

# CHAPTER 1

## THE FAIR PRICES AND BETTER ACCESS FOR ALL (PETROLEUM) BILL 1999

### Historical context

1.1 Historically, petrol prices in regional Australia have exceeded those in the larger cities, often by a considerable margin. For example, at the time of concluding this report, the price of unleaded petrol in metropolitan Sydney was 93.5 cents per litre. In Moruya, a large coastal town south of Sydney, the price was 99.6. In the more far flung regional centres the prices are higher still - for example in Condobolin (NSW) petrol retailed at 103.9, and in Port Hedland (WA), 109.8 cents per litre.<sup>1</sup> It must be acknowledged though that the picture is far from consistent. In some large regional areas, prices show only very moderate variation from prevailing city prices. During the life of the inquiry, the petrol price also swung wildly, with prices both higher and lower than those listed above being observed.

1.2 The reasons for these price differences can be explained in general terms as a product of a range of factors including competition (or the lack thereof) at the wholesale and retail levels, volume of sales, freight, oil company price support for retailers in some areas, industry structure and a number of other factors. However, it is difficult to determine the extent to which any one of these factors contributes to the differences observed. A lack of transparency in the way that companies price their products compounds the problem.

1.3 Suspicion therefore often falls on the oil companies which some suspect of manipulating wholesale and retail prices and minimising competition in order to preserve and enhance their profitability.

1.4 Competition has long been recognised as a significant method of moderating fuel prices and accordingly, governments of all political persuasions have sought to maximise competition for this purpose. For example, the Fraser Government introduced the Sites Act in 1980 to limit the number of petrol stations that the oil companies could control directly, thus limiting their ability to influence retail prices to those stations they could retain.

1.5 Governments have also encouraged the entry of independents. Major new players such as Woolworths and Liberty have entered the market providing further competition at the retail level. In some markets, particularly in Sydney and Melbourne, a range of unbranded independents is now also present. The entry of new petrol retailers has, however, been offset by the withdrawal or merging of several of

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1 Shell Petrol Pricing, [www.shell.com/au/en](http://www.shell.com/au/en), as at 7 March 2001.

the majors. For example, in 1980 there were nine companies operating. Now only four remain (BP, Caltex-Ampol, Mobil and Shell).

1.6 There have also been attempts to increase competition at the wholesale level. In particular, two State governments introduced legislation designed to allow service station operators to shop around for the best wholesale fuel price. However, to date, these Acts have not proved effective.<sup>2</sup>

1.7 The bill before the Committee represents the most recent attempt to introduce wholesale competition in the fuel market.

1.8 There have been a number of inquiries<sup>3</sup> into the petroleum industry since the Fraser government introduced the *Petroleum Retail Marketing Franchise Act 1980* and the *Petroleum Retail Marketing Sites Act 1980* in response to the Collins Royal Commission on Petroleum (1976). The Franchise Act set minimum standards for franchise agreements between dealers and the oil companies, while the Sites Act reduced the number of sites that major oil companies could own and operate directly. However there has been growing concern that the oil majors have been able to circumvent the intent of the Sites Act by way of the increasing practice of multi-site franchising, which is discussed in Chapter 7.

1.9 The Prices Surveillance Authority monitored petrol prices until 1995 when the Australian Competition & Consumer Commission (ACCC) assumed this role. However, prices surveillance and regulation ceased as part of the reform package introduced in August 1998 by the Government to improve the petroleum industry.<sup>4</sup>

#### *Government's reform package*

1.10 In 1998, the Government announced a package of measures designed to 'encourage competition'.<sup>5</sup> These measures included the Petroleum Retail Legislation Repeal Bill 1998 and a Draft Oilcode.

1.11 The purpose of the Repeal Bill was to repeal both the *Petroleum Retail Marketing Sites Act 1980* and the *Petroleum Retail Marketing Franchise Act 1980* to enable deregulation of the petroleum products industry.

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2 *Petroleum Retail Selling Sites Act 1981* (Vic), *Petroleum Retailers Rights and Liabilities Act 1982* (WA).

3 Most recently, see Royal Commission on Petroleum 1976, *The Marketing and Pricing of Petroleum Products in Australia*, Fourth Report, AGPS, Canberra; Industry Commission, *Petroleum Products*, Report No. 40, July 1994; Australian Competition & Consumer Commission, *Inquiry into the Petroleum Products Declaration*, August 1996; Report by the House of Representatives Standing Committee on Industry, Science and Technology, *Finding a balance, towards fair trading in Australia*, May 1997.

