



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON ECONOMICS

ESTIMATES

(Budget Estimates)

THURSDAY, 5 JUNE 2008

CANBERRA

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**SENATE STANDING COMMITTEE ON
ECONOMICS
Thursday, 5 June 2008**

Members: Senator Hurley (*Chair*), Senator Eggleston (*Deputy Chair*), Senators Mark Bishop, Bushby, Joyce, McEwen, Murray and Webber

Participating members: Senators Abetz, Adams, Allison, Barnett, Bartlett, Bernardi, Birmingham, Boswell, Boyce, Brandis, Bob Brown, George Campbell, Carol Brown, Chapman, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Ellison, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Heffernan, Hogg, Humphries, Hutchins, Johnston, Kemp, Kirk, Lightfoot, Lundy, Ian Macdonald, Sandy Macdonald, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Murray, Nash, Nettle, O'Brien, Parry, Patterson, Payne, Polley, Ronaldson, Scullion, Siewert, Stephens, Sterle, Stott Despoja, Troeth, Trood, Watson and Wortley

Senators in attendance: Senators Abetz, Birmingham, Brandis, Bob Brown, Bushby, George Campbell, Chapman, Coonan, Eggleston, Fierravanti-Wells, Fisher, Hurley, Joyce, Lundy, McEwen, Murray, Parry, Ronaldson and Webber

Committee met at 9 am

TREASURY PORTFOLIO

Consideration resumed from 4 June 2008

In Attendance

Senator Sherry, Minister for Superannuation and Corporate Law

Department of the Treasury

Dr Ken Henry, Secretary

Outcome 1—Sound Macroeconomic Environment

Output Group 1.1 Macroeconomic Group

Dr David Gruen, Executive Director

Mr Bill Brummitt, General Manager, International Economy Division

Mr Tony McDonald, General Manager, Macroeconomic Policy Division

Mr Jason Allford, Principal Adviser, Macroeconomic Policy Division

Ms Rose Verspaandonk, Manager, Macroeconomic Division

Mr Adam McKissack, Principal Adviser, Domestic Economy Division

Mr Phil Garton, Manager, Domestic Economy Division

Ms Jan Harris, General Manager, International Finance Division

Outcome 2—Effective Government Spending Arrangements

Output Group 2.1 Fiscal Group

Mr Nigel Ray, Executive Director

Mr David Martine, General Manager, Budget Policy Division

Mr Gordon De Brouwer, Chief Adviser, Budget Policy Division

Mr Jason McDonald, Manager, Budget Policy Division
Ms Karen Incher, Acting Manager, Budget Policy Division
Mr Neil Richardson, Manager, Budget Policy Division
Mr Michael Willcock, General Manager, Commonwealth-State Relations Division
Ms Maryanne Mrakovcic, General Manager, Industry, Environment and Defence Division
Mr Geoff Francis, Principal Adviser, Industry, Environment and Defence Division
Ms Meghan Quinn, Manager, Industry Environment and Defence Division
Mr Rob Heferen, General Manager, Social Policy Division
Ms Peta Furnell, Principal Adviser, Social Policy Division
Mr Peter Robinson, Principal Adviser, Social Policy Division
Mr Michael Salvestro, Manager, Financial and Facilities Management Division
Ms Deidre Gerathy, General Manager, Corporate Services Group
Mr David Pearl, Social Policy Division

Outcome 3—Effective taxation and retirement income arrangements

Output Group 3.1 Revenue Group

Mr Nigel Ray, Acting Executive Director
Mr Mike Rawstron, General Manager, International Tax and Treaties Division
Ms Jo Laduzko, Manager, International Tax and Treaties Division
Mr Jonathon Rollings, Manager, Tax Design Division
Ms Christine Barron, General Manager, Indirect Tax Division
Mr Tony Free, Manager, Indirect Tax Division
Ms Sue Vroombout, Manager, Personal and Retirement Income Division
Mr Trevor Thomas, Principal Adviser, Personal and Retirement Income Division
Mr Mark O'Connor, Principal Adviser, Personal and Retirement Income Division
Mr Tony Coles, Manager, Personal and Retirement Income Division
Mr Colin Brown, Manager, Tax Analysis Division
Mr Damien White, Manager, Tax Analysis Division
Mr Marty Robinson, Senior Adviser, Tax Analysis Division
Mr Phil Gallagher, Manager, Tax Analysis Division
Mr Matthew Flavel, Manager, Business Tax Division
Mr Anthony Regan, Manager, Business Tax Division
Mr Raphael Cicchini, Manager, Business Tax Division
Mr Graeme Davis, Principal Adviser, Business Tax Division

Outcome 4—Well Functioning Markets

Output Group 4.1 Markets Group

Mr Jim Murphy, Executive Director
Mr Geoff Miller, General Manager, Corporations and Financial Services Division
Mr Andrew Sellars, Senior Adviser, Corporations and Financial Services Division
Mr Bede Fraser, Manager, Corporations and Financial Services Division
Ms Marian Kljakovic, Manager, Corporations and Financial Services Division
Mr Michael Lim, Acting Manager, Corporations and Financial Services Division
Ms Kate Preston, Acting Manager, Corporations and Financial Services Division

Mr Steve French, General Manager, Competition and Consumer Policy Division
Mr Glen McCrea, Senior Adviser, Competition and Consumer Policy Division
Ms HK Holdaway, Manager, Competition and Consumer Policy Division
Mr Scott Rogers, Senior Adviser, Competition and Consumer Policy Division
Mr James Chisholm, Manager, Competition and Consumer Policy Division
Mr Brad Archer, Manager, Competition and Consumer Policy Division
Mr Patrick Colmer, General Manager, Foreign Investment and Trade Policy Division
Mr Paul Madden, Program Director, Standard Business Reporting
Mr Peter Martin, General Manager, Australian Government Actuary
Australian Accounting Standards Board
Professor David Boymal, Chairman
Mr Angus Thomson, Technical Director
Australian Bureau of Statistics
Mr Brian Pink, Australian Statistician
Mr Peter Harper, Deputy Australian Statistician, Population, Labour, Industry and Environment Statistics Group
Mr Ian Ewing, Deputy Australian Statistician, Macroeconomics and Integration Group
Ms Susan Linacre, Deputy Australian Statistician, Social Statistics Group
Ms Janet Murphy, First Assistant Statistician, Corporate Services Division
Mr Garth Bode, First Assistant Statistician, Social Statistics Division
Mr Paul Lowe, Assistant Statistician, Population Census Branch
Ms Debra Foggin, Chief Finance Officer
Ms Gillian Nicoll, Assistant Statistician, Office of the Statistician
Ms Beverley Forner, Chief Finance Officer
Australian Competition and Consumer Commission
Mr Graeme Samuel, Chairman
Mr Pat Walker, Commissioner
Dr Stephen King, Commissioner
Mr Brian Cassidy, Chief Executive Officer
Mr Adrian Brocklehurst, Chief Financial Officer
Mr Richard Chadwick, General Manager, Adjudication
Mr Michael Cosgrave, Group General Manager, Communications
Mr Joe Dimasi, Executive General Manager, Regulatory Affairs Division
Mr Scott Gregson, General Manager, Enforcement, Canberra
Mr Tim Grimwade, General Manager, Mergers and Assets Sales
Ms Helen Lu, General Manager, Corporate
Mr Mark Pearson, Executive General Manager, Enforcement and Compliance
Mr Nigel Ridgeway, General Manager, Compliance Strategies
Mr Tim Holland, Acting General Manager, Mergers and Assets Sales Branch
Ms Rose Webb, General Manager, Coordination Branch
Mr Richard Hayes, Regulatory Development Branch

Australian Office of Financial Management

Mr Neil Hyden, Chief Executive Officer
Mr Michael Bath, Director, Financial Risk
Mr Pat Roccosta, Chief Financial Officer

Australian Prudential Regulation Authority

Dr John Laker, Chairman
Mr Ross Jones, Deputy Chairman
Mr John Trowbridge, APRA Member
Mr Tom Karp, Executive General Manager, Supervision Support Division
Mr Charles Littrell, Executive General Manager, Policy, Research and Statistics

Australian Securities and Investments Commission

Mr Tony D'Aloisio, Chairman
Mr Jeremy Cooper, Deputy Chairman
Ms Belinda Gibson, Commissioner
Mr Malcolm Rodgers, Executive Director, Strategy
Mr Justin Owen, Manager, Government Relations
Mr Jon Taylor, Manager, Strategic Communications
Mr Stephen Woodhill, Executive General Manager, Corporate Affairs
Ms Emma Forehan, Media Adviser

Australian Taxation Office

Mr Michael D'Ascenzo, Commissioner
Ms Jennie Granger, Second Commissioner
Mr Bill Gibson, Acting Second Commissioner
Mr Greg Burgoyne, Chief Finance Officer
Mr Neil Oleson, Deputy Commissioner
Mr Mark Konza, Deputy Commissioner
Ms Raelene Vivian, Chief Operating Officer
Mr Shane Reardon, Deputy Commissioner

Commonwealth Grants Commission

Mr John Spasojevic, Secretary
Mr Phil Parkins, Director, Corporate Services

Inspector-General of Taxation

Mr David Vos, Inspector-General
Mr Rick Matthews, Deputy Inspector-General

National Competition Council

Mr John Feil, Executive Director

Productivity Commission

Mr Gary Banks AO, Chairman
Mr Bernie Wonder, Head of Office
Dr Ralph Lattimore, Assistant Commissioner

Superannuation Complaints Tribunal

Ms Jocelyn Furlan, Acting Chairperson

Takeovers Panel

Mr Allan Bulman, Director

Mr Alan Shaw, Counsel

CHAIR (Senator Hurley)—I declare open this meeting of the Senate Standing Committee on Economics. The Senate has referred to the committee the particulars of proposed expenditure for 2008-09 and certain other documents for the portfolios of Innovation, Industry, Science and Research; Resources, Energy and Tourism; and Treasury. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee is due to report to the Senate on 24 June 2008 and has fixed Friday, 1 August 2008 as the date for the return of answers to questions taken on notice. Today the committee will begin by examining the Australian Competitive and Consumer Commission and continue in the order shown on the agenda.

Under standing order 26 the committee must take all evidence in public session. This includes answers to questions on notice. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The Senate, by resolution in 1999, endorsed the following test of relevance of questions at estimates hearings: any questions going to the operation or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purpose of estimates hearings. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. The Senate has also resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. Any claim that it would be contrary to the public interest to answer a question must be made by the minister and should be accompanied by a statement setting out the basis for the claim.

[9.03 am]

Australian Competition and Consumer Commission

CHAIR—I welcome Senator Sherry, representing the Minister for Competition, Policy and Consumer Affairs, and the officers of the ACCC. Minister or officers, do you wish to make an opening statement?

Senator Sherry—I do not.

CHAIR—Mr Samuel?

Mr Samuel—No, I do not.

CHAIR—Thank you. I will begin questioning with Senator Chapman.

Senator CHAPMAN—Mr Cassidy and Mr Samuel, can I take you back to the Senate economics committee inquiry into petrol pricing of 2006, and in particular the hearings on Thursday, 19 October, where I asked you both questions in relation to the Western Australian FuelWatch legislation. I asked you if you had reached any conclusions as to whether it keeps prices lower on average, keeps them higher, or stabilises them at a higher or lower level than might otherwise be the case. Mr Cassidy, in response to that you said, *inter alia*:

First, we have a worry that the Western Australian arrangements have severely limited the role of independents in the Western Australian fuel market, in particular the 24-hour rule. We have been told by the independents themselves that the 24-hour rule has somewhat restricted their ability ... to be a competitive force in the market, mainly because of the way the independents work. For example, say they manage to get a load of cheap fuel one way or another, they wait for the right opportunity in the market on a particular day to drop their price and pick up market share. With the 24-hour rule, they cannot do that because they have to give 24-hours notice of what their price will be the following day.

Later, you went on to say:

We are doubtful, at the very least, about just what impact the Western Australian arrangements have had on price levels in Western Australia.

And then, Mr Samuel, you referred to the May 2005 Northern Territory inquiry into fuel prices that did not recommend introducing the Western Australian arrangements and you also referred to the April 2006 Queensland parliament petrol inquiry. You quoted from that, saying:

The committee note that the Western Australian legislation has impacted adversely on independent fuel retailers. ... The committee conclude that legislation modelled on these provisions should not be introduced in Queensland.

You also referred to the report by the National Competition Council and you quoted that, saying of the council, in regard to Western Australia:

... its concerns were heightened by fines imposed on a retailer in July 2005 for lowering price. Such an outcome does not appear to promote competition and consumer interests. The Council thus confirms its 2004 assessment that Western Australia has not met its CPA clause 5 obligations in this area.

You also referred to your own inquiry, the *Terminal gate pricing arrangements in Australia and other fuel pricing arrangements in Western Australia*, which was also negative about the Western Australian legislation. Mr Samuel, you said:

... if you take steps to endeavour to regulate that—

that is, the market—

or to diminish the price cycle, invariably what will occur is that the price will be set, on average, at a higher level, and those who take advantage of being informed and purchase at the lower points of the cycle will suffer loss.

... ..

Those who advocate attempts to remove the price cycle fail to understand that the removal of the price cycle is actually operating to the detriment of consumers ...

Can I ask what has changed, given your recent apparently sympathetic view towards Fuelwatch?

Mr Samuel—Mr Cassidy will answer first and then I will deal with the broader issue.

Mr Cassidy—You are quite right, and I note you have been reading from pages E-19 and following of the transcript of our appearance on 19 October. You raised two issues in relation to my comments. The first was the issue of independents and FuelWatch's impact on them. We had two main propositions relating to independents. At the time of that hearing we had been told by independents in WA that FuelWatch was making things difficult for them for the sort of reasons that you alluded to—their inability to be able to discount in the course of the day which, because of the arrangements relating to Informed Sources in particular, which we will no doubt get to, and the independents not being covered by the Informed Sources arrangements so that they do not transmit prices electronically but rather their prices are picked up by what we call a motorbike brigade, means there is potentially an opportunity for them to discount prices and perhaps have a two- or three-hour window before competitors, including the larger competitors, match them.

We have had that proposition put to us before we appeared before this committee in 2006. We had it put to us again during the course of our petrol inquiry last year. The other proposition that was particularly put to us during the course of our petrol inquiry last year was what has come to be called the rolling price leader issue. That is to say that under FuelWatch the majors have the ability to significantly underprice some of their sites so that in the top 10, top 50 or top 100 listings they have a certain number of sites which appear as being cheaper sites and, therefore, the argument goes that they leave the impression with motorists that chain X are the ones that have the cheapest prices, even though they might have cheaper prices at selected sites, but other sites may be somewhat dearer.

So we had these two propositions which were being put to us by independents and, as I say, the first of which we referred to in that transcript you read from. The issue we found was that, when we did our inquiry last year, we were presented with data relating to Western Australia and the experience of independents in Western Australia. On the basis of the data we could not see that the experience of independents in Western Australia under FuelWatch had been any worse than the experience of independents across Australia generally.

As we discussed during that 2006 inquiry, independent fuel stations—by which I mean not the independent chains but the actual sole owner type arrangements—have been in steady decline across Australia for a number of years. The evidence that we had from the Department of Consumer and Employment Protection in Western Australia showed that while there has been a decline in the number of independents in Western Australia, (a) that decline has been no worse than the decline in the rest of Australia generally, and (b) in a relative sense independents seem to have done not too badly in Western Australia, because if you look at their share of the total number of service stations in Western Australia, it has actually gone up marginally during the period following the introduction of FuelWatch.

Senator CHAPMAN—When you say 'marginally', by how much?

Mr Cassidy—Fifteen to 17 per cent; 15 per cent in 2001 and 17 per cent in June 2007. On the one hand we had these propositions, and you could understand the propositions and the

argument that was being made, but on the hard evidence that we were given during our inquiry last year we just could not find any evidence that independents had been adversely affected by FuelWatch. Hence, if you look at our report from our inquiry last year, I suppose you would have to say it is a bit ambivalent in relation to independents. In particular, we said it is difficult to isolate what effect FuelWatch alone has had on the viability of independents, because on the one hand we had these quite logical propositions being put to us about what effect FuelWatch might have on independents, but on the other we could not see it in the data. The actual hard data—the facts, if you like—do not show any adverse impact on independents as a result of FuelWatch.

The second issue you raised with me in terms of my comments is the effect of FuelWatch on prices in WA. The point I was making at the time is that there were a number of things that happened in Western Australia in relation to petrol, fuel, in the early 2000s period. When I say a number of things, there was of course the introduction of FuelWatch, what was then called the 24-hour rule, in January 2001. There was the introduction of the maximum wholesale price arrangement. There was the introduction of a fifty-fifty rule, whereby petrol retailers, even those bound to the majors, were allowed to purchase at least 50 per cent of their petrol from another supplier. There was the introduction of the Western Australian fuel standards, ahead of the introduction of national fuel standards. There was the entry of Coles, and I particularly mention Coles because, unlike Woolworths, who entered WA over a period of time, service station by service station, Coles actually made a significant entry to WA over a relatively short period in late 2003. The point I was making is that you need to be very careful in looking at the raw data for WA and trying to discern price effects in saying, ‘Okay, this price effect is as a result of this particular event.’

Senator CHAPMAN—But not—

Mr Cassidy—If I can just finish. I concede—maybe I was wrong in this and this shows the error of what I was trying to warn against—I was a bit jaundiced in the comment that I made in relation to FuelWatch and prices, simply because my feelings were at the time that it was probably the entry of Coles that had a more significant impact on prices than FuelWatch. Nonetheless, the basic point I was making, if you look at what I said, is that you need to be very careful in looking at the raw data to decide the price effects of any particular measure when you have had at least half a dozen things happening around the same time.

If I might say, taking us to our report last year, that is why the econometric work that we did last year is important, because econometrics is a way of looking at that sort of price series and discerning what the different impacts are from different events. If you like, it is a way of unpicking the data. We did not do that before then, and we certainly did not do it earlier, because with FuelWatch coming in in early 2001 we did not have a sufficient run of data, for argument’s sake, in our report that we did in December 2002 where we also commented on FuelWatch. At that stage we had about 12 months of data on FuelWatch, which is not enough for econometric analysis.

That was the point I was making in relation to the impact of FuelWatch on prices in WA: that you need to be very careful in looking at the raw data and attributing that to FuelWatch, to Coles or to anything else for that matter, because there were about five or six different things that were bearing on the price information at the time.

Senator CHAPMAN—Mr Cassidy, if I might intervene, taking into account what you have just said, in answering my question at that time that it was Coles rather than FuelWatch that impacted on the prices, you said: ‘The next question, if it was FuelWatch, is: why did it take two or three years for those arrangements to actually start to impact on the price relativities between say Perth, Sydney and Melbourne?’ That leads to the conclusion that you at that time thought it was more likely to be Coles impacting on the market than FuelWatch, because it was shortly after Coles came into the market.

Mr Cassidy—Indeed, it did. I am quite open. As I say, I was falling into the trap I was warning against perhaps, but at the time I thought it was most likely Coles’s entry that was the most significant factor. It is interesting that in the econometric work that was done for our report last year we did find a price effect as a result of the Coles entry, but (a) it was relatively small, and (b) it was less than the price effect of FuelWatch. At the time, I readily agree with you—I did not actually say it in evidence—my feelings were that it was probably the entry of Coles that had the major impact on prices in WA, but I have been subsequently proven wrong.

Senator CHAPMAN—Mr Samuel.

Mr Samuel—We have to go back to May-June of 2007 and the request that I made on behalf of the commission to the then federal Treasurer, Peter Costello, for approval to conduct an inquiry under part VIIA of the Trade Practices Act into retail prices of unleaded petrol in this country. At the time when approval to that was given and it was made public, there was a significant response to say that we had had 46 inquiries, including an inquiry back in August through to October 2006 by the Senate committee on economics into petrol and what would this inquiry lead to.

The purpose of the 2007 inquiry was to conduct, as I described at the time, the most rigorous, the most analytical and the most robust analysis of petrol prices, and particularly unleaded petrol prices, in this country that I suggest had ever occurred in recent decades, particularly using the powers that we had under part VIIA to subpoena evidence, whether in the form of documentary evidence and data, or in the form of evidence that would be given under oath at public and sometimes private hearings. I have to say to you that that was the critical intervention that occurred between the views that we expressed—that is, the ACCC expressed—to the Senate committee in 2006 and the views that we started to form through the second and third quarters of 2007, leading to the report that we submitted to the federal Treasurer, or the Minister for Competition Policy and Consumer Affairs, as it turned out at that stage, in December 2007.

We entered that inquiry with a vast array of reports, advices and submissions that had been made in previous inquiries. In the context of the ACCC of more recent times—that is, in this current decade—we had had a price variability report, which I think occurred in 2000-01. We had the terminal gate pricing report of 2002. We had our analysis of shopper docket which had occurred in 2004, and then we had the Senate committee which had occurred in 2006. That was a lot of work and a lot of reports over a period of time, but two things had changed. The first is that the market itself had developed and had changed since 2000-01, and importantly we had the inquiry and the powers of the inquiry under part VIIA, which was the first such inquiry that had been conducted under that part of the act by the ACCC with our ability to subpoena evidence.

We took evidence from a vast array of parties. We took evidence from independents, from the major oil refiners, from the major retailers, from parties who were not presently in the market in Australia but were considering the possibility of entering the market, and importantly, we took evidence from Informed Sources. Informed Sources is the entity that operates as the collective, if you like, sponsored by the major refiners in this country and the major retailers, Coles and Woolworths, to aggregate pricing information and to disseminate it amongst its sponsors, its subscribers, the major refiners and the two major retailers so that they know on a minute by minute basis the prices that are being charged for petrol by their competitor sites in every significant location in this country. That is in all the major metropolitan areas and the more densely populated regional areas of Australia, covering of the order of around 4,000 service stations. We took evidence under oath from Informed Sources, from Mr Alan Cadd. We took evidence under oath from the major retailers, from independents and from refiners, mainly in public hearing, but towards the latter part of our inquiries in October we took private evidence from them.

We called Pat Walker who was then the petrol price commissioner—if I can call him that; he will correct the title—in August 2007 in Perth and I can relate a conversation I had with Mr Walker just prior to his appearance. At that point of time I rang Mr Walker and said, ‘Mr Walker, we would like you to appear voluntarily at these hearings.’ I would have to say that he was concerned, based on the evidence that Mr Cassidy and I had given in the 2006 hearings, that the purpose of his appearing at a public hearing was for us to be highly critical of Fuelwatch and the like. I indicated to Mr Walker at the time that the view of the commission was starting to change on Fuelwatch—that we were starting to look much more favourably at the issues concerning Fuelwatch, not the least of which was because we had begun to find out a lot more about Informed Sources and the process of collaboration that occurs, facilitated by Informed Sources, involving the major refiners and Coles and Woolworths in terms of price sharing. Mr Walker appeared before the commission at an open hearing on 28 August 2007, which I guess was the first public sign that we had started to change our position on Fuelwatch and were adopting a much more open attitude to it.

If I can refer you to the report that we issued—that is, *Petrol prices and Australian consumers—report of the ACCC inquiry into the price of unleaded petrol*, dated December 2007—and in particular to page 241 of chapter 15, which is headed, ‘Measures to improve price transparency and competition’, at the foot of that page we say:

The more price transparency allows sellers to react more quickly than buyers to price movements the worse the situation is from a competition perspective. This would appear to be the current situation in markets serviced by Informed Sources. It could also extend to a lesser extent in other markets where retailers inform themselves of rival’s prices by driving around.

The direct exchange of prices by sellers alone allows a seller to lead the price up with reduced risk. If others do not respond the leader knows quickly and can reverse the price rise with little loss of price sensitive consumers. Direct exchange of prices by sellers also allows sellers to match rivals’ price cuts faster than most petrol buyers can respond to the price decrease. This helps retailers retain customers that otherwise might have been wooed away by rivals’ lower prices. If a retailer’s competitors can immediately match any price decrease by the retailer, then that price decrease is less likely to allow the retailer to win over customers from competitors. Knowing this, retailers are more reluctant to decrease

prices in search of greater sales than they otherwise would be. That would reduce incentives to compete on price and tend to harm buyers.

They are the critical paragraphs that started us to search for alternative solutions, because we started to understand a lot more clearly—with our ability to examine the retailers and examine the major refiners under oath, and to subpoena data from Informed Sources. They were the major factors that caused us to start looking at an alternative, and Fuelwatch started to loom, back in August 2007, as the alternative, and that was the issue that we then started to discuss with Mr Walker and others in Western Australia, and we started to put to the major refiners and the major retailers. It was very interesting that through the process, without exception, the major retailers and the major refiners that are sponsors of the Informed Sources service all said to us that a Fuelwatch service would not be advantageous. They all objected to the Fuelwatch service and said that they did not believe that it would be advantageous. That started to raise even more questions in our minds as to why they were so concerned about the prospect of the adoption of Fuelwatch as a service in Australia.

I would have to say to you that if you read chapter 15 of our report, as I am sure you have done, you will see the process of the inquiry that took place and why we then began to understand some of the issues that were affecting Australian consumers in terms of petrol prices, and why we started, back in August 2007, to look more favourably at the Fuelwatch system.

Senator CHAPMAN—Is it still a fact that the lower end of the price cycle, in an unregulated market, lasts longer than the higher end—which was again evidence that came forward to our committee—and therefore consumers who watch the price cycle gain the advantage?

Mr Samuel—That is a very interesting question, because it is an issue that has been raised over more recent times, particularly in the context of the debate over the Fuelwatch and the reference to the fact that Perth currently has a two-week price cycle. Interesting, the two-week price cycle in Perth did not commence until 2005, whereas FuelWatch started at the beginning of the decade. So it took five years for FuelWatch to bring about that effect, if in fact you could link FuelWatch to the development of the two-week price cycle in Perth. Trying to draw that causal link between the adoption of FuelWatch and the movement to a two-week price cycle is really drawing a long bow. There are a range of other factors that may or may not have influenced the depth and the extent of the price cycle in Perth, but we have yet to be able to establish what has caused it. One thing we can establish is that a five-year causal link is really stretching things to a limited degree.

Senator ABETZ—I have a bracket of questions. Mr Samuel, can you confirm for us that Mr Walker is appointed as a commissioner of the ACCC?

Mr Samuel—That is correct.

Senator ABETZ—Can you tell us as of what date, or Mr Walker may be able to assist us on that one?

Mr Samuel—20 March.

Senator ABETZ—Do we have a specific duty statement for Mr Walker in his role as an ACCC commissioner, or is his duty statement as a commissioner the same as every other commissioner?

Mr Samuel—Mr Walker is appointed as a commissioner of the ACCC and has the full responsibilities of an ACCC commissioner.

Senator ABETZ—So I understand.

Mr Samuel—Let me finish. Like all commissioners, individual commissioners have specific responsibilities of focus in connection with carrying out their duties of office. Let me put it in this context. A commissioner of the ACCC sits around the commission table and participates in all decision-making of the commission. A commissioner of the ACCC also sits on a number of committees of the ACCC, which are committees that do some of the detailed work before matters come before the full commission, and in that context Mr Walker sits on the RAPM Committee, the Regulated Access and Price Monitoring Committee, which deals with price monitoring.

In addition, commissioners are given specific responsibilities of focus. For example, there is a commissioner, Commissioner Dr Stephen King, who is the chair of our Merger and Asset Sales Committee. There is Commissioner Sarah Court who has just joined us, who is the chair of the Enforcement Committee.

Senator ABETZ—I was asking about Mr Walker.

Mr Samuel—I am perhaps painting a picture as you would understand. Commissioner Walker's role is to focus on issues of petrol, petrol pricing, petrol retailing, and petrol wholesaling—the whole issue of petrol in this country. That is his prime area of focus. It is his dominant area of focus but, at the same time, as a member of the ACCC he carries out the functions of an ACCC commissioner.

Senator ABETZ—Is it set down in writing what the specific duties are, or are they allocated at your pleasure, as the chairman?

Mr Samuel—I doubt it is at my pleasure. No, these are protocols that have developed over time. The commission agrees on these protocols.

Senator ABETZ—Are they written down?

Mr Samuel—I do not believe they have been.

Mr Cassidy—No, not as such. We do have publications, which we will happily give you a copy of, which set out quite clearly the structure of the commission, the structure of the committees and which commissioners are responsible for which committee, but there is no formal documentation that says, 'This commissioner, you do this' and 'This commissioner, you do that.'

Senator ABETZ—Mr Walker, can I ask you about your academic qualifications? Do you hold any bachelor degrees?

Mr Walker—No, I do not.

Senator ABETZ—Mr Samuel, does that make Mr Walker the only one on the ACCC without a bachelor degree?

Mr Samuel—I have not got that information. I think you asked that question—

Senator ABETZ—Mr Cassidy might have it.

Mr Cassidy—That is correct. You asked that question in questions on notice in the last committee.

Senator ABETZ—Will Mr Walker therefore be sitting on determinations such as mergers potentially involving such things as the Westpac and St George merger, for example?

Mr Samuel—That is correct.

Senator ABETZ—Will he cover the whole gamut of matters that the ACCC needs to consider?

Mr Samuel—That is correct.

Senator ABETZ—Mr Walker, what particular expertise do you think you would bring to the table in relation to the issue of mergers and acquisitions?

Mr Walker—In my former life I had 10 years as Commissioner for Consumer Protection in Western Australia, which is around the issue of consumer affairs, competition policy, et cetera in Western Australia, but, as to my suitability for the role, that is a decision for government.

Senator ABETZ—Absolutely. I accept that.

Mr Samuel—I might point out if I may at this point that if you examine the CVs of each of the commissioners they have a variety of tertiary training and a variety of expertise: some have been lawyers, some were practising—

Senator ABETZ—A very important qualification.

Mr Samuel—It may be.

Senator Sherry—Do not go too far on that.

Mr Samuel—Some of them have not been lawyers for three decades but still cannot shake the mantle off. Some have had legal training, some have had economics training, some have had training in public administration and some have had training in consumer affairs. We have to remember that the ACCC has a broad gamut of responsibilities covering a whole range of commercial and consumer affairs activities, and all of the commissioners make contributions to those activities.

Senator ABETZ—I agree with that, but I dare say that you would agree with me that it would be helpful if that expertise is built on a foundation of some formal training, and it would appear that that has been the case in relation to the appointment of commissioners with bachelor degrees and multi bachelor degrees in some cases. That is what Mr Walker—

Mr Samuel—I am sorry; if I could just—

CHAIR—Mr Samuel.

Senator ABETZ—I was still talking.

Mr Samuel—I beg your pardon. I am sorry, Senator.

Senator ABETZ—As Mr Walker quite rightly said, it is a matter for the government to appoint, and I do not pursue that point any further.

Mr Samuel—Perhaps I can respond on that to point out that, aside from the three commissioners that participated in the petrol inquiry last year, there is no-one on the commission that would have had the length and depth of experience in relation to petrol-pricing issues that Commissioner Walker has.

Senator ABETZ—Thank you for that. Just so I understand the entitlements of this position, there was a Remuneration Tribunal decision that was consolidated on 12 May 2008 that sets out Mr Walker's entitlements?

Mr Walker—Senator—

Senator ABETZ—I will ask Mr Cassidy. He is nodding his head. He seems to know these things. I will redirect the question.

Mr Cassidy—That is part of my lot as CEO. That is correct.

Senator ABETZ—A member of the ACCC gets the base salary that is set out in that determination, and then I note that Mr Walker is separately mentioned in relation to being the beneficiary of an accommodation allowance of \$25,500. I assume an accommodation allowance is a fancy name for people on big salaries for travel allowance?

Mr Cassidy—Basically the allowance, which you might say is not unique to Mr Walker in the commission—

Senator ABETZ—I note Mr Samuel gets one as well.

Mr Cassidy—It is basically an allowance to our commissioners who maintain a home base in, say, Melbourne or, in Mr Walker's case, in WA. It covers their living expenses to be either in Canberra or, in Mr Walker's case, in Melbourne during the majority of the week, and then in addition you will find in the tribunal's determination there is also an allowance for what is called reunion travel. I think, from memory, that is 12 trips a year.

Senator ABETZ—Of \$37,854.

Mr Cassidy—In Mr Walker's case it allows him to return to WA 12 times a year to see his family. That is what that is for.

Senator ABETZ—We have reunion travel for Mr Walker of \$37,824. We then have the accommodation of \$25,500 as well. Am I right in saying that this accommodation allowance is a fancy term for travel allowance, or not?

Mr Cassidy—I think it is a fancy term for an allowance to live. It covers—

Senator ABETZ—Is Mr Walker entitled to a separate travel allowance as part of—

Mr Cassidy—Not while he is in—I am sorry, Senator; I did not mean to cut you off.

Senator ABETZ—No, that is all right.

Mr Cassidy—Not while he is in Melbourne. The living allowance applies to him being in Melbourne. While he is in Melbourne he is not entitled to what is normally called travel allowance.

Senator ABETZ—When it tells us accommodation allowance of \$25,500, that is only for when he is living in Melbourne?

Mr Cassidy—That is right.

Senator ABETZ—On top of that, if we could say he had a stay overnight for the benefit of this Senate estimates, he would have been paid a travel allowance above and beyond that?

Mr Cassidy—That is correct.

Senator ABETZ—That is a separate item. Thank you very much. Mr Walker, are you able to give us a brief explanation of the Edgeworth cycle?

Mr Walker—It is a difficult concept, but essentially it is about the existence of duopolies and the effect of competition. There was some work being done, which I was not directly involved with, by some people in Western Australia and academics as well. I am not an expert on the Edgeworth cycle, no.

Mr Samuel—Perhaps I could get Mr Dimasi to assist on that. The reason that I can do it is because, if you are interested in the Edgeworth cycle, it formed part of this report. This report was not one in which Commissioner Walker participated. If it would be helpful for you to get an explanation of the Edgeworth cycle—

Senator Sherry—You asked a question for an explanation of the Edgeworth cycle.

Senator ABETZ—No. I asked Mr Walker.

Senator Sherry—That is not your prerogative. It is my prerogative to determine who answers questions. You have asked a question. I will just indicate that if you ask a question—

Senator ABETZ—All right. The expert Petrol Commissioner cannot tell me about the Edgeworth cycle, so pass it on to somebody who can.

Senator Sherry—If you ask a question and there is an officer here who indicates he is able to help, the officer will be made available to the committee.

Mr Samuel—What I suggest, because it would be useful to have an explanation of the Edgeworth cycle, given that it is referred to in our petrol report—

Senator ABETZ—Absolutely, and I have read that.

Mr Samuel—is that one of the commissioners who participated in that inquiry, Dr Stephen King, is sitting here, and he might have some assistance for you.

Senator ABETZ—There is about a three-page explanation attached by way of an appendix to your December 2007 report, which I have had the opportunity of perusing, and I do not want to pursue that line of questioning any further.

Senator Sherry—Senator, just be aware that if you ask a question we will be providing a full and comprehensive answer, and that will flow from whichever of the officers is appropriate and that is for me to determine.

CHAIR—That is absolutely correct.

Senator Sherry—It is for me to determine and not you to determine on the committee.

Senator ABETZ—Absolutely. It is interesting that the so-called expert, with all these ancillary benefits—

CHAIR—Senator Abetz, do you have a question?

Senator ABETZ—Yes, I do. I was wondering if Mr Walker could tell us about the endogenous selection of structural breakpoints.

Mr Samuel—Again, you are referring to—

Senator ABETZ—Wait a minute, Mr Samuel. I did not ask you. I asked Mr Walker.

CHAIR—No.

Senator Sherry—You are actually asking me.

Senator ABETZ—If somebody intervenes it is the minister, we were told, and not Mr Samuel.

CHAIR—Senator Abetz.

Senator ABETZ—I can understand Mr Samuel's desire to protect Mr Walker, but it is Senator Sherry's role.

Senator Sherry—I will invite Mr Samuel to indicate an officer who is here who can respond to your question.

Senator ABETZ—Thank you.

Mr Samuel—That is best addressed by Commissioner Dr Stephen King.

Dr King—The endogenous breakpoint analysis was further analysis that we undertook following the petrol report. What that analysis does is considers the time series data for petrol prices in Perth relative to the east coast over an approximately 10-year period from August 1998 to June 2007. The endogenous breakpoint analysis is a technique for identifying where there is a change in regime of that data. The actual test is a number of different tests that can be carried out to determine whether there are endogenous breaks. The particular test carried out here was looking at endogenous breaks on the mean of the data allowing for no trend, given that there is no trend present in the data. The results for that were reported in a press release putting out additional information that the commission released on 29 May. I am happy to give the results of that.

Senator ABETZ—Possibly that would be very helpful at a later stage, when we go into the actual analyses. Mr Walker, can you tell us when you were first made aware of a request for you to appear before the committee today?

Mr Walker—I received a phone call from a journalist who suggested that I had been invited to attend the committee hearing, had declined and was busily rescheduling appointments, which was the first I had been aware of any such—

Mr Samuel—We need to be aware that there are some personal circumstances that Mr Walker had to deal with last week.

Senator ABETZ—In that case I will not pursue that any further.

Mr Samuel—There were some family issues that made it a bit difficult.

Senator ABETZ—I accept that. We all have those circumstances that might be painted in a different light.

Senator JOYCE—Mr—

Senator Sherry—I am sorry, Chair. We have got two people competing for questions.

CHAIR—Yes. Senator Abetz, Senator Joyce wanted to pursue the endogenous point. Senator Joyce, we will return to that later. We have got until 12.30 and we will return to it.

Senator ABETZ—Mr Walker, do you agree that you are on the public record as suggesting that if the Fuelwatch scheme were adopted by the Australian government petrol might decrease by up to 5c a litre?

Mr Walker—That is not what I said, but—

Senator ABETZ—Would you agree that you are—

Senator Sherry—Hang on, Senator Abetz, he was still completing his answer.

Senator ABETZ—I am sorry. I was not aware of that.

Mr Walker—There was an article in the newspapers written by Glenn Milne and I think the subeditor gave the indication that the headline price, if I can use that term, might decrease by 5c. What I actually said was that the WA FuelWatch scheme had produced, on the analysis of the ACCC, a modest decrease in the order of 1.9c a litre on average. The discussion around 5c a litre came from the fact that I advised him that a significant benefit of FuelWatch in Western Australia was that on any given day service stations in Perth are selling petrol up to 5c a litre below the average price. So the savvy consumer using the FuelWatch information in Western Australia can consistently buy and identify petrol in the order of 5c a litre—with changes in the cycle sometimes that might depress down to around 4c a litre and sometimes push up to about six—below the average price. That was the reference there. FuelWatch provides a wonderful opportunity for consumers and motorists to identify the cheaper prices and on any—

Senator ABETZ—But—

Mr Walker—With respect, I have not finished. On any given day, they are able to make significant savings in terms of being able to identify the cheaper prices and, generally speaking, at least one-third of all the petrol stations in metropolitan Perth are selling petrol below the average price. So, on any given day consumers can be confident that by using the system they can identify savings below the average price—seven days a week, 52 weeks a year.

Senator ABETZ—Confronted with the headlines, did you issue an immediate media release to clarify the situation?

Mr Walker—No, I did not. My experience is that that is seldom useful.

Mr Samuel—I might say that if I were to issue a media release every time that I was misquoted or taken out of context, I would be spending all my time issuing correctional media releases.

Senator Sherry—There are a few of us in that boat.

Mr Samuel—It is not a very productive exercise.

Senator BRANDIS—You have been very unambiguous in some of your earlier statements.

Senator ABETZ—Mr Walker, do you agree that you said your aim was to save motorists between \$160 million and \$900 million a year?

Mr Walker—No, I do not recall having said that.

Senator ABETZ—Did Mr Milne pluck that out of the air?

Mr Walker—Mr Milne might have made some jumps in terms of references to what 1c a litre represents. In our conversation I have no doubt that I would have indicated to him that 1c a litre of unleaded petrol in Western Australia is of the order of \$16 million, so if the headline price of Western Australian fuel had come down 1c a litre, that represents a saving to motorists. That is a transfer, if you like, from the petrol industry to the pockets of motorists of the order of \$16 million. Clearly, across Australia, 1c a litre is about \$200 million for unleaded petrol—or of that order.

Senator ABETZ—Can you repeat that for me again?

Mr Walker—I think 1c a litre represents approximately \$194 million or thereabouts for unleaded petrol across the nation per year.

Senator ABETZ—Can I ask you specifically: did you mention the figures of \$160 million and \$900 million to Mr Milne when you spoke with him on or about 29 March?

Mr Walker—I do not believe so.

Senator ABETZ—Your explanation for this figure, where he says, ‘Mr Walker, the architect of FuelWatch in his native state of Western Australia said his aim was to save motorists between \$160 million and \$900 million a year,’ was an extrapolation from the cents per litre that you discussed with him?

Mr Walker—I am not sure. You will need to ask Mr Milne.

Senator ABETZ—How much does 1c a litre equate to? Is it about \$194 million a year?

Mr Walker—In unleaded petrol?

Senator ABETZ—Yes, in unleaded.

Mr Walker—That is about that figure.

Senator ABETZ—If we were to round that up, just for ease of maths, to \$200 million, 4c a litre would save us \$800 million, and chances are that 5c a litre would come out at about \$900 million. So you say that you never offered to Mr Milne the sum of 5c or \$900 million?

Mr Walker—I believe I already indicated that I said to Mr Milne quite clearly that in Western Australia generally the cheapest petrol in Perth is of the order of 5c a litre below the average price in Perth, so a savvy motorist in Perth can consistently—and this is a great strength of the system—seven days a week, 52 weeks of the year, identify petrol below the average price. And most people would say that that is significantly below the average price. And that cheapest price tends to be on average 5c a litre below the average price.

Senator ABETZ—Did you check the prices yesterday in Perth before coming here?

Mr Walker—No, I did not. What I would add is that any daily comparison is irrelevant because of the different price cycles that operate. Traditionally, the eastern states capital cities have a seven-day cycle and Perth has a 14-day cycle, so you will be able to quote me days when the Perth average price is greater than the eastern states capital cities and I can quote you days when the reverse occurs.

Senator ABETZ—Did you say a one-day analysis like yesterday's pricing is irrelevant?

Mr Walker—It is a—

Senator ABETZ—Did you say 'irrelevant'?

Mr Walker—It is irrelevant if the intention—

Senator ABETZ—I do not want—

CHAIR—No. Senator Abetz.

Mr Walker—Let me finish.

CHAIR—Let him answer the question.

Senator ABETZ—We are trying to assist each other. I do not want to put words into his mouth.

CHAIR—In that case, let him speak, please.

Senator ABETZ—If he did not say 'irrelevant', I would like to know the word that was used.

CHAIR—Senator Abetz, can you listen to the answer please?

Mr Cassidy—If I can help. Yes, I would say irrelevant. One day's figures are useless.

Senator ABETZ—Can you then explain to me—and that is very helpful—as to why the ACCC put out a useless, irrelevant press release which says, on its second page, 'Analysis of petrol pricing in a 9 am snapshot today shows the Coles Express sites have set the highest prices in four capital cities.' If a day snapshot is irrelevant and useless, surely a snapshot at 9 am of only four sites is even more useless and irrelevant. So why would the ACCC in a media release seek to rely on such useless and irrelevant information?

Mr Cassidy—Because, lying behind that was two weeks of consistent data showing the same thing—that Coles was leading prices in four major capital cities.

Senator ABETZ—It says 'today'.

Mr Cassidy—Yes, it says 'today'. I am telling you that the analysis showed that they had been doing that for two weeks.

Mr Samuel—If you take note of the transcripts of all the media interviews that were given by Commissioner Walker and me following the issue of that media release, you would appreciate that the purpose of that release was to indicate that for a period of two weeks before Coles had been leading the price up—hiking the price, as we describe it—in a somewhat unusual fashion. They had been the price mover in a number of capital cities. It was to draw the attention of Australian motorists to just that.

Senator LUNDY—A bit of an own goal there.

Mr Samuel—I would also indicate that, if you as a motorist are going to take into account the 4c a litre discount offered by the shopper docket, you need to be aware that Coles was hiking the price up before any of their competitors during that two- to three-week period.

Senator ABETZ—That is another issue.

Senator LUNDY—That is zero, Senator Abetz.

Mr Cassidy—I hope I am not being unhelpful in saying this but, to throw another useless figure into the ring, over four of the last six months Perth has on average had the lowest prices.

Senator ABETZ—By how much?

Mr Cassidy—I could take that on notice and give you exact figures, but in four of the last six months Perth has had the lowest prices.

Senator ABETZ—Why do you have to take that on notice?

Mr Cassidy—Let me say I do not regard that as being a particularly useful figure either. We could sit here all day exchanging figures like that, which are not terribly useful, because of the volatility in petrol prices.

Senator ABETZ—We will develop that later on. I try to be a guardian of Australian taxpayers' money, and we will be spending about \$21 million on a scheme that according to the ACCC had the one guarantee, which I got out of your report, that petrol prices will not go up because of Fuelwatch. So, having spent that, we get a guarantee the price will not go up because of it, which does not seem a good expenditure to me, but we will get on to that a little bit later.

Mr Samuel—At what point in time would you like me to explain to you the real purpose of Fuelwatch? There has been an enormous amount of focus on 1.9c a litre and 0.7c a litre, which seems, as I have been trying to say on many occasions over recent weeks, to miss the whole point of Fuelwatch. I am happy to address that now or address it at a later point of time, but at a point of time we need to understand the purpose, as described in chapter 15 of our petrol inquiry report.

Senator COONAN—Mr Samuel, if you feel that there is some particular information that would be helpful to the committee that might save us going round in circles trying to progress it, then it would be good for you to do it now.

Senator ABETZ—Chair, if you agree, I think it would be helpful at this juncture if Mr Samuel were to go through that information for us.

CHAIR—I am in the hands of the committee. If you ask Mr Samuel, I am happy to allow it.

Mr Samuel—We need to put three things in context. There has been an enormous focus on one particular half-page of our report, the econometric analysis and appendix S of that report. The econometric analysis which was described in appendix S was undertaken with one purpose in mind, and that was to determine whether or not FuelWatch had caused any harm to Perth motorists since its introduction. It was designed to assess whether FuelWatch had caused any increase in prices to Perth motorists. In fact, the econometric analysis

demonstrated that FuelWatch had produced a statistically significant reduction in margins in Perth prices of the order of 0.7c to something in excess of 1.9c a litre. I can go into the details of that econometric analysis, but it might be better if Dr King were to do that for you and to explain what it is about. Let me point out that that is but half a page of our report and, in particular, a half-page of chapter 15 of the report, which focuses on price transparency and competition.

Senator JOYCE—Mr Samuel, your significance—

CHAIR—No.

Mr Samuel—Please let me finish.

CHAIR—Mr Samuel was asked to give an explanation.

Senator JOYCE—I have something on page 4, if you want to ask him that.

CHAIR—Mr Samuel was asked to make an explanation. Please let him continue.

Senator JOYCE—If you want to ask him that question.

Senator ABETZ—Let us have the full explanation.

Mr Samuel—I will now get to the real purpose of Fuelwatch. Fuelwatch is about dealing with the issues that I described in my answer to Senator Chapman's question, which is the Informed Sources structure and the extraordinary power that Informed Sources and the process that is sponsored by its subscribers, the major oil companies and the major retailers, Coles and Woolworths—

Senator JOYCE—I am sorry, what page?

Mr Samuel—I referred to that in my earlier answer to Senator Chapman's question—pages 241 and 242. I pointed out there, and I will not repeat it all again, that the direct exchange of price by sellers, to paraphrase it, gives enormous power to sellers as distinct from buyers. We have described the Informed Sources major refiner and major retailer sponsored process as being as close to illegal collusion as you can get, but it is not illegal. That is the advice that we received and it was the advice that we received during the course of the commission of inquiry in consultation with our legal advisers as we were going through the process of the inquiry itself. We say that the Informed Sources structure is not illegal, but it is as close to illegal collusion as you could potentially get in this market. What it does is that it puts enormous power into the hands of the sellers.

What is Fuelwatch designed to do? Fuelwatch is designed to transfer that power from the sellers of petrol—the major oil companies, the major retailers and other retailers—to the buyers, the motorists. How does it do it? It does it by two processes. One is transparency and the other is the ability of consumers to use the additional information flowing from that transparency to their own benefit.

How do we achieve that? At 2 pm each day every retailer that is subject to the Fuelwatch system must disclose to the ACCC by private tender, and that is the best way to describe it, the price that they will be charging for their various grades of petrol and diesel from 6 am the next morning for the next 24 hours. That then is posted on an ACCC website and will be made available by email, by SMS and by other means to subscribers, who will freely be able to

subscribe to this information. That is the transparency element. The transparency is absolutely of little value if consumers cannot take advantage of it—for example, if in fact what it does is say to consumers, ‘Here is the information, but it may be absolutely irrelevant to you if you go down the street in 15 minutes time to buy because the price will have changed on you.’ What it does is that it gives warning of what prices will be tomorrow. It gives the transparency, but it also gives the consumers the real ability to take advantage of that transparency.

There are two impacts. One is related to price hikes which catch consumers unawares, particularly in circumstances where they will go to work of a morning and see a price on the board at the time and on their way home they see the price has lifted by as much as 15c a litre or whatever it might be. Now they will have 15 hours warning of a price hike about to come. More importantly, they will know that in that 15-hour period they will be able to buy petrol at the low price that exists until 6 am tomorrow morning, and indeed they may be able to continue to buy petrol from 6 am tomorrow at that low price from service stations who in that private, secret tender will not have known about the price hike and will have kept their prices low, so they will have that advantage. Throughout each day consumers will have a 24-hour period to decide when and where to buy petrol. If we want to quote statistics and take just one day, let me take yesterday’s numbers. For example, in Victoria—

Senator ABETZ—Wait a minute.

Mr Samuel—This will give you an idea of the power that it gives. In Victoria the minimum price was 148.5c and the maximum price was 171.2c, so there was the differential if you used the website to be able to buy at 148.5c or to pay the maximum price of 171.2c.

In South Australia the minimum price was 149.9c and the maximum was 176.3c. That was the price differential. If you are unlucky enough to go past the service station at 176.3c and not know that you could have otherwise bought at 149.9c—well, you can work out the difference there. We are talking about 26c a litre being what it would have cost the motorist by that process.

This is a consumer empowerment exercise. It is designed to empower consumers to take advantage of a competitive marketplace. But, importantly, by the process of secret tender that is required to be made at 2 pm each day, it puts the real mettle on the sellers of petrol to get their prices as keen as possible. It was best explained to me by Michael Luscombe, the CEO of Woolworths, when he said to me: ‘Graeme, Fuelwatch is going to operate to the disadvantage of consumers. If I have a site and I post a price at 2 pm today that is 5c higher than my competitor’s site down the road, then the consumers will have to pay 5c more for their petrol.’ I said to him: ‘No, Michael, they will go down the road and you just won’t sell any petrol. What that says to you is to be keen on your tender at 2 pm today. Get your price right. If you are too high you will lose sales. You might have a higher margin, but you will have a higher margin and almost no sales. If you are too low on your price then you will get far more sales.’

That is the benefit of this scheme. It is not about 1.9c or 0.7c or whatever econometric modelling might be able to show. The purpose of that modelling was to enable us to be satisfied that no harm had come to Australian motorists through the adoption of the

FuelWatch scheme in Perth. If the commissioners that sat on that inquiry had found through that econometric modelling that Perth motorists had suffered harm as a result of the introduction of FuelWatch, we would never have recommended it to the Australian government in our report.

Senator BRANDIS—The problem I have with that very long answer—

Mr Samuel—I am sorry. I will try to keep the answers brief for you.

CHAIR—Senator Brandis, Mr Samuel was invited to make a statement. It was not an answer to a question. Mr Samuel was invited to give an explanation of Fuelwatch.

Senator BRANDIS—I am not criticising the length of the answer. The problem I have with that very full answer that you just gave is you never said anything like that to this committee's inquiry on petrol pricing in Australia in October 2006. In fact you said the opposite. You said the opposite and Mr Cassidy said the opposite. Would you like me to direct you to the evidence you gave to this committee?

