

Coalitions Senators' Dissenting Report

Executive Summary – watching prices won't bring them down

Watching fuel prices will not bring them down.

To the contrary, every indication of the Economics Committee inquiry into the proposed national FuelWatch scheme is that FuelWatch will in fact *increase* prices.

While it is true that FuelWatch tends to provide a greater certainty of price, the overwhelming evidence is that it provides a greater certainty of *higher* prices.

FuelWatch, as operating in Western Australia, does provide information for consumers. However, evidence presented to the Committee suggests that relatively few motorists use it. It was also suggested that the private sector is in the process of providing the same service for **no cost** to taxpayers.

The overwhelming weight of evidence was that estimates of a reduction in prices in WA could not be sustained, and that if the scheme were introduced on a national basis, motorists would pay more for their petrol.

The evidence also suggested that a national scheme would adversely affect the position of independent retailers, making the market less competitive.

Therefore, Coalition Senators recommend that the Bills be opposed.

SUMMARY OF CONCLUSIONS

1 The unbalanced Interim Report

- The Royal Automobile Association of South Australia, and the Australian Institute of Petroleum, are justified in objecting to the way the Labor Majority distorted their – and other witnesses- evidence in their Interim Report; and,
- Labor claimed this legislation to be “urgent” and as a result the Committee produced an Interim Report, yet this final report was tabled two weeks after it could have been.

2 FuelWatch in Western Australia

- The Department of Consumer and Employment Protection (DoCEP) did not assert that FuelWatch had lowered petrol prices in Western Australia;
- DoCEPS' evidence was not helpful in deciding whether a national FuelWatch scheme would be beneficial. While some comparisons were made to other urban centres, there was no evidence on the relative situation before FuelWatch came into being to enable an assessment of its effect;

- Coalition Senators were not impressed with the “evidence” given of public support for the scheme, given the evident confusion over statistics, and the comparison of site visits and e-mail subscribers to the number of registered vehicles in Western Australia;
- While others have undertaken further analysis of the effect on prices, we find it puzzling that the Western Australian Government has not examined more closely the financial effects of its policy on the consumers FuelWatch is designed to “empower.”

3 The Position of the ACCC

- ACCC head Graeme Samuel has conceded that FuelWatch is not about lowering prices;
- The ACCC was sceptical of FuelWatch in its 2007 inquiry into the price of unleaded petrol;
- Some months later (notably straight after the 2007 election), it changed its view allegedly on the basis of analysis that could (and probably should) have been done as part of the original inquiry, concluding that FuelWatch in WA “appeared” to have resulted in a small price decrease overall;
- However, the weight of evidence was to the contrary;
- Evidence given to the Committee was severely critical of the lack of any opportunity to peer-review the analysis;
- The assumptions underlying the analysis and the methodology were also criticised; in particular, the lack of volumetric analysis, the treatment of the Coles-Woolworths effect, and the effect of freight costs;
- The conclusions relating to a price reduction in WA are rigorously disputed by independent analysts;
- Motorists habitually buying at the low point of the price cycle (ie the majority) would pay more as a result of FuelWatch and its flattening of the cycle.
- Given the weight of evidence, the ACCC is very much out on a limb as regards its analysis of FuelWatch to the extent that we do not regard the ACCC’s position as sufficient justification for the implementation of this policy.

4 Treasury’s View

- The ACCC quotes The Treasury’s examination of its analysis in its defence of its position on the lack of open peer review. But Treasury admit its examination did not amount to peer review;
- Treasury’s Regulatory Impact Statement says the analysis is not conclusive on prices and expresses concern about possible anti-competitive effects;
- Treasury notes the lack of volumetric analysis and the failure to take into account transport or port charges;
- Treasury warns of anti-competitive effects;
- While Treasury recommends the scheme as the best option for achieving the Government’s objectives, these objectives make no references to prices. The RIS concludes it remains unclear whether lower prices would result;
- On the basis of the evidence given to the committee, we would go further and say that it is more than likely that higher prices would result.

