would take that on notice, but basically agreed.

It seems to me – let us forget about the fine detail of the Oilcode – that that is not a bad deal for you blokes really, is it? The franchisees can say, 'All right, it is a BP garage for five years.' When the contract runs out you are going to say, 'You want to sell other juice. You cannot get the same assistance in the infrastructure that we have offered you. You are going to have to pay more.' So that person is going to have to work out in the marketplace whether it is worth while to sign a contract to pay more for the infrastructure to have the right to sell a tank of Caltex or Ampol, and that person will make a judgment. The marketplace will determine whether he or she gets it right. The individual might say, 'No, I am happy to stay as a fully-fledged, one-company franchise.' Another will say, 'I am a lender and you are going to charge me an extra \$50,000 to \$100,000 for the infrastructure to put another tank in, et cetera, and I am going to pay a higher operational cost per unit.'

CHAIR—Provided it is not seen as unconscionable conduct.

Senator SCHACHT—Yes, of course, it is not seen as unconscionable.

Mr Starkey—It is subject to the Oilcode.

Senator SCHACHT—The Trade Practices Act will be there whether or not it has got an Oilcode backing it up. It seems to me that the level will sort itself out, that some will choose to be full franchisees as we know them; others will be for it and, in the end, you will still be selling the same amount of petrol. It may be that one company is selling less and the other is selling more, but that is your problem not ours. You have never asked us to apportion the sale of the petrol between companies. Whichever way you look at every other thing you blokes have tried to put before us to turn the knob on getting an agreement, there is always a hook in it and the other side does not trust you. You do not trust them; they do not trust you, about what that final twist will be and what it is going to deliver. In the end, if you got rid of those two acts but you put into the Trade Practices Act that there is wholesale competition, you will sort out an arrangement with them that you can live with. I have been through all the variations of every goddamn model, and every time I have tried to put a bid in for you and a bid in for them it always comes unstuck.

CHAIR—And now you want an answer, do you?

Senator SCHACHT—No. But Winston has been through the same goddamn thing.

CHAIR—You would like an answer. Perhaps Mr Starkey –

Senator SCHACHT—I have to tell you, you heard what they said. Why can't you cop that?

Mr Starkey—We think we have got the answer in the principles that we set out for competitive supply arrangements. We were prepared to put all that into whatever sort of legally binding form anybody wanted. The arrangement of going to a point where there is fifty-fifty supply seems to us to be fraught with more difficulties.

Senator SCHACHT—But you will negotiate that with some of your franchisees, but they will not want to do that because you will offer them a better deal. Others will take their chance. The free market will determine it.

CHAIR—But the problems that you outlined –

Mr Starkey—Free market in the oil industry.

Senator SCHACHT—With a backed up, strong Trade Practices Act.

CHAIR—We need to perhaps get some response from Mr Starkey. The problems that you outlined – in responding to what was discussed earlier and what Senator Schacht has outlined – are whether or not the problems could be overcome; that is, if they exist or to what extent they might exist. Would that be an acceptable outcome?

Mr Starkey—I have to take it on notice.

CHAIR—You can take it on notice.

Mr Starkey—I have to say that we believe the fifty-fifty legislation is seriously flawed. We do not believe it could work effectively. We will go back, in light of the way you have expressed it, and we will talk with the companies and see what –

CHAIR—I think, in light of the evidence being taken here today and the discussion that has been had, it would probably be helpful if I asked the MTAA, Senator Crane, if we could have a response to some of the

things that have been put forward as possible solutions. Arguments can be presented also as to why they will or why they will not work.

Senator CRANE—I tried to convey that to the MTAA. Maybe I did not get it all over. But we will have to have them back, there is no question about that.

CHAIR—Yes.

Senator CRANE—Or send them a letter.

Senator SCHACHT—In your notes in the summary, Mr Starkey, on page 2, two-thirds of the way down you mention:

It is not correct to assume that all fuels are the same. There are significant differences between fuels offered by the refiners.

You mentioned Optimax as an example.

Mr Starkey—I am surprised you have not heard of it.

Senator SCHACHT—Yes, well –

CHAIR—What does it do for the car?

Mr Starkey—More power.

Senator SCHACHT—The real point is that 98 per cent of people drive down the street and see what the posted price for unleaded juice is – whether it is green and gold or red and yellow. Whatever the colour, they are going to drive in and buy it and put it in. Most of us average punters would not know the difference that it is going to do in the car.

Mr Starkey—Correct.

Senator SCHACHT—Secondly, it is accepted that in various states, because you have only one refinery in one state – for example, the refinery in Western Australia is BP, I think – it provides the juice for the others. That is correct, isn't it?

Mr Starkey—Right.

Senator SCHACHT—Are you telling me that what is going to happen now or in the future is that when Shell picks up the tanker load of juice and it is driving out to the station, on the way out, the driver is going to drop a bottle of blue stuff into the juice to make it look a bit different or put in an additive before it is actually sold?

Mr Starkey—I think you really do need to talk to the companies that are making differentiated products.

Senator SCHACHT—How are they going to differentiate after it leaves the place?

Mr Starkey—They are.

Senator SCHACHT—They are not going to do it driving along in the truck. They are not going to have a converter on the back of a truck – a fire underneath it re-cooking the juice.

Mr Starkey—That is right. But Optimax, as I understand it – that is the example – is not available in Perth. It is only available in certain markets.

Senator SCHACHT—It is only available in certain markets. But then it leads to the next point that, even if they are selling Optimax, they are going to have a separate tank or a separate bowser.

Mr Starkey—They are. That is right.

Senator SCHACHT—So with all the standard unleaded petrol around there will be no difference in changing the panel colour of the bowser on the tank, saying, 'For these couple of weeks it is going to be BP because they have got a better price.' The punter is going to look only at the price at the retail level. That leads me to the last question in this area. You say in the next dot point:

Quality differences will increase as imports increase their penetration. It will become more important for the consumer to have absolute clarity on the source of their fuel.

One other thing I would be interested in: why can't we set a standard for the juice, whether it is imported or refined in Australia, so there is a guarantee that when it goes into the bowser to be sold to all consumers there is a standard?

CHAIR—There is a standard now.

Mr Starkey—Yes.

Senator SCHACHT—What is the problem then? Do you mean to say that they are not meeting the standard coming in from Asia?