Mr Samuel—It was given before you arrived and we have already addressed that.

Senator BRANDIS—I want to take you to some more. How do you explain saying one thing today and the opposite in October 2006?

Mr Samuel—I could repeat the answer I gave to Senator Chapman. I am happy to do that and so could Mr Cassidy, but the one intervention was the inquiry under Part VIIA of the Trade Practices Act for which we sought the approval of the then federal Treasurer to undertake. If the commissioners that sat on that inquiry, if the full ACCC that ultimately endorsed this report that was then produced and presented to the federal government, had taken a position at the commencement of that inquiry that all previous positions that we had adopted in relation to petrol pricing were fixed and form and were not to be challenged, then frankly the inquiry would have been a complete and utter waste of time.

The purpose of the inquiry was to challenge all the advice that we had previously given in 2000, 2002 and 2004 on shopper docketts and in 2006 in the committee of inquiry at which you were present. The purpose was to challenge that, to question it, and more importantly—this was the most important element—to use our powers of subpoena under Part VIIA of the Trade Practices Act, which had never been used before, to access data and information that we had never had access to before, and to subpoena witnesses to give evidence under oath, which we had never been able to do before, so that we could get to the bottom of what was happening in petrol pricing in this country.

That is the reason I read liberally from pages 241 and 242, because what we discovered then was that the Informed Source structure, sponsored by the major refiners and the major retailers, was a structure, which is as I read before you arrived at the committee, that was causing harm to Australian motorists and was causing damage to the competitive structure of retail pricing in this country. It was that finding which is set out on pages 241 and 242 of the report that then said to us that we needed to look at something else and that then moved us to examine the FuelWatch structure.

Senator BRANDIS—I am sure nobody, and certainly not me, would have any problem with the notion of an agency such as yours looking at an issue with fresh eyes, but it goes way

beyond that. You have appeared at this estimates committee for as long as you have been the chairman. Your predecessor, Professor Fells, did the same. Mr Cassidy has appeared for certainly as long as I have been in the Senate and no doubt much longer. You and Mr Cassidy and others from the ACCC appeared before the specific inquiry into petrol pricing in 2006 and the ACCC's position on FuelWatch, on the 24-hour rule, on the philosophy of interfering in the market by limiting price variability within the cycle, has been consistent and emphatic every time you have addressed this issue. Do you really expect us to believe that on the basis of the Part VIIA inquiry, to which you have referred, the entire electoral capital of the ACCC in relation to the issue of limiting variability in the fuel price has been thrown out the window?

Senator Sherry—Just before the witnesses respond, and I am more than happy for them to respond, I will just point out that the points that you are making and the 2006 hearings in particular—I know you were not here, so I think it is useful that you are aware of this—

Senator BRANDIS—I was watching it on the monitor.

Senator Sherry—Okay. If you want a repeat in perhaps greater length of the half-hour's exchange that occurred at the opening of the hearing on the same issue, that is your prerogative. I am more than happy for the witnesses to do that, to go back over the same ground that Senator Chapman covered. I am more than happy if that is what you want, but that is a call for you and the other members of the committee.

Senator BRANDIS—Thank you for that observation. I am not proposing to do that. I must say with all due respect to Mr Samuel that I was very dissatisfied with the answer given to Senator Chapman, as I am dissatisfied with the answer repeated now for me.

Senator Sherry—I am more than happy for the witnesses to respond.

Mr Samuel—I am disappointed that you are dissatisfied, but I am afraid that is my answer, and the answer is based on a very rigorous analysis. As I said to you, if the commissioners that had entered into this inquiry, Commissioner John Martin, Commissioner Dr Stephen King and me, had gone in with a closed mind on any issue at all we would have done an injustice to the inquiry, and we would have done an injustice to the powers that were conferred upon us by then federal Treasurer, Peter Costello, powers of subpoena, powers of ability to obtain evidence from Informed Sources that had never been available to us before and powers to obtain data that enabled us to undertake econometric modelling, which actually then contradicted a lot of the information and evidence that were given to you, not by us, but by others at the Senate economics committee inquiry into petrol pricing through 2006. It is very interesting, but when you have that power to obtain information, that formal power under Part VIIA of the act, you have a much greater ability to actually get to the truth of what is occurring rather than to be relying upon information provided by many who have got a substantial vested interest in the outcomes of any recommendations that we might make.

I might say that the one party that had no vested interest at all in changing our position in relation to any matter as set out in this report was the ACCC. If anything, we had a vested interest in maintaining our previous positions. We actually took a position that said that we will give an honest, rigorous, robust analysis of what is occurring in petrol pricing. We did

that, even if it meant contradicting and changing the position that we had adopted in previous inquiries.

Senator BRANDIS—Mr Samuel, you have been consistent and emphatic. Those who were not at those earlier hearings need to appreciate how profoundly committed the ACCC was to that view, and I must say for you now to be telling us that the ACCC has had, as my friend Senator Joyce says, a moment of epiphany is about as credible as Mr Rudd saying that he is suddenly an economic conservative.

Mr Samuel—The moment of epiphany, as Senator Joyce describes it, is a pejorative expression to cover a six-month intensive inquiry undertaken by three commissioners of the ACCC with extensive economic, legal and analytical experience, supported by a team of about 20 analysts, economic, legal and otherwise, hearings conducted right throughout Australia through every capital city and significant regional centres throughout Australia, volumes of material which would test the load-bearing capacity of this room and enormous econometric analysis, all of which was designed to try to determine what was the real truth regarding petrol pricing in this country.

I cannot say any more than that. I can say to you that this report was adopted unanimously by all commissioners of the ACCC before being presented to government, so therefore it is the unanimous view of the commissioners at that time. The views that have been more recently expressed by the commission, including by me as the chair of the commission, have also been unanimously endorsed by all members of the commission. They are not the same views as were expressed in 2000. They are not the same views as were expressed in 2002. Nor are they the same views as were expressed in 2006. That is the very great advantage of Part VIIA and the powers that were conferred upon us by federal Treasurer Peter Costello back in June 2006, the ability to get to the truth.

Senator ABETZ—Mr Samuel, thank you for that extensive information in relation to the 2007 report. Was one of the options suggested or considered by the report the adoption of Fuelwatch?

Mr Samuel—This report?

Senator ABETZ—Yes.

Mr Samuel—Yes.

Senator ABETZ—I just wanted to make that clear. Did your report conclude with these words:

A detailed assessment addressing these issues—

and there were some concerns expressed—

would have to be made before government could confidently embark on any one of the suggested options.

So, by the conclusion of the 2007 report the ACCC was still of the view that a detailed assessment needed to be undertaken before adopting any of the options, one of which you have agreed is Fuelwatch?

Mr Samuel—That analysis was undertaken. If you go on and read the remaining sentence of that paragraph, we identified the issues that were required to be further contemplated and discussed—

Senator ABETZ—That is right.

Mr Samuel—Do you want to go through those?

Senator ABETZ—No. What I want to ask is where is that detailed assessment that you referred to that would have to be made before government could confidently embark on any one of these options. As we know now, Fuelwatch has been adopted and Fuelwatch was one of the options. Where is the detailed analysis above and beyond that which is in your December 2007 report and can we see it?

Mr Samuel—That detailed analysis was undertaken in conjunction with officers of Treasury and officers of the finance department over the period from late January 2008 through to early April 2008. That covered a range of issues, some of which are set out here and some of which of course go beyond what is set out here, including costing factors.

Senator COONAN—I would like to come to the timing of this additional work. We have got the report from December 2007. Could you just track through that and tell us when that was presented to government and when did you first have conversations, say, with Treasury about it? We know now that they did a very rigorous test of the information, particularly the information in annexure S.

Mr Samuel—I just missed the first part of that question. You were talking about when something was first presented to government. Was that this report?

Senator COONAN—Yes. It was presented to government presumably about the time of its date.

Mr Samuel—Yes, that is right.

Senator COONAN—18 December or something like that?

Mr Samuel—14 December is the date that it was presented to the minister.

Senator COONAN—When did you first have conversations with Treasury about the data contained in the December report?

Mr Dimasi—I am relying on my memory on this, but I think it was some time in February that we started discussing the data with Treasury, late January or early February. I do have the exact date. We had a series of discussions and conversations over a period of time after that.

Senator COONAN—I am trying to establish the dates in February.

Mr Dimasi—I cannot remember the exact date, but I can certainly provide it to you. It was some time in February. We will take it on notice.

Senator Sherry—Take it on notice and get the information on the precise date.

Senator COONAN—Did you have a number of discussions with Treasury?

Mr Dimasi—As I recall we had a meeting with Treasury and that then was followed up with a series of phone discussions requesting that we provide the data, which we did, where they were able to run their own tests. That is what happened.

Senator COONAN—Was it your understanding that the Treasury was going to rigorously test the work that was contained in the December report that you presented to government?

Mr Dimasi—It was my understanding that Treasury wanted to have a look at the test that we had done and conduct their own assessments, yes.

Senator COONAN—As a result of doing that, did Treasury raise with you that they felt that further work was warranted?

Mr Dimasi—In the discussions with us there were issues raised where we undertook further work.

Senator COONAN—What were the issues?

Mr Dimasi—Further work was being undertaken by us as we were having that discussion with Treasury. It was a continuing discussion. One of the issues that was raised, and probably the most fundamental issue that was raised, was whether we had volume data—we do not have volume data for the period. We do have volume data for a year snapshot. As a result of that we conducted further tests to examine the price effects over the course of the week. We found that the price effects were lower under FuelWatch than before FuelWatch. This is for Perth, comparing pre and post-FuelWatch, with the eastern capitals being the control group. We found that, regardless of whether you bought it on the cheapest day of the week, the average five days of the week or the highest day of the week, the price results were lower with FuelWatch than without FuelWatch. That went some significant way in allaying the concerns of Treasury and of ourselves in substituting for volume data.

Senator COONAN—Were there any other issues raised by Treasury whereby you were asked to either clarify the efficacy or benefit that could be said to arise from FuelWatch?

Mr Dimasi—There was not a series of specific questions: what about this or what about that. I do not recall it being such. It was more discussions about whether the tests were sound and they wanted to run their own—I believe they found that they were sound—and to what extent FuelWatch was an important explanatory factor.

Senator COONAN—Just so I understand it, did Treasury raise with you the fact that you should undertake further work and that was done?

Mr Dimasi—Yes. I would not exactly characterise it in that way. In the discussions between Treasury and us we talked about some of the issues. If you like, it was the sort of discussion that we had already been having internally. It was a devil's advocacy discussion, if I can put it that way. Are we satisfied that the tests explain what we think they explain? Are there any other factors that could explain it? How would you test for those? What if you looked at the different parts of the week, how would you deal with those? That was the nature of the discussion and we satisfied ourselves that we could deal with those.

Senator COONAN—Mr Murphy said in evidence last night, and the transcript confirms this, that it came from the discussions with Treasury but I think what he meant is—

Mr Dimasi—I do not disagree with that.

Senator COONAN—Further work came from the discussions with Treasury?

Mr Dimasi—Sure.

Senator COONAN—Do you agree with that?

Mr Dimasi—As part of that discussion we undertook further work. That is exactly what I am saying.

Senator COONAN—This was early in February that this extra work was done?

Mr Dimasi—No. The further work that was done was continuous. We had been doing some of this work—

Senator COONAN—When you say it is continuous, from when to when are you talking about?

Mr Dimasi—Before the report concluded we were, if you like, thinking about these issues, testing them, and continuing with that work right up until now. We are always looking at issues that are being thrown up at us and we have our modellers look at the issues, test them and look at the points that have been made publicly, so it is an ongoing exercise. I would not put a beginning and end date. It has been running through all the time.

Senator COONAN—I will put it this way. There is some work that is referred to by the commission as further work that was undertaken. What were the dates that are represented by the further work as described by the ACCC?

Mr Dimasi—As I have said, I am not sure I could give you exactly such a date. It has been further work that has been ongoing from before the work concluded—it has been ongoing up until yesterday—where I constantly have my staff answer questions that are coming up on some of the modelling, and some of the modelling that is reported outside.

Senator COONAN—There is ongoing work?

Mr Dimasi—There is always ongoing work as we look at this.

Senator COONAN—We will come back to the time frame. You had discussions with Treasury about doing some ongoing work. When were the results of the ongoing work presented to Treasury to check?

Mr Dimasi—We presented the data to Treasury to do their own checks.

Senator COONAN—Yes, but when?

Mr Dimasi—If I remember correctly it would have been in February.

Senator COONAN—Was that when Treasury said that they wanted further work done?

Mr Dimasi—No. I would not characterise it that they wanted some further work done.

Senator COONAN—Let us put it this way: February seems to be the date at which there were some definitive discussions with Treasury—

Mr Dimasi—There were discussions.

Senator COONAN—whereby Treasury was wanting to check your work, as indeed is their proper role as the lead agency preparing the cabinet submissions for government, so you agreed that you would do that. When did you give Treasury another body of work following the agreement between Treasury and the ACCC that there would be some further clarification?

Mr Dimasi—I would not characterise it as an agreement. There were discussions.

Senator COONAN—It was an understanding.

Mr Dimasi—A ‘contract’, ‘agreement’ or ‘understanding’; I would not characterise it as any of those.

Senator COONAN—Well—

Senator Sherry—Let him answer and he will characterise it in his own words.

Senator BRANDIS—It was parallel conduct.

Mr Dimasi—Perhaps he was—

Senator Sherry—Certainly consenting conduct.

Mr Dimasi—Consenting conduct, indeed.

Senator COONAN—It was not third line forcing anything.

Mr Dimasi—We did not provide a further report to Treasury. That is not what we did. We had discussions where we answered questions and we provided responses to questions that they had, so they understood the outcome of the work, but we did not provide a further report for them to assess.

Senator COONAN—Apart from the report in December that is the basis of the cabinet decision, the only additional work that we can rely on, as we are trying to examine this work, is some further work that was carried out by the ACCC some time between the report and when you issued a press release a few days ago.

Mr Dimasi—That is right. There was a series of work that was conducted over that period, yes.

Senator COONAN—When was the series of work given to Treasury to check?

Mr Dimasi—It was not.

Senator COONAN—It was not?

Mr Dimasi—No.

Senator COONAN—As far as Treasury knows the only evidence that they had was when they had discussions with you at the time where they suggested that this work could be improved by running some more data.

Mr Dimasi—There were questions that could be looked at, which we all agreed on and we looked at over a period of time.

Senator COONAN—Perhaps you can tell me what information Treasury did have available to them up until, say, April 2008?

Mr Dimasi—They had our price margin data files and we gave them our statistical files. Our econometrician was able to talk to them, if needed, so that they could work their way through the files and, if you like, replicate the results that were contained in our report.

Senator COONAN—That data was available that underpinned the December report; it was not further work?

Mr Dimasi—It is the same data. It is common data for Treasury, but once they established the methodology was sound, the approach was robust and the outcomes were solid, questions then were what else might show up. They could have chosen to test the further work, but obviously they did not feel that they needed to do that. That is a question for Treasury.

Senator COONAN—That is not quite what their evidence was last night. What is very puzzling is that what we get is of course a very qualified report given to government and given to the agencies to check; we have further data input and further runs being carried out, but we do not seem to have any resolution of the issues that Senator Abetz put to you a little while ago, which was that there would need to be some very rigorous further work done before you could recommend Fuelwatch. I am just wondering: did you ever recommend Fuelwatch and where is the evidence of the recommendation?

Mr Samuel—Perhaps I can intervene at this point. If we have a look at the paragraph that Senator Abetz referred to before, and that is on page 257 of our report, it states:

However, the preceding discussion also indicates that there are a number of issues that would need to be considered before a national FuelWatch scheme could be contemplated. There are factors that could potentially reduce the benefits from adopting a scheme, such as the limitations of the price level analysis performed—

and Mr Dimasi has discussed that at some length, but he and Dr King are happy to further elaborate if that is appropriate. It continues:

the extra potential harmful effects for rural and regional areas where there is less competition—

Again, we can elaborate on that, but that is contemplated as part of the legislation in terms of the opt-in after discussion and negotiation with the ACCC. It says further:

the potential to affect the presence and influence of independents—

Again, Mr Cassidy has addressed that issue in his answer to the question that Senator Chapman put to him at the opening of proceedings today. And finally:

and the potential for a reduction in the predictability of price cycles for consumers who have adapted to them.

Mr Dimasi and Dr King can address that, but we have already addressed it in the context of the further econometric analysis which demonstrated that if you took the most savvy motorists—all 100 per cent of motorists being savvy and buying purely at the bottom of the price cycle—and you made that comparison before FuelWatch and post-FuelWatch and looked at the margins relative to the eastern seaboard, that even in those circumstances we could demonstrate that there was no evidence to suggest any harm was done to consumers, rather there was a statistically significant reduction in margins of the order of 0.7c a litre.

I am happy to address the question of rural and regional areas, but all the other areas have been addressed in questions and answers that we have discussed. These are issues that are required to be further considered. We considered them; we developed them in conjunction with Treasury. We also developed issues concerning:

The administrative costs of such a scheme are likely to be significant.

Mr Cassidy and others within the organisation of the ACCC addressed the administrative costs, compliance costs and the process of pursuing this scheme. That of course was addressed not so much with Treasury, but with the Department of Finance.

Senator COONAN—Thank you. What is really troubling about all of this, particularly given the significant change of position of the commission—and I do not want to go into that again because Senator Brandis and Senator Chapman have addressed that matter—is the only material in the public domain, given that we all agree that transparency is really what we are all about and is very desirable, that anyone can use to form a view about Fuelwatch is this report. That is a real issue here. And what we are really troubled by as a committee, and no doubt we speak on behalf of a lot of people, is how this very expensive scheme—the best that can be said about it is that it will do no harm, but probably it will not do much benefit—is now foisted upon Australians against the advice of some very experienced departments and no doubt some very concerned ministers.

Senator BRANDIS—And against your own advice.

Mr Samuel—With respect, I have to take exception to two comments made there. Senator Coonan, you said that the best that can be said is that it will do no harm. With respect, that is again focusing on but one half page of our report concerning the econometric analysis. I had thought in what Senator Brandis described as a lengthy or prolix statement I made before that the—

Senator BRANDIS—I said ‘full’.

Mr Samuel—You initially said it was lengthy and then you suggested it was full, but so be it; it does not matter. It was long and it was certainly an attempt to be as fulsome as I can be. What I endeavoured to point out was—

Senator Sherry—It was comprehensive.

Mr Samuel—It was comprehensive.

Senator Sherry—We got very used to your very comprehensive answers in 12 years in opposition. You have not changed your ways and I would urge you not to. Comprehensive answers are what we want.

Mr Samuel—What I was endeavouring to point out is that the real benefits of Fuelwatch are not the econometric modelling. They are there to determine whether there is any evidence that Fuelwatch will cause harm to consumers and to motorists and what we demonstrated with our econometric modelling, testing this way and that—and Dr King can give further information on this—was that there was no evidence that it could cause harm to consumers or that it had caused harm to consumers in Perth, and there was evidence of statistically significant benefits in terms of the modelling, but that was—

Senator COONAN—So first do no harm. That is always good.

Mr Samuel—Let me finish.

Senator Sherry—Let him finish.

Mr Samuel—Your summation was that the best we could show is that it would do no harm. No, that was the first paragraph of my comprehensive answer. The remaining many,

many paragraphs were all about the great benefits of Fuelwatch, which is transferring power from sellers of petrol—the major oil companies, the major retailers Coles and Woolworths, and other significant independents—through to the motorists so that the motorist can have the advantage of information and the ability to use that information, which is the very essential element of true competition in a marketplace.

Senator COONAN—The reduction in petrol prices would be what the community was expecting this would do and from statements that appear to have been attributed to some people in the ACCC, not yourself.

Mr Samuel—Thank you. The real issue here is: can individual consumers get advantages that will enable them to obtain real reductions in price. If I were to take the figures that I gave you before, just taking one snapshot yesterday—and I can give you figures for any other day of the year if you like using the Informed Sources data—the savvy consumer yesterday in one city, I forget which city and it does not matter, could have obtained a 26c saving by buying not at the most expensive site but by buying at the cheaper site if that consumer had used the Fuelwatch system. In terms of the relationship between the average prices being charged in that particular state, which was in Melbourne, the average price at that particular point yesterday at 9 am was 152.8c as against the maximum price of 171.2c. That is about a 19c saving from buying at the maximum price or buying even at the average price. The advantage of Fuelwatch is that it is all about giving consumers information and the ability to use that information. In the context of that I would refer you to page 256 of our report where we talk about some of the alternatives that we examined, and in particular the expansion of the Informed Sources service in terms of providing pricing information to consumers without the price stability. We say in that particular paragraph:

As with the option to expand the availability of pricing information to consumers through Informed Sources there are some potential issues. While increasing the amount of information available to consumers, the reduction in consumer search costs is limited without some form of price commitment or a reduction in the apparent volatility in petrol prices. The effect of this option on the willingness of retailers to lead price cuts remains similarly problematic, as any attempt to cut prices would be quickly known and responded to by competitors. This reduces the incentive to cut the price in the first place.

We have looked at these issues in the context of competition and consumers, and consumers provide the foundation for competition by having information and the ability to use that information to their advantage, as against sellers who at the present time have all the information, all the advantage and all the power through the Informed Sources service.

Senator COONAN—Thank you. I have one final question on this particular bracket. Can you tell the committee: apart from the report, what additional information was made available to the government prior to the announcement of Fuelwatch in April and when was it provided?

Mr Samuel—I would have to take that on notice to give you a full, detailed answer. What I can say to you is that each of the issues that I referred to before in that sentence that set out the areas that we thought needed to be further examined were examined further. Mr Cassidy has given some answers regarding the issue of independents. In particular, we worked with Finance on the administrative costs. We worked on some of the compliance costs. We worked through the process of setting up the scheme and how compliance could be done in a way that

would have minimal impact, indeed negligible impact, on those that were required to be participants in the scheme—that is, retailers—so there are a range of issues that were dealt with.

Senator COONAN—Yes, I appreciate there would be, but what I am trying to establish here for the committee is how can we test it? We just simply do not know. You have to appreciate that we have got a vacuum in the sense that we have the report, seriously qualified, and an announcement in the middle of April that suddenly we are going to have Fuelwatch. I want to be fair about this, so I want to give the ACCC an opportunity to provide the evidence that I think is appropriate for us to have.

Mr Samuel—Again, I am sorry: I do not want to take issue all the time, but when you talk about the report being ‘seriously qualified’, the words that are used—

Senator COONAN—It did not recommend Fuelwatch and we got somehow or other to Fuelwatch being adopted just a matter of weeks later. Forgive me, but it does not recommend the adoption of Fuelwatch.

Senator Sherry—You have made your point. He is answering the question. Let him answer the question before you come to another point.

Senator COONAN—I thought he was going off on a slightly different point.

Mr Samuel—I try to keep to the point, although my answers are comprehensive.

Senator Sherry—You do.

Mr Samuel—What I was saying is that we looked at the various options. We looked at the expansion of information through the Informed Sources service. We looked at the expansion of information through moving that service through the ACCC, and then it is fair to say that in the conclusion that we expressed on pages 256 and 257 that we moved towards the Fuelwatch system as a matter that we thought deserved further contemplation and further consideration, but did issue some cautions in relation to a number of matters, all of which have been addressed in some answers that we have given this morning, with the exception of rural and regional Australia, which I am happy to do if it is required at a subsequent time.

Senator COONAN—Who did you do all this to, or by, or with, or how?

Mr Samuel—It was an iterative process.

Senator COONAN—Right. Okay.

Mr Samuel—Forgive me, but that is an iterative process, too. That is a six-month inquiry. The further information and analysis was undertaken over a—

Senator COONAN—You worked it out as you went along.

Mr Samuel—You can use whatever words you want to; I will use my words, if I may.

Senator COONAN—Sorry.

Mr Samuel—My words are that this was a process of further examination of these issues that took place over the period from early February through to early April. They involved discussions with departmental officials in the Department of Finance and departmental officials in the Department of Treasury, and they involved a large number of people within the

ACCC from Mr Cassidy through to our corporate affairs officers through our econometric modellers. There was a large amount of work that was done to ensure that there was no stone left unturned.

Senator COONAN—Thank you. Minister, this is an example of policy on the run, some sort of iterative process.

Senator Sherry—No.

Senator COONAN—Is there a major panic going on in the government about the fact that you made unsustainable promises during the election?

Senator Sherry—Can I respond to your question?

Senator COONAN—Yes, of course. I had not finished the question.

Senator Sherry—Pardon?

Senator COONAN—I said I had not finished the question.

Senator Sherry—It is an example of decisive government.

Senator COONAN—Minister!

Senator Sherry—Can I finish the answer? Are you going to be rude enough?

Senator ABETZ—No. We want you to continue.

Senator Sherry—As I indicated—

Senator COONAN—It is a mad scramble.

Senator Sherry—As I indicated, we had a comprehensive evaluation report as was indicated this morning.

Senator FIERRAVANTI-WELLS—Yes, he pressed a button on one computer program to another.

CHAIR—Committee, can the minister finish, please?

Senator Sherry—Five questions at once.

Senator FIERRAVANTI-WELLS—We are just telling you what was said last night.

CHAIR—Order! Can I have no more comments? We have a couple of minutes until our morning tea break. Can we allow the minister to finish and then perhaps we can fit in more questions.

Senator BRANDIS—I have one question before we break.

CHAIR—Perhaps you should allow the minister to finish his answer.

Senator BRANDIS—I was not interrupting.

CHAIR—I am afraid you were, Senator Brandis. Minister.

Senator Sherry—As has been indicated by the evidence today, the extensive public discussion and the comprehensive report, there was enormous evaluation and consideration of Fuelwatch and then once the report was received the government proceeded to act decisively to implement the program.

CHAIR—Senator Brandis.

Senator BRANDIS—Mr Samuel, I do not mean to be critical of it being an iterative process. I understand why you say that. But my concern is this. I would like to put this ultimate conclusion into an historical context and just bear with me as I do. You have given the government heavily qualified, caveated advice as a result of a re-evaluation and that heavily qualified caveated advice contradicts—I was cut off before, but let us just go through it—the firm conclusions of the ACCC in the *Reducing fuel price variability* report of December 2001. It contradicts the firm conclusions of the ACCC in the *Terminal gate pricing arrangements in Australia and other fuel pricing arrangements in Western Australia* report in December 2002. It contradicts the ACCC's submission to this committee's inquiry into petrol pricing in Australia lodged in July 2006. It contradicts your own evidence and Mr Cassidy's oral evidence to that inquiry. It contradicts the view of your predecessor, Professor Fels. It contradicts the conclusions of the inquiry into petrol pricing in the Northern Territory, which looked at the Western Australian arrangements in May 2005. It contradicts the conclusions of the Queensland parliamentary inquiry in April 2006. And it contradicts the conclusions of the National Competition Council in its 2005 assessment report on the implementation of the Hilmer report, the last three of which specifically addressed FuelWatch, specifically criticised it, and in your oral evidence before this committee's inquiry into petrol pricing in Australia, each of those three reports you adopted and incorporated by reference. Against that entire body of expert opinion and knowledge, not just of the ACCC but of other inquiries as well, you come now before this committee and make these firm assertions on the basis of a heavily qualified report which indicates to the contrary.

CHAIR—Mr Samuel.

Senator BRANDIS—What do you say about that?

CHAIR—That was a very comprehensive question.

Mr Samuel—I can give a very short answer.

Senator Sherry—I think he should be allowed to respond prior to going to the break. We have got 45 seconds.

CHAIR—If you can respond briefly.

Mr Samuel—I promise you it will be very short and I will try to do it in the 45 seconds. First of all I take issue with your description which you have used on three occasions that it was a 'heavily qualified, caveated' report. In fact I have read the sentence, as Senator Abetz did:

... the preceding discussion also indicates that there are a number of issues that would need to be considered before a national FuelWatch scheme could be contemplated.

Firstly, that is hardly a heavily qualified or caveated advice. Secondly, with respect to all of those inquiries that you have discussed, some of which we put submissions to, some of which we were not participants in, I would make two responses. The first is to say that the earlier of those—2000, 2001, 2002—were at the very early stages of the adoption of Fuelwatch and therefore did not have the benefit of seven or eight years experience of its operation for us to be able to analyse. Secondly, I would say to you that I can throw down the challenge and say

that none of those inquiries and none of the reports had the benefit of the extensive powers given to us by federal Treasurer, Peter Costello, under part VIIA of the act, which was to subpoena extensive data and information and subpoena witnesses to give evidence under oath. None of those had the rigour of the analysis that was undertaken in the six-month inquiry that led ultimately to that report, and the further rigour of the analysis that was undertaken since that report was delivered.

Senator BRANDIS—You know there are lot of officers in the ACCC who are unhappy with the position you have taken.

CHAIR—The committee will adjourn for morning tea until 11 o'clock.

Proceedings suspended from 10.46 am to 11.02 am

CHAIR—We are continuing with Treasury portfolio, ACCC. Senator Abetz?

Senator ABETZ—Before the morning adjournment, I think we were agreed that you had made some comments that a detailed assessment addressing some issues would have to be made before government could confidently embark on any one of the suggested options. That was at the conclusion, as I understand it, of a report that took some six months, which enabled you to subpoena witnesses and spun out to, I think, 380 pages. Full, long, comprehensive—whatever word we might want to use—I think would be a fair description of that. We are then told that some work has been done between January and March which has led to a four-page document that is in the public domain. Am I correct in my assessment that that three months of extra work—for which I assume you did not subpoena witnesses, have public hearings or consult with a whole variety of people—then led to that which is in the public domain which is now four pages?

Mr Samuel—That is what troubles me about the whole debate that has taken place on this particular issue. The four pages that were issued late last week related to half a page in this 375 page report. It related to econometric analysis, and there was half a page there in a report, plus appendix S. What the four pages last week addressed was the further econometric analysis, and that alone. Forgive me, but this is terribly important; the whole of the debate that we have had this morning and that has occurred over recent times in the public arena in relation to this matter has focused on econometric analysis which, as I have said in my comprehensive statement before, was designed to ensure that we could be satisfied that there was no evidence that FuelWatch had caused any harm to Western Australian, to Perth's, motorists. But it is but one element of the FuelWatch examination and it is but one element of the cautionary caveats that we put into the paragraph or the sentence on page 257. If I can read that sentence again because it is terribly important—

Senator ABETZ—I think we have heard it a number of times.

Mr Samuel—Yes, but the difficulty is that your question, and the conclusion that you drew in your question, suggests to me that I have not made clear what the further analysis was about. That is why I am giving this more comprehensive answer because there were but six or seven words of that sentence that related to that four-page report. And the words were: 'such as the limitations of the price level analysis performed'. Full stop. That is what that four-page document last week addressed: 'the limitations of the price level analysis performed'. All the other elements—that is, the extra potential harmful effects for rural and regional Australia

where there is less competition, the potential to affect the presence and influence of independents and the potential for the reduction in the predictability of price to consumers—were the subject of further analysis and further work that we did in conjunction with Treasury and the department of finance. The administrative costs were dealt with the department of finance and were dealt with in terms of the material that was put to the ERC and, ultimately, as I understand it, in the decision that was made by government. But there has been this extraordinary focus on the econometric analysis as if, because it refers to some numbers, that is the easy area that we will look at. There seems to be for some reason a failure to examine the very real benefits of what Fuelwatch is about, which is this empowerment of consumers, empowerment of motorists, against the current power that is excessively held, in our view, by the sellers.

Senator ABETZ—I am interested in evidence based policy. We have 380 pages of a report. Since then we have had four pages that I have referred to as an addendum; is that a neutral term that nobody will object to? Can we treat that as a bit of an addendum to this 380 page report?

Mr Samuel—It is a supplementary summation of the additional econometric analysis that we undertook.

Senator ABETZ—We know that. You have already explained that. All I need is a title for this document. So, we will call it a supplement rather than an addendum; that is fine. What else is there within the public domain that has been issued by the ACCC, other than media releases, that we can actually analyse other than that four-page document which supplements?

Mr Samuel—The administrative costs are in the public domain because they have been oft quoted. That is another element—

Senator ABETZ—I have asked: what has the ACCC put into the public domain as a supplement to its 380-page report? There are the four pages; what else? Was there anything else?

Mr Samuel—No. In terms of the public domain you have the four pages and the answers that Mr Cassidy and I have given this morning on some of the other issues. Other than that there is nothing more—

Senator ABETZ—Thank you.

Senator Sherry—I am going to respond to your question as well. In addition to the 380-odd pages, plus the four, as was evidenced yesterday by the markets group of Treasury in the couple of hours over which these issues were canvassed, we had a period of approximately two months when the markets group subjected the report and recommendations to—

Senator ABETZ—I asked about the ACCC—

Senator Sherry—I am responding—

Senator ABETZ—Yes, but it is irrelevant.

Senator Sherry—It might be irrelevant in your mind, but I do not believe it is irrelevant to the debate so I will—

Senator ABETZ—It is not a debate. I am asking questions.

CHAIR—Minister, please continue.

Senator ABETZ—The answers have to be relevant.

Senator Sherry—I will conclude my answer. We had rigorous examination of the report. We have all of the views expressed in the report—380 pages plus the four supplementary pages—were examined by the Treasury, and we went through that, too, yesterday. Then we had examination by ERC. I am not a member of the ERC, but I am sure it was a very rigorous examination by ERC.

Senator ABETZ—I am sure it was, but it was not my question.

Senator Sherry—We had I am sure a very rigorous examination at cabinet. I am not a member of cabinet, so I was not there. We had due process and a very, very thorough analysis as part of a whole-of-government process relying on the definitive organisation, the ACCC, who are the recognised experts in this area and came to a policy conclusion to support Fuelwatch.

Senator ABETZ—We have the ACCC before us and I was asking what other material had the ACCC put into the public domain since the report. I think we are agreed that a four-page supplement has been provided and that was all that my question was seeking to elicit. So, thank you for that.

Senator JOYCE—As to the four-page supplement, in that table on page 4, why are the significance levels missing?

Mr Samuel—I will ask Dr King to answer that.

Dr King—The significance levels should have been reported there. I am happy to say that all of those break points are statistically significant at the five per cent level.

Senator ABETZ—Before the morning adjournment a lot of emphasis—I will withdraw ‘a lot’ in case somebody takes umbrage—some emphasis was placed on the disparity of pricing within the petrol market and I think we were given a figure of 26c. That is not, I would suggest to you, an uncommon thing in the marketplace. I can get off an aeroplane somewhere having paid three, four, sometimes 10 times as much as a fellow traveller. I can stay in a hotel having paid 10 times as much as a fellow occupant in the hotel because they have bought at a different time to me. I can even go down the street and buy a loaf of bread from various outlets at hugely varying prices. That is part and parcel of the market and consumer habits, consumer desires and wants. Are we going to have a ‘hotel watch’, an ‘airline watch’, a ‘bread watch’ or a ‘motor vehicle watch’? In fact, if you buy a motor vehicle when it has just come onto the market, chances are you will pay a lot higher price for it than if you are at the end of that particular cycle of motor vehicles being placed in the market just before a new model comes up. These sorts of price variations are not something that is unique to petrol, are they?

Mr Samuel—No. In fact, that is the very issue. Petrol pricing in this country is unique and it is unique relative to all those other issues you talked about—motor vehicle prices, hotel prices, the price of bread and the like. The price of bread does not get hiked up in an unpredictable or confusing fashion on a Tuesday or Wednesday of a particular week. The price of milk does not get hiked up in an unpredictable and confusing fashion—

Senator ABETZ—It becomes cheaper on a Friday or a Saturday with the red-dot special signs—

Senator Sherry—You have invited vast comments and the witness is entitled to deal with the question you put to him and the numerous issues you raised.

Mr Samuel—The price of bread does not get hiked up as you walk into the supermarket entry and you pass the checkout counter on your way to buy the bread. It does not get reduced on an hourly, or a two- or three-hourly basis. And, more importantly—because I do not want to delve into our grocery inquiry at this point in time—we do not have the price-sharing information system that Informed Sources, the major refiners and the major retailers have got running between themselves that borders on as close to collusive activity as we can find without being illegal. We do not have that in relation to all those sorts of issues. We do have it in relation to petrol. I am finding it difficult to understand why there is such a strong objection to motorists, to consumers, being empowered by being given information and being given the power to use that information to their advantage against those who are selling the product—that is, petrol—to them.

Senator ABETZ—What I object to greatly is that you are championing a cause that will fine a petrol outlet potentially tens of thousands of dollars if they have the audacity to decrease their price during a particular day. I thought you were looking after the consumers, but under this which you are championing you are supporting the fining and penalisation of a petrol outlet that says, ‘Hey, I am out of touch with the market. I want to reduce my prices.’

Mr Samuel—I do not want to take the committee’s time by rereading the paragraphs that I referred you to before and read at length for the transcript—at the bottom of page 241 and the top of page 242—so I will not. We need to understand that the petrol-pricing process that occurs in this country, the Informed Sources price-sharing process that occurs in this country, is unique. It is so heavily weighted against the buyers of petrol that, if you start to modify the Fuelwatch system by taking out the price stability—that is, the price predictability for that 24-hour period—then you actually feed into the anticompetitive elements that we have described on pages 241 and 242 of this report. Let me say to you that we are not unfamiliar with the concept that Informed Sources information might be made available to all consumers on a subscription or a free basis. In fact, I described some of the impacts of that before, referring to the summation of our report on pages 255 and 256. Let me also show you a report that Informed Sources prepared and submitted to us. This is a report—

Senator ABETZ—Are you able to table that for us?

Mr Samuel—I am happy to table it. Let me just take you to this because it is terribly important—

Senator ABETZ—I suggest, with respect, that the secretariat get some copies of it for us so that when Mr Samuel does take us through it we are able to go through it with him.

Mr Samuel—I am only going to take you through one page. This was a report that was presented to us in electronic form by Mr Alan Cadd of Informed Sources on 31 March this year. He went through a whole range of statistical information that he was able to put together, providing his analysis of what had happened to Perth prices under FuelWatch. Towards the end he said, ‘I have got an alternative solution for you.’ The alternative solution is to work

with Informed Sources and to have everyone involved, all the retailers involved, provide information to Informed Sources and then what Informed Sources will do is make that information available to the ACCC and to the Australian Automobile Association. He says, 'We will rope everyone into the Informed Sources process.' I thought that was very interesting because the last page of this report in the electronic presentation given to us on the computer contained a dot point that said: 'Keep Fuelwatch in reserve as a threat.' They wanted to adopt the Informed Sources process, which is the one that we have discussed in our report, but in a dot point they said, 'Keep Fuelwatch in reserve as a threat.' I asked Mr Cadd, 'What is the threat? Who feels threatened by Fuelwatch?' And he said he was not able to tell us. I said, 'You put it in your dot points there, in your summary. Who feels threatened by Fuelwatch?' He said, 'Maybe the retailers do, the major oil companies'—bear with me, I need to explain this—'Maybe they feel threatened because of the administrative costs.' I said, 'But they will save the administrative cost of having to provide you with 15-minute information of their prices and they will save the administrative costs of subscribing to Informed Sources each year, which I understand to be of the order of \$700,000 per participant.' He said he was not sure but he said maybe I should address that to the oil companies. But he said that the oil companies were now agreeing that the Informed Sources data and information which has always been held away from consumers—been held secret from consumers and not available to them—now, according to his discussions with the oil companies and the major retailers, could be made available to consumers. But he said, 'Keep Fuelwatch in reserve as a threat.'

I then concluded the meeting with him on 31 March by asking, 'Mr Cadd, could I get a printed copy of these slides?' And he said, 'Yes, I will send them to you in a few days,' and he did. He sent them to me in a few days. I went to the summary page and guess what is missing: 'Keep Fuelwatch in reserve as a threat'? It was deleted from the summary page. What he says now is, 'Fuelwatch concept can be "reserved" for introduction nationally if free market does not achieve its aims.' He then gave me an accompanying email which attempted to explain—

Senator ABETZ—Are you able to table that as well, please?

Mr Samuel—I will refer to it and therefore I am happy for it to be tabled. But he refers here to the presentation slides and refers to the holding of introduction of Fuelwatch as a threat. And he says, 'The point I was trying to make and obviously did not do so successfully was'—and he has set out three commentaries here which, frankly, when you read them are no explanation for his now changing his presentation to delete the dot point, 'Keep Fuelwatch in reserve as a threat.'

Senator ABETZ—I do not think criticism of changing positions is necessarily your strong point in this debate. I detect from your commentary just then—let me try to think of a neutral term—that you have concerns about the impact of Informed Sources on the marketplace?

Mr Samuel—I would put it higher than 'concerns'. We have expressed those views in the report.

Senator ABETZ—Instead of spending about \$21 million of taxpayers' money on Fuelwatch, why don't we simply have an amendment to the Trade Practices Act that says behaviour such as Informed Sources has engaged in is illegal? Stop Informed Sources doing

what they are doing and, bingo, the great evil that you are talking about seems to have evaporated and the taxpayer will have about \$21 million in their back pocket.

Mr Cassidy—We did actually think about that option as it is flagged in the report. The problem we came up against is that there are a lot of what you might call information-sharing arrangements which are actually pro-competitive. If you were going to prohibit the Informed Sources arrangement in legislation, you would need to do so in a very specific sort of way so as to zero in on the actual Informed Sources arrangement itself. Then the problem is: once you zero in, you only need to make a few changes to that sort of arrangement and, bingo, you are outside the law. As a matter of practicality, we could not see how a piece of legislation could be drafted that would in a sense knock the Informed Sources arrangement on the head without potentially taking out other information-sharing arrangements in the economy which are pro-competitive and of benefit to consumers.

Senator ABETZ—Did you air those concerns with the Office of Parliamentary Counsel?

Mr Cassidy—No, we shared them with our general legal advisers.

Senator ABETZ—I would have thought, with great respect, that it would not necessarily be beyond the wit of parliamentary counsel to draft legislation to overcome this evil that we believe Informed Sources to be. Chances are there would be a few legal firms around the place that would say, ‘Give us \$20 million and we will draft something for you.’

Mr Cassidy—I dare say, but I do believe that we have in the ACCC some of the best trade practices lawyers in the country. We consulted them and that was the view we reached.

Senator ABETZ—In relation to consumer organisations, the royal automobile clubs around the country would be overwhelmingly against—that would be a fair description—your attitude to Fuelwatch?

Mr Samuel—It depends on who you talk to. The NRMA and the RACWA are overwhelmingly in favour of Fuelwatch. Others have expressed varied views. Perhaps, the strongest negative attitude on Fuelwatch would come from the RACV. I have made some comments in the public arena during the inquiry on the extent of analysis that has been undertaken on some of these issues by some of the motoring organisations. I have to say to you, with the greatest respect to them, that some of their comments have not been very complimentary.

Senator Sherry—And I do note in addition—I am going to answer—

Senator ABETZ—Sorry, I did not know you were going to butt in; that is fine. Mr Samuel had stopped, so I started.

Senator Sherry—I am indicating I intend to answer the question.

Senator ABETZ—That is fine. That is why I stopped.

Senator Sherry—And I am not butting in. Mr Michael Delaney, who is the Executive Director of the Motor Trades Association, which represents independent petrol retailers, backs the scheme. He commented:

... we took the view it would assist motorists and our members’ capacity to sell fuel.

Mr Peter Kell, who is the CEO of Choice, which is regarded as the pre-eminent consumer organisation in the country, said:

Choice would strongly support the introduction of a national scheme based on the WA FuelWatch model by the government. We believe that such a scheme should be administered by the ACCC.

I have specifically gone to retail and other motoring organisations that I am aware of. There are other organisations supporting this, but I have confined my quotes for support of the question you have raised.

Senator ABETZ—You do not have Martin Ferguson’s letter in front of you by any chance?

Senator Sherry—No, I do not but I do have—you want to raise politics—a quote from Senator Adams, a WA Liberal Party senator, who says:

I think FuelWatch is working. Some places are a lot higher and others are a lot cheaper. Myself, I’m very aware of what’s at the bowser. If there’s cheaper fuel at a price somewhere and if someone else is 10c dearer I’ll certainly go there.

Senator ABETZ—That is right and that was in relation to price consciousness, not the penalty imposed on petrol stations in the event of a price being reduced during the day. Really, this is the bizarre, anticompetitive aspect of this Fuelwatch proposal that is exercising some concern—

Senator Sherry—If I might finish my answer, because you raised the issue of politicians. I have given you a series of quotes from WA Senator Adams and again, I reiterate the first part of that quote, ‘I think FuelWatch is working,’ so we look forward to their support in the Senate. But the New South Wales Liberal opposition fair-trading spokesperson, Catherine Cusack said:

Mr Rudd has shown leadership ... we think it’s good news for motorists and we’re quite happy to come out and congratulate the federal Labor government for doing it.

That is a reference to Fuelwatch. You can have a number of political quotes and references and similarly we have a number of quotes and political references in support.

Mr Samuel—Could I just address the comment you made about the anticompetitive element? I cannot remember your exact words but the anticompetitive element—

Senator ABETZ—Yes.

Mr Samuel—I refer you to page 256 of our report where it talks about expanding the availability of the pricing information to consumers through Informed Sources and it says:

This concept would certainly increase the amount of information available to consumers. However, it would appear that the benefit of this would be reduced without some form of price commitment or a reduction in the apparent volatility in petrol prices.

We talk about the eventual integration of GPS systems and things of that nature and we say:

... it appears that with current technology this option improves information available to consumers but does not much improve the ability of consumers to take advantage of these posted prices. This is because it does not address the variability of petrol prices. In particular it does not address the issue where a consumer can ‘know’ what prices are available and yet a relatively short time later that price information can be outdated.

We then talk about having the availability of this pricing information and what it does to effectively make risk-free the hiking of prices and the potential anticompetitive element that it has in terms of the reduction of prices. I am talking about the concept of the Informed Sources solution.

Senator Sherry—In terms of the issue that Mr Samuel has referred to, none other than the New South Wales leader Mr Barry O’Farrell touched on the issue. He said Fuelwatch:

... will put motorists, not the oil companies, back in charge. It will ease some of the wild fluctuations in weekly pricing which frustrates motorists so much.

Senator ABETZ—So, Mr Ferguson is clearly wrong, as are the four departments that recommended against—the very senior departments—

Senator Sherry—The fact is that there were a range of views put to ERC and cabinet, a robust debate took place, cabinet concluded the view, having examined all the evidence, to support Fuelwatch.

Senator ABETZ—Does part of the examination of the evidence—especially putting consumers in charge—refer to the ANOP Research Services survey of November 2007 that said—and this is very instructive:

- 72 per cent of consumers in cities other than Perth always or usually try to purchase unleaded petrol when it is cheapest whilst 59 per cent of consumers in Perth always or usually try to buy petrol when it is cheapest ...

In other words, there is a 13 per cent differential, and for those of us in politics, can I tell you that a 13 per cent differential can be either very uncomfortable or very comfortable. It seems to be fairly significant.

Mr Cassidy—Madam Chair, I wish to raise a point. My understanding of the standing orders is that communication with members of the committee while they are sitting are intended to be through you. I did observe a gentleman come in and put in front of Senator Abetz—

Senator ABETZ—He has been—

Mr Cassidy—something—

CHAIR—Sorry, could you repeat that.

Mr Cassidy—And the secretary of the committee, I think quite rightly, asked the gentleman to leave. I realise in these days of technology everyone has screens in front of them, so perhaps that standing order is more observed in the breach, as it were. But, nonetheless, if you do have the process of people being able to feed in questions I think that rather alters what Senate estimates is intended to be about.

Senator ABETZ—On that point of order, if I may—

CHAIR—No.

Senator Sherry—It is not a point of order. He does not have the right to call for a point of order—

CHAIR—I think it was a question—

Senator Sherry—It is an issue for the committee and the Senate as a whole.

Senator ABETZ—It was a very helpful interruption. Can I have an answer?

Mr Samuel—Could you just repeat the question, I am sorry.

Senator ABETZ—We are short of time, aren't we?

CHAIR—I was responding to Mr Cassidy, incidentally, and it has been dealt with and you are correct that it is not permitted.

Senator ABETZ—Albeit, might I add, I am sure Mr Cassidy has never—

CHAIR—No. Senator Abetz, you have no right to respond. I think Mr Samuel is responding to the question.

Mr Samuel—If the question could be repeated because there were some words there that I wanted to pick up on. Perhaps you could just refer me to the page that you are referring to; it would be helpful.

Senator ABETZ—No, I am asking whether your robust analysis included an ANOP Research Services survey? Are you aware of that survey of November 2007 which found that 72 per cent of consumers in cities other than Perth always or usually try to purchase unleaded petrol when it is cheapest whilst 59 per cent of consumers always or usually try to buy petrol when it is cheapest? In other words, there is a 13 per cent differential, which would seem to suggest a greater degree of price consciousness and savvy buying by those living in a state without Fuelwatch.

Mr Samuel—Mr Dimasi will take that initially and then I will add some further response if appropriate.

Mr Dimasi—You are absolutely right. I have got the page in front of me and we have those results from ANOP. Of course, there are a number of ways of interpreting that. From our inquiry we have a snapshot figure for one year of when people do buy. When people would like to buy is not when they necessarily do buy. Those figures are different to what actually happens and that figure is significantly different from this. Of course, the fact that a greater proportion try to buy when it is higher in the eastern states rather than the west could simply be due to Fuelwatch alleviating some of the concerns. There are a number of ways of interpreting this. Yes, we are aware of the survey. We commissioned ANOP to undertake the survey, so we are certainly aware of it, and we see nothing in there that is inconsistent with anything that has been said except, I make the point, that an indication of intent is not necessarily the same thing as what consumers end up doing. We do have that information; it is quite different from what they intended.

Mr Samuel—I think that is the important point. There is one word used in the sentence that you quoted from ANOP that we need to examine: 'try'. That is, 'Seventy-two per cent try to buy when cheapest.' Twenty per cent always try or usually try to buy. The whole purpose of Fuelwatch—

Senator ABETZ—That is the same test—

Mr Samuel—Just a minute. The whole purpose of Fuelwatch is to empower them to be able to buy as distinct from trying and being frustrated, trying and being confused and trying

and being angered when they find that their attempts simply fail. I can give you some examples of how it occurs. But perhaps I will just give one, because it is a very public one: Easter, this year. On Saturday morning before Easter I am asked by the media, 'When should people buy petrol before the price hike?' I said, 'It is safe today. It might be cheaper on Sunday. It could even be cheaper on Monday. On Tuesday, I am not sure, because I do not know when the price hike will occur but there is likely to be a price hike on the Tuesday or the Wednesday. Normally, you would wait until the Wednesday morning because it would normally come about 9, 10, 11 o'clock on Wednesday morning, but they could bring the price hike forward. Alternatively, there could be no price hike.' The problem that I had was that I was trying to help motorists who were trying to buy on that cheapest day and I could not give them any more advice than just that.

Senator ABETZ—But you would fine anybody who under Fuelwatch sought to reduce their prices over Easter in a 24-hour period.

Mr Samuel—But how else can a system work where you are saying to people, 'We are forcing you to provide your keenest possible price at 2 pm on a day through a secret tender process and when you provide that keen price you are bound to stay by that price for 24 hours from 6 am tomorrow morning.' If we say to sellers, 'It does not matter what you put in at 2 pm because at 6 am tomorrow morning you can change it as you see fit,' then you have removed the whole element of Fuelwatch that is of advantage to consumers. You provide a transparency but you have left them in exactly the same position as they are in at the moment. In fact, what you have given is information but also the inability to use the information because you are really saying to the sellers, 'You are further empowered to provide whatever information you want and it does not matter whether you are right or you are wrong, because you will adjust it tomorrow morning.' That, if I might say so, is the Informed Sources solution sponsored by the major oil companies and by the major retailers.