5 Motoring Organisations

- There is a difference of opinion between Mr Evans, of the NRMA, and that organisation's written submission as to whether FuelWatch had resulted in price reductions;
- The majority of evidence from motoring organisations was that price reductions had not resulted;
- A majority of motorists understand the operation of price cycles and take advantage of them to buy when prices are at their lowest;
- Removal of the price cycle would result in a majority of motorists paying more for their petrol – especially in South Australia.

6 Informed Sources

- The portrayal of Informed Sources in this debate as the cause of the problems in the retail petrol market is something of a red herring;
- Evidence was given that MotorMouth as an alternative supplier of market price information at least partially counteracts any asymmetric effect of the service provided to retailers;
- Indeed, making Informed Sources' real-time data available to the public would address many of the stated problems without any of the adverse effects of FuelWatch described to the Committee – and this is already happening;
- If a private sector price monitoring service was to be provided - other than MotorMouth - motoring organisations believe it could be provided at a lower cost than FuelWatch.

7 Impact on Independents

- The only independent to endorse FuelWatch believed it would increase fuel prices for the consumer;
- The overwhelming weight of evidence presented to the Committee is that FuelWatch has been harmful to independent retailers in WA and would be so if implemented elsewhere;
- We find the lack of serious consideration of this issue by the former WA Government disturbing, particularly in the light of the views expressed to the Committee.

8 Rural and Regional Australia

- The Government is proposing to introduce a scheme - at a cost to all taxpayers - that will only cover urban Australia, and will omit those areas most dependent on private vehicle transport;.
- Given FuelWatch is likely to increase petrol prices, the lack of coverage for rural and regional Australia will hopefully save rural and regional Australia from a similar fate.

9 Wholesale Market

- The wholesale and terminal gate price are the real determinants of the ultimate retail price paid by consumers. FuelWatch, while impotent on retail prices, is just as ineffectual at the wholesale level.

10 Technical Aspects

- The rushed nature of the legislation has seen a number of valid criticisms of the legislation being aired. The lack of consultation needs to be remedied.

Introduction

Coalition Senators initiated this inquiry into the National FuelWatch (Empowering Consumers) Bill 2008 and the National FuelWatch (Empowering Consumers) (Consequential Amendments) Bill 2008 amid concerns that the Bills' provisions would result in many motorists paying more for their petrol.

There were also concerns about the lack of provision for rural and regional Australia and that the Bills would reduce the level of competition in the retail market and drive out independent operators.

It is hard to over-estimate the importance of petrol prices. They are an unavoidable cost for every Australian household and individual, with those who do not possess a motor vehicle carrying the cost of higher prices through the price of goods that they purchase, particularly food. Outside the urban areas, where dependence on personal transport is higher, the consequences of petrol price changes are correspondingly higher.

That is why Coalition Senators believe it is vital to have absolute clarity as to the intention and the effect of any legislation in this area.

During last year's election campaign, the electorate was told that a Labor Government would cut prices, over and above any reduction delivered by the market.

Indeed, before the Bills were presented, FuelWatch was presented as a price-cutting measure:

- The then newly-appointed Petrol Commissioner, Pat Walker, was quoted as saying that a national FuelWatch scheme could cut prices by up to 5 cents per litre (cpl).¹
- The Prime Minister, referring to the report *Petrol Prices and Australian Consumers*², and the operation of FuelWatch in Western Australia, told the House of Representatives: "*It says quite clearly that the relevant weekly average price margin was around 1.9cpl less on average for the period from January 2001 to January 2007.*"³
- The Assistant Treasurer, referring to the same report, told the House: "*The ACCC (Australian Competition and Consumer Commission) did an analysis of FuelWatch and found that it puts downward pressure on prices by 2cpl.*"⁴
- More recently, the Treasurer told the ABC: "*I know some people turn their nose down a bit at the prospect that people could save \$10 or so on a tank of petrol, but we don't.*"⁵ For a 50l tank, that equates to a saving of 20cpl.