4 The ACCC still monitors retail prices with a particular focus on 'hot spots'.

5 Petroleum Marketing Reforms, Treasurer's Press Release 68 of 1998.

1.12 The provisions of the Repeal Act were referred to the Senate Rural and Regional Affairs and Transport Committee in November 1998 for inquiry and report. The Committee tabled its report in the Senate in June 1999.<sup>6</sup>

1.13 In its report, the Committee concluded that it was

... of the view that the repeal of the *Petroleum Retail Marketing Sites Act 1980* and the *Petroleum Retail Marketing Franchise Act 1980* should proceed. ... Indeed, if the legislation does not proceed the Committee is concerned that:

- a) the lower wholesale prices in a deregulated environment will not be available to franchisees, the refiner marketers and consumers;
- b) competition in the downstream oil industry may be severely affected by the withdrawal of one or more of the refiner/marketers. At the very least there is unlikely to be significant new capital expenditure on downstream oil assets;
- c) competition in rural and regional areas will be delayed, with the impetus coming from supermarkets and independent fuel retailers, rather than being driven by the refiner marketers. Many rural areas will not have the benefit of competition from the independent sector;
- d) franchisees will continue to experience difficulties under the current limitations of the franchise agreements instead of coming within the ambit of the Oilcode and the protection that Code affords.<sup>7</sup>

1.14 The Committee recommended that the Repeal Bill be passed as amended,<sup>8</sup> subject to the completion and tabling of the Oilcode and the establishment of a dispute-settlement mechanism to deal with such issues as competitive tendering for transport from terminal to site, and access to the company terminal providing the best price regardless of location.

### *Oilcode*

1.15 In February 1999, the Government released for public consultation an exposure draft of a new Oilcode. Developed through extensive consultation involving representatives from all sections of the industry, the code would apply to a considerably broader range of operations than the present legislative regime.

1.16 The Senate Rural and Regional Affairs and Transport Committee also considered the Oilcode in its report. The Committee noted that it had taken a direct

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6 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on the provisions of the Petroleum Retail Legislation Repeal Bill 1998*, June 1999.

7 SRRAT Legislation Committee Report, p.55.

8 The Committee's suggested amendment provided for a delay in the repeal of the Sites Act for 2 years to allow for review by a Senate Committee.

interest in resolution of the Oilcode as it considered that 'agreement on the Oilcode by the oil companies, industry groups and resellers is fundamental to the repeal of the [Sites and Franchise] legislation'.<sup>9</sup>

1.17 The RRAT Committee noted that there had been 22 outstanding issues for resolution in the draft Oilcode at the start of its inquiry, but 'at the time of [its] report there were no outstanding issues between the oil companies and the MTAA'.<sup>10</sup>

1.18 Nevertheless, on 23 September 1999, the Minister for Industry, Science and Resources announced that the Government would withdraw the Petroleum Retail Legislation Repeal Bill and not proceed with the implementation of a new Oilcode. The press release noted that this decision was in line the Government's commitment that it would not proceed with its petrol reform package if there were not agreement between all industry participants. The Minister stated that

... it has proved impossible to get all the parties to agree to all elements of the reform package.<sup>11</sup>

1.19 While there is still not agreement between the MTAA and the oil companies on the Oilcode, the MTAA indicated to this Committee that it would be willing to swap an agreed and mandated Oilcode for the Franchise Act but it cannot yet agree to the repeal of the Sites Act. MTAA does believe, however, that it is possible to reach a compromise on the future of the Sites Act with the oil majors, Government and the other interested parties.<sup>12</sup>

### **The Bill**

1.20 The Fair Prices and Better Access for All (Petroleum) Bill 1999 was a private member's bill introduced by Mr Joel Fitzgibbon MP, Member for Hunter. Mr Fitzgibbon introduced the bill into the House of Representatives on 30 August 1999. The bill did not progress beyond the first reading stage and has now lapsed. However, this Committee has been asked to examine and report on its provisions.

1.21 During his First Reading Speech, Mr Fitzgibbon stated that purpose of the bill was to:

... bring prices down and reduce the outrageous gap separating city and country fuel prices ... by giving service station operators the opportunity to shop around for their fuel.<sup>13</sup>

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9 SRRAT Legislation Committee Report, p.55.