They would love that solution to be put in place for a very good reason, because currently outside the Informed Sources program are major retailers like United Petroleum, those that are part of the Liberty Oil group that wholesale through Liberty Oil, Gull and Matilda Newman. They are outside the system at the present time and they operate in the system where they can provide a discount and they have an hour or two-hour window of opportunity before those that are part of the Informed Sources system can actually pick up that information. What Informed Sources does is it gives enormous advantage to subscribers to it and, if all of them are pulled in, it takes away the advantage of the independent retailers who provide the discounting drive that occurs which then disadvantages the buyers of petrol. The Fuelwatch system says to every seller of petrol: 'Be keen on your pricing. Keep it at the keenest possible price because that is the price you will be bound by. Your secret tender at 2 pm is the price you will be bound by for 24 hours from 6 am tomorrow.'

Senator ABETZ—These poor independents just do not understand, do they? I have had no representation from BP, Shell, Caltex or Mobil against Fuelwatch. I have had overwhelming representation from independents opposed to Fuelwatch and that is why I must say I nearly choked when I heard the Prime Minister—no, I withdraw that because you cannot comment on that. But the suggestion that big oil somehow does not want Fuelwatch just does not relate

in any way, shape or form with the emails, phone calls, letters and other correspondence into my office all emanating from independents and nothing, not a word, from the four big ones.

Mr Samuel—It is interesting because we had plenty of words from the four big ones when we took evidence from them during the course of our inquiry and, without any exception, they were saying they do not like Fuelwatch. Fuelwatch does not work, they say, for consumers in Western Australia. We had that evidence given under oath. In terms of independents, Fuelwatch puts the heat on every seller of petrol—smaller independents or large sellers like Coles, Woolworths, BP, Caltex and Mobil. Of course, Shell has now sold its retail operations to Coles. It puts the heat on them all. It puts each and every one of them with their bums up against the Bunsen burner and says, ‘Get your price right at 2 pm because you will be locked into that tomorrow from 6 am for 24 hours. If you get your price wrong then you will pay the consequence.’ That is the process of secret tender that is an integral part of the Fuelwatch scheme. It is highly competitive.

Senator ABETZ—All the methodology that one hopes exists behind this four-page supplement: is that going to be made publicly available and, if so, when?

Mr Samuel—We were asked by Informed Sources the other day whether the data we had could be made available. We advised Informed Sources that, of course, it is their proprietary data, they can make it available to whoever they want, whenever they want, in whatever form they want and the parties to whom they make that data available can then do whatever they like with it. That is not under our control. That is a matter for Informed Sources. It is their data. We have applied our methodologies to it. Our methodologies have been checked and determined to be robust by Australian Treasury. What Informed Sources wants to do with its data, who it wants to give it to and how they want to manipulate it or deal with it is entirely a matter for Informed Sources.

Senator ABETZ—It is interesting that you mention that because I understand on Sky News you were asked:

Ok so in terms of the timing, can we expect that methodology to be released this morning?

GS:—

I assume that refers to you, Mr Samuel—

I was hoping, it is a question of timing in terms of the staff actually putting together the material, but we’ll be doing that as soon as we possibly can.

Journalist: So is it the entire research we are getting?

GS: You couldn’t get the entire economic modelling because it is many, many hundreds of pages of computer modelling and I think it would be meaningless to most observers—

Thank you for that, but some of us would like to analyse it.

but the whole logic is for us to be able to demonstrate what our modelling conclusions were and how we actually reached these conclusions, the sort of data we looked at, the sort of assumptions that it made and the process of checking and counter-testing the processes that we undertook.

J: Has it been verified independently separate to the ACCC and if not, are you willing to have it peer reviewed?

And this is the interesting thing.

GS: It is being peer reviewed within the commission itself.

Mr Samuel—No, they are not the words I used, I am sorry. I was very clear in the words I used. I do not know what your transcript says but what I said was, ‘It has been peer reviewed within the commission itself.’ Whether the word used is—

Senator ABETZ—So you say it is ‘has’; that is an easy misunderstanding from a transcript, I accept that.

Mr Samuel—Yes.

Senator ABETZ—That peer review has been finished. Senator Coonan asks rhetorically why you are doing that within the commission and indeed your answer goes on to say, ‘That might sound a bit strange’—so you are right, Senator Coonan, but Mr Samuel had anticipated that and said:

... what we did is have one division of the commission to do the economic modelling and then we asked another division, entirely separate, to examine what had been done ...

That is all very nice, having it done internally, but there was a robust discussion et cetera after six months and your 380-page report—now to be given a four-page supplement to it, albeit in one discrete area—but the fact that there are hundreds of pages somewhere else that we cannot go through, I must say, leaves some of us a bit cold and concerned—

Senator Sherry—Let the witnesses explain—

Senator ABETZ—Let me finish. Don’t interrupt. You are very strong on that, I thought.

Senator Sherry—I am.

Senator ABETZ—Then you will take your own advice. Why hasn’t it been released? Is it only because of the proprietary rights of Informed Sources?

Mr Dimasi—Apart from the fact that, of course, it has been tested by Treasury which we talked about earlier—

Senator COONAN—That is not what they said.

Mr Dimasi—They re-ran the calculations and satisfied themselves that they were robust. I think that is what they said. Apart from that, I might add that a peer review would normally involve the peer getting access to the original data and running their own tests on it. That is what a peer review would normally involve. We have provided the results for people to do that. The tests that we ran are known to other econometricians. As Treasury has also verified, they are standard. As long as the owners of the data are prepared to release it, people can go in and apply the standard tests.

Mr Samuel—They sought our approval for that and our response was to say our approval is not needed. If Informed Sources wants to release the data that they gave to us to anyone else—they gave it to us under subpoena—they are entirely free to do so. They can impose whatever conditions they want to impose on the release of their data to whomsoever they wish, in-house, or in whatever form they want to release it.

Senator ABETZ—Didn’t you use some of that data that you obtained and then extrapolated from it into—

Mr Dimasi—No, we did not extrapolate. We took that data and we compared like with like. We adjusted from some common things like Mogas price of petrol that is available to people and some other adjustments like net taxes. That is in the public domain for people to work through. The other adjustment we made was for fuel premiums. That is not available to people. That is also confidential data so people would need to go the refineries to get that. We could not release that without the refineries' agreement. That is their data.

Senator COONAN—I just wanted to take up an issue about what Treasury checked and what they did not. I have to say here that I spent a bit of time with Treasury yesterday trying to establish just exactly what they check, being the department that had carriage of the cabinet submission. Obviously, they would need to be very clear about what they were putting in the submission. I asked a very specific question and I will read it to you. I said, 'Did Treasury also review the further results'—we had got to the earlier report—'that were contained or appended or referred to in the ACCC's press release dated 29 May 2008?' And Ms Holdaway said, 'We have not had the opportunity to do that.'

Mr Dimasi—I thought we had agreed with that before the break. Yes, that is correct.

Senator WEBBER—Can I intervene and ask a couple of questions. First I want to return to some of the comments that Senator Abetz was making. He was talking about consumers in Western Australia so, of course, he aroused my interest, being a West Australian. I have not seen the document that he was quoting from but I want to get your comments on his saying that not as many Western Australian consumers are as sensitive about hunting out the cheapest price, (a) whether that is actually because we have had FuelWatch for seven years so we have got a website we can visit, (b) whether it is because our fuel cycles are a bit different so we do not have to look for super-cheap Tuesday or (c)—and my understanding of this having been through the previous Senate economics inquiry into petrol pricing—whether it is because we do not actually have the extremes in pricing as well. We do not have the high prices that Sydney has and therefore we do not have that volatility and sensitivity in terms of the variations and therefore we do not have to be as sensitive as Sydney consumers.

Mr Samuel—I think I can say without contradiction that our resident expert on this, Commissioner Pat Walker, probably knows more about FuelWatch than anyone else present in the room so I am happy for him to answer that question.

Mr Walker—I will mention a few things. There is a lot of discussion around and some people are trying to create a virtue out of people having to contrive to have their petrol tanks empty on a particular day of the week, seek out a queue, jump on the end of that queue, hope it is a cheap price in the queue that they are in and, I guess, ultimately hope that whilst they are in the queue that petrol prices will not change. There seems to be some assumption that everyone flocks in and buys petrol on the cheapest day; and you will find there is actually an appendix in the report. We do not necessarily need to go to it right now but it is appendix P. It actually indicates the volume sold in Sydney and Melbourne, for example, even on the cheapest day, is only 20 per cent. So, 20 per cent of the volume of fuel is sold on the cheapest day, which means that 80 per cent is sold on the other days of the week. The survey results that I think Senator Abetz went to earlier indicate that 83 per cent of people would prefer to have one fixed-price during the day. I think that is part of the experience of Western Australian consumers.

I think the other important question for some of us who get so involved in this petrol cycle and petrol related issues is if someone asks me, for example, 'When is the best time to buy petrol?' I will tend to say, 'Tuesday or Wednesday.' Of course, if you ask the Australian motorist that question, 'When is the best time to buy petrol?' Their answer is, 'When I need it.' Therefore, they really appreciate the price certainty and transparency that FuelWatch provides. The other reason that they are probably not so price sensitive, in terms of the day that they choose to buy petrol, is that they know with confidence that no matter what day of the week it is, no matter where the price cycle is, at least 30 per cent of the service stations in Perth will be selling petrol below the average price. So even if the average price in Perth may be 1c, 2c or 3c dearer than Sydney or Melbourne, if you are a Perth motorist the difference is you can actually buy below that average price with certainty and confidence; whereas if you are in Sydney or Melbourne, you might be driving past a signboard, or your second cousin or your partner may have phoned you on your mobile phone. If someone phones you there is a danger, of course, that by the time you actually arrive at the service station the price will have changed; but the issue is this confusion and this inability of motorists to actually seek out and know where they can get a fair price for petrol.

Senator WEBBER—Another issue that has been raised in the interesting political conversation we have been having about the virtues or otherwise of FuelWatch is the impact it may have on rural and regional prices and consumers. Can you clarify the work that has been done and the impact it is going to have.

Mr Cassidy—I am bordering on a policy issue, but let me do that. Hopefully I will not wander too far into policy. As we indicated in the report, we do have a worry about FuelWatch, or schemes like FuelWatch, in areas where you have relatively few retailers. We worry that FuelWatch could actually facilitate collusion in price agreements in that sort of situation. That is why in the design of the FuelWatch system, as embodied in the bills that have been presented, it is proposed that FuelWatch will apply in the capital cities and in the large regional towns, but beyond that there is what is loosely called a 'knock in' system. The government has indicated that if a local council in a regional area believes that it should be part of FuelWatch it will need to discuss it with us. We will then look at things like the number of service stations and the level of competition within that area and we will provide advice to the minister on whether the area should be included. It is up to the minister to decide, in terms of the criteria which are outlined in the bill, whether that particular area will be included in the FuelWatch system. This goes back to comments that the chair was making earlier about some of the qualifications—if you can call them that—about FuelWatch in the report. It is proposed to deal with that particular concern, the concern about FuelWatch in areas where there are not many service stations competing, within what the government has proposed as the design of the national FuelWatch system.

Senator ABETZ—You were saying that 20 per cent of fuel is sold on the cheapest day. Is that right?

Mr Walker—It is approximately 20 per cent.

Senator ABETZ—How many days are in the cycle? If there is a cheapest day there must be a most expensive day. How many days are between the cheapest and the most expensive?

Mr Walker—It varies. For example—

Senator ABETZ—When you were talking to Senator Webber about these matters, what were you actually referring to?

Mr Walker—I was referring to appendix P in the ACCC's petrol inquiry report. There is detailed analysis there for each of the major capital cities.

Mr Cassidy—You will see that it goes through it day by day.

Senator ABETZ—How many days does it go through?

Mr Cassidy—There are seven days in the week, so it goes through seven—Monday to Sunday.

Senator ABETZ—But sometimes a fuel cycle goes for more than seven days, doesn't it?

Mr Cassidy—It can do.

Senator ABETZ—So having a snapshot of seven days may not necessarily be indicative of a full fuel cycle?

Mr Cassidy—I will take you to appendix P. The first chart gives you average retail prices and volumes in New South Wales for a whole year by the day of the week. It is not about the cycle. It tells you what volumes were purchased on average during each day of the week for the year 2006-07.

Senator ABETZ—There is a summary of price cycles at page 159 of the report. Do you think that that is relatively accurate? You included it in your report. It says, for example, that in 1993 there were 37 troughs; therefore, one would assume there were 37 peaks as well?

Mr Cassidy—Yes.

Senator ABETZ—Given that there are 52 weeks in a year, one would assume that the troughs and peaks have extended for longer than a period of seven days.

Mr Cassidy—Indeed. I think we need to be—

Senator ABETZ—So how often—

CHAIR—Let Mr Cassidy finish.

Mr Cassidy—I was going to say I think we need to be clear that while we talk about cycles, particularly in the major capital cities, they do not happen with great and constant regularity week in and week out. For example, we had a period just recently—I think it was for about three weeks—where there was no cycle in Melbourne. Prices remained fairly flat for the whole three weeks. While we talk about these cycles—and they are reasonably common—you do get periods where the cycles do not occur in particular cities, where they extend beyond the normal, say, weekly cycle. I think that is what this data reflects.

Senator ABETZ—That is why it is important that we do not necessarily just reflect on a particular day but look at the general trends. I think we agreed on that. But do you agree that in 1993 in Sydney, for example, there were 37 price cycles, albeit possibly of varying duration, according to that chart in your report?

Mr Cassidy—Yes.

Senator ABETZ—In 2007 in Sydney there were 41 such troughs?

Mr Cassidy—Yes.

Senator ABETZ—In Perth there were exactly half that number of troughs? In fact there was a little bit less than half; there were 20.

Mr Cassidy—That is right.

Senator ABETZ—In the context of a trough or the lowest day—being more than one of seven days, given that the cycles extend for more than a week—can you assist the committee by telling us if 20 per cent of fuel by volume is sold on the cheapest day? What volume of petrol is sold on the second cheapest day?

Mr Walker—No—

Mr Cassidy—We could sit and look at appendix P in our report and probably find that answer for you.

Senator ABETZ—On what page of appendix P?

Mr Cassidy—Appendix P starts on page 355 but it goes through each capital city. The data presented there is for 2006-07 by day of the week, and you will see underneath it talks about 20 per cent being bought on such and such a day and so forth. You can sit and analyse that data if you like.

Senator ABETZ—The point I want to make is that there was the suggestion that consumers were somehow not aware when they ought to buy their petrol. In your analysis on page 357, looking at random at appendix B, we are told that in the city of Brisbane 62 per cent of petrol—the vast bulk; nearly two-thirds—was sold on the four days where average prices were below the weekly average. That tells me something about the petrol-buying consumer—that they are buying two-thirds of their petrol needs at a time when the petrol price is well and truly below the average. Is that correct? Am I reading that correctly?

Mr Cassidy—I do not know that I would disagree with that. We could be in violent agreement here.

Mr Dimasi—That is about six per cent greater than random.

Senator ABETZ—And that would be statistically significant, would it not?

Dr King—We have absolutely no idea unless you can give us a distribution and some standard errors.

Senator ABETZ—You are the ones providing us with the information. I am seeking to interpret it and now all of a sudden, when I am trying to drill into the information, it seems to have some deficiencies.

Mr Dimasi—No, there is no deficiency in the information. What you said—

Dr King—You said ‘the overwhelming majority’. I merely wish to point out that if consumers bought randomly, it would be approximately 14 per cent per day, therefore if we look over four days—

Senator ABETZ—Sorry, 14 per cent per day?

Dr King—One hundred divided by seven days—

Senator ABETZ—Wait a minute. This is suggesting that the price cycle goes for seven days but what I have put to you is that the price cycle extends beyond seven days and therefore that would not be right, would it?

Dr King—You are referring to the information provided here on page 357. The information on page 357 says:

62 per cent of petrol was sold on four days where average prices were below the weekly average ...

So it is a weekly based—

Senator ABETZ—I stand corrected on that and I accept that point.

Dr King—and looking at the weekly average and asking what proportion of petrol was sold below the average, obviously, the three days remaining must account for the remaining 38 per cent because it must add up to 100.

Senator ABETZ—Yes, I accept your calculations now. I accept where you got that 14 per cent from. But by using the week as opposed to the full cycle, which I suggest to you does not start at midnight Sunday and end midnight Saturday—the fuel cycle in fact usually goes longer than a week. Do you agree that a fuel cycle usually goes longer than a week?

Mr Samuel—If you look at the chart on page 159—

Senator ABETZ—The chart on page 159 tells me, does it not, that in 2007 there were 41 troughs, remind me—

Mr Dimasi—That was for 294 days. That was not for a full year.

Mr Samuel—Let's go back to the beginning of FuelWatch—

Mr Dimasi—Can I just take you back to the table on page 159? For example, in Sydney, because you picked Sydney, if you take the last say half a dozen years, in 2002 there were 51 cycles and then it was 53, 52, 51, 51; that is pretty close to one a week. Given that occasionally—as we saw in Melbourne recently—there was no cycle for three weeks so that number gets thrown out, it is pretty close in the major cities to a cycle that runs for a week. Perth, again as indicated here, has run roughly on a two-weekly cycle recently, but that is as we said earlier since about 2005.

Mr Samuel—It is very instructive to look at that table and just do some—

Senator ABETZ—Which one?

Mr Samuel—This is the one on page 159, table 11.2. It is very instructive just to do some comparisons going back to the beginning of FuelWatch in 2001 and look at either the number of troughs or the average days between troughs. Just running across the page, Sydney, 45; Melbourne, 36; Brisbane, 44; Adelaide, 39; and Perth, 35. It is quite haphazard. If you go through to 2002: Sydney, 51; Melbourne, 48; Brisbane, 50; Adelaide, 44; and Perth, 42. I do not want to go through the whole table but if we go through, we see eight days, eight days, seven days, seven days, seven days, six, seven, seven, seven, eight. It is really drawing a long bow to suggest that FuelWatch, which started on 1 January 2001, had a dramatic impact on price cycle behaviour other than to point to the fact that in 2005, which is several years later, the price cycle in Perth started to move out to a longer period, that is, to 12 days.

Senator ABETZ—In relation to the stated 2001, in your analysis when do you say FuelWatch started in Western Australia?

Mr Dimasi—FuelWatch started on 2 January 2000, I believe.

Mr Samuel—It was 2001.

Senator ABETZ—But then, as I understand it, a significant amendment was made. I think the ACCC has referred to it as being the time when FuelWatch—correct me if I am wrong—really started, or whatever, and therefore the data and analyses should not really be undertaken from 1 January but from August 2001 or September.

Mr Cassidy—The FuelWatch scheme, or the 24-hour rule, as it was then called in WA, was significantly altered by legislation in August 2001 because there was a serious glitch that meant that, while service stations were required to notify their price for the next day, they were not actually required to move to that price; they could stay on the price they had the previous day or indeed they could move back and forth between the price they had on the previous day and the notified price. It meant that for that period of about seven or eight months up until when the legislation was changed in August 2001, FuelWatch, as it is now called, really was not working as intended. FuelWatch, as we know it in WA, actually came into real effect in September 2001.

Senator ABETZ—That was the point I was making. Mr Samuel, you told Sky News that there were hundreds of pages of modelling and chances are that people other than the ACCC might not be able to analyse this modelling. Can you tell us how many hundreds of pages are there?

Mr Samuel—I would have to defer to my—

Mr Dimasi—It is computer files that we are talking about. I am not sure what number of pages it is. I have no idea what the number of pages is.

Senator ABETZ—All I am doing is quoting your chairman's words, that there are hundreds of pages, so what I want to know is what does that mean in A4 sheets of paper?

Mr Dimasi—I expect that my chairman, who is not a computer modeller, I might add, was trying to convey—

Senator ABETZ—I thought he was everything.

Mr Dimasi—He was probably trying to convey the correct information that there are significant working files involved. I think that is the point.

Senator ABETZ—That is how we are supposed to interpret that claim?

Mr Dimasi—I am happy to stand corrected and to change the words to 'lots'.

Senator ABETZ—Would it be more in volume than, say, your December report? I am not talking about quality, or anything.

Mr Dimasi—We would have to print out those things to have a look and see. I have no idea.

Senator ABETZ—You cannot give us a rough idea—you have no idea?

Mr Dimasi—No idea.

Senator ABETZ—If you could take that on notice, thank you.

Senator JOYCE—I think the first thing we have to differentiate between is recommendation and options. If I were to give you an option on a number of cars, that is not as powerful a statement as if I were to recommend a certain car to you, is it? I refer obviously to the report where you give options, not recommendations.

Mr Samuel—I think you will find if you go to the conclusion there that we outlined some options. We dismissed two of the options, which were what I call the ‘Informed Sources option’ and then the modification of that which is to produce the Informed Sources information via or through the ACCC, and came down in favour of the Fuelwatch option, with some caution that some areas needed further examination which is what we have been addressing this morning.

Senator JOYCE—The endogenous breakpoint analysis modelling has some flaws, doesn’t it?

Dr King—None that I am aware of, but I am happy for you to enlighten us.

Senator JOYCE—Do you have any alternate statistical modelling that could have been provided on which to premise your decisions?

Dr King—Are you talking about the exogenous breakpoint analysis?

Senator JOYCE—Yes.

Dr King—Do you mean the exogenous breakpoint analysis that has been done here on weekly, monthly, average data and minimum data?

Senator JOYCE—Yes. Are there any other alternate modelling processes that could have been used instead of that form?

Dr King—Are there any other econometric tests that could have been used?

Senator JOYCE—Yes.

Dr King—There are a variety of econometric tests that can always be used in any situation. It is a matter of judgement by the modeller to choose the appropriate test and it is the commission’s view that this is the appropriate test to use on this data.

Senator JOYCE—Why is it the appropriate test?

Dr King—Perhaps it is best to start off by explaining what structural break analysis actually does so that we can understand why this is the appropriate test. When you are looking at any time series of data, such as we have here, a structural break looks at the underlying regime generating the data. Your data will have a profile, if I can put it that way, which may alter due to a specific underlying event. What structural break analysis does is it takes that data and checks against the possibility of there being no breaks or whether there are statistically significant breaks in that time series—in this case either one or two.

Senator JOYCE—Your premise of statistical significance is what?

Dr King—The standard test of statistical significance is based on the assumption of the normal distribution of errors and a 95 per cent or 99 per cent confidence interval.

Senator JOYCE—You are using a 95 per cent confidence interval?

Dr King—I can give you the p-values, if you prefer, which allows you to do your own confidence—

Senator JOYCE—Why do you use a 95 per cent confidence interval?

Dr King—That is the standard one used in econometrics, but as I said I am happy to give you the p-values.

Senator JOYCE—You did not in page 4 but you have just told me that you are going to actually do that now—is that correct?

Dr King—To give you the PBs?

Senator JOYCE—Yes.

Dr King—I am happy to, if you wish for me to run through them now.

Senator JOYCE—Obviously if the statistical modelling is questionable then the premise of the decision to take on Fuelwatch is questionable, isn't it?

Dr King—I am sorry, this particular test is doing one very specific thing and obviously it is part of a number of tests that the commission undertook, some of which were reported in our December 2007 report and others are mentioned on page 3 of this press release. This particular test is simply analysing whether there are structural breaks in the data, determining whether those structural breaks are statistically significant and when those structural breaks occur. The aim of this test was to confirm that the FuelWatch effect was separate from, for example, a Coles entry effect into Western Australia, which is what this test does. This test shows that, yes, it was statistically separate from a Coles effect, so from this test we can say that FuelWatch has a statistically significant separate effect from Coles.

Senator JOYCE—Do the structural breaks relate to a better price?

Dr King—The structural breaks relate to the price series, yes.

Senator JOYCE—Do they relate to a better price?

Dr King—The coefficients are negative, so they relate to a price reduction, yes.

Senator JOYCE—With your analysis, though, you looked at posted prices, didn't you?

Dr King—The data that we have is based on the posted prices, yes.

Senator JOYCE—It is looking at posted prices?

Dr King—Yes, it is.

Senator JOYCE—Why did it not look at actual prices?

Dr King—I am sorry?

Senator JOYCE—Is it appropriate from an economic testing point of view for the ACCC modelling to only look at the posted price and not do a full analysis on the price actually paid by motorists and the volumes sold at those prices?

Dr King—I think there are two parts to your question. The first is, of course, the posted prices are the prices paid by the motorists. Last time I went and filled my tank the posted price was the price I paid, and I suspect that they would be in some significant trouble if they started selling at anything other than the posted price. The price data used by the commission

are the prices paid by the motorists. If the commission did not have available to it—and as far as I am aware the volume data for any period pre-2006 does not exist—

Senator JOYCE—The volume data does not exist?

Dr King—As far as I know.

Senator JOYCE—How does that affect the weighting of your modelling? If the volume data does not exist, does that start to diminish the veracity of your modelling?

Dr King—No, not at all. For modelling checks, the study used the relative prices between Perth before FuelWatch and after FuelWatch, using the east coast as a baseline. The results are here. I will not repeat them, but it shows statistically—

Senator JOYCE—At what point in time did volumes become a part of the modelling?

Dr King—Volumes are not in the model that we are looking at, the endogenous structural breaks. This is a posted price time series. You cannot simply change a time series half-way through, because you would end up with inconsistent data over time.

Senator JOYCE—Is the relevance of the posted price change dependent on the amount of volume that is sold at that posted price?

Dr King—A posted price is a posted price as far as I am aware.

Senator JOYCE—Should any modelling of FuelWatch incorporate a volumetric analysis in order to be statistically more valid?

Dr King—There was no volumetric analysis, so no econometric analysis could be undertaken pre and post FuelWatch using volumes of petrol sold.

Senator JOYCE—Would you have liked to have had data on volumes so as to cross-check your findings?

Dr King—Anyone doing econometrics would love more data, but data was not available and so could not be used.

Senator JOYCE—Would more data have given a better decision?

Mr Dimasi—I might add on this question of volumes—and this is a separate point to the one that Dr King is making—that we also tested pre- and post-FuelWatch Perth prices at the highest, lowest and the remaining average five days of the week, and we still found that under FuelWatch prices were lower by a statistically significant amount for the lowest day of the week, the highest day of the week and for the average five days. Given that we did not have the volume data—and that has been acknowledged—of course we looked for a substitute to give us some indication, and that was one of the substitutes that we used.

CHAIR—Senator Lundy?

Senator JOYCE—I still have some seconds before 20 past—

CHAIR—The answer may not be seconds.

Senator JOYCE—Can I just finish this off, because it is very important. You could have used your information powers under part VIIA to request volume data?

Mr Dimasi—We did and we do have volume data for 2006-07, which I have referred to several times, and we used that snapshot year to test a number of propositions. But we did not get volume data going back all the way and I am not sure whether or not it exists going back pre FuelWatch.

Senator JOYCE—Have you found out whether it does?

Mr Dimasi—I do not know. It probably would be significantly onerous on the companies, but we have not got it.

Senator JOYCE—So unless we get that volume data from before 2006-07 your modelling is implausible?

CHAIR—Senator Lundy has the floor now. We are going to have a brief change of topic and we will probably go back to fuel after lunch.

Senator LUNDY—I thank the committee for its indulgence. I have obligations in another committee, so I appreciate this opportunity. My questions relate to telecommunications and the issue of the current operational separation regime that applies to Telstra. Can you tell the committee when that operational separation regime was first implemented?

Mr Samuel—I think the legislation was passed in 2005. Telstra submitted its draft operational separation plan on 3 April 2006 which the then minister approved on 23 June 2006, and the regime took full effect on 1 December 2006.

Senator LUNDY—What role does the ACCC have under the current operational separation framework?

Mr Samuel—I think we have a three-headed role. One is to monitor, to investigate complaints and then to report to the minister, if appropriate.

Senator LUNDY—In terms of the conduct of your role, have you been required to conduct any investigations or prepare any reports as yet?

Mr Samuel—I will ask Mr Cosgrave to respond to that.

Mr Cosgrave—Since the implementation of the regime we have received a number of complaints about breaches of the operational separation plan. We have investigated those where we have had concerns that there have been issues either of a breach or of the objectives of the legislation not being met. We have complied with our role of reporting in relation to that.

Senator LUNDY—What are the reporting obligations?

Mr Cosgrave—The report is to the relevant minister.

Senator LUNDY—How many reports to the relevant minister have you made?

Mr Cosgrave—We have made three reports to the relevant ministers.

Senator LUNDY—In the ACCC's view is the current operational separation regime that applies to Telstra an effective mechanism for promoting equivalency between Telstra and its competitors?

Mr Samuel—I can give a short answer to that or a slightly longer one. The short answer is probably no. We continue to receive complaints of conduct that suggest that the objective of

equivalence, which was the objective of the regime, is not being achieved. There have been some instances of conduct since the regime's inception which, while it is not clear they breach the operational separation plan, do not promote the objective of equivalence which was the fundamental objective of the plan in the first place. In relation to the other objective of transparency, there is some additional reporting that the regime provides. However, this has been of limited benefit and is at a highly aggregated level. I guess, in summary, we would have to say that the regime is fundamentally unduly complex. There is a lot of discretion left to Telstra. There are limited self-regulatory mechanisms and unduly convoluted processes to implement any corrective action if a problem is identified.

Senator LUNDY—Given that is the ACCC's view, can the ACCC share its knowledge of other operational or functional separation regimes that are being implemented or have been implemented in other countries?

Mr Samuel—I would need to do that at a very high level because I do not want to get into some of the policy issues and the advisory matters that we may be dealing with in respect of the national broadband network. Obviously we keep abreast of re-entry practices worldwide. We have followed the development of separation regimes in countries such as the United Kingdom, New Zealand and Singapore, and other countries contemplating new regimes, such as Ireland, Italy and Sweden. I guess the key differences between Australia's operational separation regime and some of these overseas models, which are otherwise potentially described as functional separation regimes, relate to about five issues. They are differences in governance and oversight arrangements, different accounting requirements and processes, and ring-fencing of discrete organisation units, say, for example ring-fencing of network access from the supply of wholesale services, which is a more common in overseas regimes. Also, there are different prices in non-price equivalence of input measures and different approaches to enforcement.

Senator LUNDY—In terms of the network access ring-fencing, what observations are you able to make in terms of those five features of overseas schemes in actually being able to fix some of the problems you have experienced with the current operational separation regime that is in Australia?

Mr Samuel—I want to be a bit cautious here because, as you are aware, we are into the national broadband network probity process and we want to be careful that we do not step over the line there—

Senator LUNDY—I would not want to do that but I am—

Mr Samuel—Mr Cosgrave, do you want to respond on that to the best that you can—

Mr Cosgrave—I am cautious to do that for the reasons outlined by the chairman. One of the issues raised in the request for proposals that the government has is how it relates to structural issues and until we see those proposals I think we are probably not in a position to comment further.

Senator LUNDY—I am happy to conclude my questions there.

Senator JOYCE—Dr King, did you actually do the econometric analysis or did someone else in the ACCC do it?

Dr King—The econometric analysis is done by a team of people in the ACCC.

Senator JOYCE—Were you the head of that team?

Dr King—I was the commissioner involved in the fuel inquiry. Mr Dimasi, who is next to me, was the staff member in charge of that team.

Senator JOYCE—You had oversight of all that work?

Dr King—I was commissioner involved in the inquiry. I was aware of the work. I talked to the team involved. I am not sure if I would say ‘oversight’ is the right word.

Senator JOYCE—Aware is one thing, actually participating in it is something else. Were you participating in it or were you aware that it was going on?

Dr King—I talked on a regular basis with the team involved in it. If you are asking whether I pressed the buttons on the computer myself, the answer is no.

Senator JOYCE—I am asking whether you reviewed the papers to check their veracity.

Dr King—Did I see the results and make sure that those results were checked for veracity, yes.

Senator JOYCE—I can see the results. Did you check the process?

Dr King—Did I run regressions myself?

Senator JOYCE—Yes.

Dr King—No.

Mr Dimasi—I might add, it would be a very unusual role for a commissioner to play.

Dr King—To sit down and start running—

Senator JOYCE—I do not know.

Mr Cassidy—They were doing econometric analysis because—

Senator JOYCE—The whole premise of Fuelwatch is based on this econometric analysis. That is why it is the crux of our questioning.

Mr Cassidy—Yes.

Senator JOYCE—You said there were many, many files to this econometric work. Do you have any problems with tabling them? You could just put them on a USB and send them to us, couldn't you?

Mr Samuel—As I have said before, we have been asked by Informed Sources whether data can be made available. We have said to Informed Sources, ‘It is your data. You make it available in whatever form and to whomever you want to make it available and on whatever conditions you want.’ I have to say to you that we have had the process and methodology reviewed within the commission by separate parties who are not involved—

Senator JOYCE—Independent?

Mr Samuel—Bear with me, sorry, who are not involved in the original work. It has also been checked for its accuracy and its robustness by Treasury, but I am not in a position to be able to say that we would make our data and our methodology available to anyone out in the

public arena. We are not prepared to make all this available for any economic modeller or any economic student to simply go through and then to engage the already heavily worked staff of the ACCC in debate on these issues. The commission of inquiry needed to satisfy itself that the work that was done was robust and they have done just that.

Senator JOYCE—Let us cut to the chase: what you are saying is that you will not allow independent reviewing of that modelling work?

Mr Samuel—I would have thought that I did not say that. I said that Treasury had undertaken its own robust analysis. But if there is an economic consulting firm that wants to do its own analysis of the impact of FuelWatch in Perth then they can approach Informed Sources. Not that it is our right to do so anyhow, but we have said to Informed Sources, ‘You are absolutely free to make whatever data you want available to whomever you want on whatever terms and conditions you want to make it, so they are entitled to do their own research and use whatever test they want to use and whatever methodology they want to use. I am sure that there are some economic consulting firms that will find someone prepared to give them a brief to do that.

CHAIR—It is 12.30 pm so we will break for lunch for one hour and resume at 1.30 pm with the ACCC.

Proceedings suspended from 12.30 pm to 1.31 pm

CHAIR—I call to order this meeting of the economics committee. We are still on Treasury portfolio, ACCC.

Senator ABETZ—Allow me to turn to page 291 of Budget Paper No. 2. Just take me through that. As I understand it, we have budgeted \$20.9 million as the total cost to establish and implement a national Fuelwatch scheme. Is that correct?

Mr Samuel—Yes.

Senator ABETZ—And the ACCC is getting around about \$18.7 million and the Australian Competition and Consumer Commission is getting \$1.5 million. Is that correct?

Mr Cassidy—It is one and the same. The ACCC is the Australian Competition and Consumer Commission.

Senator ABETZ—Sorry. Yes, the ACCC is getting that for—I should have continued—capital costs?

Mr Cassidy—That is right. So that gives you all of that other figure.

Senator ABETZ—Capital costs in the first year, not surprisingly, are quite high, at \$1.3 million. What is that for? Is that to get yourself a computer system, to get things up and running, or what is that figure for?

Mr Cassidy—The capital figure that you mentioned?

Senator ABETZ—Yes, the \$1.3 million.

Mr Cassidy—Basically, IT equipment.

Senator ABETZ—I thought as much. Do you think it is going to cost about \$0.1 million to maintain or keep that IT equipment going? Is that just the rough budgeting?

Mr Cassidy—Yes, that is basically about it, yes.

Senator ABETZ—How many officers will that \$4.5 million help fund around Australia for the Fuelwatch scheme?

Mr Cassidy—Thirty in total.

Senator ABETZ—And how many offices, as in physical locations, where they might be housed?

Mr Cassidy—Our plan is that most of the people working on Fuelwatch will be in Melbourne. However, probably about nine, we think, will be out in our regional offices. They will be doing a mixture of undertaking compliance activities and liaising with local media, because one of the keys, I think, to Fuelwatch being a success—and certainly this is what we have been told by our WA colleagues—is to make sure that the information on the Fuelwatch website is being picked up by the media, including local media. So our intention is to have people out in our regional offices in each of the capital cities part of whose job will be to assist the local media in picking up the relevant information from the Fuelwatch site.

Senator ABETZ—How many people are employed by FuelWatch in Western Australia or in the discrete division of FuelWatch of fair trading, whatever it is called?

Mr Walker—When I left, approximately seven full-time equivalents.

Senator ABETZ—So multiplying that, in rough terms, four or five times would be about the appropriate number of people to cover all of Australia?

Mr Cassidy—If you do the straight arithmetic from Western Australia you end up with a higher figure than 30.

Senator ABETZ—So you are more efficient than Western Australia?

Mr Cassidy—I would not—

Senator ABETZ—I am sorry, I withdraw that question. I do not want to get involved in that debate.

Mr Cassidy—Seriously, it is because we have some economies in terms of already having some of the IT equipment that we will be using which is already in place and we can use some of our existing resources, including people doing some of what needs to be done. We have actually economised on what would be the straight pro-rata—

Senator ABETZ—Yes, good on you. You would be aware of the regulation impact statement provided by Treasury in this matter?

Mr Cassidy—I am aware of it. I should say that, while we are aware of it, it is a statement that was prepared by Treasury.

Senator ABETZ—Of course. I was just wondering if you could assist me in that. It has got an impact analysis and it then canvasses four options. Option No. 1 is the option that is represented by Fuelwatch?

Mr Cassidy—Yes. You will just have to bear with me because, as I say, we did not prepare this document, so I need to be looking at it, but yes.

Senator ABETZ—I thought as much. At paragraph 65, for example, of that document we have the figures that link up beautifully with page 291 of Budget Paper No. 2—is that right?

Mr Cassidy—That is right.

Senator ABETZ—Then I turn the page and I see ‘Business Compliance Costs’. I am told there that it imposes a series of compliance costs upon retail businesses of \$20.7 million.

Mr Cassidy—This is where, I am afraid, we run into a problem. The ACCC has no understanding whatsoever of that figure or what the basis for it is or how it was derived. Our view is, particularly with the way we are designing the Fuelwatch system, that the compliance costs for petrol retailers will be almost non-existent, but certainly absolutely minimal.

Senator ABETZ—This is the interesting point here because Treasury in its considered documentation is telling us that the estimated business compliance cost is \$20.7 million, including the initial start-up costs and one year of ongoing business compliance costs. The estimated start-up cost is \$2 million, or \$424 per business. The estimated annual ongoing cost is \$18.7 million, or \$3,974 per business. Let us amongst friends round it up to \$4,000 per business—

Senator COONAN—That is before you have got any benefit for consumers.

Senator ABETZ—That is quite right. I am wondering if you, Minister, or one of the people at the table can assist me if the budget documentation dealing with Fuelwatch in any way, shape or form covers this \$20.7 million.

Mr Cassidy—As far as I am aware the only place that that figure appears is in this RIS because it is not actually a budget figure in any sense; it is what purports to be the cost to retailers—

Senator ABETZ—Which may be passed onto consumers. It is not something that the government has budgeted for or factored into its budget and that is why you cannot find it, and you have confirmed to me that I could not find that figure either in the budget papers. Treasury and the government tabled this regulatory impact statement indicating the cost per business, \$4,000 or \$18.7 million per annum total, that may be passed on to consumers, yet we interestingly have the minister for Fuelwatch on Sunday, 27 April, telling Sky News in an interview with David Speers about Fuelwatch:

This will be a free service. We’ll be covering the cost of the setup, and there’ll be no increased compliance costs for service stations whatsoever.

Minister, you as a government accept in the regulatory impact statement that \$20.7 million is going to be the cost to business. We also have you, Minister, promising that there will not be any cost to business. Where is this \$20.7 million going to come from?

Senator Sherry—I will be happy to refer that to the minister and I will take it on notice for you.

Senator ABETZ—Good luck in trying to answer that. In paragraph 72 of the document this figure was based on 4,700 retail outlets across Australia. Are you aware of how many retail outlets there are in Australia? There would be about what? There would be about 6,000, but of course Fuelwatch will not apply to all of them, so the 4,700 would represent, what, about 70 per cent?

Mr Cassidy—Yes. I must say it is something that is of interest to us but we cannot actually say to you exactly how many service stations there are in Australia because that is not information we have been able to get our hands on. But we operate on the basis that there are perhaps a bit over 6,000—say, 6,200. We are expecting—leaving aside the opt-in provisions I was talking about before lunch—that Fuelwatch will cover a bit over 70 per cent of those, which I think probably then, more or less, gets you to that 4,700.

Senator ABETZ—I do try to be as an agreeable person as possible and I love it when we can be in agreement on these matters—

Senator Sherry—I have some information on the earlier issue that Senator Abetz has asked about and I said I would take on notice. The government's Fuelwatch program will improve competition in the market by empowering consumers. We are concerned about potential cost to businesses from Fuelwatch. As part of the assessment of potential compliance costs there will be the provision of a toll-free number for reporting fuel prices once a day to ensure they do not face these costs. The minister believes in net terms many businesses will in fact be better off. They will only have to phone through prices once a day instead of every time the fuel price changes through the day as they now do with private monitoring services. Fuelwatch will make use of existing accounting and record keeping and it will also cost consumers less to find the cheapest petrol, so consumers will obtain information for free that the oil companies can use to pay a price to obtain. I suspect that is not going to satisfy your questions—

Senator ABETZ—Well picked up—

Senator Sherry—I will take it that this question is still on notice, but I wanted to inform you as soon as I could on the views of the Assistant Treasurer, which undoubtedly were the views that he was informing the community of in that interview you referred to.

Senator ABETZ—Which, of course, was on 27 April 2008. But he then, as I understand it, tabled a regulatory impact statement on 29 May, about a month later. One assumes that, by tabling this document, he, at least on this occasion, is accepting Treasury advice in relation to the impact of Fuelwatch. I am not sure that he does it all the time, but I think on this occasion he may have done. So what we are trying to get is: how do the promises in this interview on 27 April marry up with the costs that will be incurred according to the regulatory impact statement and the, I think, agreed fact that there is nothing in the budget documentation to cover that shortfall and that which the regulatory impact statement predicts will, in fact, be passed onto consumers?

Senator Sherry—The question is on the record. I anticipated my response would not be sufficient for covering the issues you have raised, and we take it on notice.

Senator COONAN—Could you just also as part of taking on notice refer the Assistant Treasurer to the contents of paragraph 71, which also seem at odds? It sets out a number of matters which are said to go to compliance costs for small businesses establishing and maintaining information technology, daily notification of prices, learning the new legislation, establishing record keeping, info-tech systems, maintaining records, complying with auditing and compliance, developing and applying petrol pricing et cetera. The cost to business, no doubt, will also be reflected in their need to be able to properly keep their records and

undertake audits. There is obviously a huge compliance burden involved in Fuelwatch before we will see any benefit at all to any consumer. It is a perfectly reasonable piece of information that we want to know now before we have to actually look at this legislation in the Senate.

Senator Sherry—I will take your question on notice, but you are reading from the EM, aren't you?

Senator COONAN—Sorry, I am reading from the RIS?

Senator Sherry—The RIS, yes. So it is known. The issues are dealt with in that document, but I will take your question on notice.

Senator COONAN—The other thing was that the department of finance apparently raised some objections in the coordinating comments to the cabinet submission about the regulatory burden and the cost of compliance. Was that something that was raised with the ACCC, because you said you had ongoing discussions with them?

Mr Cassidy—No, and I do not think we have seen the finance department coordination comment—

Senator COONAN—But you had discussions with the department of finance—

Mr Cassidy—We did, but our discussions with Finance revolved around our costs, what we would require and at that stage we did the best we could on the way we saw the Fuelwatch system being designed and operating. It did not go to what you might call third-party costs, which is, of course, what our part in the RIS is addressing.

Senator Sherry—Can I draw your attention to the *Hansard* of 29 May. This is in relation to the issue that Senator Coonan has just raised. It states:

In relation to compliance costs, which were mentioned in the House today, the cabinet regulation impact statement, which I have tabled as part of the explanatory memorandum, was considered by the cabinet. In considering the regulation impact statement and the implementation costs involved in FuelWatch in the proposal, cabinet took a decision that the implementation cost should be nil. The reason for this was on the basis that information technology systems would need to be installed at each service station, based on the experience in Western Australia.

Instead of this, and to eliminate implementation costs, no software will be required. Service stations will be able to notify prices via a website or a toll-free number. As the explanatory memorandum notes, there will be no ongoing compliance costs because no software will need to be maintained.

A very large number of service stations subscribe to the informed sources website, which involves a considerable subscription cost which will no longer be relevant.

So, they will not be paying subscription costs.

Senator ABETZ—But not the independents.

Senator Sherry—The ACCC is as robust and independent organisation as I have seen.

Senator ABETZ—No, independent retailers. If you are not across the brief, do no interject.

Senator Sherry—You were in fact interjecting on me.

Senator ABETZ—Yes, and then you came back at me.

CHAIR—Continue please, Minister.

Senator ABETZ—You got sprung; just accept it. I do when I get caught out with answers. I raise the white flag—

CHAIR—Senator Abetz! Minister, please continue with your response.

Senator ABETZ—Don't let pride get in the way.

CHAIR—Please continue with your response.

Senator Sherry—Thank you. I was just on the last sentence.

Senator ABETZ—Oh, good.

Senator Sherry—He can never resist. It continues:

Those who do not subscribe to the website will, in most cases, spend some time each day checking a competitor's price movements, which, of course, will no longer be necessary either.

Senator JOYCE—I want to refer you to page 377 of your *Petrol prices and Australian consumers* document. I refer specifically to the caveats that are put on your whole report. I have noticed the caveats are rather substantial. I refer specifically to the last paragraph:

Of potentially greater concern is the possibility that something else entirely has driven the improvement in the relative price margin. For example, Perth's recent relatively high growth may have made it such a relatively larger market that it has enjoyed greater competition and/or economies of scale.

Also, the opening paragraph says:

There may be other items that may have induced a structural break aside from FuelWatch. However, the use of the eastern capitals for relativity means that any missing items would need to have a significantly different effect for Perth relative to the other capitals.

Are these the sort of caveats you put on most of your reports?

Mr Dimasi—These are the sort of caveats you would put in this sort of econometric report, yes. The challenge that we set ourselves was to basically look at the potential explanations, test for those and set up whatever potential challenges there could be. What we did do was to look at where all the evidence was—what evidence there was—and to test the caveats to our satisfaction. For example, to go to the last paragraph on 377 that you have referred to, the sort of issue that could be relevant is where something different may have occurred in Perth compared to the other capitals, so it is the difference that is important; and then, if you like, to have some sort of theory of why that difference would lead to differences in prices. If you take the example of higher growth, the issue there would be: would higher growth have an effect? If it did—and no-one has put any evidence to us that it has—it could have had an effect where, in fact, the prices in Perth were higher rather than lower and so the effect that we measured for FuelWatch could have underestimated rather than overestimated the effect. These are the normal caveats that you would put when you try to cover all the possibilities, look at what might be—

Senator JOYCE—These are the normal caveats you put on all your reports?

Mr Dimasi—No, I said for this sort of analysis—

Senator JOYCE—These are the substantial caveats that you put on this specific report?

Mr Dimasi—For this sort of analysis it is these sorts of caveats—not that specific one. It depends on what it is you are testing et cetera. But for this sort of analysis these are the sorts of caveats that you would put. It does not mean that there is a particular—

Senator JOYCE—You put a range of caveats on a range of reports. Would you call these caveats substantial or not?

Mr Dimasi—I would put them as caveats, really. Whether they are substantial depends on whether there is any evidence to tell you that they might have an effect, and on the ones we have put here there weren't any.

Senator JOYCE—I look on them as substantial. I will go back to the report itself. Dr King, you have been an academic. Can you explain to me what peer review means for published economic papers and university scholarship generally?

Dr King—Yes, of course. Normally if you put out an academic article for peer review, say, for example, when it goes out to an academic journal, the article is sent to a blind referee—the preferred method is double blind—

Senator JOYCE—That is a very important point to remember there: blind referee. Keep going.

Dr King—Preferably it is a blind referee under academic. It is actually not always the case. Some are one side blind, some are two.

Senator JOYCE—You changed directions there quickly.

CHAIR—Senator Joyce, please!

Dr King—No, I am just pointing out that, say, for example, the AER is a double blind. I am just trying to think—I am not sure that the economic record is double blind. Anyway, different journals have different things. You would send the academic paper out. The referees would then look through the academic paper, would then report back to the journal editors and the journal editors would then report back to the authors.

Senator JOYCE—Can you confirm that peer review for published economic literature means that it must be done externally? For example, could you just give a paper to a colleague in the same economics department and call it a peer review?

Dr King—The answer is yes. It would not normally be done for an outside economic journal. But, for example, with regards to PhD theses in US universities they are almost always examined—which would be a form of peer review—in some cases entirely internally to the university because the university itself has the relevant professional expertise in there and it can have a PhD thesis looked at by somebody who has not been involved with that student but is able to evaluate that student's work.

Senator JOYCE—I am not going to argue on the point, but I disagree.

Dr King—I am sorry, but it is a fact.

Senator JOYCE—Can you confirm that a fundamental principle of academic integrity is that there would be an external independent peer review of the publication and for the underlying data to also be made available for that peer review, particularly if the referee had follow-up questions?

Dr King—The normal approach, as I have already said, for a PhD thesis, for example, is that it can be done internally in US universities, and that is done. For an economic journal it is normal that it would be done outside. With regard to data or a econometric analysis, it would be normal for the relevant party if they wanted to follow up and run the regressions themselves to request the data set. My understanding in relation to our FuelWatch data, as the chairman made apparent this morning, is that Informed Sources can give the data to whoever would like to peer review our work.

Senator JOYCE—Also, the peer review for economics is totally at arm's length and usually the author of an economics article being reviewed for publication does not even know who the reviewer is. Is that a fair statement reflecting your experience of how economic literature is peer reviewed?

Dr King—It is usual that the author would not know the reviewer. However, it is more common that the reviewer knows the author of the paper that they are reviewing. In part, that is just due to the internet. Normally, if you were reviewing an academic paper nowadays it takes you about 30 seconds with a Google search to work out who the author is.

Senator JOYCE—Why has the ACCC not followed the standard peer review protocols?

Mr Dimasi—We were not publishing an academic paper. This is not a paper for a journal.

Senator JOYCE—I have looking at something here that looks pretty well published.

Mr Dimasi—What we did was we made sure that our conclusions were right and we were satisfied of that. That is what our concern was.

Senator JOYCE—This is the problem, because it was not, as you put very well, a blind process. We know that the only people who reviewed your modelling are the people inside your own department. We cannot rely on the total premise of why Fuelwatch came in.

Mr Dimasi—On the general question, that is not for me, but the idea of peer review in government agencies I think seems to be a new concept.

Senator JOYCE—Why?

Mr Dimasi—I just have not come across that sort of issue before, I must say.

Senator JOYCE—The Australian people—

CHAIR—Excuse me, could we talk into the microphone?

Senator JOYCE—The Australian people are being enticed towards a Fuelwatch scheme because you have told them it will bring down the price of petrol. You base that on the premise of an econometric model. The model was devised, tabulated and constructed in your office and nobody but the people inside your office have had anything to do with it.

Mr Dimasi—I am sure the chairman will want to answer that, but I just want to clarify a couple of points. When you talk about a model, we got a bunch of data that other people can get if the owners provide it and we ran through it a standard test that other econometricians can also run through. That is open for people to do. We did not write up some unspecified model that explains how the economy works or do some of these other modelling exercises. This is applying a standard econometric technique to a set of data. Other people can do that.

Mr Samuel—Senator, it is apparent from your question that you may not have been present when I gave an answer to this issue before and made a statement as to the purpose of Fuelwatch and the econometric—

Senator JOYCE—I can tell what your statement is, to save you—

Mr Samuel—No, it is very important, Senator, because you have premised your question on certain propositions which are fundamentally—if I might say so, with the greatest respect—contradictory to the propositions I put before. Fuelwatch is not being premised upon an econometric model. Fuelwatch is being premised upon the empowerment that it will give to consumers to determine when and where to buy petrol at the cheapest price and how to avoid having to be caught by the unpredictable, confusing and frustrating price hikes that occur sometimes once a week, sometimes once every two weeks, in some instances once every three weeks or once every 2½ weeks. That is the premise of it. The econometric model was done to enable the ACCC to satisfy itself that FuelWatch had not done any harm to motorists in Western Australia. If we could just get this understanding to it, it would potentially help enormously in the questions that are being asked and in the debate that is ensuing on this particular subject.