¹ Fuel Price Vow, Sunday Times, 30 March, 2008 (Walker later claimed to be misquoted but did not seek to correct the public record until questioned at a Senate Estimates hearing)

² Australian Competition and Consumer Commission, December 2007

³ Questions Without Notice, 28 May, 2008

⁴ Matter of Public Importance, 14 May, 2008

⁵ ABC *Insiders* programme, 17 August, 2008

These claims are unsubstantiated by the evidence given to the Senate inquiry. Indeed, the overwhelming weight of evidence is that if a national FuelWatch scheme is introduced, motorists will pay more for their petrol.

The Bills

The stated purpose of the National FuelWatch (Empowering Consumers) Act is to “*empower consumers*” and increase “*transparency*” in the fuel market.”⁶

Despite the above claims made by the Prime Minister, Treasurer, Assistant Treasurer, and Petrol Commissioner, neither of the relevant Bills refer to the possibility, or the intention, of the scheme delivering lower fuel prices.

It provides for a FuelWatch scheme to operate in localities determined by the Minister on the grounds of size; population; number of registered vehicles; number of service stations; ownership and operating arrangements for service stations in the locality; and any submissions made by a local government body.

Retailers must register with the ACCC and then notify the ACCC by 2pm each day of the price to be charged on the following day, ie from 6am. That price is then fixed for 24 hours.

The following day’s price is published by 4pm on an ACCC website, or by other approved methods.

Penalties will apply for any variations from the published price, whether the selling price is higher or lower than the published price.

1 The unbalanced interim report

Labor’s desperation over FuelWatch is regrettably typified by the necessity for two witnesses (Royal Automobile Association of South Australia (RAA), and the Australian Institute of Petroleum) to write to the Committee objecting to the way their evidence – and that of others – was distorted by the Majority.

When an organisation such as the RAA accuses the Labor Majority Report of “*selectively report[ing] crucial evidence provided by the RAA and other opponents of the FuelWatch legislation*”⁷ and extensively backs that accusation up, it reflects not only on the Labor Senators but also the whole Senate Committee system.

The RAA further notes that it is “*incredibly disappointed that the Committee appears to have been unable to undertake a balanced review into the merits of introducing a national FuelWatch scheme.*”⁸

⁶ National FuelWatch (Empower Consumers) Bill 2008, Explanatory Memorandum

⁷ Royal Automobile Association of South Australia, letter commenting on Interim Report, p. 1

⁸ Royal Automobile Association of South Australia, letter commenting on Interim Report, p. 3

Unfortunately, any reader of the final Majority report will be similarly disappointed for exactly the same reason.

This lack of balance is highlighted by the Majority's reliance on a supporter of FuelWatch – Australian Farmers Fuel Pty Ltd. Crucially, and unconscionably, the Labor Senators Majority Report fails to mention Australian Farmer Fuel's support is predicated on the belief FuelWatch will see higher fuel prices.⁹

It is also odd that an urgent Interim Report was necessary, and officials were made to work for 37 hours straight in order to urgently have the FuelWatch legislation ready, yet the final report was tabled two weeks after it could have been.

Conclusions

- The Royal Automobile Association of South Australia, and the Australian Institute of Petroleum, are justified in objecting to the way the Labor Majority distorted their – and other witnesses- evidence in their Interim Report; and,
- Labor claimed this legislation to be “urgent” and as a result the Committee produced an Interim Report, yet this final report was tabled two weeks after it could have been.

2 FuelWatch – The WA Experience

In October, 2000, the Select Committee on Petroleum Products Pricing in Western Australia issued its report, *Getting a Fair Deal for Western Australian Motorists*, following a review of petroleum pricing. The review was undertaken “*against a background of increasing world prices, high retail prices in the country and a high level of consumer frustration with a highly volatile metropolitan market with frequent and unexplained price fluctuations.*”¹⁰

Among its recommendations was the establishment of a “*comprehensive price monitoring system.*”

The WA Government responded with the introduction of FuelWatch in January, 2001.