Mr Starkey—The specifications can be different and still satisfy the Australian product standard.

Senator SCHACHT—That is a standards issue.

Mr Starkey—Maybe.

Senator SCHACHT—They are set by Standards Australia. You have a committee on it.

Mr Macpherson—Yes, it is a multiparty committee. It meets once every two or three years normally. I do not think it has changed the standard now for some years.

Senator SCHACHT—When you set the standard, the standard takes account of the latest technology, refining, the safety issues and all of those things. When it is set it is accepted within the industry that this is a safe product – unless you abuse it and chuck a match into it or something – that it will do the job and not blow up your car or burn out your engine unless you misuse or abuse it. Is that correct?

Mr Macpherson—Certainly each of the refineries would fully abide by the standard. I cannot answer for the others.

Senator SCHACHT—It strikes me, therefore, that the consumer does understand. I have not had any complaints over the years that the standard in relation to petrol has been broken. They might complain about the price.

Mr Starkey—It is a frequent experience just now. We are getting an enormous number –

Senator SCHACHT—Is someone breaking the standard?

Mr Starkey—Yes.

Senator SCHACHT—What are you doing about those people?

Mr Starkey—In the sites that are owned, controlled or franchised by the companies there is a product quality guarantee. There is not at any other site.

Senator SCHACHT—If you had a site which sold two different fuels under the model that Mr Heavyside spoke about – they sold BP and Caltex – they would both be coming from reputable refiners and companies. Would they both guarantee the standard?

Mr Starkey—Yes, but I am not sure that he was necessarily limiting it to a choice between the four refineries.

Senator SCHACHT—Another issue is that you are now saying you are getting complaints from people that the quality of the juice is not good enough. How do we fix that problem? The franchising act itself is not the way you overcome that; you make sure there are appropriate penalties for people abusing the standard. Whatever the standard is, and whatever the marketing practice, the standard is the standard and if you abuse the standard you get pinged. I would be interested to hear separately from you how that can be dealt with.

Mr Starkey—Under the present arrangements the only way the companies can deal with it is by controlling the product into their own sites.

Senator SCHACHT—Yes, but what can be done if someone sells crook petrol? I presume the states have consumer legislation. Is it generic legislation or is it specific legislation?

Mr Macpherson—There are two different ones. There is the fair trading issue under state laws and it is a breach of the Excise Act if there has been a breach of excise.

CHAIR—And the Trade Practices Act.

Senator SCHACHT—Yes. If it is excise it is up to Customs to go around and knock it over.

Mr Macpherson—Tax.

Senator SCHACHT—Yes, Tax and Customs in that area.

CHAIR—And the ACCC.

Senator SCHACHT—And the ACCC under fair trading, or the fair trading sections of the consumer offices I presume they have under delegation in the states.

Mr Macpherson—What we tend to find is that when we have a complaint it will actually be referred to us and then we will talk to Tax about it. That is what often happens.

Senator SCHACHT—My final point is that you say investment in the industry under the bill would be reduced. Is that investment in refining or is it investment in retail outlets?

Mr Starkey—Yes, in the retail.

Senator SCHACHT—That means Mr Heavyside is going to have to lift his game and find the dough – and if he does not he goes broke. That is his problem, not the company's and not the consumers'. He is going to have to make a commercial choice about raising the investment if he wants to have a couple of different juices being sold on his site.

Mr Starkey—That is true.

Senator SCHACHT—You would have more money to invest in refineries and exploring on the North West Shelf. I think we all win.

Senator CRANE—Can you give us the current percentage figure of imported fuel into the Australian market, or can you get those for us?

Mr Macpherson—Yes, it is published by the Department of Industry on a monthly basis. From memory, in the first half of last year it got up to about six per cent of the market, it declined to quite low levels in the next few months, and then rose again. Those numbers are certainly available.

Senator CRANE—I guess I was trying to get a comparison between last October and November and now. Has it gone up or down since then? Anyhow, we can get those from the Department of Industry, Science and Resources.

Mr Starkey—It is not a steady number. The people who are interested in importing will at times buy from the refiners as well. There will be a variation up and down. You cannot see a consistent trend up or down with imports. It is pretty spotty.

Senator CRANE—I think that about covers what I need now. Thank you, Mr Chairman.

CHAIR—As I said before, it would be appreciated, given some of the discussion, if you could get the *Hansard* and respond where possible and give us some further information.

Senator SCHACHT—On page 4, at the last dot point, you say:

AIP urges the Australian Labor Party and the Australian Democrats to reconsider their stance on the reform package, and support repeal of the Sites act as part of the complete package.

I said I will support the repeal of the sites act on the conditions I outlined in the discussion with the MTAA, which I think opens up an absolute free market. If your five big companies are all advocates of free markets, I cannot see why you cannot cop it.

Mr Starkey—Okay.

CHAIR—There is an undertaking that they will respond in due course and we would appreciate that very much. Thank you very much for appearing here this afternoon.

[5.33 p.m.]

HANLON, Mr Chris, Chief Executive Officer, Service Station Association

PYNT, Mr Keith, President, Service Station Association

CHAIR—I welcome the representatives of the Service Station Association and invite you to make an opening statement. We have received a written submission from you. You might like to give us a summary of it and add anything you wish to add.

Mr Hanlon—Thank you for the opportunity to address you this afternoon. I might point out, firstly, that I am fairly new to the industry, so I am not one of the usual suspects.

Senator SCHACHT—It will not be long before you are!

Mr Hanlon—That happens quickly, does it?

Senator CRANE—After this you will be!

Mr Hanlon—Just to point out who we are as an organisation, we are a New South Wales based industry association. We have about 1,000 members in New South Wales. We are probably the only group that deals exclusively with service stations. I should point out to you, importantly, that we are a foundation member of the Motor Trades Association. We certainly agree with all the points that the MTAA have put here this afternoon, but we do want to add some particular points from our members' point of view. Democracy is alive and well in industry associations and we are here to provide some of the comments that our members have certainly put forward.

Just in relation to who our members are, probably two-thirds of our members are franchisees, they are operating either as single-site or multi-site franchisees for all the major brands, and the balance of our members would be independents.

Senator CRANE—How many members did you say you have?

Mr Hanlon—Approximately 1,000.

Senator SCHACHT—A third of that independents?