Senator JOYCE—Is what you are saying that Fuelwatch is premised around the access to information rather than the reduction in price?

Mr Samuel—If you have a look at the whole 380-page report—

Senator JOYCE—Just say it. It is premised on the access to the information not the reduction of price.

Mr Samuel—Forgive me, let me use my words to provide an answer, if I may, rather than simply acceding to your words. The heading of chapter 15, as I have said on a few occasions, is about transparency and competition because transparency is a fundamental foundation stone for competition. It is about providing consumers with the information that they currently do not have. It is about providing consumers with the power to use that information and it is about, in a sense, neutralising or stripping that power that currently is exercised by the sellers of petrol which operates to their advantage in an anticompetitive fashion to the detriment of Australian motorists. That is what Fuelwatch is all about. It is not about econometric models.

Senator JOYCE—You are answering one question and I am asking another one.

Mr Samuel—No, you are trying to put an answer to my question—

Senator JOYCE—The question I am asking is: does Fuelwatch reduce prices, yes or no?

Mr Samuel—Fuelwatch can have the potential for any particular consumer to reduce the price, given the examples I gave this morning, by 26c. In Victoria, if a consumer can identify what is the cheapest service station versus what is the highest priced service station then as at yesterday morning at 9 am the difference was 26c a litre. That is a significant saving. This is not about 0.7c, 1.9c or 1.5c. I think there has been a fundamental misunderstanding of the purpose and the impact of the econometric model, and that is the pity of the debate, or the discussion, that is occurring here today.

Senator JOYCE—I feel the fundamental misunderstanding has been by the Australian people who believed you were reducing petrol prices.

Mr Samuel—With respect, I think the misunderstanding or the confusion is continuing to occur in the discussion that has taken place today.

Senator JOYCE—Did you inform the minister that it was not going to reduce petrol prices?

Mr Samuel—I have indicated to you the purpose of Fuelwatch. It is outlined in great detail in chapter 15 of our report. I have given a number of answers which have referred to the concern that we have as outlined on pages 241 and 242 as to the Informed Sources service. We are concerned that the impact of that is to put enormous power in the hands of the sellers of petrol, power that borders on, but is not on the illegal side of, being collusion, and the purpose of Fuelwatch is to try and redress that significant imbalance of power. If you redress that significant imbalance of power you then start to actually address the issue of true competition in the market for the sale of petrol.

Senator JOYCE—I wanted to refer to something that my good colleague Senator Brandis handed me. The sentiment and the aspirations of the market I believe remain the same. On Thursday, 19 October 2006, you said:

... if you take steps to endeavour to regulate that or to diminish the price cycle, invariably what will occur is that the price will be set, on average, at a higher level, and those who take advantage of being informed and purchase at the lower points of the cycle will suffer loss.

Do you acknowledge that you said that?

Mr Samuel—Of course; it is on the transcript. But we must understand this is not about regulating the price cycle. This is about giving—

Senator JOYCE—It is, actually. It is exactly about that.

Mr Samuel—Let me finish, please.

Senator BRANDIS—The question—

CHAIR—Senator Brandis, Mr Samuel is responding to Senator Joyce's question.

Senator Sherry—Senator Brandis, after he has answered Senator Joyce's question, you can have a go.

CHAIR—Mr Samuel, please continue.

Mr Samuel—I forget where I finished.

Senator JOYCE—You were saying that this was not to regulate price and I was saying that it was.

Mr Samuel—Senator, forgive me, please. Please try not to put words into my mouth. I know exactly what I want to say and I will say it. And that is that this is not about regulating price cycles, it is about giving information to consumers so they can take advantage of the price cycles rather than being confused, duped, frustrated and angered by the price cycles as they currently operate.

Senator JOYCE—With all due respect, I fundamentally disagree with what you have just said. You said it is not about regulating price cycles. You are telling the service stations they cannot change them by reason of a regulation. That is regulating price cycles.

Mr Samuel—Forgive me, but of course they can change them. Every day at 2 pm they will be able to move their price but they will have to do so in an environment where they will have to be very keen in their pricing. They will have to be well aware of where the market is and also well aware of the fact that if they get their price wrong the risk is on them, it is not on the consumer, as it currently is. This is all about transferring the risk of petrol pricing from the consumer over to the seller of petrol. That is, after all, one of the great essences of competition.

Senator BRANDIS—Mr Samuel—

CHAIR—You have finished, Senator Joyce?

Senator JOYCE—No, I am deferring to a question that is on the same issue.

Senator BRANDIS—Senator Joyce and I are tag teaming on this, if that is all right, Madam Chairman.

CHAIR—I am not going to allow that. If Senator Joyce has finished his line of questioning—

Senator BRANDIS—Sorry? We are both addressing the same issue cooperatively.

CHAIR—If Senator Joyce has finished on this issue we will move to you.

Senator BRANDIS—On that narrow issue. I do not want to divert the call from Senator Joyce, but it has been the custom of this committee—

CHAIR—I am chairing this committee now.

Senator BRANDIS—for long before you came into the Senate, that senators cooperatively are at liberty to ask complementary questions.

CHAIR—Well, I am sorry, Senator Brandis, but there are many members in this committee wishing to ask questions and we have limited time. Senator Joyce, do you wish to ask more questions?

Senator JOYCE—I do, but I would state that it has always been the custom and practice of any committee I have sat on that people from a range of areas have had alternate questions as required on a certain issue. If that has become a rule—

Senator Sherry—Provided they notify the chair.

Senator BRANDIS—You know that what Senator Joyce is saying is true, Senator Sherry, honestly.

Senator Sherry—You used to chair the committee.

Senator BRANDIS—And I would always allow senators to jump in if they had relevant questions arising out of prior answers.

Senator Sherry—Provided it was discussed with the chair and acknowledged by the chair.

CHAIR—I am trying to get some order in this debate. I have a number of senators on my list who want to ask questions and I have given Senator Joyce the chance to ask questions. He indicated that he wants to.

Senator ABETZ—Chair, on a point of order, very briefly, if I may. I think it has been the custom to allow it. I think most people would know my attitude—and there he comes, in right on cue—to the Australian Greens but at times at Senate estimates Senator Siewert especially will look at me and say, ‘I have got a question on this exact point,’ I cede the call to her and it really does allow for a very smooth flowing of discussion. Sure, we have not been too smooth, we coalition senators—all of us. I confess that. I blame myself as well. But I think, with respect, we could allow this sort of interruption of each other’s questions if there is unanimity about it, and clearly there is.

Senator BRANDIS—Further to the point of order, might I also point out that Senator Joyce and I are asking these questions on the same topic cooperatively by arrangement between one and another and from a common set of documents.

CHAIR—We have all sat on this committee for some time and we have tried to share out the questions equally. I have certainly allowed people to jump in on the topic when discussion has flown smoothly, but if any one of the senators here at the table is willing to have other senators jump in and interrupt their line of questioning without any intervention by the chair then we will have a very difficult session this afternoon because I think—

Senator BRANDIS—It should happen all the time.

CHAIR—I think you know what I am talking about. We have a number of senators here; if they can jump in at any time and I permit that, you will not have your line of questioning followed and this will be a very difficult session. I am trying to keep order here and I am subject to the committee, so if you want to have anyone with a loud enough voice to jump in able to ask questions then I am willing to permit that but—

Senator ABETZ—On a point of order, with great respect, there are numbers between one and 10. Overwhelmingly disorderly conduct of trying to shout another senator down would clearly be disorderly and, if I might say, Chair, you do a pretty good job in controlling the likes of Senator Sherry and myself in that regard. But where you have got, at the completely other end of the spectrum, two senators agreeing that for the purposes of a discrete question, one or two little points, they are willing to cede by cooperation without shouting that that ought to occur, I would have thought that is part and parcel of what—at least in my some 14 years in the Senate—ought to occur. I have had experience when we were in opposition, when we were government and now when we are in opposition again, and I would kindly invite you to follow that practice.

CHAIR—If Senator Brandis and Senator Joyce had informed me that they were following on this topic then perhaps I would have, but my understanding was that Senator Joyce was following a line of questions and Senator Brandis jumped in on his line of questions—

Senator ABETZ—On a point of order, Chair: can I suggest, so that this does occur and you are not left in any doubt, that if Senator Joyce is on a line of questioning and then thinks it would be a good idea to cede to Senator Brandis why don’t we have it that Senator Joyce says, ‘Chair, I would like to cede to Senator Brandis for a couple of questions’? Then you know what is going on and you are fully informed—

CHAIR—As long as the proceedings are orderly, I am happy to allow that.

Senator JOYCE—I think we should get back to lighter questions.

Senator BRANDIS—Might I say, to complete the record, Madam Chair, that for many years before you came to the Senate that was precisely the procedure followed by the illustrious Senators Faulkner and Ray in these estimates committees. We never had any of these silly discussions because it operated so smoothly.

CHAIR—It has long been my desire not to follow in the footsteps of Senator Faulkner and Senator Ray, so am I asking—

Senator BRANDIS—Madam Chair, that is a very limiting view, because they did it a lot better than most.

CHAIR—Am I asking Senator Brandis or Senator Joyce for the next question?

Senator BRANDIS—Why doesn't Senator Joyce resume where I left off and then I will jump in at the appropriate point?

Senator JOYCE—On the volume issue, Dr King, can you explain how you can say that motorists are adversely affected by Fuelwatch when your analysis shows that around 65 per cent of motorists buy below the average weekly price in Sydney but only 40 per cent do so in Perth? I am referring there to page 359 of the 2007 report. Aren't 20 per cent of the motorists therefore worse off?

Dr King—I refer you back to the additional media release of the commission and to page 3 of that media release. This is the media release of 29 May 2008.

Senator Sherry—Just before the witness goes on, Chair—and Senator Joyce may not be aware of this—this issue has actually been discussed twice, I think, this morning. I just point that out. You were not here, Senator Joyce; I know that, so I am not criticising you. If you want to go over an issue a third time, that is fine. As I said earlier, I am happy for the witnesses to respond. I just point out it has been discussed twice so far.

Dr King—You have found the document, Senator Joyce?

Senator JOYCE—Yes.

Dr King—Sorry, I was just waiting for your confirmation. You will notice that what the commission did to allow for a check that no group of consumers was worse off by Fuelwatch, at least in terms of the econometric analysis, was we then divided consumers up as to the lowest day of the week, the highest day of the week and the middle five days of the week. What the analysis showed was that if you have a consumer who, for example, purchases on the lowest day of the week then they would still gain approximately 0.7c per litre from Fuelwatch, and that is statistically significant. If you had a consumer who consistently purchased at the highest priced day of the week they would, of course, gain more. They would gain 3.5c per litre. And for the remaining five days of the week the gain was 1.8c per litre. I will leave it there. The data speaks for itself.

Senator JOYCE—You say that you are not aware of volume data over many years. You said there was a limitation of the volume data that you had in the delivery of your model. Wouldn't it be the case that all companies look very closely at volume data to monitor the performance of individual service stations and therefore they keep that volume data for years?

If volume data is available then wouldn't the ACCC be missing a valuable opportunity to ask for that information to cross-check their Fuelwatch analysis? Obviously, the ACCC can do that by their powers under Part VIIA.

Dr King—I will let Mr Dimasi answer that question.

Mr Dimasi—We did ask for volume data for one year. I might add—

Senator JOYCE—Why one year?

Mr Dimasi—For 2006-07. We asked for a lot of data from the oil companies and they, of course, let us know that our demands were fairly onerous. Our understanding was that volume data is not easy to get, especially when you go back; it would, in fact, be quite onerous on them. We—

Senator JOYCE—Onerous on whom?

Mr Dimasi—On the companies to provide—

Senator JOYCE—To provide the volume data?

Mr Dimasi—To provide volume data—

Senator JOYCE—So, you did not get it?

Mr Dimasi—We did not get any more than we did for the 2006-07—

Senator JOYCE—Except for 2006-07?

Mr Dimasi—That is correct.

Senator JOYCE—Do you find that the fact that you only have volume data for 2006-07 a limitation on your economic analysis?

Mr Dimasi—We have found other ways, as Dr King has mentioned and I have previously mentioned, to test the proposition. I guess the issue is, given that we have done that, if we would want to put the companies through some further demands for further data—

Senator JOYCE—Are you scared of them?

Mr Dimasi—Certainly not.

Senator JOYCE—Why don't you just ask them for it? They have definitely got it.

Mr Dimasi—And that is where we are at.

Senator JOYCE—So you did not get it. But you would acknowledge that had you had that data your capacity to do a more discerning analysis would definitely be possible?

Mr Dimasi—We would not have had to do the analysis that we did on the day of the week. We would have done it a different way.

Senator JOYCE—Might you have used a different model had you had more data?

Mr Dimasi—No, we would not have used a different model.

Senator JOYCE—Given that you confirmed that you were concerned about Informed Sources data being restricted to retailers and—this is more to the point—given that you have said Informed Sources might be promoting anticompetitive conduct, if you believe that to be the case wouldn't the obvious thing to do be to bring legal action against Informed Sources?

Mr Samuel—I have already given the answer to that, and that is the best advice we have is that they are just on the legal side of being legal. We have expressed in the report—and I have referred you to that on a number of occasions today—our concerns about the Informed Sources structure and the arrangements that they have with the major oil companies and with the major retailers, Coles and Woolworths, but our best advice is that we would not be able to sustain a legal action for illegal collusive conduct.

Senator JOYCE—Can you explain to me what is a rolling price leader strategy? Can that strategy be used to ambush independents?

Mr Cassidy—I refer to the point that Senator Sherry made: this goes back to the answer I gave to Senator Chapman this morning. I am quite happy to go through it again but we are just repeating ourselves.

Senator JOYCE—Okay. I will leave that because it is leading to another question. Are oil companies and Coles and Woolworths able to confuse motorists with such a rolling price leader strategy into thinking that they are always cheaper when, in fact, the lowest prices may not be available at all oil companies and at Coles and Woolworths sites at the same time?

Mr Samuel—I am sorry, I just did not hear the start of that question. Would you mind repeating it?

Senator JOYCE—No. I will ask it again. Are oil companies and Coles and Woolworths able to confuse motorists with a rolling price leader strategy into thinking that they are always cheaper when, in fact, the lowest price may not be available at all oil companies and at Coles and Woolworths sites all the time?

Mr Samuel—The answer is yes, they can. But one of the great advantages of Fuelwatch is that it becomes very transparent as to those sites where they might be leading prices down and those sites where they are not. At the present time we have that information because we get it from Informed Sources; the petrol companies—that is, the four majors—and the major retailers have that information but guess who is confused? It is the motorist. The motorist has no idea who is leading prices down. My son sent me an SMS yesterday at 12.46 pm to say, ‘BP has gone up but Coles has not gone up yet.’ That was his information just from driving out around the suburbs to try and find out. But that is hardly terribly reliable information, with great respect to my son.

Mr Dimasi—I might add that would all depend on the information that is provided from Fuelwatch. The point that you are raising is if a company consistently rolls it out so that it is the cheapest and it becomes identified as ‘company X is the cheapest’; does it therefore give the impression of being the cheapest? It depends on what other information is provided through the Fuelwatch mechanism, and that is obviously an issue to think about.

Senator JOYCE—As we all know, Fuelwatch is not about bringing prices down; it is about more information. You have said that there are limitations as to section 45 of the Trade Practices Act. What specific recommendation have you put in to strengthen section 45?

Mr Samuel—It is contained in the report in chapter 14.2, on page 228 and following pages, and particularly on page 230, where we suggest a legislative amendment. This is specifically to overcome some of the concerns that we have evidenced flowing from two

petrol cases that we have had in more recent times—that is, the Ballarat petrol price fixing case and the Geelong petrol price fixing case and the determinations of the Federal Court in relation to those matters.

Senator JOYCE—Have you had information back as to how they are going with that amendment?

Mr Samuel—No.

Mr Cassidy—The government has them under consideration.

Senator BRANDIS—Are we to read these cumulatively?

Mr Samuel—When you say cumulatively—

Senator BRANDIS—Are A(i) and (ii) cumulative tests or several tests? In other words, to meet the test in A, do you have to satisfy (i) and (ii) or just (i) or (ii)?

Mr Cassidy—You may have picked up a typing issue. Bear with me for a minute.

Senator BRANDIS—I always think it is useful in statutes to know whether we are talking about ‘and’ or ‘or’.

Mr Cassidy—It is a good point. If you actually go, as no doubt you will, given your background, to appendix R to the actual legal advice, you will see from Julian Burnside, Senior Counsel, that where he set out the proposed amendment there is an ‘and’ missing in the text in the report.

Mr Dimasi—I did not pick it up.

Senator BRANDIS—I am sure Mr Burnside’s gifts would extend to picking up a missing ‘and’.

Mr Samuel—The ‘and’ appears in his advice, so the omission of it in the body of the report is our mistake.

Senator JOYCE—Do you believe that your recommendations in section 45 have to go hand in hand with Fuelwatch?

Mr Samuel—No. They are addressing separate issues. These are matters that have been put to government in the context of the report and my understanding is that—

Senator JOYCE—Do they talk to the same issue?

Mr Samuel—My understanding is that the minister has indicated that government will be reviewing this particular issue.

Senator JOYCE—When?

Mr Samuel—I would put that question to the minister.

Senator Sherry—As I have previously indicated, I will take it on notice.

Senator JOYCE—Have you been given formal monitoring powers under part VIIA in relation to diesel and LPG?

Mr Cassidy—No.

Senator JOYCE—Why not?

Mr Samuel—I would refer that matter to the government, I think.

Senator JOYCE—Do you think diesel and LPG are part of the same Fuelwatch scheme? Why don't you have formal monitoring powers on diesel and LPG?

Mr Cassidy—Again, our formal monitoring powers have nothing to do with Fuelwatch. It is a separate exercise. The direction was given to us by the government. Again, that is a question that should be directed to the government as to why formal monitoring direction only covers unleaded petrol.

Senator JOYCE—Luckily the government is here; Senator Sherry.

Senator Sherry—The minister is not here, so I am happy to refer that on.

Senator JOYCE—Why has the government not given formal monitoring powers under VIIA for diesel and LPG, especially taking into account the current public outcry with regard to the escalation of diesel prices—diesel being a formative refining of petrol and actually a by-product of the refining of petrol?

Senator Sherry—I am happy to take it on notice and provide you with some information.

Senator JOYCE—It would be fair to say that it would be essential in getting a holistic view of Fuelwatch that you would want to have a formal monitoring of diesel and LPG. Would you say that, or would you not?

Mr Samuel—No. They are two entirely separate issues, if I might say so.

Senator JOYCE—I do not think so.

Mr Samuel—The formal price monitoring is something entirely separate from the whole Fuelwatch scheme. As you will be aware, of course, the formal price monitoring powers that were given to us in respect of unleaded petrol were matters that were announced by the minister on 17 December last year. Fuelwatch, as I recall, was determined by government several months later on. They are entirely separate issues addressing separate concerns, addressing separate issues outlined in this report. That is all I can say.

Senator JOYCE—Can you explain to me the separation, as you see it, between unleaded petrol and diesel?

Mr Samuel—It is not a question of a separation of unleaded petrol and diesel; it is a question of the separation of two issues. One is formal price monitoring and the other is the issue of the adoption of the Fuelwatch scheme. They are separate issues.

Senator JOYCE—I just want to know why your part VIIA powers are confined only to unleaded petrol. There must be some specific difference between unleaded and diesel, and I would love to know what it is.

Mr Samuel—Again, that is a question for government.

Senator JOYCE—That is code for 'I know the answer but I cannot tell you'. I will help you out. Would there be an advantage to the ACCC's formal monitoring powers over diesel and LPG under part VIIA?

Mr Samuel—Again, that is a policy issue and it is not our practice to answer policy issues. It is a matter for government.

Senator JOYCE—Once more I say that means ‘I know the answer the answer but I cannot tell you’. You have indicated that the Birdsville amendment may dampen competitive conduct. What economic evidence do you have for that statement?

Mr Samuel—It is not a question of economic evidence; it is a question of the analysis that we have undertaken and, I might observe, some other commentators have undertaken in the legal arena as to the implications of the Birdsville amendment. I could give you a short reply here today or a very long one, but the very long—

Senator JOYCE—I prefer the short one.

Mr Samuel—Well, the very short one would be to refer you to a paper that I gave to a legal conference in Sydney approximately 10 days ago, and that is available on our website. It sets out in significant detail the concerns we have over the Birdsville amendments and why, in our view, the amendments that are now proposed by government are appropriate and ought to be adopted. That is a legal interpretation. It is a legal analysis of the implications of the Birdsville amendments and the uncertainty that is created by the dual track process with divergent tracks. They are not parallel tracks that are running in the same direction; they are actually potentially divergent tracks where you may be found to have committed predatory pricing under one track but not to have committed predatory pricing on another track in the section. We believe that the Birdsville amendments—with great respect to you because I understand your involvement in them—were not properly conceived—

Senator JOYCE—Everyone’s involvement—

Mr Samuel—and that the amendments that are proposed by government are necessary to bring about greater certainty for business and particularly for small businesses that are looking at raising with us complaints concerning petrol pricing.

Senator JOYCE—I am glad you did not give me the long answer, but thank you very much. Going back, do you acknowledge, Dr King, that since you say that this is not an economic publication it has fewer of the safeguards of an economic article?

Dr King—I think it was Mr Dimasi who stated that it was not an economic journal—

Senator JOYCE—Seeing it is not an economic publication and, for the reason of *Hansard*, does not need peer review, do you think it lacks the safeguards of an economic article?

Mr Dimasi—I do not think it lacks safeguards. As we earlier discussed, Treasury were able to run the ruler over the calculations as well. Anyone else who wants to get the data can contest it as well. We are absolutely confident that our results are correct.

Senator JOYCE—Mr Walker, are you aware of a media release confirming oil company manipulation and excerpts from ACCC pricing reports from the Department of Consumer and Employment Protection—that is, from the government of Western Australia—on Monday, 19 November 2007?

Mr Walker—I do not recall it.

Senator JOYCE—I will read it out to you and ask you to elucidate:

Perth petrol prices are on the rise with Coles Express hitting a company record high of 143.9 cents per litre (cpl) tomorrow, a jump of 18 cpl at some sites. Nine BP sites are also hiking by up to 12.4 cpl to 139.9 cpl.

FuelWatch's Prices Commissioner Pat Walker said Coles Express was effectively playing games with Perth motorists, keeping some of their retail outlets at the cheapest prices.

And I quote from you:

"Coles Express will have the 10 most expensive service stations tomorrow. Ironically, they also have the cheapest three at 121.7 cpl, a difference of 22.2cpl," Mr Walker said.

"This could fool motorists who may only be able to catch the name of the cheapest outlet listed in the media and might inadvertently drive in to one of the most expensive."

How do you find that as an endorsement for FuelWatch by your own self?

Mr Walker—I would think that is an advantage of the clarity and certainty of the price information. When you have the benefit of that you can make public comments around what is actually happening in the market and provide people with information in advance.

Senator JOYCE—I think your own quote depicts something completely the opposite—the lack of clarity.

Mr Walker—The idea is that the clarity of the information is conveyed to consumers, because I think consumers have a reasonable expectation and understanding—certainly the ones I speak to and I speak to very many—that they make assumptions about brands within a particular market, a particular capital city. The assumption is, by and large, with most motorists, that Coles Express, for example, will be within a particular range, BP will be in a particular range, as will Shell et cetera. That is the message I get when I go out and talk with people. So I think that is an underlying sort of assumption. I think if we tested that in any capital city and we did it through focus groups there would be that sort of proposition. The idea is to actually alert people, particularly when you have the cheapest stations appearing in the nightly news et cetera, so that people can get an impression.

Mr Samuel—I wonder if I could just add to that, if I might, because it might just show the difference between the position that exists with respect to FuelWatch and the position that exists on the eastern seaboard where we have the sellers having Informed Sources. I have before me at the moment the data that we received from Informed Sources as at yesterday at 9 am. Let me give you the information that I can give to you as a consumer of petrol. The Caltex service stations had 11 per cent of their stations selling at less than 149.9, 22 per cent selling at 149.9, 13 per cent selling at 150.9, eight per cent selling at 152.5, 13 per cent selling at 152.9, 15 per cent selling at 153.9 and nine per cent selling at 153.9. I hope that assists you to determine where to buy petrol at the lowest price, that is at the 11 per cent selling at less than 149.9. This is the whole problem. Caltex, in their computer database room in their headquarters, know every site and they know the price at which it is being sold. The consumer has no knowledge. And Fuelwatch overcomes that particular issue.

Senator JOYCE—Thank you very much for that but it really does not deal with the question that I was posing to Mr Walker. I refer him to the final paragraph where he said:

This could fool motorists who may only be able to catch the name of the cheapest outlet listed in the media and might inadvertently drive into one of the most expensive.

The word 'fool' in your quote would suggest that there is anything but transparency in this. In fact, there is a range of problems with the FuelWatch scheme in Western Australia. If that is from your own recommendation, don't you see that that is now very confusing to the Australian motorists who now see their own petrol commissioner bringing into clear light, and very well, the problems with the Fuelwatch scheme?

Mr Samuel—With respect, back then the commissioner was talking about the benefits of Fuelwatch. He was trying to say that if you simply listen to the media and look at the media you will get a superficial report about what are the cheapest sites and what are the most expensive. Commissioner Walker was saying to go to the website and there you will find out which sites are the cheapest and which are the most expensive. You can actually identify them by reference to their location and understand what is happening. What he was doing was using the information available to him under Fuelwatch to put out a price alert to motorists to say, 'Check further than the headline that appears in the media.' I have to say to you that it is not possible in any way at all for any regulators to be able to do that in Sydney, Melbourne, Adelaide, Brisbane or Hobart.

Senator ABETZ—With Senator Joyce's agreement, can I ask you, Mr Walker, do you agree with that analysis of what you said? The question was in fact directed to you, and then we had Mr Samuel jump in telling us what you meant to say, what you did say et cetera. I would have thought it preferable that it actually come from the person sitting at the table who said it, rather than getting Mr Samuel's interpretation. But, having heard Mr Samuel's interpretation, I am sure that you will say, 'I agree with everything that Mr Samuel has said.' Surprise me!

Mr Walker—Not only that, but I probably did not elaborate because I thought it was so obvious, but maybe that is because of my length of experience working with a very transparent system.

Senator JOYCE—I think I will close on that to give other people a go. Thank you.

Senator BRANDIS—I want to take you back to the evidence that Senator Joyce quoted to you before, the evidence you gave here on 19 October 2006 when you said, may I remind you:

... if you take steps to endeavour to regulate that or diminish the price cycle, invariably what will occur is that the price will be set, on average, at a higher level, and those who take advantage of being informed and purchase at the lower points of the cycle will suffer loss.

That was your evidence then. When Senator Joyce quoted those words to you, you said in response words to the effect: 'Well, I was not specifically addressing FuelWatch.' Might I point out to you that, if you care to review the transcript, you were. Do you recall these words:

We have looked at the Western Australian arrangements ... we have a worry that the Western Australian arrangements have severely limited the role of independents in the Western Australian fuel market, in particular the 24-hour rule. We have been told by the independents themselves that the 24-hour rule has somewhat restricted their ability, if you like, to be a competitive force in the market, mainly because of the way the independents work. For example, say they manage to get a load of cheap fuel one way or another, they wait for the right opportunity in the market on a particular day to drop their price and pick up market share. With the 24-hour rule, they cannot do that because they have to give 24-hours notice of

what their price will be the following day. Having done that, they are not allowed to change that price during the course of the day so that somewhat limits the ability of the independents to be competitive in the Western Australian market. I seem to recall ... that at least one of the independent chains might have actually withdrawn from the Western Australian market since these arrangements were put in place.

We are doubtful, at the very least, about just what impact the Western Australian arrangements have had on price levels in Western Australia.

Are those words familiar?

Mr Samuel—We seem to be going back on information and evidence that both Mr Cassidy and I have already given this morning. I do not want to repeat myself, because time is running short, but—

Senator BRANDIS—Answer my question: are those words familiar?

Mr Samuel—Are those words what?

Senator BRANDIS—Familiar to you.

Mr Samuel—Forgive me, but I do not want to play games on this. You have read from a transcript. I have given an extensive answer this morning as to the circumstances that have intervened since the provision of that evidence by Mr Cassidy and myself—that is, in August and October 2006. The fundamental intervention has been the part VIIA inquiry that we undertook. That part VIIA inquiry gave us extensive powers of subpoenaing of evidence, of data, and of evidence to be given under oath. The result of that was that we came up with a rigorously analysed report on petrol prices for Australian consumers. That was the result of our six-month inquiry. I am not sure that I can take it any further. I guess the best thing I could perhaps do is refer you to John Maynard Keynes who said, ‘When I find evidence I was wrong, I change my mind. What would you do?’

Senator BRANDIS—I think what John Maynard Keynes said about people in authority finding themselves repeating the words of scribblers in generations past might be more useful for this discussion. The reason I press you on this is that the ACCC as an agency and you in particular have changed your story. You are now saying something that is in direct contradiction of what the ACCC said in its 2001 report, in its 2002 report, in its 2006 submission to this committee, in your and Mr Cassidy’s 2006 evidence before this committee, in its endorsement of the national competition commission’s 2005 report on the implementation of the Hilmer reforms, in its endorsement of the 2005 Northern Territory inquiry and in its endorsement of the 2006 Queensland inquiry. When you do a U-turn against such a weight of strong and unambiguous evidence as you are now doing, it seems to me that I, particularly as someone who chaired the 2006 inquiry and was absolutely persuaded by your critique of FuelWatch, am entitled to press you—

Mr Samuel—And you have done so—

Senator BRANDIS—and to be sceptical.

Mr Samuel—You have done so and I have given my answer on several occasions today. I am not sure I can add any more to that answer.

Senator BRANDIS—I doubt you can but, nevertheless, you say your entire case as to why we should not be so sceptical about this dramatic U-turn of the ACCC's position is the part VIIA inquiry—okay?

Mr Cassidy—You roped my name into that so if you do not mind me commenting—

Senator BRANDIS—Certainly.

Mr Cassidy—I suppose we can stay here all day and all night if we need to. Senator Chapman basically put the same question to me using a different quote this morning. What I said to him was that, during the course of the inquiry last year, we were presented with information, which we had not seen before, on the experience of independents in Western Australia since the introduction of FuelWatch. That information showed that the experience of independents has been no worse than that of independents of the rest of Australia and, indeed, it may have been better in the sense that the independent share of service stations in Western Australia has actually increased since the introduction of FuelWatch. It is marginal, but it has increased.

Senator BRANDIS—Well—

Mr Cassidy—I am sorry, Senator, but I would like to finish, because I was just getting started and getting a bit irritable about some of what is being said. What happened last year in the inquiry in terms of that issue, the affect of FuelWatch and independents, was that we were given evidence, hard information, which we had never been given before, and that hard information showed that independents had not been adversely affected by FuelWatch in Western Australia. Now, if we are presented with that information, what are supposed to do? Do we say that that is fine but we are going to stick to what we said previously?

Senator BRANDIS—Mr Cassidy, all I asked was whether the entire reversal of the ACCC's position was based on this report. That seems to be what I gather from your evidence. That is all I want to establish. I think you would acknowledge that this is a very dramatic reversal. I am not necessarily saying, by the way, that you are wrong. I am simply saying that, when an agency has taken such a strong position and then does a U-turn, that is a matter which calls for some scepticism. That is all. That is my only point. If Senator Brown were to make a speech in the Senate next week and say, 'I have been wrong about environmental policy all my life and I think we should chop down all of the Tasmanian rainforests', I think people would be surprised.

Senator JOYCE—Or they would call in Peter Garrett.

Senator BRANDIS—For the ACCC to reverse its position on FuelWatch after such a strong history of being a FuelWatch critic seems to me to be a dramatic event which entitles us to explore what underlay that reversal, and you have put up the part VIIA report and that is all you say.

Senator Sherry—I have no problem with exploring, but I just point out that it is a very repetitious exploring now. You are going over quotes and questions that have been asked twice before.

CHAIR—Mr Cassidy was trying to finish, I believe.

Mr Cassidy—You have quoted a number of reports that we have done over the years in relation to petrol. Let me say that we would still stand by the great majority of what we said in those reports. Indeed, our report last year is consistent with much of what we said earlier. In terms of FuelWatch and the inquiry you chaired in 2006, if you have a close look at the transcript of our two appearances you will find that it runs to 101 pages. Western Australian arrangements occupy five pages of that 101 pages. It includes the Western Australian fuel standards. So at best we spent two or three pages of transcript talking about FuelWatch.

Senator BRANDIS—That is because it was so uncontroversial.

Mr Cassidy—The point I keep making is that during our inquiry last year on some of these issues relating to FuelWatch we were presented with information which we had not had previously.

Senator BRANDIS—That is absolutely fair enough and that is where I want to go. You are saying to us now, ‘We have hard information which we did not have before’, and demonstrably that is true. Those additional items of information, however, do not necessarily mean that the econometric modelling and the report produced hard conclusions, because those conclusions were heavily caveated.

Mr Cassidy—That is right.

Senator BRANDIS—This is page 377. Let me run you through them one by one. The author of the report, and this is the very last half page of the report, states:

There may be other items that may have induced a structural break aside from FuelWatch.

Then they identify five items:

Different timeframes could conceivably give different results.

... ..

The fuel standard premiums used are as reported by refiners. WA has had generally stricter fuel standards—

I pause to say that that variable is against my argument, because the stricter fuel standards would tend to lift the price. That is a caveat that does not indicate something that there might be an independent reason other than FuelWatch for prices being lower. It continues:

... transport and port charges. These have not been explicitly modelled.

We all know that transport and port charges are a very important element of the cost of fuel. That was one of the main conclusions in the 2006 Senate Standing Committee on Economics. We also know that the greater proximity of Western Australia to the South-East Asian markets makes the transport costs in that jurisdiction lower. It continues:

... Perth’s recent relatively high growth may have made it such a relatively larger market that it has enjoyed greater competition and/or economies of scale.

My point, Mr Samuel and Mr Cassidy, is that all five of those relevant variables or influences on the price of petrol in Western Australia—one of which, the fuel standards—might tend to make prices a bit higher. The other four would tend—certainly the transport costs would incontrovertibly tend—to make fuel prices lower. All five of those have been excluded from the econometric modelling. How can it possibly be right to say that a report so heavily

qualified and caveated as this, with those five highly relevant variables omitted from the analysis, gives you the comfort of a certain conclusion that your previous seven analyses of this very matter were definitely wrong?

Mr Cassidy—I think we are fighting a losing battle in terms of going over a ground that we have already gone over. We have been on that page twice so far today, but let me go to Mr Dimasi and Dr King who will go through each of those five points for you.

Senator BRANDIS—I am asking the question of you.

Senator Sherry—No.

Senator BRANDIS—I am asking the question of you, Mr Cassidy, because I can understand—

Senator Sherry—I am sorry, Senator Brandis, you were not here earlier. It is I who indicates who answers the questions. If other witnesses wish to answer the question and they have indicated that to me, that is fine, because they have the knowledge and the expertise. You do not determine, Senator Brandis, under the standing orders. We have already discussed this issue this morning. I know you were not here, but these are the two witnesses who have the expertise and the chair has indicated that they are the appropriate people, so they will answer the questions and then the others may care to add to it.

Senator BRANDIS—Point of order! Point of order, Madam Chair!

CHAIR—Yes.

Senator BRANDIS—Point of order, Madam Chair! I am not asking a question about each of those caveats. I am asking a different question.

CHAIR—Well, it is—

Senator BRANDIS—May I finish please? Before you rule will you listen to the point of order?

CHAIR—Yes, certainly. Go ahead, Senator Brandis.

Senator BRANDIS—I am asking a different question. I am asking Mr Cassidy a question arising specifically out of his last answer.

CHAIR—And what is your point of order?

Senator BRANDIS—Let me finish please. And I am asking Mr Samuel, arriving out of his last answer, how they can be so certain in abandoning the—

CHAIR—What is your point of order, Senator Brandis?

Senator BRANDIS—Well, if you would stop interrupting me, Madam Chair, I will state the point of order.

CHAIR—You are restating your question. I want to know if you have a point of order.

Senator BRANDIS—My point of order is that only Mr Cassidy—

CHAIR—That is not a point of order.

Senator BRANDIS—Excuse me; I have not finished stating it.

CHAIR—Please get there quickly.

Senator BRANDIS—Only Mr Cassidy and Mr Samuel can respond to the question I asked, because I am asking them why they have changed their minds.

CHAIR—Thank you. That is no point of order. The minister has—

Senator BRANDIS—Of course it is, Madam Chair. You are making these proceedings a farce.

CHAIR—No, Senator Brandis; the minister is absolutely correct.

Senator Sherry—Mr Samuel will be responding, but the other witnesses will be responding as well on the same issue.

Senator BRANDIS—I do not have any problem with Mr Dimasi or Dr King responding as long as I get a response from Mr Cassidy and Mr Samuel about why they have changed their minds.

CHAIR—No, Senator Brandis.

Senator Sherry—The level of evidence they give will be up to them. You can determine questions, but you will not determine who answers questions, Senator Brandis. We will see how we proceed and if it does not meet your satisfaction—

CHAIR—That is absolutely correct.

Senator Sherry—Let us just see how we go with it.

Mr Dimasi—In your question there are a number of assertions about the impact of those potential caveats and I am afraid I do not agree with those assertions.

Senator BRANDIS—I am just quoting your words.

Mr Dimasi—No.

Senator BRANDIS—Each to that end.

CHAIR—Senator Brandis, if you want—

Senator Sherry—He is entitled to answer the question as he sees fit. You gave a very long question. No one interrupted you. Let him have a go. He is only in the first 30 seconds. You had a five-minute question.

Senator BRANDIS—Senator Sherry—

CHAIR—Senator Brandis!

Senator Sherry—He will answer the question as he sees fit and not as you see fit.

Senator BRANDIS—Senator Sherry—

CHAIR—No, Senator Brandis!

Senator BRANDIS—Senator Sherry, when a witness says that—

CHAIR—Senator Brandis, you are not to engage in debate with the minister. You have asked your question, as the minister pointed out, and now the official is attempting to answer your question.

Senator Sherry—Not as you see fit, as the officer sees fit.

Senator BRANDIS—I am merely pointing out that I was quoting the very words of the report.

CHAIR—The officer is aware of that. Carry on, Mr Dimasi.

Senator BRANDIS—As I said, the officers preamble was that I had put my own construction on these words. I am quoting the very words.

Mr Dimasi—Senator Brandis, you identified that you thought four of those five caveats went up against FuelWatch. I do not see that—

Senator BRANDIS—Or at least neutral.

Mr Dimasi—Or at least neutral. I do not see that in the words either. For example, you mentioned that Western Australia is closer to Singapore. I am sorry, but that is not what the tests do. There would have to be a difference over the period, a change in the costs of Western Australia or Perth relative to the eastern states. Perth was closer to Singapore than the eastern states before FuelWatch and it remained closer after FuelWatch; therefore, that is not relevant.

Senator BRANDIS—Do you mean before and after the ACCC changed its mind?

Mr Dimasi—Absolutely. Neither Perth nor Singapore moved, as I understand it.

Senator BRANDIS—Only the ACCC changed its mind.

Mr Dimasi—So in fact I do not agree with your analysis of how that would have worked. Similarly, the higher growth rate could have worked in any number of ways. We are not suggesting that higher growth rates are an issue. This is a caveat that you would put on these sorts of things, but for example, a higher growth rate could have led to higher demand and therefore higher prices.

Senator BRANDIS—That is not what you say. You say the opposite.

Mr Dimasi—No, we do not say the opposite. We say it is a caveat of what may have explained it and we did look at whether the direction is one way or another. We simply raised caveats as possibilities, but we are not saying that these were factors that worked against FuelWatch.

Senator BRANDIS—But you do actually, you say there may be other—

CHAIR—Senator Brandis, please. You are interrupting constantly and we are not making any progress.

Senator BRANDIS—Yes, we are. Go on, Mr Dimasi, please.

Mr Dimasi—I guess I would not infer what you infer from these caveats. I mean, this is just a carefully written piece which has caveats as I would expect. One of my econometricians took caveats of their piece for any of the things that they do. It does not mean that these are specific concerns or that there is any evidence behind them that would give rise to information that would qualify our conclusion. These are normal caveats and that is what we are saying.

Senator Sherry—The chair may wish to respond.

CHAIR—Thank you, Mr Dimasi. Mr Samuel, do you wish to add anything?

Senator BRANDIS—But before we lose Mr Dimasi.

Senator Sherry—You have asked for an answer.

CHAIR—Senator Brandis!

Senator Sherry—Mr Dimasi has asked—

CHAIR—Senator Brandis. You do not have the call, Mr Samuel does.

Senator Sherry—Mr Samuel may want to continue.

Senator BRANDIS—I just wanted to clarify that.

Senator Sherry—You can clarify it when Mr Samuel—

CHAIR—Senator Brandis, I will go to you when the answer is finished. Mr Samuel, do you wish to add anything?

Mr Samuel—Madam Chair, I am not sure that the matter has progressed much further while I have been out of the room, so I am not sure I can add much more to it other than to say that the inquiry took all the relevant evidence; it formed its conclusions. I have already indicated the dates at which the inquiry commissioners, who were Mr John Martin, Dr Stephen King and me, started to form different conclusions of FuelWatch. As I recall, they were around 28 August or 27 August—that is, in 2007—and those views were then formed and cemented in the content of this report through to December last year when the report was finalised and provided to the minister. I do not think I can add much more than that. We have been over this ground over and over today.

Senator BRANDIS—We have, but you still have not answered my question. All you have told us, Mr Samuel, and I do not want to be repetitive, but equally I am not going to allow a witness to escape without giving a straight answer to the committee.

Mr Samuel—I have given a straight answer, which is that we got more evidence than we had ever had before on this particular subject. It was evidence that was based on factual material provided to us using our subpoena powers. We considered that evidence carefully. We considered it amongst the commissioners of the inquiry. We considered it amongst the full commission and we formed a concluded view, which was set out there. We did some further work following the delivery of the report, and we firmed up on our view and that was the report and recommendation we gave to government.

Senator BRANDIS—I understand that, Mr Samuel. You have made that perfectly clear, but that is not my point. My point is that, notwithstanding that review, given the qualifications and caveats placed upon the conclusion and the identification of five relevant matters that do not form part of the analysis, that are what in a famous phrase Mr Donald Rumsfeld once called ‘known-unknowns’ for the purposes of this analysis. Given the conclusion omits to have regard to five relevant matters that may or may not—I accept what Mr Dimasi says—have produced a different conclusion, and therefore this conclusion is uncertain and speculative because of the omission of the five relevant matters from the model, how can the ACCC in those circumstances have a sufficient degree of confidence that its firm and

emphatic view and your firm and emphatic view in studies that were not so caveated was wrong?

Mr Samuel—With the greatest of respect, I am sorry we are repeating a lot of material that we have already been through laboriously through the day, but I will do it hopefully for the last time.

Senator BRANDIS—I am cross-examining you. Sometimes you have to ask the same question more than once.

Mr Samuel—I am sorry, but the difficulty with it is that there is a failure if I might say so, with the greatest respect, to recognise the difference between the information and the analysis that was undertaken in respect of this particular matter in 2000 and 2001 when FuelWatch had not even started, in 2002 when it had barely started and in 2006 when we were operating on the basis of information that was provided as a result of committees of inquiry in the Northern Territory and in Queensland and, if I might say so, relative to the analysis that was undertaken for this report and analysis that was much more superficial in relation to the FuelWatch issue.

We conducted in relation to FuelWatch, a very rigorous analysis. Why did we do so? Because on or about 25 or 27 August 2007 it became clear that the three members of the commission of inquiry were starting to have a serious look at two issues. One was the difficulties, the concerns, the anticompetitive concerns, created by the Informed Sources structure and, second, the alternatives which included the contemplation of the extension of the FuelWatch system beyond Western Australia throughout the rest of the country.

Let me point out the decision to pursue that course taken in August 2007 was not done lightly. It was not done lightly, because it was a reversal of a position that had been expressed—as you have often pointed out through the course of today's proceedings—a position that we had taken with quite some degree of specificity at earlier inquiries. We did not do it lightly, but we started in August 2007 to form the view that there were some issues that had to be addressed. We formed that view because we began to understand a lot more clearly the role of Informed Sources and the role of its collaboration with the major refiners and the major retailers. We took evidence from Commissioner Pat Walker from Western Australia and his officers in respect of FuelWatch.

Senator BRANDIS—You did in 2006 too, and you commented on that evidence.

Mr Samuel—With respect—

Senator BRANDIS—You—

Mr Samuel—Will you let me finish? We also took a lot of evidence from Informed Sources as to how they were operating. We took evidence from participants in the fuel industry in this country as to how they operate. We got data that we had never had access to before and never had the resources, or the wherewithal to be able to analyse the data. We got that in the context of this inquiry. It was data that we had to subpoena, because it was the only way we could get it. We put it through extensive analysis over a six-month period and came to conclusions, conclusions which I have to say had firmed up sufficiently by October 2007 that I was raising the issue in meetings that we had in Perth and saying, 'Look, I think it is highly

probable that the commission will come down in favour of an extension of the FuelWatch scheme.'

That is the course. That is the process we took. I can only say to you that we had hard evidence. The hard evidence caused us to change our view, and so be it. So be it. If we had taken all that hard evidence and said, notwithstanding that, we are not going to change our position because if we do change our position, Senator George Brandis at Senate estimates is going to raise the issue with us and say, 'How come you did a U-turn?' Frankly, we would have been doing a disservice to the inquiry, we would have been doing a disservice to Australian motorists and we would have been doing a disservice to the reputation of the ACCC.

Senator BRANDIS—Mr Samuel, I am flattered, but allowing for all of those considerations, and I understand what you are saying to me perfectly well, it is not the point. Notwithstanding the evidence to which you have regard and notwithstanding what you call the hard evidence, that analysis which factored in that hard evidence did not factor in or have regard to the five important matters that are subject to the caveats and therefore the conclusion, as a matter of logic, must be an uncertain conclusion because it is a conclusion that does not factor into the analysis five relevant variables.

Mr Samuel—I think, Senator, if I may say so again with the very greatest respect, which I do mean, that I think that shows a fundamental misunderstanding of the way that econometric modelling works, to which I defer to Mr Dimasi and Dr King. Perhaps it is appropriate to get Dr King to address the process of econometric modelling, how it works, how caveats are dealt into the system and how they are taken into account.

Senator BRANDIS—You can do that if you like.

Mr Samuel—That is very important.

Senator BRANDIS—That is fine and I think that would be useful. But my point is that it is the author of this report himself, or the authors themselves, who have identified these five caveats as being sufficiently relevant to be acknowledged. These are not irrelevant matters. They are matters which merely by being chosen by the authors of the report to be acknowledged as caveats are acknowledged to be relevant.

Mr Samuel—If I might say so, and this goes back to the response I gave just 30 seconds ago, if we can defer to Dr King, who was one of the authors of this report, he may well be able to explain to you the process of econometric modelling, the relevance of caveats, why they are expressed and the degree to which he and the econometric modellers within the commission were able to provide advice at that level of certainty to the commissioners in the inquiry and the four ACCC commissioners themselves to enable them to put their names to this report—ultimately the report and the recommendation that was given to the government in respect of the Fuelwatch scheme.

Senator BRANDIS—I do not think we need to delay the committee by hearing that. By all means, if you want to.

Mr Samuel—It is relevant; surely it is relevant.

Senator BRANDIS—But my point is that it is simpler than that, Mr Samuel. The caveats are either relevant or irrelevant.

CHAIR—Senator Brandis! Senator Brandis!

Senator BRANDIS—If they are irrelevant—

CHAIR—Senator Brandis!

Senator BRANDIS—I am asking a question.

CHAIR—No. Senator Brandis, because the answer is—

Senator BRANDIS—Because the Labor Party is getting into trouble. No, Chairman, you are jumping on a question.

CHAIR—Senator Brandis, the answer is not finished and Dr King is about to explain to you why no econometric modelling is perfect and everyone has caveats, I think.

Senator BRANDIS—But I do not think—

CHAIR—Dr King.

Dr King—Thank you, Madam Chair.

Senator BRANDIS—Mr Samuel, the caveats are either relevant or irrelevant. If they are irrelevant then we do not have to worry about them.

CHAIR—Senator Brandis!

Senator BRANDIS—It is not that they have been chosen.

CHAIR—Senator Brandis!

Senator BRANDIS—They are relevant.

CHAIR—Senator, order!

Senator BRANDIS—And if they are—

CHAIR—Senator Brandis, order!

Senator BRANDIS—How can it be—

CHAIR—Order!

Senator BRANDIS—But they are the—

CHAIR—Senator Brandis! Senator Webber, would you like to ask a question please.

Senator Sherry—Just before we proceed.

CHAIR—Yes, Minister.

Senator Sherry—Senator Brandis has posed the same question three times, shouting it out on a number of occasions.

Senator BRANDIS—I have been shouted down by the chair.

Senator Sherry—Are you shouting me down now, are you?

CHAIR—Senator Sherry.

Senator Sherry—Three times he has posed the same question. It is time to allow the witnesses to answer the question.

CHAIR—Dr King.

Senator COONAN—This might help. I just have a very simple question for Dr King that no doubt you could factor in your answer if it is convenient.

Dr King—Yes.

Senator COONAN—I just want to know what the precise numerical economical benefits of consumer empowerment are, and shouldn't those benefits be both computed and weighed up against the costs? Perhaps you can address that when you are telling us how you factor it in.

Dr King—Thank you. Let me start by referring to the caveats. You will notice that the first caveat there looks at the structural break. That was a further analysis that we did following the inquiry. The most obvious potential structural break or interference in the structural break was the entry of Coles and our further analysis looked at that and found that that was separate from the FuelWatch effect and there was a separate break in the data due to FuelWatch, and we have discussed that earlier. With regard to the time frames, we were limited on the data going back pre-1998, because the data is inconsistent because of relevant fuel deregulation. That is a standard caveat that would exist on any data set of this form. Obviously if we had 100 years of petrol price data that could be used and was consistent, that would be pleasant. It is inconsistent pre 1998, so that is what that is getting at. The fuel standard premiums were included in there, so when you said they were an omission or exclusion, no they were not omitted or excluded. That is simply stating there that we have taken the fuel standard premiums as reported by the refiners. We are assuming that the refiners have not lied to us. We can only work on the data that we have.

Senator BRANDIS—That is the one variable that goes against my argument.

CHAIR—Senator Brandis, would you allow Dr King to finish, please?

Dr King—With regards to the transport and port charges, we do not have to explicitly model those in the sense that we use the east coast as a baseline. So as long as pre-FuelWatch and post-FuelWatch—this is what Mr Dimasi was saying earlier on—Perth has not moved relative to Singapore, any effect that the transport charges have in making Perth cheaper due to being close to Singapore is taken into account pre-FuelWatch and post-FuelWatch relative to the east coast. So we have to have a difference between an effect on transport charges to Perth compared to what would have happened with transport charges to the east coast post-FuelWatch as compared to pre-FuelWatch. Essentially, this statement and in fact the last caveat put there are simply what you would expect in standard careful econometric analysis to say we have not got absolutely perfect data. No economic analysis can have perfect data. This is what economists call a natural experiment analysis or evidence based policy, I think is the other term that is widely used for this. It is extraordinarily good data in my opinion, and an extraordinarily robust set of results, but no data analysis can be perfect and that is what those final two caveats are getting at.