In evidence to the Committee, the WA Department of Consumer and Employment Protection (DoCEPS) said the purpose of the scheme was to: “*represent consumers by providing price transparency and certainty at the wholesale and retail levels of the Western Australian fuel market. FuelWatch enables motorists to make informed decisions about their fuel purchases, which puts downward competitive pressure on fuel prices.*”¹¹

It should be noted that at its inception, the scheme did not include price-fixing provisions; it merely required retailers to notify the Price Commissioner at 2pm each day of their prices for the following day but did not prevent them from subsequently changing their prices.

⁹ Andrew Fischer Managing Director and Shareholder, Australian Farmers Fuel Pty Ltd, Senate Committee Hansard, Senate Standing Committee on Economics, 21 July, 2008, p 19

¹⁰ Executive summary, *Getting a Fair Deal for Western Australian Motorists*, Select Committee on Petroleum Products Pricing in Western Australia, October 2000

¹¹ WA Department of Consumer and Employment Protection, Submission to the Senate Inquiry into the Proposed National FuelWatch Scheme, July 2008

On 28 August, 2001, changes were made to the scheme, including the introduction of 24-hour price-fixing and penalties for moving from the published price, including lowering the price.

Does FuelWatch lower prices in WA?

DoCEPs' evidence to the Committee included data on daily fuel price differences between highest and lowest-priced sites, numbers of fuel retail outlets and average annual prices. However, as this data only covered the period for which FuelWatch has been in operation, and, in most cases, did not include comparisons with the fuel market in other parts of Australia, one cannot come to any conclusions based on this evidence.

Indeed, crucially, nor did DoCEP, confirming that they have no evidence of their own that FuelWatch in WA lowers petrol prices:

Senator ABETZ: *“At the very end of your submission, on page 19, under ‘Conclusion’, I read the four paragraphs. Correct me if I am wrong, but there is no assertion in there that FuelWatch has in fact reduced prices.”*

Mr Rayner: *“Your conclusion is right.”¹²*

And

Senator Pratt: *“Do you have any information that highlights the tipping point and how FuelWatch contributes to the number of informed consumers you have to really demonstrate how that downward pressure (on prices) works?”*

Mr Rayner: *“We have not done a study ourselves or scrutinised the econometric analysis in any great detail”¹³*

In addition, DoCEP conceded that no allowance had been made for the entry of Woolworths and Coles into the WA market. Mr Rayner reported:

“We certainly observed in 2004 and indeed 2005 a lowering of the indicative retail margin. Although we did not conduct any regression analysis, et cetera, to draw any conclusions, we did draw the conclusion that the entry of the supermarkets did have a downward pressure on prices.”¹⁴

In other words, we have no evidence as to whether the current level of prices in WA relative to the rest of Australia is due to FuelWatch or to other factors, though Coalition Senators agree with Mr Rayner that the entry of two supermarket chains into the market would tend to make prices lower than they would otherwise have been.

However, DoCEP did report that the ULP price cycle in Perth lengthened from 8.3 days in 2003 to 14.1 days in 2008. On this occasion, a comparison was made with other urban centres, which varied in 2008 from 7.0 days to 7.6 days.¹⁵

¹² Ibid, p 6

¹³ Proof Committee Hansard, Standing Committee on Economics, 16 July, 2008, p 5

¹⁴ Proof Committee Hansard, Standing Committee on Economics, 16 July, 2008, p 10

¹⁵ Ibid, p 16

DoCEP's commentary notes that before 2005, the cycle was predominantly 7.0 days; between September 2005 and December 2005, there was no price cycle; and since May 2008 there has been no price cycle in Perth.

DoCEP offered no explanation of these changes, which were not mirrored in other urban centres (on the basis of the DoCEP figures). Elsewhere, DoCEP noted that Perth's ULP prices fluctuate less compared with other capital cities (Table 7).¹⁶

In general, though, the lengthening or disappearance of the price cycle, for whatever reason, results in fewer opportunities to purchase cheaper petrol, all other factors being equal.