Mr Hanlon—Yes. In relation to the fifty-fifty supply bill, the Fitzgibbon bill, our fundamental position is that it will not work. The main reason it will not work is because our members tell us they do not want to lose price support; their business will simply become uncompetitive. The fundamental issue that we are dealing with here, and the main problem our members tell us, is the price support arrangements that the oil companies extend.

Secondly, we do not believe that all fuels are the same. We believe that there are significant differences between fuel, and if you watch the Channel 7 program on Monday night you will see that there are some problems with differences in fuels. If the fifty-fifty supply bill came in, clearly there would be product liability issues as to exactly whose petrol it is, so we see a fundamental problem there. Thirdly, and perhaps more importantly, we believe that the motorist has an expectation when they drive into a service station, of whatever brand, that they are purchasing that particular type of fuel. The fourth issue that our members talk to us about is the loss of subsidised rents on their franchise sites – they do not want to see that.

Fundamentally, our view is that the main issue that this bill is endeavouring to address is competition at the wholesale level. Our members certainly complain to us on a regular basis that they are tied to price support because the refiner-marketers sell at cheaper prices to their own franchisees than to unbranded independents. That is certainly our point of similarity with the MTA. In terms of the technicalities of the fifty-fifty bill, we have some difficulties there.

In relation to multi-site franchising, it is important to recognise that that is the preferred model of the future. It certainly does have some benefits to it. One of the principle benefits is that it creates a career path for individuals within the industry, so they have got somewhere to go beyond the console. Secondly, it certainly promotes excellence in terms of superior shop standards, customer service and safety. We have a lot of MSF members and we recognise the excellence in products that they supply. Thirdly, it is important to acknowledge that, yes, it is a competitive industry and multi-site franchising delivers cost savings in the back office. Those points of view have been put forward fairly clearly by AIP.

But what the Motor Trades Association draws attention to, and what our members certainly express to us, is that they want to see that those MSF operations are at arms-length from refiner-marketers. Certainly when I visit our multi-site franchise members they tell us that their staffing and pricing decisions are determined by the franchisee and not the franchisor. But, clearly, the MTAA submission does draw into question the nature of who actually provides the equity and what the definition of a controlled entity is. I do not necessarily need to expand on them today; they have been made extremely well by MTAA and they will be followed up with a submission to you. Our view, trying to balance the whole situation, is that we believe there should be perhaps a

limit on multi-site franchises. We have put forward a suggestion that that be limited to between five and 10 sites.

Senator SCHACHT—By legislation?

Mr Hanlon—Yes. In conclusion, there is a tremendous sense of frustration within the service station industry at present. Our members are constantly telling us that they want Oilcode; they want some type of code of practice that provides protection for franchisees. As an organisation, we support the retention of the sites act. We would certainly want to encourage both MTAA and AIP to sit down and negotiate a little bit harder on some of the issues where we believe we can reach agreement. For example, we certainly support the inclusion of independents under Oilcode, we are quite happy to see commission agencies removed from the ambit of the sites act and we have even suggested that there be some relaxation of the current percentage limitation on the number of sites that are directly operated by oil companies.

The point that we are trying to make is that we believe the industry has to move on. There are other issues around the corner – more importantly, what is going to happen with petrol pricing when the GST comes in? There are excise considerations to be made there. There are also issues to do with automatic indexation of excise by CPI. So we need to move on and resolve these Oilcode matters. Secondly, we as an industry acknowledge that oil refiners have to make major investment decisions this year, and we certainly want to keep a strong refining industry within Australia because that is jobs for Australians as well. So we have tried to come at a balanced point of view between what our members are saying, what the MTAA have expressed and the practicalities of the fifty-fifty bill and the multi-site franchising situation. Certainly we would like to see the two head organisations, AIP and MTAA, sit down and finalise the Oilcode.

CHAIR—Thank you. Mr Pynt, do you want to add anything to that?

Mr Pynt—No, not at this point in time.

CHAIR—To understand the concerns you raised with regard to the bill that is part of this inquiry, you said that some of your members would be concerned with regard to price support being lost. You also raised fuel difference, franchise rents and commissioned agents as being issues. The bill, as I understand it, would not preclude price support. In fact, if the major oil companies wanted to remain competitive then, where necessary, they would probably continue that practice even with the advent of a possibility of a franchisee being able to purchase 50 per cent of their fuel somewhere else. I have to say that the difference in fuel in terms of the product – I am speaking now as a consumer, putting a consumer hat on – is that when I drive past the service stations around Canberra and/or in Tasmania, the principal sign out the front does not say to me, ‘We sell fuel that makes your car go faster and/or better and/or something else.’ Mainly you look for the sign that says how much per litre it is. That is what consumers look at. I accept that there are some consumers that are product-specific minded, but I have to say that they buy unleaded fuel or they buy leaded fuel. Some people must obviously buy premium unleaded. I do not know about Optimax. I actually have not seen it being marketed anywhere. Maybe they buy Optimax as well. For most, the first and foremost consideration is how much per litre it is.

Mr Hanlon—Sure.

CHAIR—If you drive around this town anywhere, you see the big square sign up and it has got how much per litre unleaded is and how much per litre diesel is, and that is the end of it. With the other products the consumer buys at the service station – be it oil or fuel additives that they actually sell on site or whatever else the consumer might buy – it is a decision the consumer makes then and there. I am not quite sure if I see that there is validity in terms of the fuel difference argument. I would like that to be demonstrated, if possible.

Mr Hanlon—A situation may arise where a motorist goes into a service station and does not necessarily remember if they have purchased a branded product or other unbranded product or differently branded product that has been supplied under the fifty-fifty bill. If there is a problem with that, who do they actually go to for recompense?

CHAIR—In the case of your survey work – and I assume you have done some survey work – you may have got from a competitive point of view – and I am saying this is a consumer – for instance, Gull. When they first started selling petrol here in the ACT, Gull were selling it significantly lower – 5c or 6c and even up to 10c a litre lower – and people were driving well out of their way to buy the cheaper fuel. They could not give a stuff frankly where it came from; it was the price that affected their decision. In terms of any survey that may have been done, at what point does a consumer say, ‘I am a Shell or a Mobil consumer but, by God, if someone is selling it for 10 cents a litre less, I am a 10 cents a litre less consumer.’