Now since the report has concluded nobody, as far as I am aware, has come up and presented any economic theory, as again Mr Dimasi said earlier, as to why differential growth rates may explain the results, nor presented any empirical evidence, nor quite frankly suggested why the differentiation on these growth rates would have led to a relative price fall in Perth relative to a price rise, which would be the normal economic conclusion. So, yes, they are under a heading 'caveats' and, yes, they are standard econometric caveats. On the first one we have not stood still. On the others, they were certainly not omissions. They are just cautionary points that are put in there as per good econometric analysis.

Senator BRANDIS—That is very helpful, but I think my point is a much simpler one. The inclusion of them in this part of the report is an acknowledgement of their relevance. These relevant factors have not been included in the modelling and perhaps they cannot be. Perhaps they cannot be, because you say no data set is perfect, but my concern, and this is really why it is a question to Mr Cassidy and Mr Samuel, is that, given that intrinsic limitation on the modelling, I question why we have the assertion from Mr Samuel and Mr Cassidy that the hard data that has been included in the modelling is sufficient for the ACCC to do this spectacular U-turn in its advice to the parliament and to the government. I think I have made my point. Senator Joyce has some questions.

Senator JOYCE—Dr King, it is really obvious. Can you just define 'fuel' for me? What is 'fuel'?

Dr King—In terms of this report it is unleaded petrol.

Senator JOYCE—I looked for this in the glossary. What portion of the market that drives the internal combustion engine that you find appropriately under the bonnet of your car is unleaded petrol as opposed to the volume of diesel or LPG?

Dr King—I have absolutely no idea off the top of my head. This was an inquiry into unleaded fuel and that is what the analysis looked at.

Senator JOYCE—Do you think that having a statistical inquiry into just a particular section and then coming up with the Fuelwatch scheme is plausible? Most people would say fuel is diesel, fuel is petrol, fuel is unleaded petrol and fuel is LPG. This is the premise of the Fuelwatch scheme. This economic model only takes into account a section of the market, which inherently leaves the whole economic model as very implausible, because it just does not take in the whole market. It only deals with unleaded petrol.

Dr King—The inquiry was into unleaded petrol and that is what the analysis covered.

Senator JOYCE—Why did we have—

Mr Cassidy—Sorry. Could I just help you with your previous question? On page 1 of our report we indicate 91 per cent of all fuel used by passenger vehicles was petrol. That is, it is reported that about 91 per cent of the fuel—

CHAIR—Senator Fierravanti-Wells.

Senator FIERRAVANTI-WELLS—Does that include the premium unleaded petrol as well? Is it all unleaded, including the premium varieties as well?

Mr Cassidy—That is right.

Senator JOYCE—What about agricultural use and what about mining use?

Mr Cassidy—I have spoken to you already about that. Ninety-one percent of all fuel used by passenger vehicles is petrol.

Senator JOYCE—Passenger vehicles.

Senator Sherry—I will take on notice. I am not sure whether the ACCC can help, but I will get that specific data that you have asked for through another area of economics, if necessary, Senator Joyce.

CHAIR—Senator Coonan.

Senator COONAN—Yes, my previous question. Do you want me to repeat it?

Dr King—I am sorry, if you would not mind repeating it.

Senator COONAN—I was interested in knowing how you measure the economic benefits of consumer empowerment and the precise numerical economic benefits. Should those benefits not be computed and weighed up against the costs?

Dr King—Within the analysis done here we are looking at the effects on the price in Western Australia. The analysis here is not looking at an economic measure of consumer empowerment benefits.

Senator COONAN—It is not measured at all for the purposes of any modelling that you do?

Dr King—The econometric modelling, no. It is just looking purely at the price of fuel.

Senator COONAN—Where in the ACCC's consideration of this FuelWatch and the ultimate recommendations made has there been any assessment of the numerical economic benefits of consumer empowerment? We have heard a bit about the costs. Would the commission think that it would be appropriate that there would be some exercise taken to weigh the benefits against the costs?

Mr Samuel—I am assuming in the context of the costs, you are talking about the RIS, are you—the regulatory impact statement?

Senator COONAN—Yes.

Mr Samuel—As I say, we have not participated in that and had not seen the regulatory impact statement until it was released, so I cannot comment upon the costs that have been attributed to the implementation or the compliance costs associated with the scheme that are contained in the RIS. What I have endeavoured to illustrate is the advantages of consumer empowerment in this market, as we analyse them through this report. It is a bit difficult for us to do an examination of the numerical advantage or numerical benefits to consumers flowing from consumer empowerment and to compare them against compliance costs and implementation costs in relation to which we have no knowledge, because we have no—

Senator COONAN—You have not done it either, I suppose. That is another issue. Is it a one-sided exercise from your perspective? Do you just avert to economic empowerment? You have talked a lot about it today, Mr Samuel.

Mr Samuel—Are you talking about consumer empowerment?

Senator COONAN—Yes.

Mr Samuel—Yes.

Senator COONAN—It does not really have any numerical assessment or weighting, does it, anywhere?

Mr Samuel—In the report?

Senator COONAN—In the report or out of the report.

Mr Samuel—No.

Senator COONAN—I am just interested. I say this with respect: is it just rhetoric? How do we know what we are getting here for this taxpayer investment?

Mr Samuel—You know what you are getting in the sense of the discussion that I put forward before, which is to focus on the—I am sorry, I do not want to repeat myself—concerns that we expressed in the report and that we developed over the Informed Sources collaborative arrangement with the major oil companies and the major retailers, the anticompetitive impacts of that, the confusion and the disempowerment of consumers that flows from that in terms of the imbalance of power it gives to the sellers of petrol, and then to say: ‘What are the mechanisms for giving buyers of petrol greater power? What are the mechanisms for redressing this significant imbalance of power that exists under the current arrangements?’ We examined the alternatives: the Informed Sources solution, the modification of that solution to run it through the ACCC and then ultimately, the Fuelwatch solution, and we have come up with the conclusions that we came up with in chapter 15 of the report. It is a fairly significant, detailed and comprehensive discussion that has occurred there, but I am happy to take it further.

Senator COONAN—Yes. It does not have any number. That was really the point I was making. It is not capable of any kind of precise numerical calculation.

Mr Samuel—It is not capable of precise numerical calculation in much the same way as, when we analyse mergers, we do not apply precise numerical calculations to the impacts of a merger. We actually look at the qualitative elements of competition and what the impacts of a merger might be. The same thing applies across the board in terms of competition and the impact of competition on consumers. It tends to be, as much as anything, a qualitative analysis that we undertake.

Senator COONAN—Yes, I know that. Just on the competitive aspects or potentially anticompetitive aspects, I would just like to ask you: if private fuel companies had implemented and enforced a 24-hour rule of their own initiative, would that have contravened the relevant price fixing section of the act—that is, absent the legislation?

Mr Samuel—If the system that had been adopted had been a Fuelwatch system, such as we are contemplating here, it would have been a system whereby there was no collusion in terms of the setting of the prices; indeed the prices are set by tender. You cannot get a more anticollusive arrangement than to have prices being given to a third party by secret tender. As I said before, it puts a significant competitive pressure on those that are tendering the price, which is probably one of the reasons why there is so much objection by the sellers to the Fuelwatch system.

Senator COONAN—I appreciate that and I appreciate that that is what the scheme proposes but, absent the scheme, if fuel companies had implemented and enforced a 24-hour rule of their own initiative, that would be a contravention, would it not?

Mr Samuel—No. When you say a 24-hour rule of their own volition, the 24-hour rule contemplates a secret tender of your price. That in itself is not collusion.

Senator COONAN—No, I understand that.

Mr Samuel—Then it contemplates a mechanism for the price being fixed. That is being fixed for a 24-hour period. That would be a matter that would come before the commission, I would guess, under the authorisation provisions and would be considered in terms of its net public benefit. You can probably gather, without our having done any of that authorisation process because it has not been put before us, from the comments that are made in the report that we would consider that there was a net public benefit in that process being adopted.

Senator COONAN—I gather that that is no. Are you saying that companies under the act can then agree not to change their prices for a period of time and, if so, what period of time would the ACCC allow for such private sector agreements that fix prices? Would it be a week, a month, a year?

Mr Cassidy—We need to interpret your question a bit. Supposing your proposition is: could an oil major in supplying petrol say to those that they are supplying to, ‘A condition of this supply is that you have got to fix your price once each day and then not change it until the following day.’ I do not think that would necessarily be a breach of the law. I am just running my mind over the Trade Practices Act and trying to—you can shake your head, Senator, but they can say—

Senator JOYCE—No, that is—

Mr Cassidy—Wait a minute. Sorry. They can say a condition of supply of petrol is that you cannot sell petrol from another supplier, and that is not a breach of the law. If you put that construct on it, I simply do not think that would be a breach of the Trade Practices Act. It would not matter whether it was 24 hours, 48 hours or a week. As I say, these are the sorts of things they normally get lawyers to pore over, but I am just running my mind over it—

Senator COONAN—I am not surprised.

Mr Cassidy—I do not think that would be a breach of the Trade Practices Act.

Senator COONAN—Is the commission really saying that fixing prices for a period of time is actually good for consumers. Is that what we are to take out of this?

Mr Samuel—I am sorry if I am sounding a bit frustrated, but I provided an answer to that on about four or five occasions earlier today. It is all about empowering consumers. You empower consumers by two processes. The first step in the process is to give consumers information. The second part of the process is to give them the opportunity to use that information to impose competitive pressure upon suppliers. If you take your question in its absolute isolation it does not deal with the totality of the Fuelwatch process.

Senator COONAN—I understand that. I do understand that. I am talking about fixing prices absent the scheme.

Mr Samuel—I understand that. You can take pockets of the scheme, if you like. I understand that there are other proposals that are being floated for what I call the Informed Sources major refiners type proposal, which is the one that I referred to this morning. That takes a part of the Fuelwatch scheme, drops the fixed pricing for 24 hours and says, ‘There you are; we’ll give that consumers.’ I have already expressed the view and referred to the views expressed in this report that that operates potentially even more to the detriment of consumers than the current structure because it ropes in the independents to the relatively anticompetitive structure that we think exists with the Informed Sources structure that we have at the present time. You can give me a whole range of hypotheticals and I can perhaps give you a series of hypothetical answers.

Senator COONAN—Yes. I understand that. I do not want to be tedious about it, but, unless there is something I have missed, it does seem that, if companies had agreed to fix prices for 24 hours or possibly had different prices but agreed not to change them for 24 hours, they would not be violating the act.

Mr Samuel—If they were simply to agree amongst themselves that, without doing anything more, they would keep their prices fixed for 24 hours?

Senator COONAN—Or some other time, I suppose.

Mr Samuel—Whatever period of time.

Senator COONAN—Perhaps using different prices.

Mr Samuel—But not notify consumers in advance of what they intend to do and not providing a secret tender of their prices—just simply fixing for 24 hours on its own?

Senator COONAN—Yes.

Mr Samuel—I doubt that that would satisfy any public benefit tests under an authorisation.

Senator COONAN—So it would violate?

Mr Cassidy—I do not know if it is a breach.

Mr Samuel—If they agree amongst themselves?

Mr Cassidy—Yes. Going back to where I was, this is all hypothetical—

Senator COONAN—They are not likely to get an authorisation—that is really what you are saying.

Mr Cassidy—If all they agreed was that they would set a price, whatever that price might be, and then they would not change it for 24 hours, I am still struggling to see how that is an offence in terms of the act.

Senator COONAN—Good. I am sure they will be pleased.

Mr Samuel—We are doing some legislative interpretation here on the run. I am sorry; with respect to my CEO, I think it is a breach of the act. It is a breach of because it is maintaining a price—

Mr Cassidy—Yes.

Mr Samuel—I am sorry. It is a bit hard because we have not got the legislation.

Mr Cassidy—If the service stations agree—

Senator BRANDIS—Do some modelling on it.

Mr Cassidy—It could be section 45—

Mr Samuel—Mr Cassidy did express some caveats to the model.

Senator BRANDIS—Mr Samuel, I understood you this morning to be referring to the report itself—this is the December 2007 report—when you said it was an iterative process. Was that what you were saying?

Mr Samuel—Only in the sense that we did not suddenly form a view at the beginning of this report that we were going to take certain positions. These positions developed as we progressed. We debated issues in various meetings and debated issues with our senior counsel, and that ultimately resulted in that report.

Senator BRANDIS—That is exactly where I wanted to go. The report was delivered to government on 14 December 2007, after an extension of the time limit for the report of 15 October 2007. I suspect that you will not be able, nor will I require you, to pin this down to a specific date, but can you tell me the approximate date by which the authors of this report had arrived at their conclusions about Fuelwatch?

Mr Samuel—I want to take you through the process. We were starting to form those conclusions. I was trying to think last night about relevant dates and I have a record of a phone conversation that I had with Commissioner Walker, who was then the petrol commissioner in WA, which took place on 23 August. The purpose of that phone call was to say to Commissioner Walker that we would like him to attend the hearing that was to be conducted in Perth on 28 August because a view was beginning to form amongst the commissioners who were on that inquiry—Commissioner Martin, Commissioner King and me—that FuelWatch was something that we might have to look at very seriously, and we wanted to get a lot more information about FuelWatch as part of our public hearing. That is the first recorded information I have of a view starting to be formed amongst the commissioners of inquiry.

Senator BRANDIS—Pausing there, you were always going to look at FuelWatch. You cannot have an inquiry like this without turning your mind to the Western Australian arrangements.

Mr Samuel—As I said, it was taking it forward. That is the first recorded date I have of an attitude being formed amongst the commissioners of this inquiry that FuelWatch was something that needed to be seriously considered, as distinct from previous attitudes, which were to dismiss FuelWatch as something that ought not to be considered. That is the first recorded information I have of a change in thinking. It would have been developing up until then, but certainly the phone call I had with Commissioner Walker and the inquiry that we had with him on 28 August is the first significant date. You will then find—

Senator BRANDIS—Before you go on, what I am really looking for is the epiphanic moment, or the Rubicon crossing moment as it were.

Mr Samuel—Yes. That is what I was going to go through, if I might. I have had my staff go through the transcripts of evidence or transcripts of proceedings of those public hearings

since that date to see whether there is further indication of the thinking of the commission. Unfortunately, a number of these hearings were conducted in private and therefore it is not possible for me to table them—and I trust that I can refer to them without them being tabled. They are confidential.

Mr Cassidy—We had better clarify that before you refer to them, I suppose.

Mr Samuel—I had better clarify that. It is not essential. Let me simply say—

Senator BRANDIS—I am not going to ask you about the detail. I am going to ask you about dates by which the thinking of the authors had matured to a certain point.

Mr Samuel—What I can say to you is that, through the period of September and October, the thinking had begun to mature quite significantly. I do recall a meeting I had with the Western Australian Premier on 12 October, because I was over there giving a speech. I met with the Western Australian Premier to talk about a range of issues and in that particular discussion I indicated to him that we were now seriously considering the prospect of a Fuelwatch and would be seeking the assistance of his department and of the FuelWatch area in Western Australia to take some of our more detailed thinking on this forward. That is to try to give you a picture of where our thinking was heading. I have to say to you, by the middle of October, we were starting to form some serious views that this needed to be considered very seriously. Some econometric modelling was taking place at this point in time.

The commissioners on the inquiry were keen to have the econometric modelling done because, if I can summarise the views of the commissioners, we wanted to determine that there was no evidence available to suggest that FuelWatch had caused harm to consumers. Had econometric modelling evidence been available that it had done harm to consumers, we would not have taken the matter any further forward. But the econometric modelling was proving to demonstrate that there was no harm done to consumers in WA as a result of FuelWatch.

Put that in the context of our view that Informed Sources was doing harm to consumers because of the imbalance of information between sellers and buyers and our view that Fuelwatch redressed that imbalance. It actually neutralises Informed Sources in total. You may not be aware, but Informed Sources does not operate in WA because FuelWatch supplants it. So it redresses the imbalance. It takes the power away from the sellers. It moves the power over to the buyers. Put all that together with the econometric modelling that was being done.

By the time we had got to this report I think we had got to a position that said: subject to some final checking in some areas, and keep in mind that we are producing a report which is recommending a radical policy proposition, and naturally all of the ACCC commissioners who endorsed this report—all six of us at the time—wanted to be sure that, if we were going to recommend such a radical policy proposition, we reserved the right to do any further examination necessary just to be absolutely sure as to what we were reporting—

Senator BRANDIS—Do I glean from what you have said that the point after which the authors of the report decided to recommend Fuelwatch was the point at which the conclusions of the econometric modelling were received?

Mr Samuel—No. The econometric modelling was being undertaken—forgive me, I have to check with Mr Dimasi—through this period. It was the ultimate checkpoint. We had formed a view; we had formed three positions. The first was Informed Sources was damaging the competitive process for the selling of petrol in this country and creating an imbalance. That was item No. 1. Item No. 2: Fuelwatch had the real prospect of switching that imbalance of information, that imbalance of power, away from the sellers in favour of the buyers, the motorists. The third issue that we needed then to determine was: is there any evidence to show that FuelWatch was doing damage to, or had done damage to, Western Australian motorists? That econometric modelling was taking place at the same time. Had the econometric modelling come up with any evidence of harm being done to Western Australian motorists by FuelWatch, the proposition would have been dropped entirely.

Senator BRANDIS—I want to focus on the second of those three matters. I would like you to identify, as best as you are able, the date by which that emergent view had crystallised sufficiently in your mind, and the minds of the other authors of the report, that you were prepared to commit it to a preliminary draft document.

Mr Samuel—I could not give the exact date.

Senator BRANDIS—No. I said at the start that an approximate date will do.

Mr Samuel—I would have to say to you that the issue was left open—

Senator BRANDIS—Until?

Mr Samuel—subject to the econometric modelling. It was very important. That econometric modelling was a vital piece of evidence in our report and our determination. Remember, the drafts of the report were being prepared as we proceeded into the final month or so of the inquiry. But through the month of November, as drafts or chapters were being prepared—and I am looking to Commissioner King and Mr Dimasi just to be sure that I am giving you accurate information here—so the econometric modelling was being prepared. And, as that modelling was being provided to us, so we were becoming more and more reassured on the basis of that evidence that the third point that I identified—that is, whether any harm had been done to Western Australian motorists by the scheme—was coming up with a negative. That is, no harm had been done by FuelWatch to Western Australian motorists.

Senator BRANDIS—I think I understood you to be saying that, but I want to ask you something much more specific. If you go to page 243, section 15.1.3—

Mr Samuel—Yes.

Senator BRANDIS—I am sorry to tell you that I have not read the entire report, but I have read those portions—

Mr Samuel—You have or have not?

Senator BRANDIS—I have not read the entire report, every word of it, but I have read those sections—

Mr Samuel—You have joined the vast mass of the Australian population, so do not feel in any way embarrassed.

Senator BRANDIS—I would not be so sure about that. But it seems to me that, if I were to identify something in this report which is most specific in its commentary on and recommendation in relation to Fuelwatch, it is section 15.1.3. Is that right? I know it is—

Mr Samuel—That is the Fuelwatch paragraph, yes.

Senator BRANDIS—That is the Fuelwatch bit.

Mr Samuel—Yes.

Senator BRANDIS—On what date—you might need to take this on notice—were the drafting instructions for section 15.1.3 given to whoever was the draftsman of this section of the report?

Mr Samuel—Certainly I could not give you that information at this point in time. I would have to take that question on notice.

Senator BRANDIS—Sure.

Mr Samuel—Let me take that on notice. I think that is the best.

Senator BRANDIS—All right. Who actually did write section 15.1.3?

Mr Dimasi—We had a team of people—as the chairman mentioned, around 20 people. I cannot remember who the individual actually was. We had a number of people who wrote this.

Senator BRANDIS—It must have been somebody.

Mr Dimasi—Of course. But I would have to check on that. I might add that—

Mr Samuel—There could have been four or five people involved in drafting that particular section.

Mr Dimasi—I would have to say, even if we knew, it would not be appropriate to start to nominate individual staff members who drafted particular parts of this report.

Senator BRANDIS—I would like to know because I am trying to identify a point in time. The ACCC has, as you said yourself, Mr Samuel, radically changed its view in relation to this matter—‘radical’ was your word. When somebody changes their mind or when a corporate mind changes, obviously that is something that usually happens over a period of time, but there must come a point at which we can identify that we are post the change-of-mind phase. It seems to me that a convenient point of identifying the time by which the ACCC had changed its mind must be certainly not later than the date on which the drafting instructions for section 15.1.3 were given. Would you agree with that?

Mr Samuel—No, I do not think so, because there were various elements of 15.1.3 that we needed to consider, not the least of which has been this oft quoted and much referred to paragraph on econometric analysis. So I would have to say that, while parties may have been drafting up elements of 15.1.3—for example, the descriptive elements of the Western Australian FuelWatch scheme, which would not have changed whatever the views of the commission were—the econometric analysis would have—

Senator BRANDIS—All right, fair enough. Let us limit ourselves then just to be efficient with the time. It is pretty obvious, I hope, that I am interested in that part that states the

conclusion, that expresses the opinion rather than being descriptive. So when were the drafting instructions given for those parts of section 15.1.3 which state the commissioners' conclusions about FuelWatch?

Mr Samuel—I would have to take that on notice.

Senator BRANDIS—Roughly?

Mr Samuel—I could not tell you. I would think that it would be somewhere through the latter parts of November—mid-November or the latter part of November—because we were at all points of time awaiting the outcome of the econometric modelling. As I said before, if the econometric modelling had shown evidence of harm having been done, I can assure you that the chapter would not have recommended the adoption of Fuelwatch.

Senator BRANDIS—The latter parts of November. When was the econometric modelling to which you have now referred received?

Mr Dimasi—It was received over a period of time.

Senator BRANDIS—I am sorry. Just to narrow the focus, Mr Samuel has told us that there was a point at which econometric evidence was received which, if I may paraphrase you, Mr Samuel, caused you to be satisfied about a particular matter. I want to identify that particular bit of the econometric evidence.

Mr Samuel—You must understand that econometric modelling is not something—and I am not an econometric modeller, I am pleased to be able to say—whereby on the day of 4 June we have nothing and on 5 June suddenly we have an econometric model and that is it and it is all complete. It is a process.

Senator BRANDIS—I understand that, but there must have been a point of time at which the thing you were waiting upon the econometric model for was received. I just wonder what it was.

Mr Samuel—What I was going to say to you was this: you go through a process and the process is of a number of tests. The testing to date is showing that there is no evidence of harm and that there is a margin decrease of 1.9c. But what about checking to see what would happen if you took people that bought not at the middle range of the cycle but bought at the top of the cycle? Okay, we will go and test that. That shows that there is a margin decrease of 3.5c. But let us just take then the savvy motorist and say 100 per cent of all motorists bought petrol at the low point of the cycle. What happens then? Then you do some further econometric modelling. In other words, it is to test every which way. I think this is where Dr King or Mr Dimasi can go through that process and describe what occurs.

Senator BRANDIS—I am not really asking about a process, though.

Mr Samuel—No, but that is important in the context of understanding where we form conclusions.

Senator BRANDIS—I am trying to establish dates, you see.

Mr Samuel—I cannot give you a final date. All I can say is that the process of the econometric modelling gives us reassurance, more reassurance, more questions being asked, more reassurance, more questions being asked. Ultimately you—

Senator BRANDIS—I understand the nature of these iterative processes, but there must be a point in time beyond which a conclusion is reached. You told us that the drafting instructions for 15.1.3, or at least those parts of 15.1.3 which stated a conclusion in relation to Fuelwatch, were given in approximately the latter part of November.

Mr Samuel—I cannot be firmer than—

Senator BRANDIS—I am not pressing you, by the way. That is fair enough. The best you can do, unaided by your notes and minutes et cetera, is to say the latter part of November, and that is fine.

Mr Samuel—But I have said that I have to take those questions on notice. I am trying to give you some assistance.

Mr Dimasi—Perhaps I could clarify one thing. You refer to the drafting instructions. That sounds very specific. We do not have a set of drafting instructions. What we have is a debate. We write the papers. We meet with the commissioners and we develop the position. If you are looking for the specific point—

Senator BRANDIS—But somebody had to write this.

Mr Dimasi—Yes, of course. But, sorry, you are looking to focus on the drafting instructions on a particular day, when the instruction was given to write this recommendation. It was not as simple as that. We will certainly check the dates, but I cannot assure you that we will be able to find a specific date for such an instruction.

CHAIR—We have about one minute before the afternoon tea break.

Senator BRANDIS—My last question is this: whether it be in the form of a drafting instruction or in the mind of the draftsman himself, when the decision was made ultimately to state the conclusion he has stated about Fuelwatch—was that before or after 24 November?

Mr Samuel—I will have to take that on notice.

Senator BRANDIS—November 24 was a Saturday, wasn't it—in the week after or the week before?

Mr Samuel—I would have to take that on notice. I cannot give you those dates based on what we have at the present time, I am sorry.

CHAIR—The committee will break for afternoon tea at this point.

Proceedings suspended from 3.45 pm to 4.01 pm

CHAIR—We will resume discussion of the Treasury portfolio and the ACCC.

Senator EGGLESTON—Mr Samuel, last year, as you may know, the Senate Standing Committee on Environment, Communications, Information Technology and the Arts, as I mentioned in the February estimates, brought down a report on Indigenous art. I notice that you had an article in the *Northern Territory News* in February this year regarding the Indigenous art market. It said that you had started distributing information and fact sheets to galleries and art centres about fraud and malpractice in the Indigenous art area. Could you tell us what you are doing in that area? One of the specific recommendations of that report was that the ACCC set up a special Indigenous art unit. There is a lot of fraud in this area. As you

know, it is a \$600 million a year business. Have you been offered funding by the federal government for this purpose?

Mr Samuel—There are a few questions there. I think it would be better if we take that question on notice and give you a proper report on it.

Senator EGGLESTON—I am happy to do that. Sorry it is such a short interlude from Fuelwatch, but we will return you to the main game.

Senator ABETZ—I have had placed in front of me an article from the *Australian* on 30 May. Minister, are you able to assist us as to the appointment/reappointment of Mr Samuel? I understand that is about to come up.

Senator Sherry—It is obviously a decision of government.

Senator ABETZ—But I gather it is coming up relatively soon.

Senator Sherry—I know the issue is under consideration, but that is as much as I know personally. I am happy to take the question on notice and refer it on to Minister Bowen.

Senator ABETZ—I stumbled across that as I was reading the article. The point in that article is that a Mr Drury is asserting that the ACCC has been diligent in trying to mute its critics, as evidenced by its letter to Woolworths boss Mike Luscombe a few weeks back seeking support for his claims that he gets better profit margins in Perth than elsewhere. I was wondering if relatively briefly you can tell us what that is about. I assume that Mr Luscombe made that statement and that has been reported somewhere and that attracted your attention, Mr Samuel.

Mr Samuel—It did indeed.

Senator ABETZ—And you wrote him a letter?

Mr Samuel—Not, I might hasten to add, in the colourful language of Mr Drury, in an endeavour to mute our critics—not at all. When parties make claims of this nature we want to establish whether in fact they are accurate and what the basis is. Obviously they impact upon consideration of these issues. We have written to Mr Luscombe seeking some information to support and verify his claims. I am not sure we have received a response yet from Mr Luscombe.

Senator ABETZ—But you cannot enforce that request?

Mr Samuel—We could under formal petrol-price-monitoring powers.

Mr Cassidy—It was under our formal price-monitoring powers that we wrote seeking the information. I do not think we have a formal response yet, but I do believe we have an informal indication from Mr Luscombe that he believes he has been misquoted in terms of what he said about Western Australia.

Senator ABETZ—All right. We will not take that any further. Mr Cassidy, if you refer to page 1 of the report, 91 per cent of all fuel used by passenger vehicles was petrol. Does that mean when I pull up at a service station, unless I accidentally pull out the diesel bowser, basically all the petrol that is sold on the apron of the service station is covered by that 91 per cent? What I am wondering is: does the unleaded include the premium? Do they still sell super or call it something else—octane whatever it is and biofuel enhanced unleaded? What

are we actually talking about? If you do not know, not much rides on it; it is just of interest. Could you take it on notice.

Mr Cassidy—If you look at the footnote on that, we actually got that from an ABS publication, a survey of motor vehicle use.

Senator ABETZ—I was just wondering if you knew.

Mr Cassidy—No, not off the top of my head. But, if you like, we could take that on notice.

Senator ABETZ—If you could, I would be much obliged to you.

Mr Cassidy—We will check that publication and see if there is clarification. For example, does it include on-farm use of petrol for motor vehicles, for argument's sake? Let us take that on notice.

Senator ABETZ—In relation to the modelling that we have been spending some time on, who did the modelling? Did you do that, Dr King, or was it somebody else within the commission?

Dr King—No, it was the team within the commission. I will pass over to Mr Dimasi to respond.

Mr Dimasi—As I said before, it would be very unusual if we had got one of our commissioners to do the modelling. We have a branch within the commission—the Regulatory Development Branch—which is a branch of expert economists.

Senator ABETZ—Who was in charge?

Mr Dimasi—The branch head is Anne Plympton. She heads up a branch that reports to me. There are a number of economists and modellers that we call on to do our work from time to time. We call the modellers as we need to do so.

Senator ABETZ—Was she actively involved in the modelling?

Mr Dimasi—No, she was not.

Senator ABETZ—Who was in charge of this particular exercise?

Mr Dimasi—The chief modeller was Richard Hayes.

Senator ABETZ—As to the four-page supplement that we have been talking about today—I trust we have agreed as to what that document is—is it fair to say that about two of the pages represent pages that are in the 380-page report?

Mr Dimasi—Yes. The idea was to explain the results—

Senator ABETZ—Yes, we do not need go there.

Mr Dimasi—of the methodology to set it out.

Senator ABETZ—We do not need to go there. The actual new information that is available to the community as a result of that four-page document is in fact two pages of actual supplement, although it incorporates two pages from the original report; would that be a fair summary?

Mr Dimasi—The new information is presented on two pages, yes.

Senator ABETZ—Thank you. Mr Walker, if I may, I will come back to you. I got myself into a muddle about the number of days in the week and things of that nature, but you did give evidence, as I understand it, that 20 per cent of fuel is bought on the cheapest day; is that correct?

Mr Walker—I took you to appendix P and I said in Sydney and Melbourne, as I recall, approximately 20 per cent. I think there are variations across the other capital cities.

Senator ABETZ—Then I think Mr Dimasi may have helpfully intervened indicating that you would normally expect about 14 per cent per day on the basis of seven days and if everything was averaged out—and it was on that basis that I started to realise the error of the path I was going down. But it was interesting to me that, if 14 per cent is the average you would expect on a day, on the cheapest fuel day you get in fact a 50 per cent, in rough terms—six per cent or seven per cent—increase of fuel being purchased in volume terms rather than the average of 14 per cent. Am I doing something wrong with my maths in relation to that particular day?

Mr Walker—No. I think there may be some confusion. I think the 14 per cent figure—and I think it was proffered by one of my colleagues—was on the notion that, if people purchase fuel uniformly across seven days—

Senator ABETZ—That is right.

Mr Walker—seven times 14—

Senator ABETZ—That is right: 98.

Mr Walker—is 98. So, 14 or 15 per cent.

Senator ABETZ—Yes. As to other factors, do you want to add to that?

Mr Walker—I am not sure specifically in relation to buying petrol. I think there was about an even distribution. I think that was the context, but if it was not—

Senator ABETZ—Yes. But for other factors you could anticipate that people might buy the same amount of petrol on each day and that would be 14 per cent. But that shows, I would have thought, 50 per cent above what you might expect the average to be. I am not doing anything wrong with my maths there? I did earlier today; I accept that. I just want to make sure I have got this one nailed down. Is that right?

Mr Walker—I think people are influenced by what they believe the price will be on the day.

Senator ABETZ—And 20 per cent of the volume is purchased on the day that it is the cheapest. Is that the day when the most fuel in volume is sold, when the price is the cheapest?

Mr Walker—Yes.

Senator ABETZ—So chances are it would not be extrapolating too far to say that the consumers in Sydney are buying the most petrol on that particular day of the week for only one reason, and that is that it is cheaper?

Mr Walker—They would certainly be attracted to that.

Senator ABETZ—Mr Cassidy, do you agree with that?

Mr Cassidy—Yes.

Senator ABETZ—I had led myself into some confusion with these figures, and I am now trying to get myself out of the fog and get some understanding with which the commission can agree.

Mr Walker—Can I add something that might be of interest to you?

Senator ABETZ—Yes.

Mr Walker—In Western Australia there was one period in 2004 and 2005—the last quarter of 2004-05—in which there was a price cycle present, the normal sort of price cycle—and one period where there were no price cycles at all.

Senator ABETZ—Wait a moment. But we are talking Sydney, are we not, with that figure of 20 per cent that I was concentrating on?

Mr Walker—You were. I was just going to make the observation that the volume of sales—I think it is important—in Perth remained. The larger days for volumes were Thursday and Friday in both models.

Senator ABETZ—Can I take you to Western Australia, and hopefully you are aware of these. I understand three separate companies have conducted FuelWatch consumer surveys over a period of time. Are you aware of that?

Mr Walker—I am aware of surveys having been conducted, but I could not name you the particular companies or the precise dates.

Senator ABETZ—No, you do not need to. Is it true that none of those reports has been made publicly available?

Mr Walker—I believe the information has been made publicly available. Certainly information from it was quoted in the submission from the Western Australian Department of Consumer and Employment Protection to the ACCC's inquiry last year.

Senator ABETZ—That would be the department that in fact commissioned the report. This is all about consumer empowerment, we have been told. We are having consumer surveys—three of them, I understand. Can they be publicly released so we can have a look?

Mr Walker—That would be a decision of the WA government. But I suspect if you were to ask for them you would receive them.

Senator ABETZ—Thank you. I might try that. Senator Webber, you might put in a good word for me when I make that request. I am not holding my breath.

Senator FIERRAVANTI-WELLS—They are going to see you coming a mile off. I would not hold my breath.

Senator ABETZ—Senator Murray, you might get a unity ticket on this for Senator Eggleston. Will the ACCC have the power to suspend the Fuelwatch scheme if you believe it produces adverse effects on consumers or retailers? Or will that have to be a government decision?

Mr Cassidy—The Prime Minister's press release of 15 April indicated an intention by the government to review the effectiveness of the national Fuelwatch scheme 12 months after its operations commence.

Senator ABETZ—Yes, but do you have the power, if for whatever reason there is something in the scheme that is making things go haywire, to pull the plug on it? Or will it be—to quote somebody's words—that the buck stops with the Prime Minister and the government on this issue? I just want to know the mechanism, not as to whether—

Mr Cassidy—As you know, the Fuelwatch scheme is going to be enshrined in law.

Senator ABETZ—I have read it. I just want to make sure there is no discretion given to the ACCC to suspend the monitoring or whatever if certain unfortunate unforeseen events occur.

Mr Cassidy—That is correct.

Senator ABETZ—I will take you back, Mr Walker and Mr Samuel, to when I asked about a clarifying press release. It was a front-pager I think in the *Daily Telegraph*. It was pretty serious. There was an assertion about a 5c a litre fuel price decrease potentially. I do not want to labour this point too long, but we have agreed there was no clarifying or correcting statement put out. Mr Samuel, I think all of us practitioners of the art of politics in this room would agree you would be doing a full-time job potentially trying to clarify everything. But every now and then we actually do, especially if the matter is serious. I would have thought this was a very substantial misrepresentation of the position. I think we are all agreed that it is a misrepresentation. Getting a 5c a litre decrease in fuel price will not happen with Fuelwatch. I think we are in heated agreement. That being plastered on a front page, read by I would assume millions of people around Australia, did it never cross anybody's mind, especially yours, Mr Walker, that, 'I might have to clarify this'?

Mr Walker—It crossed my mind. But I would go back to far more extensive media material, and that was upon my appointment or nomination by the government. That was carried very extensively across Australia, across all media. I made those comments very clear on that day—that we were talking about a very marginal/modest reduction in petrol prices of the order of 1c or 2c. That had far more coverage—not to cast any comments on the crowd-pulling capacities of Mr Milne and the publications within which his media statement appeared. I note from the media I did that day that there were 32 media requests on the follow-up. I have subsequently spoken to the media on many occasions and I have been asked about that. The clarification has come. The earlier response was: was there a media release put out? The answer was: no, but it has certainly been clarified. The position was well explained, I felt, upon appointment. The position has been responded to subsequently.

Senator ABETZ—I think it was the *Daily Telegraph*. The banner headline was that it was an exclusive interview with you, Mr Walker, and this was something it would appear Mr Milne was pretty proud of. As a result, it got the front page because it was exclusive, but then no clarification. With respect, I would have thought—and this is an opinion, Chair, and I will stop it there—it would have been important enough to put out an immediately clarifying statement.

Mr Walker—It was the subeditors, I think. It was the headline. If you actually read that article—and I am sure you have—you will not have seen those comments directly attributed to me.

Senator ABETZ—Albeit I think we did agree that, for the \$900 million saving that is referred to, if you then divide that by the litres consumed et cetera, it would translate to about 5c a litre.

Mr Walker—In response to that, I would have thought he would have used a billion, because five by \$200 million has a sexier sound than \$900 million. But that is just my observation.

Senator COONAN—That is for your next headline, Mr Walker.

Senator ABETZ—Chances are the headline tomorrow will be ‘Mr Walker utters the words \$1 billion’.

Mr Walker—I am sure you can assist there.

Senator ABETZ—No. I am trying to dampen expectations, in case you had not noticed, as to what Fuelwatch might be able to achieve. I am told that in the *Adelaide Advertiser* on 28 May there was a three-month survey. I do not think I covered that this morning. There was a three-month survey referred to in the *Adelaide Advertiser* indicating that unleaded fuel was at least 1c a litre dearer in Perth than in Sydney and Melbourne. Then it extrapolated that in Perth drivers were paying nearly \$2 more to fill the family car with 40 litres of fuel. The figures were sourced from the MotorMouth website. Are you aware of that survey?

Mr Samuel—Not specifically. There is a difficulty with these surveys and statistics in the reference to the MotorMouth website. You may not be familiar with the fact that MotorMouth is a subsidiary of Informed Sources. The MotorMouth website includes in its information only those sites that are not part of the Informed Sources price sharing information scheme. I know your base is in Tasmania, but you could go on to MotorMouth—

Senator ABETZ—Be careful; so is the minister’s.

Mr Samuel—I was not going to refer to Tasmania. I was going to refer to Victoria. You could go to the MotorMouth site, put in your post code and ask: what are the prices at the nearest sites? You would find that the nearest site—I did it actually for my own post code—was about 10 or 15 kilometres away, primarily because the sites that are within that 10 or 15 kilometre radius happen to all be part of the Informed Sources survey. So, MotorMouth is not a detailed all-encompassing coverage of sites; it covers only those that are not part of the Informed Sources, such as a couple of the independents and the like. It is what we call the motorbike brigade. It is determined by going around with the motorbike brigade. Leaving all of that aside, to take spot comparisons of Perth prices relative to eastern seaboard prices does not actually take you that far. I can give you different statistics, for example, of the highest prices or the highest average daily retail prices in the five largest capital cities in the calendar years 2003 to 2007 and to date. I could show you all of those. They show that from about 2003 onwards, taking that figure, highest average daily retail unleaded petrol price for the five largest capital cities, Perth is without exception lower than any of the other capital cities with the exception of Brisbane, which of course has the state base.

Senator ABETZ—Where is that from?

Mr Samuel—That is information that we have managed to extract. I have to say to you—

Senator ABETZ—Is it in the report?

Mr Samuel—No, it is not.

Senator ABETZ—No.

Mr Samuel—And there is a good reason why it is not in the report. I was going to go on and say I think it is about as irrelevant a statistic as the one that you have just described in respect of that survey.

Senator ABETZ—The decision that the government has made is based on, quite frankly, a lot of statistics and a lot of modelling, having gained information, trying to put it together, and then extrapolating from that data. But I will not—

Mr Samuel—I need to clarify that.

Senator ABETZ—Time is of the essence.

Mr Samuel—I understand that, so I will keep the clarification brief. I think it is important that we do not allow that particular proposition to go uncorrected. The econometric modelling did not simply look at Perth prices and compare them with eastern seaboard prices and say Perth's are lower and—

Senator ABETZ—I know that.

Mr Samuel—the eastern seaboard's are higher, or anything like that at all. It looked at Perth prices before and after the introduction of FuelWatch and then determined whether, in relative terms to the eastern seaboard and the margins, those margins went up or went down.

Senator ABETZ—You also factored in Coles, did you not, entering the market in Western Australia?

Mr Samuel—Yes. We factored in Coles and other—

Senator ABETZ—That is right. With respect, that is understood.

Mr Cassidy—Reflecting on what you read out, it is plain wrong.

Senator ABETZ—Sorry?

Mr Cassidy—Reflecting on what you read out, I think it is just plain wrong.

Senator ABETZ—All right.

Mr Cassidy—Because I mentioned to you this morning that—

Senator ABETZ—Not having seen it, you are willing to say it is plainly wrong?

Mr Cassidy—As you read it out. Let me put this proposition to you. I mentioned to you this morning and I described it—pejoratively, admittedly—as another useless figure. But I said that in four out of the last six months, in monthly average terms, Perth prices have been the lowest. They have been the lowest using Informed Sources data. They have been the lowest using MotorMouth data. I think that statement that you read out is clearly inconsistent with that, in which case I would say that statement is wrong.

Senator ABETZ—I can understand the different statistics and different ways of data collection. Of course, as I understand it, MotorMouth and Informed Sources no longer operate in Western Australia, and so how they gather their information can be questioned, and I understand that. But I was just interested in your commentary on that. Informed Sources collect data in this industry and sector, but this is not the only industry or sector in which they collect this sort of data, is it? That is their game? Or are they fuel specific?

Mr Cassidy—I think that is right. I do not profess to be intimately associated with Informed Sources, but I think they do data collection in other industries. But I think the petrol data collection exercise is their major one. As I understand it, they do data collection in other industries. But I think what we might call their petrol data collection is their major activity.

Senator ABETZ—As to the data collection activity in other industries/sectors, is there anything untoward about that and then making it available to those other industry sectors?

Mr Dimasi—We have no reason to believe so. Indeed, it is not the data collection per se that might be untoward.

Senator ABETZ—The sharing of it?

Mr Dimasi—It is the sharing of it on an almost real-time basis that creates the problem.

Senator ABETZ—Sorry; allow me to rephrase the question.

Mr Dimasi—That is a unique problem to petrol. We would not see those circumstances arise in other sectors. That is why we would have no reason to believe there would be any problem elsewhere.

Senator ABETZ—It is the sharing of that data that you say does not occur in any other industry or sector in which they collect this sort of information?

Mr Dimasi—The sharing of that data on an almost real time basis, and the disaggregation of that data as well. It is the extent of the data, the almost real time sharing of that data, which allows competitors to respond in almost real time to what is happening. That is what causes the potential issues.

Senator ABETZ—That is where I think we have a bit of a philosophical difference in relation to—

Mr Dimasi—We are just explaining what—

Senator ABETZ—If people want to put their prices down, I say ‘You beaut’. But anyway, we will not go there anymore. We have covered that. Mr Samuel, you indicated that one of the difficulties with fuel prices was that nobody really knows at the moment who the price leader is. Is that a correct summary of part of your evidence earlier today?

Mr Samuel—I think the correct summary is the words I use, which is that the process that we have at present leads to enormous confusion, unpredictability on the part of consumers, and frustration and anger.

Senator ABETZ—Yes, as to who the price leader is.

Mr Samuel—It is not so much as to who the price leader is but it is as to who is charging what, where they are charging it, how long that price will remain in place, when it will be changed, when it will work adversely for consumers and when it will work to their benefit.

Senator ABETZ—I understand all of that. I must have misheard you—and we will check the *Hansard*—but I thought that one of your concerns was that consumers did not know who the price leader was in relation to fuel prices?

Mr Samuel—No, I do not think I did say that.

Senator ABETZ—In that case I misheard and we will move on. That is why I asked you if it was a fair summary, in case you had not said it, and you say you did not say it. The *Hansard* will either tell us whether I am wrong or you are wrong. Given my intervention earlier today, the chances are that it is more likely I will be wrong than you. But you never know what might happen. Can I take you to another issue. Mr Cassidy—and if this was put to you, I will withdraw the question, but I do not think Senator Brandis touched on this—in 2006 you told a Senate committee that we have a ‘worry that the Western Australian arrangements have severely limited the role of independents in the Western Australian fuel market’. Is that what you said at the time?

Mr Cassidy—Yes. I think that was the substance of the question Senator Chapman put to me at the very beginning of the day.

Senator ABETZ—What evidence did you have at the time to say ‘have severely’ limited? There must have been a body of evidence that had shown you that it had severely limited the role of the independents.

Mr Cassidy—As I said this morning, we were actually being told by independent operators that that was the case.

Senator ABETZ—So it was that easy to get the ACCC to say that, just by somebody saying it to you, and then you are willing to repeat that as fact before a Senate committee?

Mr Cassidy—We do not just repeat whatever we hear.

Senator ABETZ—I know you do not.

Mr Cassidy—Firstly, we have been told that, and, secondly, from our knowledge of the way the petrol market works, we could see that that could be a possibility. As I said this morning, it has been our understanding for a period of time that independents do seek to drop their price during the course of a day and take advantage of the fact, as you or someone else referred to just a few minutes ago, that, with the motorbike brigade picking them up rather than the electronic Informed Sources, it takes a couple of hours for their dropped price to be responded to. We have been told that was the case. We can see from our knowledge of the industry that that could be the case. But, as I said to Senator Chapman this morning, the problem was that, when we got hard data from Western Australia on what had happened with independents after Fuelwatch was introduced, an adverse impact on independents just was not borne out by the data.

Senator ABETZ—Has the ACCC spoken with APCO about the issue of Fuelwatch in recent times? I know you have spoken with them in court, but have you spoken with them about Fuelwatch in recent times?

Mr Samuel—They gave evidence at our inquiry hearing in Ballarat, I think. But, frankly, I cannot recall whether we asked them about Fuelwatch. I would have to take it on notice.

Mr Cassidy—It is the case, as it turns out, that there was a meeting planned with APCO for today.

Senator ABETZ—Sorry?

Mr Cassidy—There was a meeting planned with APCO for today, which has been called off for reasons that are fairly obvious given Commissioner Walker was going to be the one at the meeting.

Senator ABETZ—I do know when that meeting was being arranged and that is why I asked certain questions earlier but then withdrew them on the basis of the personal events. I accept that. Can I ask in relation to Informed Sources: is the ACCC of the view that the information that is sent around by Informed Sources used by retailers to then reduce their price during the course of the day?

Mr Samuel—It is used for a number of purposes. The primary purpose is to detect and to have specific knowledge of what competitors are charging for petrol in local competitor sites. That then can be used for three purposes. Firstly, to match prices by taking them down; secondly, to reduce prices in advance of others; and, thirdly, to hike prices. It is a price sharing mechanism. It makes the price hiking relatively risk free, because you know within minutes whether your local competitor sites are raising their price or not. It does mean that you can in any locality raise a price and not necessarily raise it in other localities. All you would be concerned about in the databank or the computer banks that are held in the head offices of Coles and Woolworths and the major refiners is what your local competitors are doing. It permits you to adjust your prices to deal with what the local competitors might be doing with their price.

Senator ABETZ—You could do that—I think it has been used before with a motorbike brigade and mobile telephones—and undertake that sort of operation in any event. It is just using latest technology to achieve what would otherwise be a lawful activity.

Mr Samuel—No-one is suggesting that this activity is unlawful. I think I have described it as just on the legal side of—

Senator ABETZ—I am interested in that specific issue. You say it is just on the lawful side, but what I am putting to you is: would you describe it as being just on the lawful side if somebody got on a motorbike with a mobile phone and did that for everybody else in their particular market area? As I understand it, Fuelwatch will be designating certain markets and geographic areas and at this stage we do not know how big they are going to be. But I dare say some of these markets might be geographically relatively small. If all the service stations could employ somebody on a motorbike with a mobile phone to go zipping around just to continually phone in what everyone is charging, would that be just on the legal side as well?

Mr Samuel—No, that would be perfectly legal. The difference in this is that this is a subscription service where the major oil companies and the major retailers all enter into a specific agreement with Informed Sources. They pay a sum of money into Informed Sources which then results in their making a commitment to providing electronic information as to the

prices they are charging for fuel on a continuous, real-time basis, and they receive in return the aggregated and disaggregated information from Informed Sources as to what their competitors are selling their petrol for. That is a different situation. That is an agreement, arrangement or understanding that might get you just to the point of the legal side of breaching the Trade Practices Act.

Senator ABETZ—But this is just using technology to its very best, is it not? Once again I use the analogy—I think it was Mr Cassidy that referred to it—of the motorbike brigade. If they were to do that with their mobile phone, even with a little computer that they could work things out on very quickly and pass on the information, whether it is passed on verbally two hours after the event or even in real time as opposed to two hours later, what is the problem with that?

Mr Samuel—If a party proceeds out on his motorbike and unilaterally of his own volition goes out to check the prices of his competitors, that is his choice.

Senator ABETZ—Sorry, I think we have been at cross-purposes. What I was saying was instead of all these petrol stations employing Informed Sources, they employ a motorbike brigade to do exactly the same and ring in on mobile phones. Instead of using Informed Sources, they get a motorbike brigade. What is the—

Mr Samuel—Can I clarify your question?

Mr Cassidy—I would characterise it this way—

Senator ABETZ—Three or four of you can have a go at the same time over there as well.

Mr Samuel—We are all struggling to quite understand the question. Mr Cassidy can have a go.

Senator ABETZ—It was a cheap shot. I am sorry.

Senator Sherry—They are rebuilding enthusiasm and really getting into it. They are here for the night, so they are settling in.

Mr Cassidy—At a point in time a sale of petrol is made at a price. The way Informed Sources works is that, within a matter of minutes of that sale being made, that information is communicated. That is not unlawful. If what happened was that the information was communicated within a matter of minutes before the sale was made, that is to say what they are communicating is their intention to sell at that price, even if it is only a couple of minutes later, then that is when we have a problem because that would be, in our view, unlawful. Because of the technology what Informed Sources allows is that that communication occurs, as I say, within a matter of minutes of the sale being made. The closer you get to the point at which the sale is made, the more that communication of information mimics, if you like, the anticompetitive effect of actually communicating before the sale is made what your intended price is. That is the basic issue. With your motorbike brigade and mobile phones—

Senator ABETZ—No, yours.

Mr Cassidy—they could not possibly have that transmission of information on the broad scale that Informed Sources does—

Senator ABETZ—As quickly?

Mr Cassidy—Yes, as quickly.

Senator ABETZ—So get rid of broadband—

Mr Cassidy—We would not see that as being the problem.

Senator ABETZ—and all of that stuff, so they do not have the quickest technology. In the modern day I must say that argument does not impress me, that they cannot use modern technology—broadband and computer systems—but if they were to use a draught horse and cart it would be okay. I would have thought this is the modern economy, this is—

Mr Cassidy—You are thinking of the competitive effects. If modern technology and Informed Sources arrangement means that within a couple of minutes of a petrol sale being made all the major oil companies and Coles or Woolworths, are aware that that sale has been made at that price, we think that is fairly significant in terms of the competitive impacts of that.

Senator MURRAY—Is that essentially the evidence you have given about 44 times today?

Mr Cassidy—I do not think so.

CHAIR—Thank you, Senator Murray.

Mr Samuel—I agree with what my colleagues may want to say.

CHAIR—Let's get on with it.

Senator ABETZ—We know you are always unanimous in the ACCC. I must say I do find passing strange from time to time that with a body of such excellent minds there is such a great degree of unanimity. But let's keep on. Does the ACCC have an econometric model of petrol prices that it uses on a regular basis to constantly monitor the market? Mr Cassidy, you made the relevant point that one survey might show something else and the way you collect your data throws something else. I think a lot of the fog and haze in this debate is that everybody seems to have their own model, their own way of doing business. I am just wondering whether the ACCC has a constant model and would they then be willing to publicly disclose that so other brains a lot brighter than mine could analyse it.