Coalition Senators note the evidence of Professor Frank Zumbo on this point:

"We have talked about 'magic' Tuesday. There is nothing magic about it. The reality is in Sydney it is cheap Tuesday. Based on the ACCC numbers, a significant proportion of petrol is bought on cheap Tuesdays. Let us be clear about one thing under a proposed FuelWatch system: cheap Tuesday will disappear. There is talk that you will be able to get the cheaper price on that particular day. If you look at the pricing data, the lowest average price in Sydney on cheap Tuesday is consistently lower than the lowest price in Perth under FuelWatch. So all those motorists that buy on Tuesday night—and I have to admit I do too—will be immediately denied that extra discount.

*"In terms of the strategy, the cycle, there is also nothing magical about that. It is a typical high-low strategy. You have motorists who are not sensitive to price—people with company cards and company cars. They are not sensitive to petrol. They will buy on any day. They just buy when they need to. So the oil companies will make some of their money on those high price days because there are people willing to pay those prices. On other days, there are very price sensitive motorists who are battling and petrol is very important. They will line up on Tuesday and they will not have that opportunity. **Given that the lowest price under FuelWatch in Perth is consistently higher than the lowest price at the bottom of the cycle in Sydney, those motorists will be immediately disadvantaged.**"¹⁷*

How Many People Use FuelWatch?

Having admitted that they don't assert FuelWatch lowers petrol prices, DoCEP contended to the Committee that FuelWatch works because it is popular in the community.

However, on the level of use of FuelWatch, DoCEP only provided figures for May 2008, reporting 291,767 visits to the website, 40,000 more than the previous month.

This, of course, was during the same period as there was a national discussion about the Rudd Government's proposal to implement FuelWatch nationally – therefore likely skewing the hits numbers with curious visitors, many from outside Western Australia.

¹⁶ WA Department of Consumer and Employment Protection, Submission to the Senate Inquiry into the Proposed National FuelWatch Scheme, July 2008, p 17

¹⁷ Committee Hansard, Standing Committee on Economics, 1 August, 2008 pp 39, 40

And while the number of email subscribers was reported to have reached a “new high” of 37,490 in May 2008, Coalition Senators note that the Australian Bureau of Statistics (ABS) recorded 1,676,495 registered vehicles in WA in 2007.¹⁸

Therefore, the total of email subscribers represents merely 2.2pc of the number of registered vehicles.

Satisfaction with FuelWatch?

DoCEP’s Submission 5a, Section 2.2, refers to surveys carried out by un-named consultants for DoCEP on “Usage and Satisfaction of (sic) FuelWatch.” Surveys of between 400 and 408 respondents in each year from 2004 to 2007 inclusive showed that the percentage of respondents using FuelWatch ranged from 72 to 86.

The percentage of those users finding the service “useful” was 77 in 2004; the percentage “satisfied” with FuelWatch was 70 in 2005; 65 in 2006; and 65 in 2007.

In other words, in 2007, 73pc of the survey sample of 400 used FuelWatch, and only 65 pc of those were satisfied with it. Again, in the light of the number of registered vehicles, this is not convincing evidence in support of FuelWatch.

And while five emails were quoted in favour of FuelWatch, there was no indication of the total received – nor indeed how many received were negative about FuelWatch.

Conclusions

- DoCEP did not assert that FuelWatch had lowered petrol prices in Western Australia.
- DoCEP’s evidence was not helpful in deciding whether a national FuelWatch scheme would be beneficial. While some comparisons were made to other urban centres, there was no evidence on the relative situation before FuelWatch came into being to enable an assessment its effect.
- Coalition Senators were not impressed with the evidence given of public support for the scheme, given the evident confusion over statistics, and the comparison of site visits and e-mail subscribers to the number of registered vehicles in Western Australia.
- While others have undertaken further analysis of the effect on prices, we find it puzzling that the Western Australian Government has not examined more closely the financial effects of its policy on the consumers FuelWatch is designed to “empower.”

3 The Position of the ACCC

“I have indicated quite publicly that we do not see FuelWatch as ultimately being there to bring about a reduction in prices.”