Mr Pynt—I can speak not from a differential but from a consumer’s point of view. Yes, we all look at price nowadays because we have been conditioned to that through consumerism. We look at it and do not necessarily look at the product. The time that people then see that they should change from a cheap brand is when they have a problem. I can give you instances where a service station is selling cheap petrol with water in the fuel

and people then stop going there because they think it is the cheap fuel and they tell other people. Then they go back to the branded people.

CHAIR—Is it not a dumb approach from the retailer's point of view?

Mr Pynt—Absolutely.

CHAIR—He is ultimately going to go –

Mr Pynt—But it happens. They do not check their tanks. I was answering your question as to when people move away from the cheap fuel. They move away when a problem occurs and at no other time because they do look at the unleaded – and we take unleaded as branded unleaded – as being the same at any site. As you know, you can have an unbranded site. You can have the Shell tanker delivering, or the Mobil tanker, BP tanker, or Caltex tanker, on the site and yet it is unbranded.

CHAIR—But in terms of the issue that we have had put to us by the AIP, there may be people mixing toluene or some other substance with the fuel to bulk it up and make the refined unleaded petrol go from 1,000 litres to 1,500 litres. There are, I suppose, check mechanisms that could be put in place for that. How is that really a problem? I am trying to understand the point that you raised with regard to fuel difference. What do consumers look for? I would have thought the principal decision in the consumer's mind when he or she goes to buy fuel is: how much have I got to pay for it? I accept that there are some consumers that may, for whatever reason, buy only premium unleaded and that is all they ever put in their car for whatever reason but, even so, they may well shop around on price between providers of premium unleaded.

Mr Hanlon—Certainly the main determinant of where people buy is price. We are trying to look at a situation where there is a problem and a product liability issue. In circumstances where you cannot identify which particular tank the fuel came from and, say, you had got a load of bad fuel with toluene in it, where do you apportion the liability for that? It is in a situation where there are two competing products being supplied from the one outlet that it is very difficult to establish that.

CHAIR—I think it was put by the MTAA that that problem could be overcome by taking a sample of the fuel from the tanker before it is actually put in the tank. It has also been put to us that currently among the major refiners of this country BP supplies Mobil supplies Shell supplies Ampol. So in terms of unleaded fuel, per se, there is not necessarily a difference anyway. So if it comes from the BP refinery and goes into the Mobil service station, people who think they are buying Mobil are not. They are really buying BP. I suppose, putting the question back about who has the responsibility then in respect of contaminated fuel, whether it is toluene or whatever else, I think it would be possible to take the sample from the tanker to then determine if there is a fuel mixing arrangement going on in the case of ordinary unleaded fuels and you could then overcome that problem. How do you see that?

Mr Hanlon—I think that is a convoluted arrangement for the consumer.

CHAIR—Not for the consumer.

Senator SCHACHT—Maybe for the retailer, but not for the consumer.

Mr Hanlon—What we want to do is get rid of the whole toluene issue anyway, of blended product, and the way to do that is to excise all the inputs at the same rate. That is the best way to get rid of this problem.

CHAIR—You have just outlined one possible solution to that problem.

Senator SCHACHT—At the moment independents have quaint brand names, I might call them – Golden Eagles, Southern Stars, or something like that. They are independent. They go around and buy wholesale from various of the major four refiners, put it in their tanks and sell purely on price, because they have no brand loyalty – the brand name is not even memorable in one sense, I suppose, for many of them. Then they might front up next week, they have half a tank left over but they get a better price from another one for the same unleaded standard petrol. There is nothing to stop them mixing that in the tank at the moment, is there? So they have got a problem on product liability. How do they handle it now? Or do they not handle it?

Mr Pynt—They do not, because they then go back to a service station and try to apportion the blame to the last one they got the fuel from.

Senator SCHACHT—But, as far as the independent is concerned, he or she is mixing the juice from different refiners who are all producing petrol, as we heard from the previous witness, to the same standard laid down by the Australian Standards Association, so different petrol is already being mixed in the same tank. MTAA talked about having separate tanks so that if you did buy a batch of Shell to go with your BP garage it would be in a different tank, clearly separated. Have there been many complaints from consumers to the independents about mixing the petrol from the different refiners?

Mr Pynt—I cannot answer that.

CHAIR—Is it possible to get some research on that?

Mr Pynt—Yes, it is possible to go to some of the independents to find out. These are non-branded independents. There are two lots of independents – there are branded independents and non-branded independents.

Senator SCHACHT—I am not talking about the non-branded ones.

CHAIR—Would you be able to undertake to seek some information on that?

Mr Pynt—Yes, we can do that.

Senator SCHACHT—They are buying petrol almost on a spot basis, on a weekly basis, from different companies, including imported, I would imagine.

Mr Pynt—Yes, we will do that for you.

Senator CRANE—I noted at the start of your remarks you said that, while you came here as an independent association and you gave your membership numbers, you agreed to all the things the MTAA said and you said you were a foundation member. You then started to differentiate in a number of areas which were, I would say, significantly different. I want to address some of those particular areas. But, firstly, how many of those 1,000 members are in the country and how many are in the city? I am only asking for approximate numbers.

Mr Pynt—Probably two-thirds in the country, one-third city.

Senator CRANE—A proposition which you would have heard me put and which came out of our earlier hearings was the request that a franchisee-operator who wished to could switch over to become a commission agent. Do you have a problem with that or not?

Mr Pynt—We do not have a problem with that.

Senator CRANE—I am talking about if they wanted to change their arrangement. You mentioned that you wanted price support to stay, and I understand that. But if somebody wanted to do that and the company was happy to do it – and the four companies told us then they were happy to do that – you would have no opposition?

Mr Pynt—No way.

Senator CRANE—But you would want to retain the right for them to stay as franchisee-operators, if they so chose?

Mr Pynt—To have a choice because, as you are well aware, in the country areas they operate entirely differently to in the metropolitan areas. At this point of time, because of the circumstances which were alluded to by the previous colleagues, people are being forced into a situation where they are de facto CAs now in the metropolitan area.

Senator CRANE—In terms of price support, the estimate given to us in November was that city operators were getting price support about 80 per cent of the time. Would you think that is a ballpark figure? I am not asking you to be precise, but is that in the order of what your membership would be receiving?

Mr Pynt—I suggest it would be.

Senator CRANE—What about in the country?

Mr Pynt—In the country there is very little price support available to them.