Mr Cassidy—I take 'model' to be 'model' in the sense in which we would normally use the term. We do not have a model. What we have is informal monitoring of service stations in all the capital cities and 110 country towns. We are getting daily price information from all of those sites. There are over 4,000 of them. That is what we scrutinise and analyse in terms of what is going on with petrol prices.

Senator ABETZ—Is that a constant—

Mr Samuel—Yes.

Mr Cassidy—Every day.

Senator ABETZ—methodology?

Mr Samuel—Yes. The methodology is quite simple. It simply collects the data—that is, collects the prices at which petrol is being sold across those service stations at 9 am each day, and then charts it so that can be used for information internally. Then, of course, if you visit

our website, you will see that it is also charted to show the way the petrol price cycles work and the relativity of Australian average prices against the Singapore Mogas price.

Senator ABETZ—And the volumes?

Mr Cassidy—No. We do not get daily volume data.

Senator ABETZ—I hope this is not too simplistic. You will undoubtedly tell me it is, but I am a simple sort of fellow. If I had four watches and I was selling one of them at, let us say, \$10 and the other three at \$5 and that was out there on a big billboard like at a petrol station, you would say, 'Right, there are only two prices, \$5 and \$10, in the marketplace. The average price of a watch is \$7.50,' whereas I might sell only one watch at \$10 but a whole lot at \$5, which therefore drives down the average price that the consumer pays for a watch. Because you have somebody up here at \$1.70 and somebody else at \$1-whatever and there is a 26c price differential, as I think we were told by Mr Samuel earlier in the day, it sort of reminds me of that risqué comment about statistics—it is like skimpy bathers; what it shows is interesting but what it hides is vital. Unless we know the volume sold at each of those price levels, I think there is a major aspect of our analysis missing.

Mr Samuel—Remember that the highest and the lowest price is not volume sensitive. What it simply indicates is that there is a site that is selling at a high price of 171c and there is a site selling at the lowest price of 145c, and that shows you the highest and lowest. It shows you the range at 26c between the two sites. In terms of averages, yes, the average is calculated without reference to volume being sold at specific sites, but I am not sure that that data is even available.

Mr Dimasi—No, I do not think it is. It is not available to us. Again, it is a question of what are you trying to measure? What is it you are trying to do? We are tracking prices on a daily basis. These prices are collected pretty regularly by Informed Sources, which provides the data to us. We are able to track the movements of the cycle and track the movements of prices during the day and across the week. I think the data we get does the job perfectly well.

Senator ABETZ—Can I just ask one final question. What time—

Mr Samuel—The time that our flight departs is 6.35 pm; is that what you were about to ask, Senator?

Senator ABETZ—I will stop. That is fine.

Senator Sherry—That was remarkably effective.

Senator COONAN—It has been a long day. I wanted to clarify your earlier evidence so I have not drawn the wrong conclusion from it. I think you told us earlier that if companies agree to fix prices for 24 hours that would not violate the Trade Practices Act. I think that was Mr Cassidy's evidence. But then I thought I heard that, if petrol companies do not fix their prices, in other words, they change their prices during the day, then that almost violates the act. Could you clarify this for me, please?

Mr Cassidy—Let me get myself out of the hole. I think what I said to you was that if oil companies were to say to the people they are selling petrol to, 'Here we are. We're selling you this petrol on the basis that you will fix a price and then you will not change your price for 24 hours,'—in other words, it is the oil company saying to those retail outlets, 'This is what you

will do,'—I thought that was probably unlikely to be a breach of the Trade Practices Act. My legal people immediately got to me and said there are the resale price maintenance provisions and we are not quite sure how they would play in that.

I would like to draw back from that a bit and say it may not be a breach of the Trade Practices Act, although we would need to think about the resale price maintenance provisions. The other scenario is not where the oil company is saying to those who they are selling petrol to, 'Here you are. We will sell you petrol on this condition,' but where the retail service stations are getting together and agreeing amongst themselves that, 'Hey, what we will do is only change our price once a day and then we will keep it fixed for 24 hours.' My legal advisors tell me that is much more likely to be a breach of the act under section 45 of the price fixing provisions, which refer to maintaining not only price fixing in the sense of agreeing on a price but also price fixing in the sense of an arrangement which has the effect of maintaining a price.

Senator COONAN—Propping it up as such.

Mr Cassidy—I think, in short, my answer would be: if it is the oil companies saying, 'Here we are. You'll do this as a condition of our supplying petrol to you,' it may not be a breach.' However, we would need to think carefully about the resale price maintenance provisions. If it was the retail outlets getting together and saying, 'Here we are. We'll just agree that this is the way we are going to sell petrol. We will only change our price once every 24 hours,' then that is rather more likely to be a breach of the Trade Practices Act.

Senator COONAN—That is much more in accord with what I would have thought. Thank you. There is just one other thing I want to clarify. Going back to about February or March—we are not sure of the date—when Treasury's evidence is that they were the cause, or at least one of the causes, of asking the ACCC to do some further work, you say, 'Well, look, everybody agreed.' I realise that that is what you say. Was an additional body of work done after that additional work then given to Treasury to check?

Mr Cassidy—No.

CHAIR—Senator Murray, are your questions on Fuelwatch?

Senator MURRAY—Absolutely not.

CHAIR—Can I allow Senator Abetz to ask one last question?

Senator ABETZ—I have got a second wind. How will Fuelwatch operate? I think somebody told me there will be a toll-free—

Senator Sherry—I did.

Senator ABETZ—Thank you, Minister. What happens if a genuine mistake is made, if I ring up and say 163c instead of 165c or 136c instead of 163c, and then I put up my shingle the next day at 6 am believing what I honestly said? Is there going to be a person at the other end with a pen and paper taking down a note saying, 'Mr Samuel of such and such a garage, 163c'? Will it be recorded and what happens if there is an honest mistake by a retailer who then honestly puts up his billboard the next morning and then gets pinged because he made a mistake or the recording of it was a mistake?

Mr Cassidy—There are two parts to your question. Firstly, in terms of what is intended in the Fuelwatch system for retail stations providing the information, they can provide it in several ways. They can provide it through the internet. There will be a website that they just log on to and give the price. They will be able to, where you have got more than one service station—obviously, this is probably what the oil majors will do—send us a batch file that will list their service stations and say, ‘Here are the prices that we are going to be charging from 6 am tomorrow.’ And there will be a touch-tone telephone service where they can phone, give their identification code and then follow the prompts and say, ‘Here are my prices for tomorrow,’ and that will be an electronic thing. Those are the three ways in which it is envisaged.

Senator ABETZ—Will it be repeated to them? Believe it or not, I sometimes dial the wrong number.

Mr Dimasi—They will get a receipt to confirm the number. The intention is that they will get a receipt. They will know what they have put in.

Senator ABETZ—How is that receipt—

Mr Cassidy—I did not finish the answer. You had a second part to your question, which was: what if someone says or enters, say, 145c a litre where they really quite obviously meant—

Senator ABETZ—154c.

Mr Cassidy—125c a litre. I am not being unhelpful, but that would be something for the legislation, in the sense that we would need what would obviously be a sensible ability to say, where there is an obvious mistake made, that is not something which constitutes a breach of the law. But that is not in the bills at the moment.

Senator ABETZ—No.

Mr Cassidy—I think it is something that Treasury and the government are conscious of and have under consideration.

Senator ABETZ—Minister, I doubt I will vote for it; but, if it does get through, I would be less disappointed if there were a mechanism in it, in the event of a mistake happening, that meant that could at least be rectified. Thank you.

Senator MURRAY—The joy of having a television in your office is that you do not have to go through all of this, but the disappointment is you have to listen to it all.

Mr Samuel—I have a television in my office but I still have to go through it!

Senator MURRAY—My conclusion is that it is worth giving Fuelwatch a go.

Mr Samuel—Yes.

Senator MURRAY—I am glad you are big enough to change your mind when you get the evidence to do so. Having listened to it all today, I have concluded that good actors cannot redeem a bad play, and the play should have been over after an hour, I would have thought.

Mr Samuel—That is the nicest thing I have heard all day, Senator, so thank you.

Senator MURRAY—That is my observation after a long listening period. I want to ask you about the Code of Banking Practice. As I understand it, that is a voluntary code?

Mr Cassidy—You are wandering into territory which I think is more ASIC's.

Senator MURRAY—No, it is not. I will come to what I am after.

Mr Cassidy—I think you are right. It is a voluntary code.

Senator MURRAY—My impression has been that it has almost entirely been an area of interest for ASIC. I cannot recall the ACCC ever having anything to do with that.

Mr Samuel—I think that is right.

Senator MURRAY—There has, however, recently been a court case which indicates people are taking a relatively liberal view of the misleading and deceptive conduct provisions of the Trade Practices Act. You will know the one I am referring to. I do not know what they have decided, whether the case will be heard in the Supreme Court. I think that judgement is still pending. But I will quote to you from the Code of Banking Practice. It says it 'sets standards of good banking practice'. I do not have the primary document with me so I hope the quote I have got is accurate. It says:

The Australian Code of Banking Practice sets standards of good banking practice when dealing with individual or small business customers, prospective customers and their guarantors.

Then there is a sentence:

All banks that adopt the Code are contractually bound by their obligations under the Code.

I do not want you to give me a legal opinion, because I do not think that is right; you need to look at each circumstance. But it has been suggested to me that a breach of the code, given that it says participants are contractually bound, could in certain circumstances therefore trigger the misleading and deceptive provisions, if people alleged that the conduct of the bank was contrary to their agreement. I raise this with you as a policy issue. What concerns me is that if this interpretation is possible then all the codes, which I think are part of the fabric of good governance in Australia, could start to be under some assault and people might not want to sign up to them anymore because of the liability issues. Do you understand where I am going with this?

Mr Cassidy—Yes.

Senator MURRAY—Has that been raised with you before, that issue or that problem?

Mr Cassidy—No.

Mr Samuel—I am not aware of it, no.

Senator MURRAY—You understand—

Mr Samuel—I understand the issue, yes. I think we would have to take the issue on notice. But I am not aware of it.

Mr Cassidy—We will take it on notice and have a look at the proposition you put and try and give you, as best we can, our view in a hypothetical sort of way of whether that would take us to the misleading and deceptive conduct provisions or not.

Senator MURRAY—Without telling you how to do your business, what I want to alert you to is a potential problem I see. I think a code is a good thing and I think—

Mr Cassidy—Yes.

Senator MURRAY—if people are exposed to legal liability, that may be justified in some circumstances but it could be dangerous if it was general; it would result in people not signing up to codes. It might be an area you might want to give advice to the government on in due course.

Mr Samuel—We will take that on notice. We will have a look at the code, too, that you have referred to, the banking code, and just understand what—

Senator MURRAY—Particularly given the court case which is currently before the court. It is signalling that more liberal approach. Thank you for that. The other matter I want to ask you briefly about is the Productivity Commission's inquiry into retail shopping. As you know, I have the view that the shopping centre industry is insufficiently competitive and open. Without canvassing my view, my question is this: do you interact with the Productivity Commission prior to and during the process of their reporting or do you only really receive their reports at the same time as everybody else?

Mr Samuel—No. We put a submission into that inquiry and then we interact with them. The members of the Productivity Commission sitting on that inquiry conduct interviews with us. That involves one or two of the commissioners. Mr Cassidy and other senior staff are involved in this area, particularly dealing with issues of relationships between retail landlords and retail tenants. That is what happened on that matter. It happens with virtually every Productivity Commission issue that affects what we do.

Senator MURRAY—I have no inside information, but it is possible that they may throw up concerns about possible anticompetitive circumstances in the industry. What is your process, if they do that?

Mr Samuel—First of all, it would not come as a surprise to us if that was proposed. I would have expected that they would have discussed those issues enough to get our reaction as to any suggestions of anticompetitive structures or behaviour in the industry. But in the event that there was an issue that they had raised in a report then you could be, I think, reasonably assured that we would be pursuing it not only in our own investigatory processes but also in the context of any information and evidence that they had gathered in the course of their inquiry.

Senator MURRAY—I presume, if it is a practice that falls within the existing law, you would address it on that basis, but if it was a policy shift you would give advice?

Mr Samuel—That is correct.

Senator MURRAY—You do not stand back?

Mr Samuel—No.

Senator MURRAY—I wanted to hope that. It is another area where I am hoping you might change your mind.

Mr Cassidy—We do not make a habit of changing our minds.

Mr Samuel—It makes Senate estimates hearings far too long if we change our minds too often!

Senator MURRAY—Yes; I can understand that. The third area I wanted to briefly discuss with you—and it was an area raised by Senator Eggleston—which I have an interest in, goes to APRA and the mooted merger between Westpac and St George. Without getting into what your decision might or might not be, where are you at with that issue? What are you doing?

Mr Samuel—We are going through our normal process of analysis. I do not have the website details in front of me as to the projected timelines, but I think we have received a submission. Yes, we have just received a submission, so the timelines for analysis will have just started. The normal process for a merger—I say ‘normal’; let me emphasise this may take longer—would, depending on the information given to us, and given that this is now public we can go out for public inquiries, normally take us around two months to conduct the public inquiries. That may be longer, depending on information available to us from both the merging parties and other sources. If we deemed it appropriate we would go out with a statement of issues, which would draw attention to specific concerns that we might have or concerns we may not have. Those are designed to provoke more focused comments and submissions being put to us. Then we would anticipate that, after the expiry of three or maybe four months in total from the beginning of the initial application being put to us to the completion of the process, we would be able to make a decision.

Senator MURRAY—Staying with banks, I have noted what I would call seeded articles. In other words, I suspect the banks are commissioning PR houses who are then placing the articles, all digging away at the four pillars policy. Have you had any—I do not want to know from whom—formal presentations or submissions to you from the banking industry seeking to influence your submissions to government with respect to the four pillars policy, or was it entirely just a public relations exercise?

Mr Samuel—No, it is a matter of policy for the Treasurer. I doubt that there would be any value in putting a submission to us, because I think it is purely a policy issue to be determined by the federal Treasurer and the federal government. I do not think it is an issue that affects us. We deal with banking mergers like we do with any other mergers under section 50, substantial lessening of competition issues, the four pillars policy and the role of the federal Treasurer in the context of the act—the financial services shareholdings act, I think it is called; I cannot recall the exact name of it. That is a role and a responsibility specifically given to the federal Treasurer and exercisable by him at any point in time. It is not a matter that we have any influence or role in.

Senator MURRAY—I just wanted to be sure you were not subject to lobbying pressure on this front.

Mr Samuel—I can assure you, by reference to the rest of the discussion that we have had today, Senator, that we do not succumb to lobbying pressure, either.

Senator MURRAY—I would think that is right, given my long knowledge of both you and your colleagues, so I accept that evidence. One of the reasons I am interested is that, in the 2004 Senate economics committee report into trade practices, there were 17 recommendations—

Mr Samuel—That is right.

Senator MURRAY—one of which accepted divestiture as a policy area which needed to be addressed. You cannot address the four pillars issue without having a divestiture development. You understand exactly what I am saying?

Mr Samuel—Yes.

Senator MURRAY—That is why I am interested in that. Lastly—this question is to the minister and this may not be the proper place—I thought I saw an advice that FICS and the Banking Ombudsman and those sorts of organisations were being amalgamated.

Senator Sherry—They are, yes. This is not the correct place. It would be in ASIC.

Senator MURRAY—Does it affect the ACCC at all?

Senator Sherry—No.

Senator MURRAY—Not at all?

Senator Sherry—No.

Senator MURRAY—Okay; thank you very much. That is all I had, Madam Chair.

CHAIR—Senator Murray, you spoke of a long history of involvement in ACCC issues, and I think I speak on behalf of everyone on the committee in saying that we appreciate your contribution to the debate. I have not been on the committee long; others have been on the committee longer. I think everyone has appreciated your contribution to that debate.

Senator MURRAY—Thank you. I am honoured by the recognition.

Senator FIERRAVANTI-WELLS—Mr Samuel, I understand that your appointment is due to expire. Can you tell me when that is?

Mr Samuel—On 31 July.

Senator FIERRAVANTI-WELLS—Could you tell me, Minister, when the process of reappointment of Mr Samuels or an appointment of his replacement is due to commence?

Senator Sherry—It is an appointment for government. Obviously, the minister, as I indicated earlier, is considering the matter. I do not think I have a brief on the precise timetable, formatting, et cetera, so I will have to take that on notice for you.

Senator FIERRAVANTI-WELLS—Could you also, if you do not mind, set out the criteria for the appointment for Mr Samuel's position.

Senator Sherry—I will take that on notice as well.

Senator FIERRAVANTI-WELLS—Also, could you tell me what other positions in the ACCC are due to come up for reappointment and when those terms are due to expire.

Senator Sherry—I will take those on notice for you.

Senator EGGLESTON—I had some questions on 'grocery Watch', but I think, Mr Samuels, you said you did not know a lot about 'grocery watch'?

Mr Samuel—No, I did not say that. In the coffee break we were talking and I said informally that questions in relation to the grocery inquiry would be premature because that

inquiry is still running at present and I would not want to pre-empt any of the findings of that inquiry, which is due to report to government on 31 July. In respect of 'grocery watch', that is a matter that is being developed between the ACCC and government at this stage. It is still in its developmental phase, so I am not sure I could give you anything definitive there. That would be really a matter for government, once government has reached a determination as to what it wants to do and the processes and methodology it wants to adopt.

Senator EGGLESTON—Thank you, Mr Samuels; I am sorry I misinterpreted what you said.

Mr Samuel—That is fine. Thank you for the question on the clarification.

Senator JOYCE—Mr Samuels, for the record, can you tell us how many cases under the Birdsville amendment have been brought to the ACCC.

Mr Cassidy—When you say 'cases'—

Senator JOYCE—Inquiries, complaints.

Mr Cassidy—Seventy-five.

Senator JOYCE—So 75 complaints have been brought. How many of those have been determined to be discounting and not predatory pricing?

Mr Cassidy—None of the 75 complaints, in our view, has constituted a breach of the Birdsville amendment. They have run into problems either because someone has said that that retailer is selling at a price below what I can buy the product at. But that is not the relevant cost; the relevant cost is the cost to the retailer who is actually selling the good. They have also run into problems because of the reference to 'for a sustained period', and a number of the complaints have related to sales that have only been short-term in duration—a couple of days. Then, I think, the final issue on which the complaints, if you like, have run into problems has been the purpose. As you know, in the so-called Birdsville amendment there is a predatory purpose requirement. Of the ones that survived the other tests, we then found that, as far as we could see they have not had a predatory purpose.

Senator JOYCE—When people put forward the argument that the Birdsville amendment will stop discounting and restrict competition, that is really not evident from the facts, because there has not actually been one case yet. We hope there will be soon. In fact, I would be encouraging the ACCC to prosecute a case under the Birdsville amendment. But as the evidence stands at the moment, 75 cases have been brought forward and not one has taken the next step towards prosecution. So, people relying on the argument that the Birdsville amendment restricts competition really do not have a leg to stand on, do they?

Mr Samuel—I think the proposition I put to you before was this: as the law currently stands, we have two subsections of section 46 that deal with predatory pricing: section 46(1AA) and section 46(4). You have section 46(1) combined with section 46(4) and you have section 46(1AA). The concern that we have had is that they are two divergent sections, primarily by reference to the—

Senator JOYCE—Market power and market share.

Mr Samuel—substantial market power; that is right. Substantial market power has gone through many years of definition by the courts. It has been assisted, we believe, by recent amendments to more closely define what constitutes substantial market power. The amendments that are now proposed by the government will deal with the issue of recoupment.

Senator JOYCE—Recoupment was already dealt with in the explanatory memorandum of the initial changes to the Trade Practices Act. How can you deal with it twice?

Mr Cassidy—We can deal with it because it is one thing to have something in an explanatory memorandum—

Senator JOYCE—But it was never—

Mr Cassidy—No, please let me finish. But there is no obligation on the courts to take any notice of what is called extrinsic materials. The proposal now is to actually put that recoupment provision into the legislation, I might say into 46(1AA), which in our view will mean that 46(1AA) will now become the predatory pricing provision in the Trade Practices Act, because that is where the recoupment provision will sit. From our point of view, if these changes are made, we will not be taking, I would think, a predatory pricing case under 46(1); we will take predatory pricing cases under 46(1AA).

Senator JOYCE—Is that advice that has been given to you or is that your opinion?

Mr Cassidy—That is our assessment in looking at proposed amendments.

Senator JOYCE—To make more congruous—

CHAIR—Senator Joyce, we did promise the ACCC that they would be away by 5.15 pm.

Senator JOYCE—I have four questions to place on notice.

CHAIR—You can give them to the secretariat. You have time. To the commissioners and officers of ACCC I say thank you very much for your attendance today.

Mr Samuel—I thank you, Chair and the committee members, for accommodating our travel arrangements. We appreciate that.

Senator EGGLESTON—With your indulgence, I might still put these ‘grocery watch’ questions on notice.

Mr Samuel—That is fine.

[5.15 pm]

National Competition Council

CHAIR—I welcome the National Competition Council. Do you have an opening statement that you wish to make?

Mr Feil—No, I am happy just to take questions directly.

Senator EGGLESTON—In relation to the third-party access issue of Pilbara Railways, the Minerals Council of Australia, I understand, has asked for inclusion of an efficiency override provision for part IIIA of the Trade Practices Act. This section provides the legal regime to help miners get access to nationally important infrastructure. Increasing third-party access to such infrastructure has been an issue that I believe has come before you. In

scenarios where infrastructure such as railway access, for example, in the Pilbara is faced with higher demand and competition between parties, what is your view about the Minerals Council's position?

Mr Feil—We currently have three applications for access to railways in the Pilbara in the process of being considered. The Minerals Council of Australia has made a submission in respect of those applications. The council has yet to produce its draft recommendation, which is our first part of the process. Then we allow a further opportunity for submissions before we make our final recommendation. We obviously have to apply the law as it is written.

The law as it is currently written provides for six principal criteria we have to consider in making a declaration/recommendation, and those are the six criteria we do consider. They address/identify whether the facility people want access to is a natural monopoly. If it is not or it is uneconomic to duplicate, we cannot recommend declaration. It must also lead to the material promotion of competition in a dependent market behind the infrastructure that people are seeking access to. Again, unless we are affirmatively satisfied of that, we cannot recommend declaration. There are other criteria dealing with national significance, with health and safety and making sure that it can be maintained, and with whether there is another effective access regime at a state level. Criterion (f) is a general requirement to address whether or not declaration would be in the public interest.

The interpretation the council, the tribunal and the courts have put on that is that, if there are significant costs arising to the economy as a whole, we would not recommend declaration. A number of those costs are of the type that you would consider as an efficiency argument. For example—and this is a generic example not specifically relating to the matters we are still considering—if we were to come to the view on evidence that the effect of access would be to destroy the efficiency with which that facility operated such that it would damage the Australian economy, we would obviously take that into account. If that outweighed the likely benefits from promoting competition in the upstream market or any others then I think quite simply we would recommend against declaration.

The council has said on a number of occasions publicly that, if by an efficiency override the suggestion is that there should be some ability for us to recommend against declaration where the damage to the economy from a lack of efficiency or an effect on efficiency would outweigh the upside of access, we can and we would. There is no override required to do that. We are a little concerned that by efficiency override some parties are suggesting that that should amount to a veto from the asset owners.

The suggestion has been put to us that the efficiency override means more than just allowing for the public interest to be considered, that we should somehow be obliged to give the commercial interests of asset owners greater weight than all the other interests we have to judge. That would be beyond the policy as currently reflected in part IIIA and is not a matter for the council. We have to apply the law as it is. We have no doubt that, if the case can be made out that there is a destruction of efficiency such that the overall effects of allowing access would be detrimental to Australia, we can and we would reject a recommendation for declaration.

Senator EGGLESTON—When the original Pilbara iron ore industry was established in the sixties and seventies, the Western Australian state agreement acts did provide for third-party access to the railways. But in those days the tonnages shipped and the number of trains running was far fewer than they are today. I suppose one has to take into consideration the enormous growth in the utilisation of those railroads in considering the efficiency of the operations and compare it with, I presume, Dalrymple Bay in Queensland, where it is said that multiple access has to some degree reduced the efficiency of the coal operations. I note that there is also a requirement for the railway usage to be part of the process of production. Is that not the case?

Mr Feil—They are slightly different issues. The state agreement acts generally provided that the operators of the railway were obliged, subject to a set of conditions, to carry ore for other parties. That is not the same as allowing someone else to run a train on the rails. No party has ever achieved getting their ore carried as an independent party on any of those state agreements. But certainly it was contemplated that there would be some sharing. That is a little difficult to answer because we are still considering it. But, if there was an effective regime operating, that would be a factor we could take into account.

The production process issue arises slightly differently. The definition of what is a service and therefore what can be declared under part 3A excludes production processes. If I want to come under part 3A to get access to a bakery or a car manufacturing plant so that I can build cars and then compete with the person who owns that plant, I cannot have access. The argument has been run and was accepted by a court in an early part 3A matter that these railways are part of some process for producing iron ore. They are certainly somewhere in the set of things you do. But the more recent court decisions have overturned the view that these railways are doing something by way of producing iron ore, and the council, I think, is comfortable with the view that the production process exception does not apply.

That matter has now been accepted by the High Court, which has granted special leave and will be heard at the end of July. There will be further legal argument on that. But so far the Federal Court and the full court by majority have taken the view that the exception does not apply to the Pilbara Railways.

Senator EGGLESTON—You mentioned third-party access meaning another company running its own locomotives on the railways. But it is suggested by implication perhaps that if the company that owned the railways subcontracted its locomotives and trains to another company and the primary company carried the product—in this case iron ore, if we are referring to the Pilbara—that would meet the test. Would it?

Mr Feil—No, I do not think I went that far.

Senator EGGLESTON—That was my question. You did not say that.

Mr Feil—I guess they can be confused a little bit. Under part 3A you can only succeed in getting access where the facility that underlies the service that you want is uneconomic to duplicate. There is a reasonable line of argument over a number of situations, not just in the Pilbara, that railways—the below-rail part of it—meets that criteria. I do not believe that at this point anyone has accepted that you cannot economically go out and buy rolling stock and locomotives. Under part 3A you cannot achieve access to above rail. If you come to us you

have to stick to the stuff below the rail, and then that gives you the right to run trains. You have to go and compete and buy like anyone else and set up that part of the business. We are only in the position to look at giving access to something that is not economic to duplicate. This is not a licence to go and use someone else's capital and equipment to compete with them. It is about a much more important social interest or national interest.

Haulage is the alternative. A number of parties would be perfectly happy, I would imagine, to get their ore from the mine to the port and really do not want to be in the trains business. The applicant we have in these matters, which is a subsidiary of Fortescue Metals, wants to run trains for itself, and has indicated that, if it was in that position, it would also be willing to offer a haulage service using its trains and rolling stock on the rail system that is there.

Currently, neither BHP nor Rio Tinto offer any form of haulage to anyone who is not a connected party and have indicated in response to various requests that they do not wish to. They have an out in terms of the state agreement acts in that, if they can make a claim that it interferes with their operations, they arguably do not have to meet the obligation to provide haulage and have argued that, among other things, to deny haulage to those parties who have tried in the past.

Our view is that haulage is a different service, but for a number of parties it may well be that, were there an operating haulage system in place, the demand for wanting to run trains might be somewhat less. But at this stage that is all speculative because there is no haulage available.

Senator EGGLESTON—You mentioned locations in Australia other than the Pilbara where these issues might be under consideration. Where else in the country apart from Dalrymple Bay would that be?

Mr Feil—The issue of access to rail arises at a number of places. We have looked at various rail regimes as it has evolved. The arrangements with the structural separation where essentially the tracks are owned in a good part of Australia and operated by one company and various people operate on top of them is quite a commonplace arrangement in normal long-haul freight. It is not so common in the Pilbara, obviously, because each one of them has their own dedicated system. The Dalrymple Bay example—which is a port, but there are rails to that point—has a combination of owners, operators of rail and runners of trains.

As to the example where people make comparisons between the Pilbara situation and Dalrymple Bay, generally holding Dalrymple Bay up as a disaster and access as being the reason that happens, in an earlier decision where the council considered that same argument—this was an earlier Pilbara rail one which is now out of our hands; we have published our recommendation on that—our view was that it is a false comparison. A number of factors have led to the issues that arise in the eastern coal ports, and the list is rather long.

One of them is that, yes, there is more than one party using those railways. But there are a number of other things. To suggest that you can simply say that the only substantive difference that led to the difference in performance was that other parties could get access to rail is to pick out one item that happens to suit an argument. But I am sure other people with other arguments might well pick out something else. There are issues around ownership.

There are issues around government involvement. There are issues around regulation at a state level. None of the infrastructure issues in the east coast coal ports is regulated under part 3A.

Senator EGGLESTON—How long do you think the process of making determinations will take? Is that a little bit like asking how long is a bit of string?

Mr Feil—We are under instructions through the statute to use our best endeavours to deal with these matters in a standard period of four months. It took us four months to get the application in a form that we could make use of it. We are well over the four months. We have currently extended that standard period towards the end of August. As at this point in time I think we are on track to achieve that. But it is not always in our hands. We have already faced legal action over whether we have power to consider this. While we try and keep going as we are dealing with the Federal Court challenge to our ability to consider it, it can slow things down. We are also obliged to seriously consider submissions we receive. That can take a period of time when they arrive in two of these types of folders.

Senator EGGLESTON—Lastly, I notice the federal resources minister, Martin Ferguson, has fairly bluntly warned BHP and Rio to negotiate with Fortescue Metals Group over access to their rail networks. But I would have thought that that was perhaps a little bit premature and that the answers really lie in your legal process. Would they?

Mr Feil—It is not uncommon for an application to us to be part of a wider set of alternatives, options and routes to getting access. We are not particularly phased or surprised by that, but that is a matter for the minister.

Senator EGGLESTON—Thank you very much.

Senator BUSHBY—One of your outputs is advice provided to governments on competition policy and infrastructure access issues. Have you ever been asked to provide advice to government on competition policy related to petrol?

Mr Feil—No.

Senator BUSHBY—I take it then you also have not been asked to provide advice to the government on Fuelwatch?

Mr Feil—We have not provided advice to government on Fuelwatch. Several years ago, when we were reporting annually on competition policy under the National Competition Policy, included within our reports were a scan of issues. But in the last four or five years—

Senator BUSHBY—I am glad you raised that. Page 14.34 of your 2005 report titled *Assessment of governments' progress in implementing the National Competition Policy and related reforms: 2005* states in relation to FuelWatch, being the WA version:

The Council's position remains unchanged from 2004. It considers that Western Australia is yet to conclusively demonstrate that its petrol pricing restrictions provide a net public benefit, and its concerns were heightened by fines imposed on a retailer in July 2005 for lowering price. Such an outcome does not appear to promote competition and consumer interests. The Council thus confirms its 2004 assessment that Western Australia has not met its CPA clause 5 obligations in this area.

Is that still the council's position?

Mr Feil—That was the council's position at that time.

Senator BUSHBY—Has anything—

Mr Feil—We have not looked at it since. That was the last assessment report we have done. We do not perform that function at this point.

Senator BUSHBY—Have you been referred any issues to do with the optic fibre cable across Bass Strait and access to that?

Mr Feil—No. Telecommunications is excluded from part 3A.

Senator BUSHBY—That makes that easy. Lastly, I note that you have had a reduction in your funding of \$4.8 million over four years. The budget papers suggest that that is due to the winding up of your role in implementing the National Competition Policy. I will put this slightly differently to make it a bit fairer for you. Will that reduction in funding cause you any difficulties in delivering the ongoing obligations of the council?

Mr Feil—That reduction in funding reflected a reduction in what we do. We have funding for the ongoing part 3A work and I am as confident as I can be given the nature of that work that we have sufficient funding to do our job.

Senator BUSHBY—Presumably a fair degree of that funding was to fund people?

Mr Feil—We had—

Senator BUSHBY—You had more people in place to do that role but you are no longer playing it?

Mr Feil—Yes, we have fewer staff than we used to have when we had a bigger job.

Senator BUSHBY—Has that already been addressed?

Mr Feil—That was addressed over time. There was a wind-down.

Senator FIERRAVANTI-WELLS—What will be your interaction with Infrastructure Australia, the new body that is being established?

Mr Feil—There is not a formal overlap. But I think the council endeavours to ensure that parties with overlapping interests, whether they are government or private sector, have a knowledge of what we do and how we go about it. We will continue to arrange some informal information. But our role is now fairly much prescribed by part 3A in the statutory requirements. Most of the people we deal with are people who want access to a specific facility or the service provided by a specific facility, and the people who own it. We do get wider submissions to that process, but our role is a narrow one. I imagine there may be some interest from Infrastructure Australia in what we do and what the implications are. But it is a broader policy question than one for us.

Senator FIERRAVANTI-WELLS—So you may be consulted in relation to this audit that they are doing?

Mr Feil—We would be happy to help if there is information that we can provide.

Senator MURRAY—The previous government had a policy of wishing to undo or get rid of complex or burdensome regulation which was no longer relevant, and the present government has accelerated that process and has a very ambitious agenda on that front. As you probably know, the Productivity Commission has again been tasked with furthering that.

They produced previous reports. I want you to tell the committee what role the competition council plays in trying to encourage better competitive practices with respect to regulation.

Mr Feil—In the current environment our role is infrastructure access under part 3A and that is our only role. We used to under National Competition Policy have a role relating more generally. That role is no longer with the council. As I understand it, the government has moved to set up a new organisation. I think it is the COAG Reform Council. That will have something of a similar role. But the council will have no involvement.

Senator MURRAY—A similar role to the past role of the National Competition Council?

Mr Feil—At least in part. I am not familiar enough with their role and the relevant proposals, because it is no longer our area.

Senator MURRAY—So your evidence is that under present law and practice the only area in which you pay attention to regulation is with respect to infrastructure?

Mr Feil—Our role is to consider applications for declaration of facilities under part 3A of the Trade Practices Act. We also will have a similar role in respect of gas pipelines, again under the new gas law. But our previous role of National Competition Policy where we did the annual assessments and provided encouragement is no longer the council's function.

Senator MURRAY—So you have nothing to do with regulation?

Mr Feil—We have nothing to do with quality of regulation, except the regulation we implement, which we would rather like to do well.

CHAIR—Thank you for your appearance this evening. I now call the Australian Accounting Standards Board.

[5.40 pm]

Australian Accounting Standards Board

CHAIR—Would you like to make an opening statement?

Prof. Boymal—No, I do not have an opening statement.

Senator MURRAY—Professor, I am the reason you have had to sit and endure a long wait, because I wanted to ask you a number of questions. I should apologise for your having to wait. As you know, in October 2007 the AASB released a revised AASB 1039 standard with respect to government, the Commonwealth and so on. What do you have to do or do you have anything to do further to that? Where are you at with that process?

Prof. Boymal—I think the accounting standard is AASB 1049.

Senator MURRAY—Yes, 1049; that is right. I knew that. I was just trying to trick you.

Prof. Boymal—You were just trying to catch me out. I survived the first one. AASB 1049 is an accounting standard that is quite unique in the world because it harmonises generally accepted accounting principles—you might say AASB's rules—with Government Finance Statistics, which is another mode of presentation for governments that stems from the International Monetary Fund and is managed in Australia by the Bureau of Statistics. We were asked to try to assemble an accounting standard that combined the best features of those two sets of requirements so that there would not be confusion and we would not have one set of

requirements presented on some occasions and another set of requirements presented on others. The standard is new. It has not yet been put into effect because the first year of application is 30 June 2009. As to what else there is to do in relation to that standard, the Financial Reporting Council, which directed us to do this job, has asked that we also apply the same concepts—if you can call them that—to entities that comprise the general government sector. Entities that comprise the general government sector are the big government departments and other statutory authorities forming part of the general government sector. We have only just commenced that final task and we have been set a deadline date to have it in place. I think it is February 2010.

Senator MURRAY—In your considered view, will that be enough time for those new or adjusted standards to be used for entities from 1 July of the following financial year?

Prof. Boymal—Yes, I understand that it will be.

Senator MURRAY—You are leaving just four months for them to set up IT systems and adjust their chart of accounts in ways that I cannot foresee.

Prof. Boymal—Yes, I think you are right in your observation. If we were to get that standard out by February 2010, it would still be open to the AASB to choose when the first year of application should be. If we were to get it out earlier than February 2010, maybe it would be appropriate to make it effective from 1 July 2010, which means the year ending 30 June 2011. But if we were close to that deadline date, it probably would not be appropriate to have it apply in the next financial year, for the very reasons that you have just indicated.

Senator MURRAY—Have you had any advice from the government, either via the FRC or directly from, say, the Department of Finance and Deregulation, as to how much lead time they would need in this matter?

Prof. Boymal—No, we have not had an indication either from the FRC or from the government, but we are hearing that some lead time would be appropriate. The principal reason is that many accountants working at the government department level and, even more so, at the statutory authority level are really quite unfamiliar with Government Finance Statistics. Their understanding of accounting is to report under generally accepted accounting principles. Therefore, as well as introducing the standard, there is probably going to need to be an education program so that the accountants, particularly in statutory authorities, are sufficiently educated in what it means to handle it—and then there is the system issue, as you indicated.

Senator MURRAY—Do you intend to formally ask either the FRC or the government, through the Department of Finance and Deregulation, to give you some advice that may affect your timing? I ask you this question because I, and indeed the minister—not many others in here—went through the shift to accrual accounting in government agencies. The process was much longer than the most optimistic had hoped. In some large agencies such as Defence they really struggled to get their heads around it.

Prof. Boymal—Yes. I would say that this particular change is not really as dramatic as the move to accrual accounting. It is mainly a presentation method.

Senator MURRAY—Yes, I just use that as an example.

Prof. Boymal—As to what we, AASB, intend to do: we are obliged to put our proposals out in the form of an exposure draft. That exposure draft will ask a number of questions, one of which is: giving consideration to matters of education and systems and the like, what is the most appropriate application date? It was our intention to ask the constituency what they thought about that point rather than to ask the government or the FRC.

Senator MURRAY—But you will get input?

Prof. Boymal—We certainly will get input from the constituency, yes.

Senator MURRAY—I may be wrong, but my suspicion is that the real start dates will end up, in financial year terms, a year later. It is difficult at this stage to be sure that the process can be completed from your side and then implemented from the government side in sufficient time, because of course this standard flows through to the implementation by the states and territories as well.

Prof. Boymal—Yes, indeed it does.

Senator MURRAY—And there is a question of resources and skills, particularly in smaller agencies. You might have to do this. That is correct, isn't it?

Prof. Boymal—Yes, that is very correct. There is another issue surrounding that. When we introduce new standards we have a general policy that we give a full 12 months notice before the beginning of the year in which it is to first apply. That general policy of ours would also lead us to the conclusion that we should not bring it in with only a four-month lead time. It should be the year after that.

Senator MURRAY—Professor, you did not use exactly this language, but I understood you to indicate that we are leading the world in the development of this standard. I recall that Australia and New Zealand led the world in the introduction of accrual accounting in government reporting and financial statements and that our experience in fact has led other countries to be able to follow on. Do you think that the First World is looking at AASB 1049 and its attendant developments in the same way? Is that the information you are getting from your contacts overseas?

Prof. Boymal—Other countries have shown some interest in what we have done. We do not have any indication that any other countries intend to proceed in exactly the same way right at the moment. Part of the reason for that is that there is an international accounting standard that also deals with the differences between GAAP and Government Finance Statistics. Instead of harmonising the two systems, which is what we have done, that international standard simply asks for some disclosures in a set of government accounts about the differences between GAAP and GFS. The indications at the moment are that the world is—if you can talk about the world as one—dealing with this at the moment in a somewhat different way to the way in which we did. But we certainly are trailblazers, and I would expect in time that what we have done will be noticed by other countries, or perhaps even noticed by the international standards-setting body for government accounts, and that others will move the same way. But there is no indication of that just at this moment.

Senator MURRAY—Speaking from a practical but layman's perspective, my view is that ultimately the production of world statistics and reporting would be enhanced by proceeding

along a harmonised and unified approach, which is the Australian approach, rather than continuing to have two competing sets of reporting, albeit with better explanations, because that is essentially what is happening under the international standard. That is a bit of editorial; that is my own view. I want to turn to tax expenditures. Are you familiar with the broad concept and issues surrounding tax expenditures and how they are devised and so on?

Prof. Boymal—You are talking about them in government accounting? Yes.

Senator MURRAY—To what extent does the AASB pay any interest to that area of accounting and estimation? As you know, much of the concern with tax expenditures is how you value them—make them numerate—and how you calculate them against what benchmarks and over what time frame and all those sorts of things. Do you get concerned in a professional sense in any way with that field of estimation and calculation and the development of standards?

Mr Thomson—Is this in terms of showing a functional classification?

Senator MURRAY—Yes. I suspected you would give me a somewhat blank answer. The difficulty we have in the government budgetary sense is, if you talk about total outlays, we have direct outlays, which are very much the province of AASB 1049 and its expanded and developed version, but we also have indirect outlays, and the combination of the two is the total effect of government on our economy and society. Indirect outlays are the tax expenditures—basically, tax concessions and other things. But they have to be accounted for and reported on. There is a tax expenditure report being produced at present. The Auditor-General has just produced an audit report, which I did not bring with me so I cannot quote the number, on tax expenditures. One of his prime observations, which anyone who indulges in this area knows, is that the area of development of benchmarking and proper standards with respect to tax expenditure is undeveloped. In fact, I think he uses the phrase ‘there is poor data in many areas’. These are basic accounting concepts: get the data right and report it correctly. I am not surprised you are looking at me blankly. I really wanted to know whether you have in any sense been engaged by anyone to even enter this area or whether it has been none of your business to date?

Mr Thomson—The way that we have handled this, certainly in the context of AASB 1049, is that the presentation is based on the GFS presentation. We are effectively relying on the government purpose classification major groups, which is set out in the GFS manual. We have not got into any detail on that. It is all at really a high-level principle. I guess the simple answer to your question would be, no, we have not.

Senator MURRAY—That is what I was expecting. If government were to get enthused about this area, along the lines of getting better reporting, better standards, better accounting going for this, would it be your expectation that that would be developed through the AASB? Or is it the sort of thing that would remain a policy area for a government agency such as Treasury to handle?

Mr Thomson—Given the way that we have gone with harmonised reporting with GFS, if the AASB were to be involved, it would have to be in conjunction with the ABS. Certainly, in developing 1049 we did a lot of work with the Australian Bureau of Statistics in

understanding their classification framework. I think if we were to do any more developmental work in there we would not be doing that alone.

Senator MURRAY—My last area of questioning concerns an area I have raised with you before, and that is the development of a far better framework for the not-for-profit sector. Where are you at with that?

Mr Thomson—In terms of a framework, we have not progressed that, and the reason is that at present not-for-profit enterprises in the main come under state legislation—

Senator MURRAY—Yes, I know.

Mr Thomson—the incorporated associations acts of various states. The states tend not to work together in relation to their legislation. So we have a disparate system at present where the incorporated associations, depending upon which state they are registered in, will have different requirements applicable to them. Those requirements sometimes specify in detail what the accounts are to be. In other states they do not specify. In some states they require an audit and in the other states they do not. Or, if they do require an audit, the cut-off requirement of an audit is different. In some states, information is lodged which is on a public record and in other states information is lodged, particularly for charities, which is not on a public record, although it is known internally to the governments. We have a real mixed bag of requirements.

Interestingly, Senator Sherry has just been talking about—in another group of activities—that the legislation should be moved from state to federal in order that some standardisation could be applied. That same argument could really be applied to not-for-profits. We could certainly write an accounting standard for those entities, but at present the statutory requirements are so different that the need is not so much for an accounting standard as it is for some standardised overall legislative requirement.

Senator MURRAY—Yes, a coherent and consistent single legal structure for those entities. I suspect our government will be much more interested in this area, because it is a worldwide interest to get this sector more structured, particularly because they are beneficiaries of government largesse and there is a quid pro quo that goes with that. I want to check this for my own understanding. For you to be tasked to do that, the route would be government to the FRC and then the FRC to you, wouldn't it? That is how it would work? The government would not structure financial—

Prof. Boymal—Government could indicate directly to us that they see a need for standards. The FRC is there to give strategic direction. The FRC is given two strategic directions, one to adopt international accounting standards and the other to do this harmonisation of GAAP and GFS that we spoke of a moment ago, and I am sure that both of those initiatives did not come from the FRC, they came from government at the time. But to us it really would not matter whether it came direct from government or through the FRC.

Senator MURRAY—This might be an unwise question. Much of the work you do is difficult. But it would seem to me that developing an accounting standard in this area in comparison to other things you do is relatively easy, because much work has been done elsewhere in the world, you are looking at a particular type of entity and it could be done in relatively short order. Is that a misconception on my part?

Prof. Boymal—No, I think that is a fair summation, compared with some of the other jobs that we have been given. There are some difficulties, though, with the not-for-profit sector. For a start, it comprises silos, different organisations, and is there much similarity between a charity compared with a member-driven organisation like, say, a law institute or an accounting body, or a government not-for-profit entity? It is very hard to actually come up with a set of rules that would be equally appropriate to these different silos that comprise what you generally call the not-for-profit sector.

Senator MURRAY—Except that any not-for-profit entity that falls under Corporations Law is already covered by your accounting standards.

Prof. Boymal—Yes, it is.

Senator MURRAY—So it is only those which are not covered under Corporations Law.

Prof. Boymal—That is quite so. It is a company limited by guarantee. It is already covered.

Senator MURRAY—Which would seem to me to make it a little easier?

Prof. Boymal—Yes, but I think it is fair to say that the companies limited by guarantee and the charities and the member based organisations are really all saying that the standard set of rules does not seem to be quite appropriate to them; in some areas the requirements are too onerous and yet at the same time they do not get to the nub of what that organisation's activity is. We do have to be a little careful in the idea of just taking the pool of rules that we have and adding to them that we do not add, add, add without taking some things off. Otherwise, if we continue just to add, we create quite an onerous regulatory burden. It is a matter of thinking of the needs of the users of these financial statements and it might be that the standardised rules or the starting point is nothing more than a starting point, but it needs more than just a little bit of tweaking.

Senator MURRAY—It might be over altruistic of me, but it seems to me that, even if the legal entity structure that already exists in the states and at the Commonwealth level were to remain the same, it would still be in the national and the public interest for the AASB to develop a set of accounting standards which applies to organisations that are not subject to the Corporations Law, and whose accounting principles are not established already through state legislation. I am not familiar with what it is. My last question to you really is: is it open to you on your own motion to start work in this area?

Prof. Boymal—It is open to us to start work in this area, subject to available resources, of course. But the issue turns out to be a little more complicated than you have indicated. If you look at one of the silos, such as charities—and in my personal view there is a need for a set of accounting standards to apply to charities—should the same set of accounting standards apply to World Vision or the Red Cross as applies to some little pet charity where all they are doing is collecting a few coins? The small organisation —

Senator MURRAY—The answer is obviously not.

Prof. Boymal—Indeed. As soon as we say, 'Let us address that particular industry', if you want to call it an industry, then you are faced pretty much immediately with the question of differential report, different rules for the big ones than for the small ones. We are addressing

the whole question of differential reporting at the moment across-the-board. We are looking at the not-for-profits as well as the for-profit enterprises. But I am really just trying to point out that, as soon as you do start addressing, let us say, accounting for charities, immediately it is not one set of rules that you are looking at but a different set.

Senator MURRAY—The reason I am putting these questions to you, apart from the fact that I think it is a developing policy area in which you have a key role, is that I take the view that it is very difficult to construct a legal framework, legal architecture, architecture which changes the nature of how the entities themselves would be governed and formed and their requirements under law and how they would be regulated. It is very difficult to do that in isolation of an accounting standard and a set of principles. The two inform each other. I do not see your role as following the first. I would think government, if they want to change the environment in which the not-for-profit sector operates—and bear in mind it is a huge diversity and it is very substantial part of Australian society—they will have to do the two cognately. Lastly, do you agree with that viewpoint or do you think I am wrong and that first they need to sort it out with the states and only then should you come along?

Prof. Boymal—We can deal with it separately to the question of the regulatory requirements and the different state rules and regulations. I agree with you that there is a need, and I say that because our constituency is constantly telling us that they believe that they need some special treatment or special set of rules. We have a set of accounting standards, but that set of accounting standards applies to all. They are not saying they do not have standards—

Senator MURRAY—Which is its weakness.

Prof. Boymal—They are saying that the existing suite of standards is not as appropriate for them as they would like it to be. We are getting that sort of complaint from our constituency, the not-for-profit constituency, all the time. Therefore, they themselves clearly see that there is a need for us to have something more specialised for them.

Senator JOYCE—Returning to AASB 1049, at what point in time should an issue that you are aware of strike a feature on the budget financials and to what consequence should it hit the financials? I will give you two examples. Obviously, we have the emissions trading scheme. We have had evidence that that proposed scheme will be revenue positive. It is a government policy to introduce it in 2010, and it is on the record that it will be revenue positive. But they are not part of the financials, nor do they even get a notation in the budget papers. Why is that the case? I will give you a further working example. One of the government's positions is that it has mothballed a major asset at Rockhampton, an undercover beef facility worth many millions of dollars. It was a very specialised asset in a very specialised area. I anticipate, being an old bush accountant, that they would definitely require a diminution of the asset. Under the accountancy standards, you have to reflect fair market value. Its fair market value is now obviously overtly influenced by the fact that we have a pointless facility stuck out in the scrub. But they also do not crack a feature or even a note on the financials. For those two instances—and this is my only question—can you give me your opinion as to whether they should have struck a feature on the budget papers and, if not, why not?

Prof. Boymal—Accounting standard 1049 is dealing with the reporting of outcomes. As an accountant, I would say it is dealing with historical occurrences. After the year is over and you report what the year looked like, that is accounting standard 1049. Accounting standard 1049 is not absolutely designed to deal with budgets. It is not a requirement that the budget be drawn up in accordance with 1049, although I do see that the budget papers have prepared the budget very much in accordance with accounting standard 1049. I emphasise again that 1049 is about historical accounting, not looking into the future.

In terms of emissions trading, and the budget, it is really a matter of government policy the extent to which the government would put into its budget matters that it has not as yet totally put into place. Therefore, it is not for me to comment on whether that ought to be there or not as a matter of government policy. In terms of your other example, if it is something that has already happened, a decision relating to assets—and that decision is already over and done with—then I would say that ought to be incorporated in the budget papers. But it has to be of a sufficient size to be, if you like, specified or to be able to be pinpointed in both the budget papers and the outcome papers.

Senator JOYCE—What standard should they use in prospective cash flow analysis if they are not using 1049?

Prof. Boymal—I think they probably should be using accounting standard 1049. But accounting standard 1049 was not written to deal with future numbers. I appreciate budgetary information is most important from a government point of view, but accounting standard 1049, whilst it does ask governments to indicate how their actual outcomes compare with their budgets, is not an accounting standard that says, ‘This is the way that your budget paper should be written.’

Senator JOYCE—They really have free rein in their prospectives that way.

Prof. Boymal—Yes.

Senator JOYCE—How do you feel about that?

Prof. Boymal—The government has chosen to use 1049. But that is not prescribed in this accounting standard.

Senator JOYCE—Are there other accounting standards in the public forum that are quite explicit about how you deal with prospective cash flows?

Prof. Boymal—I would say the answer is, no, there are not.

Senator JOYCE—In the financials of any company there are certainly accountancy standards on cash flow statements.

Prof. Boymal—Yes. But our standards deal with historical reporting. It is after it happens, not what is going to happen.

Senator JOYCE—When a decision is made that is going to happen, a decision is imminent, it is a decision of budget night and therefore the decision is made that there will be a change in the usage of an asset that will bring about a diminution of its value?

Prof. Boymal—Yes.

Senator JOYCE—Does that change have to be reflected in the budget papers under 1049?