10 SRRAT Legislation Committee Report, p.55.

11 Media Release, Senator Nick Minchin, 99/309, 23 September 1999.

12 Evidence, p. E2.

13 House of Representatives *Hansard*, 30 August 1999, p. 9333.

1.22 The bill has a wider application than the city-country price differential as it applies to franchises operating in metropolitan areas as well. Clearly the bill is intended as a method of stimulating oil industry wholesale competition generally. Mr Fitzgibbon noted that the arrival of Woolworths and other independents had brought benefits of new competition at the retail level and stated that: 'It is now time to introduce that same level of competition at the wholesale level'.<sup>14</sup>

1.23 To achieve its objectives, the Fitzgibbon Bill, if passed, would allow branded service station franchisees to lawfully seek up to 50 per cent of their fuel supplies from sources other than the oil company to which they are tied. However, the bill's provisions would allow the franchisor<sup>15</sup> company time to respond to any threat of alternate supply as the franchisee would have to give at least 7 days notice of their intentions.

1.24 While using the same principles as the State legislation, the bill contains a number of new features that distinguish it from those Acts. In particular, the bill incorporates provisions designed to avoid 'passing off' issues. The franchisee would be obliged to provide signage on any dispensing equipment informing customers of their fuel supply arrangements so that the customer would not be in any doubt as to the origins of the fuel purchased (see Chapter 5 for an elaboration of this issue).<sup>16</sup>

1.25 The bill also proposes to amend section 47 of the Trade Practices Act to provide that all fuel supply agreements entered into on or after the commencement of the Oilcode, are deemed to substantially lessen competition or to have that effect unless the agreements provide that a franchisee can purchase up to 50 per cent of each kind or grade of fuel from suppliers other than the primary supplier.

1.26 Not unexpectedly, the bill drew a wide range of reaction. The Motor Trades Association of Australia (MTAA) expressed strong support. The MTAA sees the bill as providing useful leverage for its franchised members in their quest to obtain more competitive terms of trade from their franchisors, the oil majors.

1.27 The ACCC also offered measured support on the grounds that it would serve to encourage further competition.

1.28 The Service Station Association, while sympathetic to the intended aims of the bill, was less supportive, arguing that the bill had little chance of achieving its objectives and might have adverse consequences.

1.29 Not surprisingly, the Australian Institute of Petroleum and the oil companies expressed strong opposition, questioning the need for further competition,

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14 House of Representatives *Hansard*, 30 August 1999, p. 9333.

15 A *franchisor* company is generally one of the four oil majors who contracts out the operation of a site to a *franchisee*.

16 Franchisees rights as per the Fitzgibbon Bill.

highlighting a number of alleged technical flaws and forecasting adverse and unexpected consequences.

1.30 The Government has also indicated that it does not support the bill, urging instead the advancement and adoption of its own reform package.

1.31 Government officials from DISR also advised the Committee about various practical and legal issues that may impair the operation of the bill.

### **Issues**

1.32 The debate on this bill during the Committee's inquiry centred on three principle issue categories:

- franchise agreements and tied supply;
- economics of the industry; and
- constitutional and legal issues.

1.33 In the next Chapter, the Committee examines issues relating to franchise agreements and tied supply. The Committee discusses the franchise system and tied supply, the distribution of franchise sites and other factors that influence country prices competition.

1.34 In Chapter 3 the Committee considers the economic workings of the petroleum industry. Chapter 4 deals with the effect that the current inability of some service station operators 'to shop around for fuel' has on petrol prices, especially prices in country areas. Most importantly, the Committee evaluates the probable impact of the bill on consumers, especially those in country areas, whose circumstances the bill was intended to address.

1.35 In Chapter 5, the Committee examines a number of constitutional and legal issues raised by submitters and witnesses in respect of the bill's provisions. Such issues included the possibility that some measures in the bill might be unconstitutional while other measures could offend laws against 'passing off'.

1.36 Chapter 6 contains the Committee's conclusions about the provisions of the bill and its recommendations.

### **The Sites Act and multi-site franchising**

1.37 While the wholesale competition issues targeted by the bill are important, ownership and control of service stations is equally important in considering the overall picture of the industry. Although the bill purports to increase wholesale competition through franchisees, the effectiveness of this initiative may be greatly affected by the structure of the industry and the influence exerted by the oil companies.

1.38 Ownership, control and vertical integration issues have long been recognised as potentially affecting competition and it was in response to concerns about these issues that the Fraser government introduced the *Petroleum Retail Marketing Sites Act 1980* (the Sites Act). However in the intervening twenty years, the structure of the industry has changed significantly. Franchising spread significantly and in recent years franchised sites have begun to consolidate into a new format known as multi-site franchising, giving rise to new concerns in some quarters that the oil majors are circumventing the intent of the Sites Act.

1.39 The Committee has devoted Chapter 7 to a consideration of multi-site franchising and the Sites Act.