Senator CRANE—That is consistent with the evidence we received before. As I said, some of it was on the record and some of it was private, because a lot of people rang us up with regard to that. I think that is very important in terms of the management.

When we come to the access question, we heard from the MTAA in relation to the sites act. If they could get an amendment to the Trade Practices Act – and I have also addressed this question to Mr Starkey, who is going to come back to us on it – which actually allowed a competitive access regime in terms of access to the wholesale price for fuel, and we did address some of this in our last report, would you be happy with that, as the MTAA said they were? I think they said there would be no more purpose in having the sites act. Would you agree with that particular proposition in their submission?

Mr Pynt—No, not fully, and Michael Delaney alluded to the fact of the separation of activities in the wholesaling and retail structure. You could have a situation where there could be a set wholesale price of 76 cents a litre – a hypothetical case – but if there was no sites act then a lot of the companies would be running their own sites. They would know what the independents purchased the price at – say, 76c. It would be very easy for them to sell their fuel at a price that is not competitive, or at a price that allows the independent to be uncompetitive.

Senator CRANE—But that –

Senator SCHACHT—That would be in contravention of the Trade Practices Act and they could not do that.

Mr Pynt—If that was the case, but the point is that the Trade Practices Act is not –

Senator CRANE—That is the purpose of the amendment that I was talking about, so that there was no unfair trading or unconscionable conduct. There are already unconscionable conduct provisions in the Trade Practices Act now which were put there a couple of years ago. But with the addition of a special clause to deal with your particular problem, my understanding from what Mr Delaney said, and we can check the record, was that if that was done so it was generally competitive and with the power of the Trade Practices Act – bearing in mind that it is a pretty powerful act and it has been amended a number of times during the year – there would be no purpose in having the sites act. You have to start from the base, that that is there. We can arrange or get agreement between the parties that that is there. From reading Mr Delaney's submission, in terms of the principles he put down, that is very close to producing such an outcome. That is the basis on which I am asking the question. I am not asking you to hang yourself, but if that principle was established in the act –

Mr Pynt—The way I read it is that if the sites act goes there is nothing to stop the oil companies running their own sites and therefore you would have two operations. I appreciate the fact that they might say they will still have franchisees, but with the sites act going they do not have to have franchisees. Therefore, there would be two categories – oil companies and independents. Could independents be competitive against an oil company that was running their own sites and wanted to take market share?

Senator SCHACHT—That is a fair point, but I would also point out, as Senator Crane said, it requires an amendment to the Trade Practices Act to ensure that amongst the major refiners and the petrol companies there is open access to a competitive wholesale price. If that were established – and I say the big argument is about what the amendment to the Trade Practices Act would be – and if there is an ancillary Oilcode agreed to, that would even be better. I think that what we discussed today and what we put back to the companies might be a better way to go than endlessly trying to amend and have rules. You suggested that no-one can have a multi-site franchise of more than half-a-dozen sites. That requires such legislation and regulation that I am not sure in the end there would not be endless argument concerning the definition of what a multi-site franchise is, for example. We would be back here every couple of years driven nuts, saying, 'What is this definition?' I am not sure we want to be doing that as long as there is a properly open, competitive industry of which the retailers have a fair shake.

This leads me to the one thing in your comment which I wanted to emphasise, as the chairman did. There is nothing in Mr Fitzgibbon's bill that precludes franchising continuing. I would have thought the companies would negotiate and that there would be full franchising. If people want to cop that with the discount arrangements and the price support and all of those things, and with the assistance they get for the infrastructure, running the petrol station and building, et cetera, they will make very attractive offers. That can still continue. But if someone else says 'No, I want to run a different operation. It will be nominally BP but I will have 50 per cent from Shell,' they will suffer a penalty, I suspect, in the fact that they do not get price support. But then they know they have cheaper petrol, or think they can get it, so they make the judgment of which way they jump. The companies make the judgment of what they give to encourage people to be full franchisees. It is an open and competitive market. Sooner or later some people will unfortunately make the wrong judgment and go broke, but a lot, I think, will do better. This endless argument, as we have had here today and at every hearing, about the price support problem that we now have with the turnaround of 80 per cent or 90 per cent price support, I just want to emphasise that the Fitzgibbon bill will not get rid of franchising, as we know. If the companies all choose to get rid of franchising and price support, that is their decision. I suspect a number of them will keep it going because they think that is the best way for their place in the market.

Mr Pynt—When Mr Hanlon made his opening statement on some of the aspects of the Fitzgibbon bill, he was looking at the things that are fraught with danger. The SSA support the fifty-fifty legislation, the Fitzgibbon bill, if we can get it through. It also comes into account through independents that are branded independents. They are suffering from the same problem as the franchisees, and there are a lot of branded independents out there. If you are carrying the brand as an independent and you have a contract that says you buy X amount of fuel, you have still got the problem of buying 100 per cent from these people on the basis that at this point of time you are carrying the brand. If the legislation were enacted then it would assist the independents as well as the franchisees. For franchisees, we are also speaking about getting mixed up between the franchise act going and the Fitzgibbon bill, which are two different operations.

Senator SCHACHT—Absolutely.

Senator CRANE—I do not want to spend too much time on the Fitzgibbon bill. I have raised the liability question, the infrastructure costs and all those sorts of things. The message that I got pretty clearly out of these is that the service stations that make a quid make it on the basis of high volume and that is the key. It is very difficult if you are in a very remote area, unless you have high volume, because of the small margins. If you increase the infrastructure costs – which, having fifty-fifty would – and the liability questions – but I do not want to dwell on that as I want to go to the unbranded independents you mentioned – I understood that you

said the franchisee operators should have access to the same price fuel as the unbranded independents have. Is that what you said?

Mr Hanlon—Yes.

Senator CRANE—How could that be considered fair when you consider that the fuel company, whatever it is, supplies all the infrastructure, albeit on a lease basis, and has an agreement to provide the fuel, as against the unbranded or branded independent that actually supplies all the infrastructure and owns the site – or somebody else owns the site – separate to them. Surely the person who supplied all the infrastructure and put the whole lot in there – whether they put a brand on it or not – is in a better position competitively in the market to extract a better price over the marketplace. I have some difficulty with the concept: they supply all of that and you are going to give them exactly the same when they have put none of their capital on.