Mr Thomson—There is a requirement in 1049 that, if a budget is made publicly available, then there is a comparison between that and the historical or outcome information that Mr Boymal spoke about. I guess if the budget papers did not reflect something that should have been written down and it was a material item, the outcomes prepared in accordance with 1049 would reflect that and, therefore, there would be a disclosure that there is a difference between what was budgeted and what the outcome was.

Senator JOYCE—Thank you very much for that.

CHAIR—Thank you for your attendance tonight. I will call the Takeovers Panel.

[6.19 pm]

Takeovers Panel

CHAIR—Welcome. Do you have an opening statement?

Mr Bulman—No, I do not.

Senator JOYCE—With the greater play of sovereign wealth funds in Australia, do you believe that there will be the proper transparency of the utilisation, audit, control of Australian assets with a greater involvement of sovereign wealth funds, especially with places such as China? Do you believe there is a differentiation between the transparencies that would be accorded a public company in how they take over an asset compared with a sovereign wealth fund? Do you feel that there are any threats from incursions from sovereign wealth funds? Are there any issues in regard to reciprocity in the policies of sovereign wealth funds' involvement in Australia and our Australian—if we had them—sovereign wealth funds' involvements overseas?

Mr Bulman—I think I will need to frame that question in the context of our role. Our role is within chapter 6 of the Corporations Act in relation to takeovers, and we are a peer review body in relation to takeovers. In other words, our role would only be if a matter involving a sovereign wealth fund came to us. I do not wish to speculate too much, but effectively it would depend on whether a bid was a scrip bid or a cash bid. Normally I would have thought sovereign wealth funds would not use scrip bids. They would normally use cash bids. Therefore, the issue of disclosure would be issues of disclosure about whether they have sufficient funds to fund the bid. Sovereign wealth funds being what they are, being relatively cash rich, that probably would not be so much of an issue. If they are offering scrip there may be issues around the disclosure of the value of whatever scrip they are offering. Those rules apply whether it is a sovereign wealth fund, an Australian company or another overseas entity.

I am no expert in the areas of accounting, but my understanding would be that if a sovereign wealth fund was acquiring a reasonably large company in Australia they would still be large proprietary companies and subject to reporting as large proprietary companies. From our perspective, chapter 6 of the Corporations Act applies to everybody equally, whether they are overseas, whether they are Australian, whether they are sovereign wealth funds or whether they are not.

Senator JOYCE—So your involvement is limited to chapter 6 of the Corporations Act and that is it?

Mr Bulman—Just chapter 6 of the Corporations Act; that is correct.

Senator BUSHBY—In light of the current proposal or media speculation and comments by various people about the potential for Westpac and St George Bank to merge, what role would you play if that were to proceed?

Mr Bulman—My understanding from reading the press is that that merger is by way of a scheme of arrangement. We would have very little involvement at all in that. Schemes of arrangement are approved by the court. Therefore, the court and ASIC, the corporate regulator, would be the main regulators in that case. If there were some sort of rival bid or where that then led to a dispute, then perhaps we would become involved if somebody made an application.

Senator BUSHBY—Some of the media speculation that I have seen has been—and only from commentators—that it would be preferable if NAB and St George merged. You never know: something might come out of the woodwork that involves you. Anyway that is all I have.

Senator JOYCE—As to unincorporated bodies that merge, are there any requirements whatsoever? If I wanted to get away from having to deal with you under chapter 6 of the Corporations Act and I made my vehicle a trust of an unincorporated body and then had a takeover between unincorporated bodies—so that I was one step away from it—how would you pick me up?

Mr Bulman—For a start, because we are a dispute resolution body we would not be picking you up as such. But in terms of the way chapter 6 of the act applies, you have to be a company with more than 50 members or a listed company or a listed managed investment scheme for that act to apply.

Senator JOYCE—What if I put an unincorporated body above me in control of the vessel?

Mr Bulman—I suspect chapter 6 would not apply in that situation.

Senator JOYCE—That is a good trick. For all you people watching late at night, that is how you get out of it!

Mr Shaw—I am not sure that you can actually get out of it, because you would have to move the ownership of the company, which is all the shareholders, somehow into this trust and that would not be so straightforward.

Mr Bulman—That would probably involve either the scheme of arrangement provisions, which would involve ASIC and court supervision, or it would involve a takeover of some description that may involve us, depending on whether there was a dispute.

Senator JOYCE—Just make sure the management vessel was not the unincorporated body.

Mr Bulman—I am not sure I particularly understand.

Senator JOYCE—That is all right. Thank you, Mr Bulman. We do not have time for me to explain it.

CHAIR—Are there any further questions?

Senator EGGLESTON—Yes, Chair. Has the Takeovers Panel any role in the proposed BHP takeover of Rio Tinto? Does that raise any issues of concern to you?

Mr Bulman—We have not had a dispute in relation to that takeover yet. One could speculate that is possible.

Senator EGGLESTON—So it does not involve you in any way at this stage. What about the possibility, following on from Senator Joyce's earlier questions, of foreign countries' sovereign wealth funds seeking to perhaps go beyond buying a stake in Australian resource companies and in fact having a controlling interest which might lead to a takeover and their control of those companies? Would that be something you would be involved in?

Mr Bulman—Again, if there is a dispute in relation to some aspect of chapter 6, we may be involved in it if an application is made to us. Otherwise, as I say—and as I think I said to Senator Joyce—chapter 6 applies to everybody whether you are a sovereign wealth fund, an Australian company or a foreign company.

Senator EGGLESTON—What about competition issues? Do they come under your umbrella at all?

Mr Shaw—No, they do not. Chapter 6 is about protecting investors. The so-called Eggleston principles of identity, people being treated equally, information and competition issues are clearly outside our remit—with only a very limited exception, and that is that one of the principles is an efficient, competitive and informed market.

Senator EGGLESTON—Yes. I wondered whether that might apply to the issue of BHP and Rio Tinto. If it effectively becomes an iron ore monopoly, might those provisions be triggered?

Mr Shaw—It is the market for the shares rather than the market for—

Senator EGGLESTON—the product. I see. Thank you for clarifying that.

CHAIR—As there are no further questions from other members of the committee, I thank the witnesses very much for attending this evening.

Proceedings suspended from 6.28 pm to 7.31 pm

Commonwealth Grants Commission

CHAIR—Welcome, gentlemen. Do you have an opening statement?

Mr Spasojevic—We do not have an opening statement.

CHAIR—We will start straightaway with questions then.

Senator EGGLESTON—I would like first to talk about the condensate tax and Woodside. The Commonwealth is saying it will compensate the losses to WA state revenue from the removal of the condensate tax. Would you like to explain if there is a mechanism for that to be done in circumstances where—it is not the removal of the condensate tax; it is the exemption from taxation—now the condensate will be taxed? How is it that there is a proposed compensation to the Western Australian government? I believe that the exemption would cost WA \$338 million in lost revenue and the federal government will supposedly compensate WA to the extent of \$407 million. Is that something you could comment on?

Mr Spasojevic—I am sorry, but it is not something within the scope of the Commonwealth Grants Commission.

Senator EGGLESTON—Another issue raised during the week is a discrepancy between the estimated revenue from the goods and services tax which the Commonwealth calculates Western Australia will receive and what the state government says it will receive in forward projections. That difference amounts to about \$1 billion—in fact, \$972 million. I know that GST grants to the states are not distributed according to revenues received, but could you enlighten us as to the mechanism whereby states are made grants from GST funds? How is it that there could be this discrepancy in the calculations of the Commonwealth government versus the state government over the amount of GST revenue Western Australia will receive over the forthcoming four years?

Mr Spasojevic—I cannot help you on the substance of your question of the difference between the Commonwealth's projections and the state's projections. What the CGC does is recommend shares of the GST which is collected. We are not privy to how the Treasury does its forecasts, nor are we privy to how the Western Australian government does its forecasts. I am not trying to duck the question; it is just outside the scope of my knowledge or expertise.

Senator EGGLESTON—Thank you very much. I have no additional questions.

CHAIR—Gentlemen, thank you.

[7.36 pm]

Productivity Commission

CHAIR—Welcome. Do you have an opening statement?

Mr Banks—I have a brief opening statement to give you a bit of a snapshot of some of the work we have done since we were last here before the committee. Since our last appearance in February, we have received four new tasks or studies from the government and, again, typically they are quite diverse. One that you will have been reading about a little bit in the press is paid maternity, paternity and parental leave. We are in a process of very wide public consultations through public hearings, other community consultations and submissions right now. We have a draft report which will come out in September this year and the final report will come out by February next year. The press often misses the fact that we will have a draft report in September, and it is an important part of our process to give people an opportunity to respond to the commission's early thinking.

We have two studies that have come to us from this year's March meeting of COAG. One study is on the review of mutual recognition schemes, mutual recognition agreements and the trans-Tasman mutual recognition agreement. That is a nine-month review. The findings will be presented to Australian heads of government and the New Zealand Prime Minister. We also have a review of the regulatory burdens on the upstream petroleum oil and gas sector, which is a 12-month review. We plan to release an issues paper later this month on that.

The fourth study that we have received since we appeared in February is into modelling the economy-wide effects of assistance to the textiles, clothing and footwear industries. This will complement the review of assistance to that sector by Professor Roy Green. That will be completed by the end of the month, with the report being released in early July.

There are four other studies underway. I will just mention them briefly. They are ones that I mentioned to you last time, and I think I said last time that there was an emphasis on regulatory issues in the work of the commission. Three of them are regulatory issues that cross jurisdictions. The first is into business regulation benchmarking, which I talked about a little bit. The second is part of a five-year process of annual reviews of the regulatory burden on business. The first one we did was into the primary sector and the current one we are looking at is focused on the manufacturing sector and distributive trades. A draft report will be coming out later this month. The third of those regulatory cross-jurisdictional reviews is one into chemicals and plastics regulation, and the draft report has already come out and a final report is due in late July. The fourth project currently underway, which I think we had received just before I appeared last time, is into modelling the economy-wide effects of support to the automotive industry, which, like the TCF one, is complementing another review that is currently underway. That report was released today.

In addition, the government has announced that the commission will be undertaking an economic assessment of drought support measures. That has been only recently announced, and we are still awaiting terms of reference for that.

In terms of other recently completed and published work since the last hearings in February, in May we put out a report on the review of Australia's consumer policy framework, which has been responded to now by the ministerial council, and broadly accepted; a report on local government revenue-raising capacity came out in April; and a safeguards inquiry into the import of pig meat also came out in April, and the commission's recommendations have been conveyed to the WTO as required under those arrangements. We have also presented a submission to the Garnaut climate change review, which focused on what role there is for other policies to supplement an emissions-trading scheme. We have prepared a discussion paper on urban water reform and we have put out, as we do every year, a volume on trade and assistance review as part of our annual report series.

Finally, and again showing the diversity of the things we do, under our government services review we have put out a compendium of data on services for Indigenous people. That is a bit of a snapshot of what we have done. I will leave it there. We are happy to take questions.

Senator BUSHBY—Has the Productivity Commission undertaken an analysis of the Fuelwatch econometric analysis undertaken by the ACCC?

Mr Banks—No. We have been very busy doing all sorts of quantitative work, but that is not included.

Senator BUSHBY—Do you remain of the view, which has been expressed previously, that the Productivity Commission should be split over two locations, Melbourne and Canberra?

Mr Banks—That has been the case for a considerable period of time. I have not expressed any view publicly on that; I just take the situation as it is. An organisation in two locations obviously has disadvantages, but it also has advantages, and one of the advantages is that we can draw on a workforce from a capital city as well as from the capital itself, and that has provided some advantages to us. Video conferencing has also made it much easier to operate

across the two offices. I certainly have not seen this as an issue. In fact, over time, it has become less and less of an issue for us in how we work.

Senator BUSHBY—Your opening statement suggests that you still have plenty on your plate. Are you at all stretched resource-wise at this point, or do you find the fact that reviews such as the passenger motor vehicle and the textiles, clothing and footwear inquiry going other than to you means that you actually have resources available to do more work?

Mr Banks—In fact, we are making an input into those two reviews through the modelling we are doing, which has been quite busy. We have done them in relatively short order time, and currently with those two projects and what else we are doing, we are probably as busy as we have ever been. We have eight commission projects on hand at the moment. In addition, the commission does some supporting research that supports that kind of work and also looks at some other issues that we think are useful for public policy. We do work related to the government services review which produces the blue book and the Indigenous report that I talked about. So, we have a spread of activities and we are pretty busy, I can tell you that.

Senator BUSHBY—While we are on resources, how did you fare in the budget? What was the bottom line change for you, if any?

Mr Banks—I might defer to my colleague who is across all numbers in that area.

Mr Wonder—Basically, the commission's budget in 2008-09 is \$31.018 million. We have a slightly smaller budget than was the case in 2007-08, but that is a function of a couple of things: one, some machinery of government changes that came about when the new government won office; and part of the commission before that time was a unit known as the Office of Best Practice Regulation, which has now moved to the Finance and Deregulation portfolio. So, our slightly smaller appropriation reflects that change as those resources follow the function, as they normally would. The only other change that we have experienced is the same as elsewhere in the Public Service: we have been subject to the same efficiency dividend as everyone else. But there have been no changes other than those two.

Senator BUSHBY—There are two changes: the first one you are saying is a direct result of structural changes?

Mr Wonder—Yes.

Senator BUSHBY—The other reduction in your funding was due to the efficiency dividend, common with most other portfolios?

Mr Wonder—That is correct.

Senator BUSHBY—How have you managed to address the efficiency dividend? Have you been able to absorb the dividend?

Mr Wonder—Effectively, with the 3¼ per cent efficiency dividend that we and every other agency is subject to, that has translated to the loss in the number of staff that we can afford to hold in our organisation.

Senator BUSHBY—How many staff—

Mr Wonder—I will just finish the point. At the same time, we have had to look at other administrative strategies that we can bring to bear as well. At this stage, the smaller staff

numbers are actually, as I mentioned, complicated by the fact that the Office of Best Practice Regulation accounted for some and, as you suggest, there has been some impact of the efficiency dividend as well. We think that the efficiency dividend in terms of our numbers—it is approximate always—is probably of the order of about five staff that the commission has fewer this year compared to last year as a result of the efficiency dividend.

Senator BUSHBY—Thank you very much for that.

Senator EGGLESTON—I see that the commission has recently prepared a report on emissions trading. I would like to ask some questions about that. You say:

- Where activities are covered by an emissions trading scheme (ETS), individuals and firms factor the traded price of greenhouse gas emissions into their decision-making and adjust their production and consumption in the most cost-effective way.

You conclude:

- An effective ETS therefore is most likely to achieve a given abatement target at least cost to the community.

That is quite an interesting conclusion, because many people believe that emissions trading will in fact increase costs to the community. Would you like to explain that conclusion to the committee?

Mr Banks—Both things are right, seen from different perspectives. Essentially, to reduce greenhouse emissions, ultimately the cost of putting out carbon emissions would have to go up. That can be done in various ways and over time, in the absence of an emissions-trading scheme or a carbon tax, there have been various regulations that have come into force with quotas and various other arrangements. The great advantage of something that affects the price of carbon emissions is that it allows decision makers to make decisions on the basis of revealed prices in the market. That is why it is often described as the least cost way of achieving emissions reductions, because investment decisions, production decisions and consumption decisions will be made automatically according to the carbon intensity and the extent to which that is reflected in the price. It is a relatively efficient approach to achieving a given level of abatement of emissions.

Senator EGGLESTON—From what you are saying, it is likely to achieve an abatement target at least cost, but of course that does not exclude the least cost being a higher cost, does it?

Mr Banks—No, that is right. Ultimately, an action to reduce emissions will involve a cost, and I think that is generally accepted. So, the question for Australia and, indeed, countries around the world is how to do that in a least cost way. It is particularly important for Australia as a relatively small emitter as a nation that we do that in a least cost way, as it is for other countries. Inevitably there will be a cost, and the question is for any government and any economy how to do that in the least cost way.

Senator EGGLESTON—In what areas do you think the costs will be higher under an emissions-trading scheme? What did your research show?

Mr Banks—We have not specifically indicated what relative prices will do, but clearly if we follow through the notion of putting a price on carbon then energy generally will be

increasing in price. That is the whole purpose of a scheme to reduce emissions by raising their price.

Senator EGGLESTON—Yes, indeed. You also say:

Once an ETS is in place, other abatement policies generally change the mix, not the quantity, of emissions reduction. Retaining existing, or introducing new, policies to supplement the ETS would need to offer other benefits.

What other benefits are we talking about?

Mr Banks—Areas that we thought were most prospective in terms of policies that would be complementary to a cost-effective way of pricing emissions would be, for example, policies focused on research and development. As you would appreciate, that is an area where I think efforts by individuals to make investments are not always able to be captured in their own returns, so an issue like greenhouse I think is one where those kinds of market failures, as they are called, could be particularly problematic. I think policies directed at research and development, provided they are well designed and well targeted and generate additional research and development, seem to be quite prospective to us without looking in detail at what some of those might be. The other one might be where there are barriers—informational barriers and other things—to the take-up of efficient energy options. There would be scope perhaps for policies there to make an impact that would be complementary to the cost-effective approach of an emissions trading system.

Senator EGGLESTON—One of your more interesting conclusions is:

With an effective ETS, much of the current patchwork of climate change policies will become redundant and there will only be a residual role for state, territory and local government initiatives.

Would you like to expand on that conclusion for the benefit of the committee?

Mr Banks—An emissions trading regime is intended to achieve a given level or amount of abatement at least cost. So policies that are also directed at reducing abatement become generally redundant in a situation in which you have a national scheme that is actually pricing carbon and affecting decisions right throughout the economy. That can be most problematic where you have fragmentation from one jurisdiction to another, so you have each state and territory with its own regulatory approaches to reducing abatement at the same time that you are trying to do so efficiently through an emissions trading system.

Senator EGGLESTON—Another of your conclusions is in regard to mandatory renewable energy targets, which is a matter this committee has dealt with recently in an inquiry. You say:

Currently, the most significant climate change policy instrument is the Mandatory Renewable Energy Target (MRET) which is marked for significant expansion. However ... the MRET would not achieve any additional abatement but impose additional costs.

Would you like to make some comments about that conclusion?

Mr Banks—As I said before, a mandatory renewable energy target is a way of achieving a reduction in emissions by targeting a particular form of energy use. If emissions reduction is already being targeted through the price system through an emissions trading system, what will happen, through an MRET, as it is called, is you will get a change in the composition of

reductions and how they occur but not in the total reduction in emissions, which is set by the emissions trading system, ETS.

Senator EGGLESTON—You say specifically that the MRET system presumably, if expanded, would:

... most likely lead to higher electricity prices and provide a signal that lobbying for government support for certain technologies and industries over others could be successful.

Presumable that would be at a price to the community. Is that the general thrust of your views?

Mr Banks—It was an observation in saying that things have changed now. We have gone from a situation in which a range of policies were directed at reducing greenhouse emissions to one which is a systemic approach which, if effective—and there are lots of issues to do with how such a scheme can be implemented—would achieve that result at least cost. In those circumstances, there would be no additional abatement from a range of other policies, but the cost of achieving a given level of abatement would increase. What we are saying is, the government and COAG having decided to pursue an emissions trading scheme, the rationale of these other measures in the absence of such a scheme is diminished.

Senator EGGLESTON—I must say we are very pleased about that view from this committee's point of view, because that was a conclusion we reached when we conducted an inquiry recently into increasing the mandatory renewable energy targets. We thought it was wiser to wait until an emissions trading scheme was in place because increasing the MRET would only complicate the picture. So we are very pleased to hear that that is a view that you seem to endorse. The last point I would like to raise is your conclusion that the extent to which land use, agriculture and forestry, will be included in the emissions trading scheme is uncertain. You say:

While it appears feasible to include forestry and some elements of agriculture, it is unclear whether this is the best option.

A lot of people put a lot of faith in the use of agriculture and forestry in an emissions trading scheme, so I wonder if you would like to make some comments for the committee's interest on that conclusion?

Mr Banks—I think that reflects the transaction costs and difficulties of accounting for emissions in agriculture and forestry relative to other activities involving, for example, emissions from energy use in manufacturing. There are problems in the sheer adding up requirements of such a scheme, so that needs to be taken into account at the same time as the fact that the wider the coverage of a scheme of that kind across the economy, the less the burden that any individual part of the economy would bear. But there is a trade-off between objectives there, so the work we have done is just suggestive of the need to go very cautiously there in terms of the instruments that might be chosen. There may be other instruments that could achieve the same ends in a more cost-effective way. So it is just a caution, I guess, for Australia, given the importance for that sector of not pursuing reductions in a way that could be quite high cost.

Senator EGGLESTON—One of the key examples you quote as an alternative is credit for carbon sequestration. As I understand it, that is a fairly expensive thing to set up, so I am a

little surprised by that suggestion. Is it not so expensive or costly, if you like, in terms of trading carbon to maintain carbon sequestration? Is that your point?

Mr Banks—There are costs in a range of these. I would have to look at the detail of that report, but I guess what would be important for Australia always is to think of what Australia does in the context of a global response, and how Australia can meet international requirements in a way that would be least cost for us. So there might be opportunities for us to find ways to meet some of those targets that would make sense for Australia relative to other countries. If you wanted further information on that, I would have to get back to you, unless my colleagues want to comment on it.

Mr Wonder—There is perhaps one other point that we make in the report that I could touch on, and that is that the international accounting rules are quite important. In other words, if we were to do something in that area, how that would mesh with what other countries are doing if we wanted to link an Australian ETS with an international program would be something that would need to be examined.

Senator EGGLESTON—Is there any international body, such as the UN, coordinating emission trading schemes around the world, and what kind of mechanisms are being adopted in different countries for emissions trading?

Mr Wonder—I cannot give you that detail. I do not know whether my colleagues can.

Senator WEBBER—The OECD is doing a lot of coordinating work with that.

Senator EGGLESTON—That is an example of the vast reservoir of knowledge that we have here.

Mr Banks—As my colleague said, that work is going to be absolutely critical for Australia for reasons to do with just our geography and our natural endowment of, I guess, fossil fuels and so on. We have created an economic structure that was very efficient in the old days but will be quite costly for us to dismantle unless we have other countries simultaneously doing that. In terms of the approach we follow, ensuring that we can dovetail into an international agreement and have complementarities between what we do and the rest of the world is very, very important. I think there are some big issues there, obviously, that will need to be tackled in the years ahead.

Senator EGGLESTON—Do you have any sort of time frame? Did you come to any conclusions about how long it might take us to set up an efficient emissions trading scheme? Are we looking at five, 10, 50 or 100 years ahead?

Mr Banks—I suppose the only point I would make is that we should not underestimate the regulatory challenge that faces this country in setting up a scheme that minimises costs and minimises compliance costs for industry. I think there are some big challenges in that area. I would not like to hazard a guess about what would be the most appropriate amount of time to solve all of those, but what I would say is that it will require consultation with industry, which is something Australia has not always been good at in terms of understanding compliance costs for business. That side of things I think will be very important to get right, to ensure that we get a good understanding of how this will operate and what impacts it will have on business generally.

Senator EGGLESTON—I think the changes required are immense and will take a long time to go through, moving away from hydrocarbon fuels and coal in Australia will be very costly for this country in the long run. But thank you. Senator Joyce would like to follow up.

Senator JOYCE—In your modelling of the emissions trading scheme, are you modelling in compensatory payments to the holders of carbon, such as rural property owners?

Mr Banks—Sorry, Senator?

Senator JOYCE—In your involvement in the modelling of emissions trading schemes, do you envisage, have you seen or have you been part of any process in that modelling scheme that brings about compensatory payments to caveats that will be placed on rural land by reason of their holding the carbon that formerly was their private asset which they could have done with as they wished?

Mr Banks—No. In fact, the commission has not done modelling of trading systems as such; that is not something that we have done ourselves. So we have not obviously done the further work that you are suggesting.

Senator JOYCE—A final question: what is the depth of your involvement in emissions trading schemes? Does it go to the actual extent of what products you envisage will become more expensive in the economy and what products you envisage will become cheaper, and what the productivity effect of that will be on the economy?

Mr Banks—As I said, we have not actually done the detailed work in that area. We have made a submission to the Garnaut review looking at some of the supplementary policies that might be important in the context of an emissions trading scheme being developed, and in an earlier submission we also talked about some of the desirable characteristics in the broad of a scheme of that kind. We have not been asked to do the detailed work that would help us to understand the answer to the questions you have raised.

Senator JOYCE—I will keep on stepping back until I think I get to a level where I can stop. Do you believe that, in a model of a scheme, it would best work to the least detriment of the productivity of the nation if it were revenue neutral; that is, the benefactors in the economy equalled the people who pay the charge? I will break it down to a simpler question. If there will be products that have a charge put on them by reason of a carbon charge, should there be the equivalence of other products that have a subsidy placed on them to make it more likely that you would buy them, so that we do not just have a net cost put on the whole economy by an emissions trading scheme?

Mr Banks—If I understand your question correctly, the problem with subsequent payments that might be motivated by equity or distribution or other reasons is that you do not want to offset the signals that are being provided by the tax on carbon emissions in the first place. So, ultimately, carbon emissions will have to be priced and they will have to be more expensive if we are to reduce emissions. So that is taken as a given. It may be that the way in which that flows through into energy prices and other things and impacts on people at the lower end of the income distribution or particular regions is an issue that would need to be addressed by government, and could be, but that would be something that would need to be considered at that time.

Senator JOYCE—For instance, if you were putting a charge on petrol, you might subsidise, let us say, solar panels for families earning over \$100,000?

Senator Sherry—It is becoming very speculative here.

CHAIR—Yes, I think that is a difficult question.

Senator JOYCE—That would be good public policy, but I do not want to hold you up.

Senator ABETZ—I have a few questions. It is good to see the Productivity Commission here again. Some of these questions have been gazumped because today you have put down *Modelling economy-wide effects of future automotive assistance*. I will admit to not having read more than I think about one page of it thus far.

Mr Banks—It was only released at three o'clock.

Senator ABETZ—Yes, so I understand. I did go back to my office at 5 pm and my staff told me and presented me with a copy, and I said, 'Look, that is all good, but for another day.' If some of these things are covered in the report already, my apologies. You were sent a letter, I understand, via the Assistant Treasurer for this report, and as I understood the Assistant Treasurer's letter there were eight options that you were to consider, is that right?

Mr Banks—Yes.

Senator ABETZ—I assume you modelled or looked at those eight policy propositions?

Mr Banks—Yes.

Senator ABETZ—Did you look at any other policy propositions, or did you consider yourselves to be confined to that which had been put to you by the Assistant Treasurer? By the way, what is the usual way in which the Productivity Commission conducts itself when it receives a letter with eight specific areas? Do you do that which has been asked but also give other advice or make other suggestions beyond the confines of, in this case, the eight suggested areas?

Mr Banks—Could I say that the range of options we were asked to look at essentially covered all the feasible options that you could imagine in terms of combinations of the tariff and the ACIS subsidy.

Senator ABETZ—So it was difficult to get another permutation—is that what you are telling me?

Mr Banks—I think that is right.

Senator ABETZ—So you restricted yourself to those eight?

Mr Banks—We did and we did not. We restricted ourselves to that, but we also did some sensitivity tests, because, as you would appreciate, with modelling there are various assumptions and so on that need to be made. So we did some sensitivity tests to see what the effect would be of different assumptions. We also modelled, because we thought it would be helpful to the government and to the Bracks review, what the impacts would be of productivity improvements in the automotive sector and how they would flow through the economy as well, as a further simulation that we conducted. The options that we were asked to look at clearly needed to be measured against the status quo, which is the current regime of

reductions that are in place, which we called a reference case, and we modelled that as well. So, what we did certainly keyed off the terms of reference that we were given.

Senator ABETZ—Did the reference case include the Green Car Innovation Fund as a given?

Mr Banks—Yes. It was specified, as you know, in the specs that we received that we would build that into the database but not model that as a separate option. That is what we did. We treated it as a production subsidy. We shocked the model with that green car fund, the \$100 million per annum, and that became the base case from which we looked at what would be the effect of various changes in tariff or the ACIS subsidy on top of that.

Senator ABETZ—Correct me if I am wrong on this—and I do not have Mr Bowen's letter with me—but at the time I thought that that which was being submitted to you simply asked you to accept the green car fund as a given but without asking you to actually model the impact or effects of it?

Mr Banks—Yes.

Senator ABETZ—That is how I understood the letter. I am not asking whether you were cheeky and understood the letter in some other way, but you did model the green car fund proposal and drew certain conclusions.

Mr Banks—I should say that everything the commission did was tested in a workshop to which the secretariat for the Bracks review were invited. They were comfortable with what we did in terms of responding to the need to integrate the green car fund into the work. There is a subtle distinction between modelling the green car fund as a shock to the model and seeing what effects that would have and integrating it into the database as a given. So you have to model it to get it into the database. You have to model it as a subsidy, just to get it in there, so that you can then shock it with changes in tariffs et cetera.

Senator ABETZ—So you took that approach?

Mr Banks—And we took that approach, that is right, but you will not see a separate simulation that says green car fund in the work that we did. That is not one of the options that we have modelled in that sense of options together with changes in tariffs and ACIS.

Senator ABETZ—Do you not cast a judgement on the green car—and this sounds as though I have read the report but I have not—on page xxi, at least?

Mr Banks—Let me say also the approach that the commission took. For our report to be helpful to government, you would appreciate that modelling cannot replicate reality. Although the model that we used we think was the best for the job, and we tested it with experts et cetera, inevitably there are things that a model leaves out and there are assumptions that need to be made. To make our report as helpful as we possibly could, we gave some consideration to the things that the model cannot encompass. One of those is adjustment costs. The model cannot anticipate what the adjustment costs might be if people lose their jobs et cetera, in the industry, so you need to think about that, and we thought about it a lot in 2002. We came to the view this time that adjustment costs in a rather buoyant labour market would be significantly less, and we did not see it as an issue that would change the findings that came out of the model.

The other one is what is called in the economic jargon externalities or spill-overs, and that is unpriced benefits that an industry might generate for others, which has been a focus for public policy to sort of generate more of that, so that is a good thing. We asked ourselves: if you reduce the tariff or change the tariff and you change the subsidy program for the automotive industry, the ACIS program, would that affect spill-overs et cetera, and therefore are we missing something in the modelling that would materially change the conclusions we draw from it? It was in that wider context of thinking about spill-overs that we also briefly considered the green car fund and whether that would generate spill-overs such as to change the broad thrust of the conclusions we drew about the benefits of reducing tariffs, and concluded that that was unlikely to be the case. So that is the context on the page that you are referring to.

Senator ABETZ—Thank you for that. Can you just confirm a few issues for me. In this report, do you suggest that there is only room for two car manufacturers in Australia?

Mr Banks—No, we do not say that. One of the things that we do not include in the modelling is economies of scale. One of the issues that we looked at last time was: what would happen if, instead of getting incremental adjustment, you had one manufacturer actually vacate the field and would that be problematic to understand what the adjustment costs would be from that. So anything we did back in 2002 was of that kind to try to understand what the adjustment impacts would be. It was not a forecast, and none of what we have done really is a forecast; they are projections holding all other things the same. So we have not modelled that issue. We gave consideration to a reduction in the number of manufacturers, of assemblers, in the 2002 report just to see what that would do in terms of the scale economies issue.

Senator ABETZ—But you did not say in that report that there is room for only two?

Mr Banks—No, we did not say that.

Senator ABETZ—Can you tell me whether the vehicle industry accounts for some \$5 billion of value added exports?

Mr Banks—You are going to catch me on a number now. There will be a number in our report, I am sure. What I can say is that exports have grown very significantly for this industry over time in a context in which domestic assistance has been falling. This is one of the things when we did the inquiry proper back in 2002, as opposed to this modelling exercise, that we saw as a significant change in the industry.

Senator ABETZ—When we are talking about exports increasing in recent times, what, over the past decade, five years—what are we talking about?

Mr Banks—When we looked at in 2002, over the previous decade there had been a very significant increase, I think from something like 10 per cent of production to about 30 per cent, and I think for some manufacturers currently, like Toyota, the proportion of their sales which is going overseas I think is something like 60 or 70 per cent now, so there has been a very dramatic change. We have seen a situation in which import penetration in Australia has increased, but production of cars has stayed relatively stable or increased off the back of significant export performance. That has changed somewhat in the last few years, where

production has peaked, import penetration has been greater and exports have not grown fast enough to offset that, and that has been the backdrop to some of the current concerns.

Senator ABETZ—The industry employs about how many workers, do you think, or in your analysis?

Mr Banks—My understanding of that—and again the exact number will be in the report, so do not hold me to it—is that there are about 45,000 employees.

CHAIR—Directly?

Mr Banks—Yes.

Senator ABETZ—And indirectly?

Mr Banks—I am not sure that we have that number in there, but I can get back to you on that if you like.

Senator ABETZ—Yes, if you could, that would be helpful. Minister, does the government have confidence in the Productivity Commission?

Senator Sherry—The report or the commission, or both?

Senator ABETZ—The commission?

Senator Sherry—In terms of the work of the Productivity Commission, it is important and useful. In the context of the modelling review that was released today at 3 o'clock, I think it highlights the usefulness of the role of the Productivity Commission. The paper released today is a modelling, and that will inform the Bracks review and its recommendations to government. It will be useful and important input, and there will be a debate on the issue, but at the end of the day government determines policy.

Senator ABETZ—I assume that the Productivity Commission does not see itself as being anti-worker or anti-manufacturing?

Mr Banks—I think I might have answered a similar question last time, and we certainly do not. Our view has not changed in three months, either.

Senator ABETZ—People are still saying this about you all these months later, including today, and I am of course reading from an AMWU press release on the back of your report which tells me that the current members of the PC were appointed by the Howard government and reflect that government's anti-worker, anti-manufacturing prejudices. I just thought that might make your evening, but some of these other assertions about \$5 billion of value added exports, that it employs nearly 100,000 workers and that you say that there is only room for two car manufacturers, those things I picked up out of the AMWU media release that was issued today on the back of your report.

Mr Banks—Perhaps I could just make one point that they have missed—that I have actually been reappointed by this government, and one of my fellow commissioners has also been appointed by this government in recent times.

Senator ABETZ—When was that reappointment, Mr Banks?

Mr Banks—April. It seems like a long time ago.

Senator ABETZ—They have not been in that long. I know it seems an eternity, I know it does, but I would have thought in your case the reappointment—

Senator Sherry—Particularly when you are in opposition; it certainly seems an eternity.

Senator ABETZ—Of course, and it is from that perspective that I am talking, Senator Sherry. Well, congratulations, and a well-deserved reappointment, if I might say. Can I move on to—

Senator WEBBER—I have a question on the green car.

Mr Wonder—Just for the record, on Mr Banks's appointment details, he was reappointed as he said, and the period of his reappointment is from 20 May 2008 to 19 May 2013.

Senator ABETZ—Well done, as I said, but over to you for the green car.

Senator WEBBER—I just have one brief question on your most recent report. I have not read it because, like Senator Abetz, I have been stuck in this room for most of the day. Mr Banks, what would be your response to people that may question how you can reach the conclusions you have about the green car initiative, given the fact that you do not have any information about how that initiative will be implemented?

Mr Banks—I should say that we have not reached any conclusions about the initiative. But, in the context of thinking about whether the modelling that includes the green car in the database would be affected by the green car initiative in terms of whether the conclusions we drew from the modelling would be materially different, we looked at some issues in relation to the production effects and the potential for spillovers and simply raised some questions. I guess, if there were a bottom line from that, we did not feel that those considerations would materially affect the conclusions that came from the modelling. It was solely in the context of trying to test the modelling that we speculated about some of those effects. You are absolutely correct: we do not have any information about how the Green Car Innovation Fund will operate in practice. Will it be very technology-specific, or will it be broader in scope in terms of how it operates? In that sense, we are at a disadvantage of doing anything more, but indeed, in the terms of reference we received, we were not required to do more than that in terms of the actual modelling work.

Senator WEBBER—But it is just part of the general principle—when you bring in an ETS, a whole range of other steps that governments have taken to be cognisant of our need to look after the environment and what have you will then become redundant or have less impact.

Mr Banks—Yes. I guess what we were saying there in terms of spillovers is that that may be significant as a result of that. As I said earlier, we saw the ETS, now that it is in place, as being a very efficient way of dealing with that in its own right.

Senator WEBBER—Indeed; thank you.

Senator ABETZ—But given your terms of reference, you did have to examine to the best of your ability this green car fund, which I think Senator Webber quite rightly alluded to as not having much flesh on the bone if it is something that is going to be coming in, if it does, in three years' time. But it was part of your terms of reference; it was specifically mentioned by the minister?

Mr Banks—Yes. We were required to integrate it in the database, and we did that in a way that we thought was quite conservative by treating it like a production subsidy, and that would lead to an increase in production and so on in the way any other subsidy would. But some of the other effects, for example, on spillovers and things are more speculative, and we were not able to model those.

Senator ABETZ—Of course. We have been told from time to time, and I think most people would agree, that increasing productivity is an important aspiration or pursuit of any government. I dare say that is why there are such creatures as the Productivity Commission to assist governments in pursuing that end. I dare say you would agree with the proposition that innovation helps increase productivity? That is a bit of a no-brainer?

Mr Banks—Yes. You could almost say that the two things, in a broad sense, are almost synonymous.

Senator ABETZ—Yes, good. I just wanted to make sure that we were in heated agreement on that, to lead on to the next one. So, the promotion of innovation in your mind is vitally important to increase the productivity of the nation?

Mr Banks—That is a different question.

Senator ABETZ—It is.

Mr Banks—Innovation policy needs to be motivated by generating increases in innovation or research and development that would be socially beneficial, so there are two things: (a) that they are socially beneficial, and (b) that policy generates additional spillovers or activity that would not otherwise have occurred. My colleague, Dr Lattimore, has spent a fair bit of time looking at design issues to do with innovation policy and R&D policy to ensure that those policies are focused on actually generating additional beneficial spillovers for society that would not otherwise have occurred in the absence of that policy. Because, when you think about it, a lot of innovation occurs within businesses, actually within homes as well, just as a natural part of your everyday life. One of the great drivers of innovation in Australia has been the increased competitive pressures in this economy coming from trade reform and from deregulation domestically, which has put a lot of pressure on firms to find lower-cost and smarter ways of doing things and, indeed, new things to do. All of those are innovation. Innovation is a lot broader than research, technological research and development, as you know.

Senator ABETZ—Yes, absolutely.

Mr Banks—So yes, I agree with the proposition expressed that way.

Senator ABETZ—Yes, and thanks for that clarification. Have you been asked to provide any assistance to the national innovation review?

Mr Banks—Yes, we have, in an informal sense. You will appreciate that—

Senator ABETZ—Sorry, by whom?

Mr Banks—Dr Terry Cutler, who is heading that review, and I have had conversations, and my colleague Ralph Lattimore has provided some informal support, advice and information to them off the back of the report that we did on science and innovation some time ago—I am

not good with dates. Dr Lattimore was the research manager on that study, which, if you have seen it, you will know it is a very thick one—

Senator ABETZ—You are not trying to pass the buck, are you?

Mr Banks—and you would not want to drop it on your toe. So that stands, I guess, as a well of information that the Cutler review is drawing on in its own deliberations and not wanting to reinvent the wheel. We have assisted them in coming to terms with understanding what is in that report and some of the work that is behind it.

Senator ABETZ—How old is that report, again?

Dr Lattimore—It was 27 March 2007.

Senator ABETZ—It is about a year old, so you would, if need be, be providing any supplementation to that report for the benefit of Dr Cutler's review?

Mr Banks—Well, I should let Dr Lattimore comment, because he has been providing some advice.

Dr Lattimore—We were not updating the figures in the analysis that we had done in that report. However, what we did was to go through some of the principles and arguments that we outlined in that report in a range of areas—for example, some of the dilemmas and issues associated with the design of the tax concession. They were briefs; we were not involved in the actual policy formulation in this body, but indicating some of the conceptual difficulties you have in designing these sorts of instruments, of the kind that Mr Banks referred to, for example, in getting additionality right in any of these instruments.

Senator ABETZ—Did the Commercial Ready program do anything good, do you think?

Dr Lattimore—Most certainly it did. Our approach to looking at the issue of Commercial Ready was mainly through the lens of R&D Start, which was a predecessor of similar design and which had been evaluated by the Centre for International Economics, CIE, on two occasions, effectively. It reached the conclusion which, when we assessed it, looked reasonable—that in some cases there were benefits from the projects. So, yes, on occasions it produced benefits.

Senator ABETZ—Yes. Thank you for that.

Dr Lattimore—I should add to that, however.

Senator ABETZ—It depends on what you are saying.

Dr Lattimore—Our view in the publication was that there were nevertheless significant additionality problems with that program, so that while there were circumstances in which projects were good, there were circumstances in which projects which would have gone ahead anyway were being supported. That involves, in a sense, losses to taxpayers.

Senator ABETZ—Is that a pretty tough call and assessment to make, that a project would have gone ahead anyway?

Dr Lattimore—There are several ways in which you can look at this. Probably the most promising way in which CIE did it was to look at a control group of firms who are like with projects that did not, at the margin, just get the support and see if those projects went ahead or

not. They found in that particular instance there was no difference between the control group and the groups which received the assistance. There were several other ways in which they looked at this issue, including subjective questions to the participants. Generally they were more favourable, but of course that may not be surprising.

A third piece of evidence relates to the actual failure rate of the projects. It showed that it was a very low failure rate. Roughly 80 per cent of the projects succeeded. In the area of R&D, typically a lot of projects fail if they are truly at the frontier of difficulty, so the high rate of success was suggesting that the selection process was choosing the most commercially viable of the projects, which of course were the sorts of projects which would have proceeded in any case.

Senator ABETZ—Well, silly Howard government. We should have designed a program that had a greater failure rate in it, from what you are saying to me.

Senator Sherry—What he said was that they would have gone ahead anyway without the assistance.

Senator ABETZ—No, some. This is not black and white, and I think Mr Lattimore and I would be agreed on that. In the scheme of things you will always be funding some projects that, chances are, would have gone ahead anyway and some that, on reflection, might not have gone ahead anyway but failed. That is the luck of the draw.

I would have thought in general terms that with most of these schemes, investing taxpayers' money, you would be saying that having an 80 per cent success rate is something that you should put a tick next to, rather than what you seem to be saying by implication. The fact that you have had such a high success rate means that they all would have gone ahead anyway and so they did not need funding, whereas if it was a fifty-fifty assessment, then that might have suggested a better system. I am not sure you have convinced me on that.

Dr Lattimore—Imagine circumstances in which 100 per cent had succeeded and all of them would have been funded. What that means is that you are using taxpayers' funds to support things which would have occurred anyway. Taxpayer funds have to be raised through the tax system and, as such, they then occasion their own costs, their own distortions, which we estimate to be roughly 30 per cent of the tax funds, so you would actually lose 30 per cent to the economy of the amount of money that you put in as a subsidy in those circumstances.

Clearly then there are trade-offs between the amount of additionality you get and the distortions that occur through raising taxes. That was our concern in the judgement we reached about the R&D grants program. We made a number of suggestions—not recommendations, because this was not an inquiry report but a commission research report, about mechanisms which might be looked at to try to increase the additionality of that program.

Senator ABETZ—Thank you for that. The grants, often in the event that the company is making money, I understand are in any event subject to taxation. Is that right? Would you say that about 30 per cent goes straight back to the taxpayers anyway? Then, if it is successful, chances are the company makes a profit and then would be repaying the taxpayer. But I thought that the real benefit of the Commercial Ready program was that it brings in some money—sure, the project may have been commercialised in any event, but it expedites it and,

as a result, brings the dividends a lot quicker back into the community, creating employment et cetera. And, might I add, it employs scientists et cetera that this country so desperately needs to keep within Australia, and it brings that forward rather than saying, 'Yes, if we had swanned around the community trying to get venture capital for another two or three years we might have got sufficient funds to get going'. The Commercial Ready program, from my understanding—having talked to many dozens of them over the past week or so—expedited it and, therefore, the benefits to the Australian society were brought forward. What would you say about that?

Dr Lattimore—The evidence was that it did in fact bring them forward. However, there again is a trade-off between bringing them forward and projects which were going to occur anyway, and other uses for those funds. In relation to the profits and the tax issue, of course, whenever you provide a subsidy to something you push resources into those areas. They are resources that you do not apply elsewhere in the economy, an economy which has fairly active resource use at the moment. Those other areas also produce profits and tax revenues, so the additional tax revenue you might see from a successful project may be illusory.

Senator ABETZ—It may be. I hear what you are saying on that. Chances are we might have to agree to disagree a bit on that.

Senator Sherry—The government made a budget decision.

Senator ABETZ—A shocking decision and, having made that comment and that intervention, Minister, can I just say any program can always be improved, can always be finetuned to take into account the concerns that the Productivity Commission expressed, but to simply axe it creates a huge hiatus that will really hurt innovation. To say that we need to review it and we might fund things again in the next budget—that stop and start approach to this issue—is very damaging to innovation. But it is too late to keep on with commentary. I would like to ask about the taxation, can you—

Senator Sherry—Just briefly, can I comment?

Senator ABETZ—No, there were no questions, so we will keep on.

Senator Sherry—If there are no questions you should not have commented in the first place, but I will respond. Responsible budget fiscal concerns—

Senator ABETZ—You made a statement and I made a statement in response. Let us get on with it.

Senator Sherry—That was our approach in the budget and we stand by it.

Senator ABETZ—Good. The more you say it and the more Senator Carr says it, the better. I will copy your *Hansard* as well.

CHAIR—Senator Abetz.

Senator Sherry—There are many times we have said it.

CHAIR—Minister! Senator Abetz.

Senator ABETZ—Thank you. Can I ask in relation to taxation measures, has the Productivity Commission ever in its existence been asked to do modelling as to what it might

do to productivity, be it from a luxury car tax to a condensate tax or things of that nature? Have you ever been asked to model taxation measures?

Dr Lattimore—My colleagues might be able to answer that.

Senator ABETZ—You can take that on notice if you do not know.

Mr Banks—Yes.

Senator ABETZ—We would be interested.

Mr Banks—The area that comes to mind and flows from what we have just been discussing is the tax concession for research and development. Do you want to comment on that, Dr Lattimore?

Dr Lattimore—There are several things. We have looked quite closely at various times at the R&D tax concession, including in the most recent report on innovation, but in terms of other aspects of tax of a different kind, we were looking at ageing implications. We looked at what might happen to a variety of tax measures over time and the revenue that they might bring forward as a consequence of ageing in Australia. They are two of the instances which I can give you.

Senator ABETZ—It is just that the luxury car tax applies to vehicles 75 per cent of which are in fact bought by businesses as in four-wheel drives, utes and whatever else. I would have assumed that that will impact on price, on inflation and ultimately potentially on productivity, but if you are not in that game that is fine; and allow me to move on. I would like to ask if the Productivity Commission has been engaged in considering the issue of Fuelwatch? This committee has not spent much time on Fuelwatch, so I just thought I would introduce a new topic.

Mr Banks—I indicated earlier that we have not—

Senator WEBBER—As long as it is not another eight hours it will be fine.

Senator ABETZ—Is that all? Time flies when you're having fun.

Mr Banks—I am afraid that we cannot add to the deliberations of this committee on that matter.

Senator ABETZ—Have you been asked by anybody to do anything as to the impact of Fuelwatch?

Mr Banks—No. That is correct.

Senator Sherry—That question was posed earlier.

Senator ABETZ—Was it?

Senator Sherry—Yes.

Senator ABETZ—Thank you. I was not aware of that because I got a note that was slid over to me.

Senator Sherry—Before we get to ASIC, I can assure you that ASIC have had absolutely nothing to do with it either.

Senator ABETZ—Thank you.

Senator EGGLESTON—I would like to ask you about a previous report. One of the recent reviews by the Productivity Commission has reiterated the opinion of many others that more attention needs to be paid to the mathematics teacher shortages. I had lunch with the Vice-Chancellor of the University of WA a couple of weeks ago, along with some of my colleagues, and there was a lot of focus there on the need to encourage people to take maths based subjects and to have better teachers in those fields. You made some recommendations, but what was the report called so that I can look it up?

Mr Banks—Thank you for that question. That was the same report that my colleague, Dr Lattimore, has been talking about. It is the one on science and innovation. He might want to reflect on that. More generally, there is an issue in terms of a shortage of maths teachers, but it is possibly part of a bigger looming issue in terms of a shortage of skilled teachers, which I have commented on before. That is an important issue for this country going forward. We specifically looked in the context of the science and innovation report at science and maths teachers. As more highly skilled teachers in some respects, they have been the ones who have in a sense first been leaving the system and creating that shortage. Dr Lattimore, do you want to add to that?

Dr Lattimore—I would add briefly that we did not deal with that matter to any great extent. It was part of a section that dealt with general shortages in the science workforce, but we did identify that as an area where there were difficulties and where perhaps the natural way in which markets might work—for example, with engineers—was not functioning well. We simply indicated that there was an issue that needed to be considered.

Senator EGGLESTON—That is very interesting. One of the ideas that the University of Western Australia had was to add bonus points to maths and science subjects for university admissions because people were, if you like, playing politics with the subjects that they did to get into university and chose the easier ones to get the scores which got them in, but they were not doing the sciences. The UWA is going to load maths and science TEE subjects so that people get extra points for doing them, which is a good way of encouraging students, but it really does not address the teaching problem.

Mr Banks—No. That would end up giving us more people trained in science and maths, but they would be finding jobs in the private sector, outside of education. Ultimately at the end of the day it comes down to issues of remuneration, in particular for those skills, to ensure that the relativities are not so great that even the most committed teacher cannot afford to stay in teaching. That is a big issue for us going forward.

Senator EGGLESTON—It seems that many of them reach their maximum income earning capacity within the state education department somewhere in their early 30s, so there is not much of an incentive for them to stay on as teachers. As we know, teachers move into many other fields of business, including politics; they do not stay necessarily as teachers. I think the question of increased remuneration is very much a factor which needs to be addressed.

Mr Banks—There are a range of issues. As you know, we conducted an inquiry into the health workforce, which fed into the COAG process. The issues in relation to the education workforce are just as significant and important for this country going forward as they are for

the health workforce. We need to ensure that we have skilled people doing the right things within the system and educate our young people to go on to be the highly skilled people that we need in the future. I do think the issues that you raised are extremely important and we may well do some more work in that area if we can.

Senator EGGLESTON—Thank you. I think you do some very interesting reports.

CHAIR—Thank you to the Productivity Commission.

[8.49pm]

Australian Securities and Investments Commission

CHAIR—Welcome. Would you like to make an opening statement?

Mr D'Aloisio—Thank you. I have just a brief opening statement. Since my appointment as Chairman of ASIC we presented before the committee on two previous occasions, in May 2007 and February 2008. On the first of those occasions, in May last year, we outlined a set of six priorities for ASIC that we would pursue in the then next 12 months, including a three-point plan in respect of the unlisted unrated debenture area, which had seen some failures in that market. The second time this year we highlighted some issues associated with market volatility that we were working on, such as margin lending, short selling, stock lending and hedge fund activities.

As it has been 12 months since we announced those priorities, we thought it was timely to present a report card, if you like, of the key achievements ASIC has made in advancing the six priorities that we spoke about. I am going to ask in a moment the deputy chairman, Jeremy Cooper, who headed our Retail Investor Taskforce, to speak briefly on what ASIC's plan is in the area of protecting the wealth of retail investors. I will also ask Commissioner Gibson, who heads our Capital Markets Taskforce, to provide a short statement on the results in her area. Commissioner Gibson is responsible for confidence in the integrity of Australia's capital markets and the important issues of insider trading and market manipulation.

I will give a brief overview on our achievements on the six priorities. We have prepared a document on what we have done for committee members to look through. With your lead, Madam Chair, I would like to give a copy to members of the committee, rather than go through what we have done under each of the six priorities. That may assist with some of the questions later on. You will see from that document that we have divided our priorities in terms of real economy priorities and financial economy priorities and outlined what we have done under each of those. We have also outlined, most notably in relation to the unlisted unrated debenture area, the work we have done in really coming to grips with the issues of disclosure in that sector, the various guides and guidelines that we have issued to improve disclosure for retail investors in that area and the additional resources that we have added in areas of insider trading and so on.