Also, it is not all bad, this ‘us and them’ is not out there all the time in the marketplace because we were given examples where a number of the fuel companies were assisting people, who had started off as franchisee-operators, to gradually buy the site. So you would need different arrangements for that as the ownership transferred over. I am just trying to get you to justify the statement that somebody who has put all the capital in there is not in a stronger position in the marketplace than somebody who has put in none and is leasing, in effect.

Mr Pynt—We are talking about the wholesale price, and the wholesale price should be a price at the gate. Therefore, as far as the refinery goes, and getting it to the delivery point, the costs are there with the oil company. From that point on, it becomes the on costs. So there are on costs which, as an independent myself running a branded site, I have paid for – I have got mortgage payments and I have other things to pay for in the build up of my retail margin. The franchisee has got the brand – the same as I have – and he has got rent to pay or royalties, whatever the case may be, so he has got his on costs there. So the fuel leaving the terminal gate should be the same price for everyone. It is the on costs that then tell you what your margin is going to be on your price board. If the oil company offers promotions and the dealer takes these promotions to attract people in, yes, he may pay half a cent or 0.2 cents more; if he is carrying a brand, irrespective, he may pay a bit more than the people that are not paying that brand.

Senator CRANE—If I could just clarify this, are you saying that because of a contractual arrangement you should have that access; but if there are other costs involved because all the capital is supplied that should be reflected in the lease arrangement and not be part of the price of the fuel?

Mr Pynt—Absolutely; it should be after the event. The fuel is the fuel and the marketing is the marketing.

Senator CRANE—What about the transport of the fuel?

Mr Pynt—Exactly the same: if the transport is supplied by the company, they build the transport price in – I cannot quote figures, but it is 0.6c in the metropolitan area; but if you take your own truck in because you can do it cheaper and it is not affecting the quality of the fuel, such as taking it in contaminated tanks or tankers that are being used for something else, then that is added on to the cost, so it becomes a cost after the fuel, a marketing cost. So if you can deliver it at X amount –

Senator CRANE—Let me give an example, and I will use where I come from – I am from down near Esperance in Western Australia. There was a situation there with one company which got a quote. There are very few retailers that own their own truck, though there would be some around the place; they have got distributors who distribute to a number, but the cost of having a truck with all the tankers and the infrastructure is pretty great. They had an arrangement with the company and they got a quote in this particular place with Brambles which was a couple of cents a litre to cart it about 650 kilometres. They got a better price quote from Brambles than they got from the company. You are saying that they should have the right to get Brambles to cart it or the company has to match the price?

Mr Pynt—Absolutely. If everything is status quo and the trucks conform to the AIP regulations to go into the terminal, yes, they should. I will give you an instance. I have a site in a country town called Tamworth –

CHAIR—The company could potentially hire Brambles to do the job anyway and still take 2c a litre on top.

Mr Pynt—They actually do – they get Finemore’s to transport for them now, or all these different companies; they do not run their own trucks anymore because they can do it cheaper outside. I will give you an instance. I have a site in the country that is branded. My deal is if I buy less than a full tanker load it costs me a little bit more, because they can bring in B tanker from Newcastle and drop the whole tanker into my site and therefore that is cost effective and they can drop the price, but if they have to take small tankers in it costs them a lot more. It is happening now that the transport costs are an added cost after the fuel, so, yes, it is possible to be able to do that. The terminal gate price can be the same for anyone who turns up with a tanker, whether it be their own tanker or a company tanker, but the price afterwards would change so it reflects on the price board.

Senator CRANE—I have certainly seen contracts or agreements where the costs are not transparent. When you get down to the bottom line and you work it all out and you get it made transparent, you actually see

where all the costs lie. As part of this process with franchise agreements, what is your view on transparency in terms of the contract and the fuel? Currently, some of them – not all – tend to run into one another.

Mr Pynt—Absolutely.

CHAIR—Under the GST that will not be a problem.

Senator CRANE—As a country person, I am delighted that my fuel and my transport costs are going to come down significantly. We will not have a GST debate here – as much as I would love to – but I am looking forward to cheaper fuel and cheaper transport.

Mr Pynt—Talking about costs, let me go back to the Fitzgibbon one, if you do not mind.

CHAIR—We will keep focused here.

Senator CRANE—You are the one who provoked me.

Mr Pynt—I do not want to enter into it. I am neutral. Let me go back to the Fitzgibbon one and some of the questions that were asked before in reference to tankers, storage and fifty-fifty. It was pointed out that the oil company have a big investment in the site. If somebody has fifty-fifty – in other words, get 50 per cent from somewhere else – in actual fact they would lose the income from that site because they do not want to get 50 per cent of the fuel. It was also pointed out in later conversation that they work on royalties. Most companies now work on the basis of a percentage of the GP on fuel. Therefore, if they were buying the fuel cheaper and making more profit on it, then the oil company would be getting a return on that 50 per cent that was not their fuel anyway. They would still get a return from their site.

CHAIR—That is right.

Senator CRANE—At what point does the franchisee become the owner? Is it when it lands at the site where he is going to distribute the fuel or is it at the point where it was loaded on to the truck or does it vary?

Mr Pynt—I really cannot tell you. When it is dropped into your site, you take full responsibility for it.

Senator CRANE—When it is in your tank?

Mr Pynt—When it is in your tank, you take full responsibility for that.

CHAIR—What if you used your tanker? It would be when it was put in the tanker?

Mr Pynt—It was when it was put in the tanker – when you take delivery of it.

Senator CRANE—When you take possession. You mentioned the words ‘arms length’ in terms of multi-site franchising? Can you expand on what you mean by arms length? I have heard about 10 different versions of what they mean by arms length.

Mr Pynt—And you will probably hear 11 and 12.

Senator CRANE—That is fine, but I want your version. You are representing 1,000 organisations.

Mr Hanlon—It would be minimal equity in that company.

CHAIR—Minimal equity in the site?

Mr Hanlon—In the company running the sites.

CHAIR—You said minimal equity. How do you determine that? What is the defining factor in that? Is it a 10 per cent shareholding? How is it measured?

Mr Hanlon—The position that was outlined in the MTAA submission had a figure of 20 per cent in it.

Senator CRANE—So you would agree that any company that is operating a multi-site franchise could have up to 20 per cent of the ownership and control of that operation?

Mr Hanlon—Yes.

Mr Pynt—Unfortunately, this is where democracy takes its hold. When it comes to multi-site operations, which is different from equity holdings in organisations, we believe that arms length is where there is no input or assistance by the oil company away from any assistance that they give individual franchisees. If multi-site operators are working on consignment stock, if they are working on a business plan that guarantees them a certain amount of income, so should the individual franchisees.

Senator CRANE—You are saying an individual’s franchisee should have exactly the same rights as people operating within a group in the multi-site?

Mr Pynt—Yes.

Senator CRANE—There is an essence that people operating within that operate very similar to a commission agent.

Mr Pynt—I am not privy to a lot of the contracts that are on foot with various companies. But I would probably, on innuendoes that have been put forward, say that they are not arms length as a company. Most of

the oil companies support their multi-site franchisees in some form or other, which gives them an unfair advantage.

Senator CRANE—I would think that there would be no reason whatsoever why the multi-site franchisee should not have the same price support as an individual franchisee had.

CHAIR—The other way around.

Mr Pynt—It might not be just price support.

CHAIR—Mr Pynt is arguing the other way around.

Mr Pynt—Yes. It might not just be price support; it could be not better credit terms.

Senator CRANE—I understood what Mr Pynt said. You are saying that if there was an individual he should have access to exactly the same credit lines and the same arrangements so there is no advantage.

CHAIR—The same scheme of arrangement, whatever it might be.

Mr Pynt—Yes. Although I have different brands – me and my site operator because I operate more than one site – I have my own capital invested in it, the same as Mr Heavyside. Therefore, if you are dealing with a multi-site operator who has better terms and conditions than you have then you are not actually running your own business or you are not competing on a level playing field in a commercial market.

Senator CRANE—Can I take that a little bit further? I do not know whether you heard me today or not, but one of the things I put on the table for possible discussion was that we try to draw up 10 models of franchising arrangements. The reality is that I do not know how many different franchise arrangements are out there but there is one hell of a lot. There are hundreds of different arrangements in amongst the 8,000 or 9,000 operators. I was told very quickly from both sides of the argument, ‘No, we want the right to be able to make our own arrangements and we want to have variance according to our circumstances.’ If you turn around and say to us now, on the one hand, that individuals must have exactly the same access, the same rights and the same rules as the multi-site people have, couldn’t that work against the individuals who wanted to vary their arrangement?

CHAIR—I do not think Mr Pynt was saying that.

Senator CRANE—Let Mr Pynt answer the question. I am just getting it clarified.

Mr Pynt—That is not a contractual issue. I would suggest to you that in a lot of these things the assistance is not necessarily in the contract. It is assistance on the basis of assisting the multi-site operator to run many sites. I would suggest to you that probably they are all based on the fact that the sites act is there and to get around the sites act. Therefore, there is assistance.

Senator CRANE—I understand now what you are saying in terms of that. You can still have variation in the contractual arrangements but if there are add-ons or other things they must be consistent across the full arrangements.

Mr Pynt—Yes, that is right.

Senator CRANE—Over country and city.

Mr Pynt—Yes.

CHAIR—Consistent access.

Senator CRANE—Open access is a different question and we have already questioned you about that. We have already put up a challenge between the main people in terms of whether or not we can develop the principles that Mr Starkey put down on behalf of the fuel companies last September and what Mr Delaney has said today and see whether or not we cannot pull those two things together so that we end up with an amendment or an arrangement, whatever you want to call it. In my view, the Trade Practices Act is the best place for it because it has the power of the Trade Practices Act behind it. That is a totally different issue from what I was asking about. Let me just check this because –

CHAIR—While you are having a look, Senator Ridgeway had some questions.

Senator RIDGEWAY—I am encouraged by some of your opening comments about the need for dialogue between the other players in this group, and it is something I would encourage amongst the groups. I have an interest more in relation to the competition aspects, the Fitzgibbon bill and petrol pricing itself. In relation to the Fitzgibbon bill, as much as I acknowledge that it has good intentions, I am unclear as to what the practical consequences might be. You have a particular view that you think it might have the reverse effect to the application of it so far. Can you talk about that a little bit more in terms of why you think that? Is there a particular reason other than just the issue of the possibility of exposure of price support?

Mr Hanlon—My understanding is that similar bills exist in Victoria and Western Australia and it has not been taken up by the industry. I know that, for example, in the Mobil line group it is being discussed, as are issues in relation to progression of Oilcodes. Certainly, the way that wholesale prices are, the comment is that people would be concerned that they would lose price support and that they would end up having to pay more

commercial rates for the properties that they are currently leasing. I am really reflecting the views of what our members are putting forward. Keith, do you want to provide any additional detail?

Mr Pynt—As we said, some of the things are fraught with danger, but we still agree that the fifty-fifty bill should be enacted to allow the franchisees and the independents to have a competitive price, and they would be able to do that. I would assume that most of the franchisees or branded people, if they are only talking of one cent a litre, would not move away from having 100 per cent supply, but it would become very competitive because there are lots of non-competitive prices out there. I can take that to my own particular site as against the franchisee site down the road because I am an independent and I get X amount off the wholesale price or whatever price each oil company wants to call it, but the franchisee, when price support is taken off, has to pay the maximum price. So it could be a 5c difference. So the same company could provide the independent with 5c cheaper than the franchisee, which puts him in an uncompetitive market.

Senator RIDGEWAY—I guess one of my dilemmas in all of this is trying to weigh up the expectation from the voters, if you like. Polls always smell good. They are a bit like perfume: they smell nice but are never nice to swallow.

CHAIR—Are you waiting for the July one?

Senator RIDGEWAY—That is it. But the issue there for me is more about how you weigh up the community interest versus the commercial interest. I can understand the need for stability for your members. As a flow-on from that and getting to the question of competition, do you have any particular views about multi-site franchising operations and the ability to influence petrol prices and how that might be overcome and the disparity between city and country?

Mr Pynt—I can answer part of it.

Mr Hanlon—There are a couple of questions there.

Mr Pynt—Let me take the fifty-fifty bill first. From a consumer point of view, to allow the service station operator to be competitive, the consumer will never know what is going on. Once enacted, the consumer will not know whether you are buying fifty-fifty but it may be shown on the price board. Therefore, from a consumer point of view, it cannot do any damage. It will not put the price up or should not put the price up. I cannot say it won't because it depends on how the oil companies react to their people buying some other product. But from a consumer point of view, he would not know. So it depends on what is on the price board. If the price of oil drops \$10 a barrel and the dollar goes up and the price comes down to 70c a litre tomorrow, then they would not care what price a barrel was or what price the dollar was. So it is what is on the price board, and, if the fifty-fifty rule does allow the price to come down then, yes, it is going to be accepted by the consumer.