The sixth priority that we took on was to do a strategic review of ASIC. I am pleased to advise that, as you will see from what I have handed up, we have completed that review and we have now moved into an implementation phase. That has been a very extensive review of ASIC with the basic objective being to really get us closer to the markets and be a lot more

forward looking in the way we approach issues, and we think that the benefits of the changes that we are making will come through over the next few years.

In terms of the next 12 months, our priorities over the coming year will remain very much the same priorities as those that we spoke about last year and that are in that report. The nature of those priorities as such is that they will probably remain ASIC's focus for the next two to three years and certainly our strategic reviewers confirm that those priorities are the right priorities for ASIC, most notably focusing on retail investors, the capital markets and issues of providing further resources in supervising those markets in the broker area and in the area of insider trading.

Other things that we will do in the next 12 months will clearly be, in terms of the strategic review itself, to move to implementation and to make the changes that are necessary. In addition to pursuing the priorities and doing that, we will also of course handle new matters that the government refers to us. So far the government has referred a number of matters to us, including the mortgage exit and entry fees, superannuation fund reporting, the Financial Literacy Foundation and more recently an examination of credit rating agencies and research house analysts. We were also involved in the Financial Services Working Group on shortening disclosure documents, and most recently the government's green paper may see new work areas for ASIC. The coming year will really have the same priorities that we have been pursuing this year, most notably implementing the strategic review and dealing with new matters that government may refer to us. I will now ask Deputy Chairman Jeremy Cooper to talk a little bit about the work that he has been doing in the Retail Investor Taskforce.

Mr Cooper—In May 2007 ASIC announced the creation of the Retail Investor Taskforce. The task force was set up to look at the quality of advice and investor education that was available, better disclosure to retail investors, blitzes on advertising and financial products and the early detection and elimination of illegal schemes. Broadly, the aim of the task force has been to identify ways to help Australian retail investors build financial security through long-term investment.

Since it was formed in November, the task force has considered a broad range of issues, including how investors behave when they are making investments, their level of engagement with financial savings, the types of information they find most useful and how that information should be presented to them and made available to them. We sought many ideas from industry, consumer groups and individuals, and we have conducted about 50 one-on-one interviews with leaders in the field and from consumer groups and so on. We have held several roundtables and we have reviewed research findings both from Australia and from overseas. Indeed, we devoted a whole day at our summer school earlier in the year to discussing retail investor issues. At that summer school we ran workshops looking at disclosure, investor education, financial advice and self-managed super funds.

From the work that we have undertaken two really interesting facts have stood out throughout our work. The first is that approximately 46 per cent of Australians cannot read financial disclosure documents that are given to them well enough to be able to understand them. The second very important fact is that only around about 20 per cent of Australian investors actually get financial advice. One of our top priorities is to improve the information going to retail investors. There is no question that the current information is too long and

often hard to understand, and the government is aware of this issue and ASIC is in fact part of the Financial Services Working Group currently looking at four-page disclosure and other matters.

But there is more to disclosure than just length. Retail investors increasingly want more tailored information—that is, information that speaks to them. One solution we see is much greater use of electronic disclosure. By this we do not just mean taking a paper version of a document and putting it on the internet in what they call PDF format, rather we mean information that is interactive, engaging and, where possible, actually personalised. To this end we recently released a consultation paper on facilitating the use of online disclosure in financial services.

Other initiatives include a guide that will enable super funds to provide members with projections that will give them an indication of their likely benefit at retirement. Providing this personalised information is aimed at making people more interested and engaged in their financial affairs. We are also looking for ways to help retail investors access low-cost, simple, professional advice. Again, we see greater use of technology as playing a part in the solution. We are also working, again, with the Financial Services Working Group, on superannuation intrafund advice and a paper on this issue was released on 30 May 2008.

Helping retail investors avoid investing in illegal schemes and scams is another major challenge. While we will be increasing our activities in this area and will be taking earlier action to nip illegal schemes and scams in the bud, the reality is that we will never catch all of them, and therefore we need to arm retail investors with more knowledge so they stick to legitimate investments. We describe this idea as swimming between the flags. If you are between the flags you are swimming and investing in a safer section of the market. There is still some risk, but much less than outside the flags where you are on your own and in danger of financial rips or even sharks. We will be working on better educating retail investors on how to stay between the flags while they invest.

Other things that we are doing to help retail investors include a blitz on misleading or deceptive advertising, taking much earlier action against illegal scams and schemes, and working on a guide on margin lending disclosure. ASIC is also working on the integration of the Financial Literacy Foundation. The foundation has been doing a lot of good work and we look forward to taking up the mantle. We want to ensure that in future investors are more alert and knowledgeable so that it is much harder for dubious schemes to attract their money.

CHAIR—Thank you.

Ms Gibson—Thank you for the opportunity to speak to you this evening about the Capital Markets Taskforce. This task force was also established in November 2007 when I joined ASIC. Its mandate was to review ASIC's record in the enforcement of market abuse offences and to design a strategy to improve our performance. Today I will outline some of the achievements of the last six months and give you a broad outline of our focus in the next 12 months.

Mr D'Aloisio has spoken to you about the market turmoil and some of our responses. The turmoil has certainly focused our attention on the issue of market integrity. A number of companies suffered severely and there has been considerable speculation that predatory short

selling activity in those stocks magnified the value adjustment, as it were. One of our responses to the turmoil was our announcement of 7 March that we had launched an investigation into whether the markets were affected by short selling on the back of false rumours or collusive behaviour, or both. This investigation will take several more months, but it has already delivered some excellent results in terms of building ASIC's skills to enforce the market's rules. We have served over 70 notices to produce on all the major brokers requiring delivery of share trading records and broker communications. We are currently working through some 580,000 emails and 220 hours of broker voice recordings. I must say the brokers have by and large been mostly cooperative, promptly delivering information in an electric form that facilitates our analysis. We have used the latest technology to quickly establish trading profiles, effectively to recreate the course of trading, and to link the profiles back to specific broker activity. Importantly we have started a dialogue with the major brokers, stock lenders and hedge funds about good market behaviour and this work will be a foundation for the new ASIC stakeholder teams once the strategic review is implemented.

Turning now to the next 12 months, the task force has made a number of recommendations to respond to the three principal themes of good deterrence: prevention, detection and enforcement. On the prevention front, we commenced the dialogue with the business community about the importance of market integrity at the ASIC summer school in February. The discussions with the brokers and the investors that I mentioned earlier were another step to develop working relationships with all market participants. After all, they have the front-line responsibility to manage market information flows and to educate/supervise staff about illegal trading activity. We want more active assistance from brokers in our investigation and our prosecution in the next 12 months. We will be stepping up our presence in the public domain. We will be advocating significantly improved practices amongst all financial industry participants. When it comes to detection, we are working closely with the ASX on detection and investigation of suspicious trading patterns and we have both taken steps to improve our communications with each other, with the brokers and with possible wrongdoers. The task force has identified more opportunities to improve our work in the near future. We are focusing on new information technology projects, different review lines and the adoption of new investigation techniques learnt from our US and UK colleagues.

Finally, to enforcement: the UK Financial Services Authority has adopted the term 'credible deterrence' and, in short, this just means bringing successful prosecutions. We need to do that, too. We will move to a single markets review team to deal with each referral we receive from the ASX, from detection of suspicious conduct all the way to finalisation of the referral. Our senior team will all be experienced market offences specialists. We have already sent eight cases to the Commonwealth DPP for consideration for prosecution this year. We are working closely with the DPP on these projects. We have issued three continuous disclosure infringement notices this year, so that demonstrates that we are significantly stepping up our enforcement focus and activity in the market's areas. ASIC's aim is to convince the market and the judiciary that markets offences are not victimless crimes and that they deserve strong punishment. Wrongdoers must have a real fear that they will be caught and face meaningful sanction. Thank you.

Mr D'Aloisio—That completes our opening statement.

CHAIR—Thank you.

Senator Sherry—One additional comment?

CHAIR—Yes, Minister.

Senator Sherry—It is an appropriate time for me to do this, as I may not get an opportunity to do this again. Senators Watson, Murray and Chapman are finishing their Senate term on 1 July and all three have taken a very long-term, active and keen interest in this estimates, but I think their record is well known. I just wanted to place on record my personal thanks, gratitude and observation to their work over many years at these estimates, which has focused—though not exclusively but more than most other members of the Senate have been—on ASIC. I think it is appropriate to put that on record. As I said, I might not personally get a chance to do so in another forum. I wanted to place on record my personal thanks for their keen and active interest over many years.

CHAIR—Thank you, that is echoed by the committee as well.

Senator BUSHBY—Thank you to the three of you for your opening statements, which certainly paint a picture of ASIC being very active, very busy and very proactive in addressing the issues that you need to address. That brings me to my first question. Can ASIC please explain how it will budget for its new responsibility as the coordinator of the highly successful Financial Literacy Foundation following Labor's decision to transfer the foundation to ASIC, a measure which will save the government \$13.5 million over three years? Presumably it will shift some cost to you.

Mr D'Aloisio—Perhaps I can talk a bit about the overall budget process and then move to the financial literacy.

Senator BUSHBY—That would be very helpful.

Mr D'Aloisio—When I took office last May and we looked at the forward rolling budgets for ASIC over two or three years, the view that we formed as the new commission at the time was that we could work in the 2007-08 year with an existing budget that we have, and will. During the course of this year, as the strategic review has unfolded, clearly we have looked for savings in the areas that we might de-emphasise and redirect resources. We have advised the government that in the 2008-09 year we can work within the existing allocations and that we would also deliver the efficiency dividend.

At the time we did that, the government was contemplating giving us the Financial Literacy Foundation but had not made the decision. Subsequently we were advised that it had made that decision and we would need to fund it. The decision was made most recently and we have taken it on. Our feeling from the review that we have done certainly in the 2008-09 year that is coming, given that we will be rebuilding that financial literacy area and integrating with our own investor education programs, is that probably during that year we will be able to work within existing resources. However, as that financial year moves and we have a better look at what is involved then certainly, if we felt that we needed additional resources to pursue the aims of that foundation, combined with the work in our own investor education area that we are doing, we would be going to government to seek additional resources. At this stage, our feeling is we can work within what we have.

Senator BUSHBY—Thank you.

Senator Sherry—I would like to add to that. The government has taken a decision obviously in the budget to merge the programs—and I would stress the programs—of the Financial Literacy Foundation with ASIC. The Financial Literacy Advisory Board under the chairmanship of Mr Paul Clitheroe will continue and will have the ongoing responsibility of overseeing the delivery by ASIC of the various programs that continue on. The government in its decision looked at the roles, responsibilities and functions of ASIC and believes that, prior to the foundation programs being transferred, it has a focus on education and we believe that one organisation delivering rather than two was more efficient and more effective.

There is one other comment I would make on the budget of ASIC, again for the record, although I have said this publicly. On Tuesday I released our green paper which deals with—and I will not go into detail here—the COAG agenda for the transfer of a significant range of state regulatory responsibilities in financial services and it is reasonable to anticipate that most or perhaps all of those responsibilities will transfer to ASIC in the federal jurisdiction. I have said publicly, once the program of transfer is set down and ASIC commences its regulatory development, it would be unreasonable to expect for those responsibilities to be paid for within the current budget of ASIC.

Senator BUSHBY—I would imagine that Mr D'Aloisio agrees with that as well.

Senator Sherry—I am sure he does.

Mr D'Aloisio—I am glad that is on the record.

Senator BUSHBY—I was going to ask that question myself later.

Senator Sherry—That is on the record and of course ASIC will obviously follow the developments of COAG, the transfer of the powers and the operative dates. I am very confident that Mr D'Aloisio will be presenting the government with a budget estimate for additional regulatory responsibility when those transfers occur and that will obviously be considered in the budget context.

Senator BUSHBY—Thank you for that, Minister, and thank you for your statement. The key comment that you made was the shifting of the focus within ASIC of what you are looking at, and I imagine, given the breadth of your scope and what you are charged with looking at, you could probably have your budget doubled or tripled and still find very relevant things to go off and focus on. The whole concept of economics is the allocation of scarce resources and you need to find the priorities and the things which need to be attacked; that is what you are focusing on and that is what you have done. But, necessarily, that means that you are shifting your focus away from other areas that you could be pursuing; you are making judgement calls as to which are the most pressing, given the current situation.

Mr D'Aloisio—There is no question that the strategic review has involved reprioritisation and we are trying to get better resources, better productivity and so on from what we have. And certainly that refocus, redirection, is very on three key things. It is very much in the retail investor area—and financial literacy is very much backing what we are doing there—the insider trading market manipulation area and the area of international flow of capital. We think those are three big things. Within those we have to select issues and matters that will

have an impact on the market, so instead of running perhaps 15 cases, we might run five or six, but those five or six that we choose—say, insider trading—may well be much more significant cases than we may have run in the past. It is that thinking that is going behind the redirection of resources.

In a very broad sense, like any sort of police force or any regulatory body, you will use up whatever resources government gives you and you could find a use for those resources, but we do not see at the moment the need for us to go to government and ask for more resources to take on these other areas. We think that the priorities that we have identified are the ones that are going to matter, and within those we are working hard to distil the key things that are going to influence behaviour.

An example of that is in the unlisted unrated area. We have pursued both enforcement type action and also action of changing behaviour in the market through the use of regulatory guides. That sent a very clear message to the whole unlisted unrated area of debentures and other products as to what we could do. So by picking that one we have given a fairly clear message of where we are heading and we expect industry will fall into line without our having to run a whole lot of cases in that area.

Senator BUSHBY—As I understand it, you are fairly happy with the priorities that you are focusing on, but it still does come at an opportunity cost in terms of what else you could also be focusing on.

Mr D'Aloisio—Yes.

Senator BUSHBY—You mentioned in your—

CHAIR—Senator Bushby, we might go for our evening break at this time. I know you have only just started.

Senator BUSHBY—I have one other question that flows on from that and then I will move on to other things.

CHAIR—All right.

Senator BUSHBY—You mentioned your own research findings and some figures. I have had a quick look at that and I have figures from that research, which I understand surveyed 1,200 Australian investors in several focus groups. Is that correct?

Mr Cooper—Yes. That was what we call the Roy Morgan retail investor research work.

Senator BUSHBY—The findings showed that less than half the investors had a long-term financial goal and a plan to reach that goal. I think 37 per cent had neither a plan, nor a goal. Around half the investors had only one type of investment. The mean number of investment types was 2.19 and investors often came to invest due to external life stage pressures such as divorce, inheritance, redundancy or retirement and if you add those results to the results that you said, it sounds as if you have a fair challenge ahead of you.

Mr Cooper—A fair challenge and a long-term one as well. When you are talking about influencing—

Senator BUSHBY—That is what the Financial Literacy Foundation is intended to address.

Mr Cooper—Indeed.

Senator BUSHBY—It sounds to me like it is a fairly big task which is going to be fairly resource intensive.

Mr Cooper—Yes. We would not be unique on the planet. When you look at retail investor behaviour the challenges are fairly similar.

Senator BUSHBY—Coming back to the issue before, it is going to be a big job and it is not going to be a cheap one.

Mr D'Aloisio—That is right. What we have seen in Australia is retail investors merging into financial consumers and consumers in a sense. But notwithstanding the recent turmoil and the drop in the stock market, we have seen a very significant build-up in wealth in retail investors which has not necessarily been matched with easy availability of advice and good advice for investment. That requires ASIC to play a much more active role in that market, where the supply and demand is out of kilter, compared to a more mature market. In that sense we feel that over the next three to five years there will be substantial resources that will be allocated to things such as those that Mr Cooper has been mentioning, on investor education and just simple rules like diversification of assets, understanding risk-reward premiums. There are a whole lot of things that we need to select and work on to assist the retail investor.

We are expecting that as the supply-and-demand equation between availability of advice and people looking for advice gets back into kilter a lot of that will be taken over by industry. The competitive forces may then allow ASIC to step back a bit from that space. But certainly in the next three to five years it is going to be resource intensive. Indeed, both governments—the previous government and this government—have seen that in pushing ASIC towards that retail investor area.

Senator BUSHBY—I am happy to go to a break from that.

CHAIR—Thank you. We will adjourn temporarily until 9.30.

Proceedings suspended from 9.18 pm to 9.30 pm

CHAIR—I call the committee to order again.

Senator FIERRAVANTI-WELLS—If I may I would like to ask some questions in relation to phoenix companies. In a former life I used to wind up companies that did not pay their tax, so I take a particular interest in these sorts of matters. I noticed that you now have an Assetless Administration Fund and you are going to be financing preliminary investigations and reports by liquidators. Can you tell me some of the statistics in relation to how that is going and the extent of that financing?

Mr Cooper—We have had the fund now for some time. As with any new program, there have been things that we have learnt along the way and things that we have learnt how to do better as we have spoken more closely with the industry about how it works. In broad summary, the scheme allows external administrators of very low value insolvencies to make an application to us to fund them to conduct inquiries and report back to us about misconduct in the time leading up to the insolvency. It puts the insolvent estate, if you like, in funds in order for those inquiries to be carried out. The statistics have actually been quite positive in

terms of the number of reports that have come in to us that are of a standard that we can then take them and conduct our own investigations.

Senator FIERRAVANTI-WELLS—It is on the basis of those reports that you then consider whether appropriate action is going to be taken to pursue directors for insolvent trading?

Mr Cooper—It is not just that but it is the actual message that it sends back to the sorts of directors that have been in, say, phoenix companies and other sorts of low-value insolvencies. The thinking was, crudely, in times gone by that, if the company collapsed with almost no assets, the conduct of the directors was never going to be looked into because the liquidator would not be funded and therefore ASIC could not find out about it and so on.

Senator FIERRAVANTI-WELLS—That is exactly right, and that encouraged the cycle. Then they would move on and start another company and the thing would start all over again and they would become serial offenders.

Mr Cooper—Indeed. Since 1 January this year we have worked through some 97 matters and have carried out 51 bannings of directors as a result of reports coming in to us. We are relatively happy with the way the thing has proceeded. I said the scheme had been in effect for a while. In the last two years we have disqualified a total of 125 directors, and 83 of those were directly attributable to the Assetless Administration Fund.

Senator FIERRAVANTI-WELLS—That is excellent. As to those disqualified directors, are you putting them on any sort of register or anything like that?

Mr Cooper—We are. Those sorts of disqualifications do go straight onto our register. We carry out the disqualification and then it goes straight onto our register.

Senator FIERRAVANTI-WELLS—Can a person who wants to inquire about that register make application to inquire?

Mr Cooper—They can go online and have a look.

Senator FIERRAVANTI-WELLS—That is obviously part of that education process—that is, people can check to see whether Mr Bloggs has a previous corporate history?

Mr Cooper—They can see that and they can see whether the financial adviser that they are dealing with has a licence, and a whole range of other information is available directly online.

Senator FIERRAVANTI-WELLS—Is that fund separate to the enforcement activity that you undertake?

Mr Cooper—Yes.

Senator FIERRAVANTI-WELLS—What are the trends in relation to phoenix companies? From what you have said, the trend seems to be downwards. Do I read that into what you are saying?

Mr Cooper—I do not have specific phoenix—

Senator FIERRAVANTI-WELLS—If you could just take that on notice.

Mr Cooper—I will take that one on notice.

Senator FIERRAVANTI-WELLS—Also, in your strategic review in the budget papers you talk about trends likely to occur over the next five years. With the downturn in the economy, do you envisage as part of that that there could be some corporate failures and in particular those corporate failures that very much affect building companies and where you have wages and entitlements of workers affected, particularly in the building and other industries? Do you envisage that that will be an issue?

Mr Cooper—It certainly has the potential to be. We are in a multispeed and multifaceted economy at the moment. But as interest rates rise it is only a matter of time before it filters through into all industries. Even with the ones that seem buoyant now, the effect of increasing interest rates will bite sooner or later.

Senator FIERRAVANTI-WELLS—Has the budget for your activities remained the same?

Mr Cooper—Certainly if you compare this year with the previous corresponding period. But if you go back, it has gone up fairly steeply. They adjust year to year.

Senator FIERRAVANTI-WELLS—Now, of course, we have across-the-board efficiency cuts. How will that affect your enforcement activity and the sort of compliance monitoring that you do?

Mr D'Aloisio—We are working through the 50 per cent, and clearly that does translate itself to having to find productivity improvements or some staff reductions. As I said in answer to Senator Bushby's question earlier, we have looked at reallocating some areas, but this one, the Assetless Administration Fund and the work that we are talking about, is not one of them. The work in there will continue. We are really looking for those savings in other areas.

Senator FIERRAVANTI-WELLS—I have not had a look at the green paper. When you take over these state regulatory responsibilities, will it mean that the states will compensate you for work that you do on their behalf? How do you envisage that that will work?

Senator Sherry—Effectively, they benefit because they will have less responsibility and therefore less cost on their budget. I actually was asked at the press conference whether the Commonwealth would be compensating them, to which I gave a very swift no.

Senator FIERRAVANTI-WELLS—I would hope so.

Senator Sherry—The states do benefit to the extent that there is a regulatory function that they will no longer perform. I do not know the actual detailed consequences of that to state budgets. There is an advantage in a monetary sense to them but, no, we will not be seeking to either compensate them or recover the moneys. As I indicated earlier—it might have been just before you came in—we would expect additional resources to be given to ASIC once we have identified the dates of transfer. ASIC itself has identified the costs involved in the extra level of responsibility. We would not be requiring additional responsibilities to be funded out of the existing budget.

Senator FIERRAVANTI-WELLS—I apologise; I have not seen the paper, but are you taking those responsibilities from all of the states?

Senator Sherry—The states and territories agreed at the COAG to a number of specified powers that they currently regulate. We are talking about margin lending, trustee companies, mortgage broking and non-deposit-taking institutions, which are still regulated by the states. We got an agreed agenda. I anticipate power transfer by the end of this calendar year. I would anticipate—and this is obviously going to be ASIC’s work—the detailed regulatory development oversight, hopefully by the end of the next calendar year. It might be earlier but that will be ASIC’s responsibility. Then there are some other—perhaps if I can use this description—second tranche bits and pieces, such as payday lending and property spruiking. Whilst they were not part of the COAG agenda, since the COAG agenda was signed off there certainly appears at this stage to be a view emerging that if the powers/responsibilities that have been signed off at COAG are to be transferred then the bits and pieces that are left of state financial services regulatory responsibility should also be transferred to the Commonwealth. It is fair to say there is an emerging consensus that that should occur from business organisations, consumer organisations and the states, but there is no formal agreement yet. We have invited comment. My view as a minister is that I think that is desirable, but I think it is like to happen in two tranches because of the practical issues of power transfer, definition and then the regulatory implementation. It is a big job.

Senator FIERRAVANTI-WELLS—From the investor perspective, that is effectively going to make you potentially a one-stop educator, if I can put it like that. You will obviously be looking at new and better ways of educating investors across a whole range of areas that probably at a state level they may not be able to do now. That is part of your second phase—

Mr D’Aloisio—Through our work on that, quite independently of the green paper and what may come out of that, we certainly identified the retail investor area—retail investor education and financial consumer education—as key priorities for us. If we do get additional responsibilities we see that as continuing to build on the platform that we are already are well on the way to building now.

Senator FIERRAVANTI-WELLS—Thank you.

Senator BUSHBY—During the February Senate estimates hearings you indicated that there was a team investigating whether hedge funds are colluding to drive down share prices. You also commented that anecdotal evidence of collusion is quite broad. Can you please provide an update as to the progress of this investigation, given that no time frame for completion was given?

Mr D’Aloisio—It might be useful if I ask Commissioner Gibson to cover the work that we have been doing, which had started at around that time, around the investigations and inquiries that we have been conducting and that she briefly commented on a bit earlier.

Ms Gibson—Those inquiries are continuing. I envisage it will be some months yet because of the enormous volume. ASIC is learning a very great deal about the nature of the communication in the broking community. We are learning how to use IT to be able to scan those things quickly, but it takes a long time to get the material from the brokers in a form that they can download so that we can then scan them and so on. As I say, it will be some months. My initial view is that it was not as preponderant as everyone thought.

Senator BUSHBY—Despite the anecdotal evidence at the time?

Ms Gibson—Yes, but by the same token there are certainly some things that cause us official interest—I think the expressions is—in terms of trading activities.

Mr D'Aloisio—What we said at the time and what we are looking at is whether some of the activity that went on in the market could have been insider trading or market manipulation. Typically, a false rumour coupled with short selling could be an example of what could be either insider trading or market manipulation. I think we said at the time that the anecdotal evidence in the market was that some of this may have gone on so we said, 'We are having a good look at it.' Commissioner Gibson is really in charge of the team that has been looking at that and it does involve very extensive review of material, email traffic, other traffic, other discussions et cetera and we will update the market as and when we are able to given the nature of these sorts of inquiries.

Senator BUSHBY—Given that it does sound fairly resource intensive and like a large job, Commissioner, you mentioned that it looks like it is not as widespread as the anecdotal evidence suggested. Is that what the initial results are showing?

Ms Gibson—We have not identified a large number of rumours that are plainly false.

Senator BUSHBY—If that is the case, will you at some point decide that the commitment of resources is probably more than is needed, and scale that back?

Mr D'Aloisio—Yes, you would, but we are a long way away from that. Just the sheer amount of data and material that we have that Commissioner Gibson's team has collected would indicate that we have quite some months before we get anywhere near being able to assess whether we then redirect those resources.

Senator BUSHBY—In April this year the company known as Chartwell, which is based in Geelong, collapsed. Was ASIC aware of the problems that Chartwell was facing before the administrators were appointed in April?

Mr D'Aloisio—The matter that we are talking about is clearly an investigation that ASIC is currently conducting in relation to that, so I will not get into the specifics of that. ASIC's involvement in Chartwell in terms of looking at it initially really goes back primarily to around February/March of this year, when complaints and information were received, and that led to our launching a formal investigation in April. As we have looked through our files, there was some earlier material in terms of a complaint that was made some time back, but our files indicate that we did not treat that as a serious complaint and did not take it further. The complaint, I think, was anonymous at the time, so we were not able to take it further. We have gone back through our files, clearly as we do with these things, to see whether we could have acted earlier, et cetera, but I think on this one we really acted very promptly once it became clear around February/March/April that we should get involved.

Senator BUSHBY—At about the same time Opes Prime collapsed. I guess it is probably reasonable to say that there has been some concern from some investors and investor groups as to the system of regulation and the performance of the regulators effectively. I am not actually personally casting any doubt; I am just saying that there has been some expression of concern in respect of those two in particular. You have outlined tonight some of the things that ASIC is doing, but what comments in particular would you care to make that might allay the concerns of investors?

Mr D'Aloisio—Opes is one that is under investigation. I have said to the market that we will update it as quickly as we can in terms of what has occurred. What we saw that was new in relation to Opes that we are looking at was the taking of a product, if you like, a stock lending product, which has traditionally been institutional and at the wholesale of the market, and the taking of that product and bringing it into probably some retail investors. How many were retail and sophisticated in Opes we are still working through. That was the new bit, and the new bit is probably telling us that where complex wholesale products are going to be taken into the retail sector we have to push disclosure issues and analysis of those issues more. But, other than that, we do not expect the investigations that we have done to date to show that some sort regulatory failure was involved in what occurred. At the end of the day you have in effect a flawed business model and investors potentially losing money. But, for us, in addition to the investigation of what went on and tracking it, certainly the Retail Investor Taskforce work that Mr Cooper is doing is going to be looking much more at this whole area of where products that are traditionally offered at a wholesale level are offered into the retail area and what sorts of additional disclosure and issues we need to push.

Senator BUSHBY—Once again, I am not actually intending to cast any aspersions on ASIC, but I understand that it was revealed that Opes Prime had warned both the ASX and ASIC in February that it was in breach of its liquidity requirements.

Mr D'Aloisio—No. The issue there is simply this. The ASX reported to us on 12 and 13 February 2008 that Opes was slightly below its liquidity requirement in relation to, primarily, counterparty risk because it was a market participant and trader on the exchange. We looked at that within a very short time but, in fact, it got its ratio back over what the ASX required for liquidity. Indeed, when it went into voluntary administration it was above that. The liquidity ratio that the ASX asked us to look at was not a solvency test, so you were not able from that to work out that there could be issues of solvency coming up. Again, what has come out of that as we have thought it through in the strategic review—and this was in the comments I made at the SDIA conference recently—is that we have allocated and are allocating additional resources to have a look at brokers and we have raised the question as to whether we should take a closer look at the balance sheets of brokers. That is moving in a direction probably more than the regulatory framework requires us to do. But, given that we have had these problems, we think we should put some more resources into looking at the balance sheet strength of or the solvency issues around brokers. But as yet we have not announced a program. We have indicated to the SDIA and to brokers that is our thinking, and we are going to follow that up in the next few months.

Senator BUSHBY—Would it be fair to say that once implemented the lessons you have learned from what you have just outlined will actually minimise or reduce the risk of recurrences of this type of situation?

Mr D'Aloisio—I think at the end of the day we believe that in the current framework that we operate under that is ASIC's role. It is a supervisory and oversight body. When things go wrong it clearly goes in. It tries to deal with things in advance but, ultimately, as I said on another occasion, ASIC is not a guarantor of last resort, nor is ASIC a body that can go into every organisation and test its business plans, business models, balance sheets and advise the directors and executives what it should do. That is the job of the board. That is the job of the

executives, and investors themselves have a responsibility in terms of assessing what they go into and so on. Certainly, as an oversight body with the regulatory framework we have got, our key tool is disclosure and clearly there is enforcement action on misleading conduct and so on. As to disclosure in these areas we are going to push that, as we have said, to the limit.

Senator BUSHBY—Thank you; that was very helpful. There was a report in the *Australian Financial Review* recently—I apologise that I do not have a date for that—that directors of public companies are facing financial problems in obtaining suitable insurance cover. Can you tell the committee whether you consider those fears are well founded. Is that an issue?

Mr D’Aloisio—We could take that on notice. I am not personally aware that there are difficulties.

Ms Gibson—The article that you referred to, Senator, was an article that suggested the premiums were going to increase significantly for all directors in light of recent collapses and anticipation that people would try and recover anticipated costs that were going to come out of this flow. My understanding—it is only anecdotal; it is not formal—is that those rates have not yet increased but that everyone expects that they will in due course.

Mr D’Aloisio—Certainly, in other work that we have done in relation to PI, there seems to be a demand for business in the sense that suppliers are looking for business and are competing for business, so if you have got strong competition for business you would think that would act as a downward pressure on premium increases, but that is based—

Senator BUSHBY—But looking at it from the other side, and in a past life I was a director of small businesses, I know that I did not like the fact that I had to write out cheques to cover these sorts of things. If this starts to get more expensive and becomes a much larger percentage of turnover, I guess there is a risk that some directors may choose not to take it, which places them in an invidious position down the track if something goes wrong. Do you see any trends in the number and type of class actions being brought by shareholders?

Mr D’Aloisio—They are increasing. Certainly, you have now a very substantial class action, I guess, as to lawyers and community. We are observing the market. We ourselves recently used our own class action powers under section 50 of the ASIC Act to recover compensation for Westpoint investors. I think as a commission our view would be that if public interest would be better served by us using a section 50 class action to take compensation proceedings, particularly for retail investors or the disadvantaged, we would seek to do that. It is very much part of the landscape that is out there.

Senator BUSHBY—I have a number of other small briefs here that I want to quickly run through. These are actually some documents handed to me by one of my colleagues with a view to asking some questions. I refer to ASIC Class Order CO 07/753, which was an order under which financial practitioners in Singapore have been given access to Australian financial markets and an ability to operate in them without reciprocity. How did such an order come about? What would the process be that would lead to a granting of such a class order in favour of financial practitioners in Singapore?

Mr D’Aloisio—We have Regulatory Guide 178, which has been a guide that ASIC has had for some years. It is in effect a unilateral recognition as opposed to a mutual recognition. As

best as I can tell, I think the background of it has essentially been as to a situation where Australia is a net importer of capital and where attracting foreign investment or attracting investment in Australia is probably regarded as good policy. I think unilateral recognition, or allowing investment to flow in, may well have been behind that guide. ASIC is also working with Treasury on mutual recognition in relation to New Zealand, the United States and Hong Kong. We are also looking at mutual or reciprocal recognition in addition to the unilateral recognition that has occurred in relation to Singapore. Following the recognition with Singapore, IFSA was one of the organisations that was disappointed with that relief. We have, in fact, started a process of re-examining Regulatory Guide 178 to see if indeed we should make any change to that or whether we should leave unilateral recognition as an option that we have in addition to pursuing mutual recognition. I think that is where we are on that.

Senator BUSHBY—I do not mean to belabour this, but what was the catalyst that led to this? Did the Singapore government approach us and ask for it? How did it actually occur?

Mr Cooper—The Monetary Authority of Singapore, their ASIC if you like, applied to us under this policy. I should say, of course, that Singapore is a very open market. The policy that we are talking about dates back to the early 1990s. The ASC, which was our predecessor organisation, held public hearings about this very topic back in 1992 and then, in 1993, put out a policy that looked very much like the one we are talking about now.

Senator BUSHBY—It was only last year that Singapore was—

Mr Cooper—Yes. Singapore was the kind of catalyst for bringing the issue to the surface, but the idea of the thinking going back into the early 1990s was to look at it from a slightly different perspective. We have really got two interest groups here that we are looking after. One is the health of the financial services industry from the product maker and fund manager end. But then there are the retail investors and consumers. It was that end that we were looking at in the early 1990s, saying that for properly regulated and supervised products from overseas it was appropriate that Australian investors be given a choice and be given access to those products, if we were satisfied that the jurisdiction was comparable, given the sorts of regulation imposed and so on. It is not open slather and, in fact, the—

Senator BUSHBY—I am just trying to understand the process rather than make any judgements on it. I understand that there are good requirements that need to be met and that the Singaporean monetary authority needs to have standards equivalent to those that ASIC would have and requirements for its operation, so I understand that probity-wise it is all quite above board. But I am just trying to understand how it comes about. You said that the decision was made in the early 1990s to pursue this path or put in place this policy. A lot of things have changed since the early 1990s. Do you think that it is still an appropriate thing to be doing given Australia's current financial climate?

Mr D'Aloisio—What we said is that it is time to look at it again. But I do not want to imply from that that we necessarily think that unilateral recognition is a bad thing for Australia. I think the comments that have been made and, as Mr Cooper said, the age of that policy going back is such that we feel we ought to conduct a consultation process on it and reassess it. Whether that will lead to a change or not, I do not know at this stage.

Senator BUSHBY—It is probably a bit late for Singapore, in a sense.

Mr D'Aloisio—Yes, it would be in that sense.

Senator BUSHBY—The horse has bolted in that sense.

Mr D'Aloisio—Yes.

Senator BUSHBY—Just so that I understand it fully and for the record, the reason when the Singapore monetary authority approaches you and asks for something like this to be put in place and you do not say, 'Well, that would be great but can we have the same from you?' is because of the policy from the early 1990s; that it was unilateral, and you do not automatically ask to see whether we could have the same access to their markets?

Mr Cooper—That is correct. I do not want to create the impression that we have not looked at this since the early 1990s. It was completely refreshed in May 2004. But, clearly, we decided to stay with the unilateral way of doing things.

Senator BUSHBY—Is there a policy not to ask for reciprocity when—

Mr Cooper—No, there is certainly not. The very interesting factor here is that while Singapore is a very open market and has products and all sorts of interesting financial innovations happening, so far there has been no commercial interest from any Australian fund to be there.

Senator BUSHBY—Is it more a case of making them feel better rather than you actually want to go and operate there?

Mr Cooper—The chairman mentioned other jurisdictions. There is genuine commercial interest, particularly in Hong Kong, and ASIC has been working hard with Treasury and with IFSA for some time now, and that is a mutual project.

Senator JOYCE—Can I clarify that? I am sure Senator Bushby understands it perfectly, but I do not. The reason we are not asking for reciprocity is that basically there is no interest in Australia having it? There is no interest in Australia investing in the market? There is only interest in them investing in ours?

Mr Cooper—That is not quite correct. I think we are now having a dialogue with Singapore and we will, I believe, get the mutual recognition, but I am just making the point that commercially, as far as we understand—

Senator JOYCE—It may not result in a stampede?

Mr Cooper—It may not, and it is up to the market, which I guess is the really important point. It is not up to ASIC to direct Australian funds over to Singapore.

Mr D'Aloisio—But the reason we did not seek reciprocity in relation to Singapore in the first instance was not because of that fact. It was because we were applying an existing policy that allowed us to unilaterally recognise a jurisdiction coming in. It was not to do with the fact that we did not think anyone would want to invest in Singapore.

Senator JOYCE—What stage are our negotiations with Singapore at? I imagine it will not have huge problems with offering us reciprocity. At what stage are our negotiations with them?

Mr Cooper—If I had to call it, I would say we were halfway through.

Senator BUSHBY—I apologise if some of these questions touch on some of the statements that you made in your opening statement, but if they do you can just point me in the right direction. The Allen Consulting Group's ASIC stakeholder survey found that your stakeholders do not believe that the regulator has its priorities right. What were some of the reasons given for this viewpoint?

Mr D'Aloisio—The survey was part of the process we put in place for the strategic review of ASIC to get those priorities right, so in that sense the survey was a very useful tool for us in redirecting our resources. Our reading of the report is that they are basically saying ASIC overall is doing a good job but probably it needs to do some more in certain areas such as insider trading, retail investors and so on. I think that research confirmed our own thinking of where we were headed with the retail investors, insider trading areas in any event. It was useful in that sense.

Senator BUSHBY—How widespread do you think insider trading is in the Australian market?

Mr D'Aloisio—My answer to that question has been that the market has been talking about insider trading and so on anecdotally for some time, and we have said that rather than try to debate the point of how much there is or is not and try to prove or disprove those arguments, we basically said in May or June last year: 'Let's put a lot more resources into this and let's tackle insider trading in a very concerted way with a separate unit within ASIC that Commissioner Gibson heads. Let's really hit it hard, put the resources into it for the next so many years.' We have not put a limit on that. Once we have done that and really pushed it, we then feel we will be in a position to be able to answer that question more clearly. I think certainly—

Senator BUSHBY—Wouldn't it be good to have a benchmark?

Mr D'Aloisio—The difficulty is that it is the old story that you do not know what you do not know. How do you actually set up a benchmark of how rife insider trading is? There are some indicators when you look at when takeover announcements are made and the trading before and after. Sometimes there is a lift in that trading, and the argument is that maybe there is insider trading involved. But I think rather than our trying to express a view on that anecdotal evidence, our approach is now to really put the resources into it and improve our strike rate on dealing with insider trading. In doing that, I think we will get a better feel for how extensive it is or it is not.

Senator Sherry—Just before we leave the Allen Consulting Group report, I think it is important to note that to ASIC's credit it released a report that it commissioned that contained criticisms of itself.

Senator BUSHBY—I acknowledge that. I am not having a go at ASIC.

Senator Sherry—Just for the *Hansard* record, because I think that largely got missed in the media on the way through. I cannot think of too many organisations, public or private, where they have released a report that does contain criticisms and it has actually got it out there as part of the debate about the reorganisation that is to take place, which I think is to the credit of the organisation.

Senator BUSHBY—I could bring Fuelwatch into the discussion here, but I won't.

Senator Sherry—I did reassure you before we started that there would be nothing to do with Fuelwatch—

Mr D'Aloisio—We have not written any derivatives over the price of petrol.

CHAIR—During the height of the stock lending debate there were some articles in the press that suggested that ASX as a private company was not a good company to oversee the stock market. Do you see the ASX as having any regulatory role?

Mr D'Aloisio—The issue that you are referring to is really a policy issue for government. It is really a structural issue of the market. ASIC's role is to work within the existing regulatory framework to full effect and that is what we are seeking to do. We work closely with ASX. We think ASX is doing a good job. I have said that on other occasions, and our objective is to make the existing system work to the maximum. Beyond that it is a policy issue for government.

Senator BUSHBY—I had some more detailed questions on Opes Prime, but I think you have answered most of those. I also have some questions on the green paper, but I must admit that, having sat here from nine o'clock in the morning till 11 o'clock at night since Monday, I have had not had a chance to have a really good read of it either, but you have made some very useful comments as to where you are going with that. There are a number of proposals that the government has raised—for instance, the proposal to combine ASIC and APRA—that have not been proceeded with.

Senator Sherry—We specifically ruled that out. That is not a topic in the green paper at all.

Senator BUSHBY—I understand that, but what I am saying is that you have raised a number of ideas for how to move forward in this sector and then have not proceeded with them. Is there a risk that what you are talking about here in the green paper, having raised it and seeking comment on it, will not go ahead?

Senator Sherry—No. It is end game, as far as I am concerned, on the regulatory power transfers. Without going into all the detail, you would find that most, if not all, of the issues dealt with in the green paper have been the subject of one or more inquiries over the last decade, generally concluding that they should be federally regulated—including trustee companies, which I think even goes back to the Wallace inquiry, which was more than a decade ago—and that regulatory responsibility should be transferred to the Commonwealth. COAG has signed off. I am very confident that the transfer of regulatory powers will occur. As to the second tranche, if you like, the other bits and pieces, I have already indicated that I think that is highly likely. No, this is not another review. These are the options. This is the analysis of the areas that will be transferred and I am confident.

Senator BUSHBY—As I mentioned, I have not read it. Has it been put out for consultation?

Senator Sherry—What it contains is an analysis of the development of each sector in factual terms. There are a number of different options if you transfer in terms of various acts,

regulation et cetera. That is in terms of the COAG agenda, but the COAG agenda has been signed off and I am confident that it will be concluded.

Senator BUSHBY—The consultation is really just for around the edges?

Senator Sherry—It is only a 30-day consultation. By and large it—

Senator BUSHBY—But if it is all ticked off and set in stone then why consult?

Senator Sherry—But there are still issues around the edges, if I could describe it as such. There are still views that we would like a final concluding attitude on, and I think it is important—even if it is, I have to say, relatively brief in terms of the consultation—to offer people that opportunity on that tranche that COAG has signed off on. For the other areas that COAG has not signed off on, where I have indicated I think there is an emerging view that they should cover the Commonwealth but the states have not yet agreed, we have asked for consumer, industry and state views on those. As I say, I think there is an emerging consensus that they should be transferred as well.

Senator BUSHBY—I actually think that 30 days is quite a long time for consultation given your recent track record with three days post budget for one we were discussing the other day.

Senator Sherry—As I said, I am confident in this area that it is endgame.

Senator BUSHBY—I note that today the House of Representatives Standing Committee on Economics is embarking on an examination of competition in the banking and non-banking sectors with respect to mortgages. The green paper does cover mortgages. How would that investigation fit in with what you are talking about? Is there any crossover at all?

Senator Sherry—I was not actually aware the House of Representatives committee—

Senator BUSHBY—You were not aware of that?

Senator Sherry—No, I was not.

Senator BUSHBY—They should probably tell you these things given you are the minister.

Senator Sherry—I have been here in estimates, and the House of Representatives has not been a focus, I have to say, in the last week and a half. Thank you very much for telling me. As to the issue of regulatory oversight, take mortgage broking, for example, which we will move to the Commonwealth jurisdiction. That is clearly an important aspect of banking distribution: mortgage products. The level of competition I would see as a related but separate issue, so I do not have any concern about the inquiry.

Senator BUSHBY—You probably need to speak to Craig Thomson about it, I think.

Senator Sherry—The other thing I would indicate is that my ministerial responsibilities do not give me responsibility for the prudential regulation of banking. That is an APRA responsibility, which is the Assistant Treasurer.

Senator BUSHBY—The inquiry is actually looking into increasing competition between banks and non-bank lenders. That is a specific purpose of the inquiry. As to GE Money and their bullying, I understand you have recently conducted an investigation into that. Is that a voluntary agreement that you have reached with them, or is it mandatory?

Mr D'Aloisio—It is an enforceable undertaking. It is not voluntary.

Senator BUSHBY—I could not remember the actual term. You had the power to go a bit further than that in terms of how you dealt with it; is that correct? Why did you determine to go for an enforceable undertaking rather than to actually fully prosecute or launch a civil suit or other powers that you may have had in that respect?

Mr Cooper—If I can correct the record: it was actually licence conditions that we imposed on GE, which is very similar to an enforceable undertaking.

Senator BUSHBY—That is why I am asking: to find out.

Mr Cooper—But in all matters we have what we call a regulatory tool kit spanning from criminal prosecution to civil actions.

Senator BUSHBY—Suspension of the licence?

Mr Cooper—It is basically managing behaviour one way or another. It is always a fine balance as to which tool that we use. It was a package deal, and I will go through a couple of the features. GE effectively agreed to change its business model so it would no longer provide personal advice but only general advice. It meant moving on some of the people that had been involved in some of the behaviour. We felt that, rather than going into an expensive and elongated prosecution of one sort or another, imposing these licence conditions, going public as to what the issues were—there was roughly three-quarters of a million dollars worth of compensation payable by GE Money to some of the customers that had been involved—

Senator BUSHBY—How was that worked out, do you know? That is not up to you, is it, but up to GE?

Mr Cooper—It is a bit of both. It is quite a meticulous calculation of nearly 3,000 different customers, so there is quite a process involved.

Senator BUSHBY—A lot of people were affected. That is why I am interested in it.

Mr Cooper—We felt there was an overall package and a certainty of result. It is done and dusted. It has been publicised so that other participants in the industry have seen what the issues are and what the outcomes have been. We felt as an overall package that that was the right way to go.

Senator BUSHBY—Do you think it acts as a sufficient deterrent for other players to avoid similar behaviour?

Mr Cooper—It is a fine judgement, but one of the most valuable things that the big players in financial services have is their reputation.

Senator BUSHBY—You have announced that you are looking at conducting a review of credit-rating agencies?

Senator Sherry—We are not looking to; we are. Treasury and ASIC will be conducting an examination of credit-rating agencies and research houses. The announcement was made about a week and a half ago.

Senator BUSHBY—What framework will that take?

Senator Sherry—A range of issues have been identified, say, in respect of credit-rating agencies in the context of US subprime. Conflicts of interest—

Senator BUSHBY—Will it be an official investigation? You mentioned Treasury and ASIC. Will it be a properly constituted committee to look into it with terms of reference?

Senator Sherry—It will be officials from ASIC and Treasury.

Senator BUSHBY—As to the Anti-Money Laundering and Counter-Terrorism Financing Act, which came into effect on 12 December 2007, I understand that as at 23 May, according to the *Financial Review*, only 6,000 of the 17,000 organisations required to comply had actually complied. Is that correct?

Mr D'Aloisio—It is not an area within our immediate jurisdiction, but I am happy to take it on notice, to the extent that it is, to answer it or to have it answered for you.

Senator Sherry—It is within Attorney-General's. Coincidentally, I actually went for a three- or four-hour briefing with them in Melbourne two weeks ago. They obviously have high relevance to activities of the financial sector. I was just interested in terms of the performance and the impact on the financial services sector. It is actually a financial services regulatory agency, but it is not within the Treasury portfolio.

Senator JOYCE—So, how do you do it?

Senator Sherry—How do you do what?

Senator JOYCE—Money launder?

Senator Sherry—They are a fascinating organisation. If you want to go and get a briefing as to how they pick them up, catch it et cetera—and they are a fascinating agency in terms of the work they do—I am happy to organise a briefing for you, if you like.

Senator JOYCE—Thank you.

Senator Sherry—That might be for the joint committee on securities, corporations and financial services. I am sure we could organise a briefing for that.

Senator BUSHBY—The final issue for tonight is AGMs. What are your plans to overhaul the way that AGMs are held and to bring them into the 21st century? What changes are you proposing to introduce to do this?

Senator Sherry—It is very early days. Again, I commented on that at the recent conference of the Securities and Derivatives Institute. It is part of a group of work we are doing around directors' duties, responsibilities and liabilities. I am having a meeting, I think tomorrow. I have not updated the diary for tomorrow yet, but I think it is tomorrow. We will have a group of issues, and this will be one of them, that we believe require attention. But it is very early days. The announcement has only just been made. There is no formal work program as yet set down, no submissions received et cetera. We are just commencing.

Senator BUSHBY—You do not have any time lines or—

Senator Sherry—I do not as yet. Hopefully after tomorrow I will. The Markets Group in Treasury will be overseeing the work.

Senator JOYCE—Just from their title, ‘unincorporated bodies’, I know they probably do not involve you. As to the merging of unincorporated bodies, especially where there is multiple membership and they do not have perfect knowledge of what is going on in their structures—and obviously they involve assets—does ASIC have any oversight whatsoever?

Mr D’Aloisio—It would be state jurisdiction, I guess. It would not fall, as you say, under our jurisdiction. Can I take it on notice, have a look at it and give you a more considered answer as to where the responsibility lies?

Senator JOYCE—Certainly, and I will make it a bit more detailed. If an unincorporated body is used as a vehicle, and under which hangs certain incorporated bodies, such as trust companies et cetera—

Mr D’Aloisio—Yes, it would have to have other vehicles to act through.

Senator JOYCE—does that mean that they can say that it is a state legislation and ‘it has nothing to do with us’? Can you say: ‘Hang on. Just your management vehicle is an unincorporated body. Underneath you is a whole heap of incorporated bodies’? Can I leave that with you.

Mr D’Aloisio—Unincorporated bodies can take various forms. Partnerships, associations, clubs—there is a whole range of unincorporated bodies. I think we get the gist of what you are asking. Let us have a look at it and give you a considered answer on how it works at a state level and how that interacts with the Corporations Act.

Senator JOYCE—And what authority you have, if something goes wrong, to go to someone and say, ‘You have misled the membership.’

Ms Gibson—To the extent that it obviously relates to some of the companies that sit underneath it we regulate those companies. To the extent that those companies have change of control elements and disclosures in there, we regulate that. But at the next level it is not ours.

Senator JOYCE—You have those companies just controlling assets. As wealth is made they are held in assets, but the unincorporated membership does not—

Ms Gibson—They would be directors of those companies and those directors would have duties to the creditors.

Senator BUSHBY—You are not looking at taking over unincorporated associations?

Senator Sherry—No. We have a sufficient agenda to keep us occupied for the next two years, I think.

Senator BUSHBY—There would arguably be some benefit of national coordination and bringing the obligations of unincorporated associations in line with those who have—

Senator Sherry—I understand. However, there is plenty on the reform agenda for the 21st century for this government for the next two years, unless ASIC, of course, want to take on clubs, partnerships and charities. They may have a different view and may give me some advice on it, but I think I have indicated what my view is for the next couple of years anyway.

Mr Cooper—I should say for the record that most of Australia’s major mining projects are unincorporated joint ventures, and the issues surrounding those are well established. I think

the patch that we, as the corporate regulator, supervise is quite clear, as are the tax consequences and so on. They are a very legitimate and very major part of the landscape.

Senator BUSHBY—I did not realise that. Isn't a no liability company one that is usually used for mining?

Mr D'Aloisio—As well. You can have a no liability company.

Senator JOYCE—That is incorporated.

Mr D'Aloisio—That is incorporated.

Senator BUSHBY—Exactly; that is right. That gives them special—

Mr D'Aloisio—But, typically, two companies could come together as a joint venture for the development of a mine, for example, and you see that quite often. The joint venture is an unincorporated vehicle through which each party takes the proceeds of whatever it is that they are mining and sells it off, and they have an operating company that actually develops the mine.

Senator JOYCE—And then the disclosure mechanisms if there is a merger—

Mr D'Aloisio—But those unincorporated joint ventures in the mining area are clearly regulated because the corporations that are running them are regulated by ASIC, and the tax legislation regulates joint ventures as well. They are not unregulated. They are regulated in a different way.

Senator JOYCE—Underregulated, I would say.

CHAIR—As there are no further questions, I thank the commissioners and officers of ASIC for attending the hearing.

Committee adjourned at 10.25 pm