Senator RIDGEWAY—And you do not see that as having a flow-on effect in terms of your members and their view of stability or price support?

Mr Pynt—They are worried and that is why we brought up the points earlier that, if the fifty-fifty legislation is enacted, a lot of the franchisees are worried that the oil companies would take it out on them to ensure that they are not renewed or do not get price support and are put into an inevitable position of going broke very quickly.

CHAIR—That could be considered unconscionable conduct and could be dealt with under the Trade Practices Act. But, with what Senator Ridgeway is asking about, could it also not be the reverse, that for those oil companies to want to maintain market share, wouldn't they also want to make sure that those franchisees that are operating in the current marketplace maintain their market share?

Mr Pynt—That is what I was saying earlier. Yes, I believe that they would be competitive, but they will be competitive if the fifty-fifty comes in. But at the same time some of our members are worried –

CHAIR—Worried about it.

Mr Pynt—that they would be exited from their sites very quickly.

Senator RIDGEWAY—Just as a follow on from that whole issue about competition and multi-site franchising, I notice that you do not have difficulties with it as a reasonable mode of operation. You talk about it more in the context of trying to limit the size of how multi-site franchising might occur. Perhaps I missed it in the beginning, but I know Senator Schacht said something about 12 sites. Can you confirm that you did say 12, and my question beyond that then is: why 12? Is that an arbitrary figure or does it present something in terms of competition in the marketplace?

Mr Hanlon—From recollection, I think we did say 10 sites. We recognise that there are practical difficulties with that, as Senator Schacht has pointed out. Probably the basis for using that is the undertakings that the oil companies gave in relation to their future structures and their preferred operating models. That is basically where that figure would have derived from.

Senator RIDGEWAY—You are saying it came from the oil companies themselves?

Mr Hanlon—Yes, certainly we looked at what plans the majors had for the future.

Senator RIDGEWAY—I may get a chance to talk to the oil companies again and ask that question specifically. I am just interested in looking at the modelling of it all and at what works and what does not.

Mr Hanlon—Yes, sure. The other issue is comments that our members make about the desired number of sites to operate. That seems to be the emerging trend.

Senator CRANE—Are you talking about distributors there?

Mr Hanlon—No.

Senator CRANE—Because a number of distributors own six, seven, eight, 10 or 12 service stations.

Mr Hanlon—Yes, that is right. We have few distributors as members.

Senator CRANE—I am seeking some clarification on one of Senator Ridgeway's questions, please. In terms of any figure on sites, it would have to be arbitrary. Going back to what I asked before and what Mr Delaney said, if you got the issue of equal or open access resolved, why would you continue to need to have this limitation on sites?

Mr Hanlon—I think I answered that earlier. If the sites act went – and although we are pricing – it would be the oil companies versus the independents. Therefore, the oil companies could run all their own sites. Although there would be competition at the wholesale level, what is the competition at the retail level?

Senator CRANE—That is not really practical, is it? When they have got good operators operating in various parts of the country, why would they want to set up the entire infrastructure and try to run a series of small businesses right around the country? It does not make commercial sense to me.

Mr Pynt—Can I theorise on that one?

CHAIR—Mr Pynt, you can answer it, whether you are theorising in your answer or not is entirely up to you.

Mr Pynt—One has to look at the way the oil companies are now getting their revenue from royalties. Assuming they are running CAs, then the shop could be franchised out or they could run it themselves. A multi-site operator, where you have someone running 50 or 20 sites, is on a royalty basis. We are all aware that an owner operator can operate a site a lot more efficiency, with better cost benefit in themselves –

Senator CRANE—That is my very point. If you have got that open access there is no logical commercial reason why multi-site operators are one, two, 10, 12 or 20 – whatever figure you want to put around it – with the one operator. The owner operator would beat the pants off them in terms of being a viable commercial operation.

Mr Pynt—That is all right if it is the status quo and we can accept what is going on. But, as we have seen from the oil companies, they could still run the sites themselves. If they ran the sites themselves and did not have the multi-site – I was talking about individuals – if they did not have franchisees, which they would not have if the sites act goes, they could run them under their own management scheme working on the same basis.

Senator CRANE—I asked Mr Starkey on behalf of the oil companies today whether or not they stood by the statements they made to the committee I chaired back last November. In terms of that they dealt with the issue of the ownership of sites. Summarising it in one line, they fundamentally said – although there was some variation, and you can read it – they wanted to own a few to test the market and some for training purposes so they could run owner-operators. I asked, 'Do you stand by that statement?' – and they put it on the public record under oath and privilege, and it is in the submission there by them – and they said no with that qualification. I ask you to have a look at it, read it and then maybe come back to the committee on it.

Mr Pynt—If you are saying it was in their submission, why do they want to get rid of the sites act if we are allowing them to run a certain number of sites themselves?

Senator CRANE—Because it is restrictive across the industry. My understanding is that they want the industry to develop in the best commercial way in terms of wherever it exists, whether it is owner-operated, unbranded, branded operators or commissioned agent operators. They just think that under the current thing – and I have heard not dissimilar arguments put by the MTAA and they have reasons they want it there and from other people who came here – the restrictions there now are stopping commercial development. We see these service stations – and I wrote the figures down: \$20,000 in 1980, \$9,300 or thereabouts in November last year, \$8,300 now – and I am getting pretty damned concerned. I am a country person. If the service stations are going like that where the hell is it all going to end up?

CHAIR—It is a bit like banks. The removal of the sites act will probably help that significantly.

Senator CRANE—Certainly what we have now is not working. The price question is the one that is consistently raised. Thank you very much. I am not the chair but I will hand you over to the chair.

CHAIR—I am very appreciative of that, Senator Crane. Senator Ridgeway, you have no further questions?

Senator RIDGEWAY—No.

CHAIR—I will say thank you, unless there is anything you wish to further add. We will probably be inviting you back before the committee. If there are further submissions that you can make or would like to make to us in light of today's proceedings it would be appreciated. There have been a range of issues that were discussed in as much as being questions and answers. You might like to consider some of those and if you feel inclined to give us further submissions we would appreciate it.