- ACCC Chairman Graeme Samuel, Committee Hearing, Melbourne, 7th August 2008

The position of the ACCC on FuelWatch, its effect on prices, and the extent to which available evidence supports the ACCC position, has become a central part of the debate about whether the scheme should be introduced on a national basis.

¹⁸ Australian Bureau of Statistics, 9309.0 - Motor Vehicle Census, Australia, 31 Mar 2007

Even if one accepts the position that FuelWatch is designed to empower consumers, rather than to reduce prices, it is only right and proper that we should have an informed opinion on whether the scheme reduces or increases prices, or is price-neutral.

The evidence of DoCEP – after years of operating FuelWatch - disappointingly, did not enable us to reach such a position. Therefore the evidence in this section of the Minority Report from the ACCC, independent analysts, and Government departments (in a later chapter) is crucial.

ACCC Inquiry into Price of ULP

In December, 2007, the ACCC conducted an inquiry into the price of unleaded petrol. The inquiry report, *Petrol Prices and Australian Consumers*, included a section on the operation of FuelWatch in WA, drawing in part on the inquiry submission by DoCEP. While this is not the place to repeat its findings in full, we will refer to them in order to put evidence given to the Committee into context.

At the outset, the report notes:

“A key element introduced under FuelWatch was a form of retail price commitment, the 24-hour rule, which took effect from 2 January, 2001. Under these arrangements, fuel retailers are required to notify DoCEP about their next day’s fuel prices.....on a daily basis by 2pm. Retailers must charge these notified prices from 6am the next day for 24 hours.”¹⁹

As we have seen, the price-fixing commitments were not introduced until the end of August that year. It is regrettable that the ACCC should make such a fundamental mistake.

Coalition Senators note that despite claiming of the relative price levels between Perth and the eastern capitals that:

“the relevant weekly average price margin was around 1.9cpl less on average from the period January 2001 to June 2007, than for the period from August 1998 to December 2000.”²⁰

In its conclusions, the ACCC noted: ***“....there are a number of issues that would need to be considered before a national FuelWatch scheme could be contemplated.”***

The ACCC continues:

“There are factors that could potentially reduce the benefits from adopting a scheme, such as the limitations of the price level analysis performed, the extra potential harmful effects for rural and regional areas where there is less competition, the potential to affect the presence and influence of independents, and the potential for a reduction in the predictability of price cycles for consumers who have adapted to them.”²¹

¹⁹ Petrol Prices and Australian Consumers, 15.1.3, Price transparency arrangements for consumers in Australia, WA FuelWatch, p 243

²⁰ *ibid.*, p 247

²¹ Petrol Prices and Australian Consumers, 15.1.3, Price transparency arrangements for consumers in Australia, WA FuelWatch., p 257

The chairman of the ACCC, Graham Samuel, stated:

*“A national FuelWatch scheme could not readily be introduced and withdrawn. It would need national legislation to be enacted. Any future removal of the scheme would then require further legislation. This implies that **very careful consideration should be given to the introduction of a national FuelWatch scheme.**”²²*

While the issue of the effects on rural and regional Australia was partly dealt with in the FuelWatch legislation (by effectively omitting these important areas of Australia), the extent to which the ACCC went on to resolve the other matters, given Mr Samuel’s comment above about “very careful consideration”, was crucial for Coalition Senators in coming to our conclusions about the proposed national FuelWatch scheme.

Release of Further Analysis

On 29 May, 2008, the ACCC released details of its “further econometric analysis” of FuelWatch.²³ The conclusion of the four-page document (of which only two pages provided new information) was:

“From the econometric analysis, on a conservative basis, the ACCC can say that there is no evidence that the introduction of FuelWatch in Western Australia led to any increase in prices and it appears to have resulted in a small price decrease overall.”

Given that the ACCC used this conclusion as fulfilling their previous statement of a need for further “very careful consideration” of FuelWatch, much of the evidence to the Committee inquiry dealt with the veracity or otherwise of ACCC’s “further econometric analysis” and conclusions.

Lack of Peer Review

Much evidence was given to the Committee about the lack of opportunity to fully peer review the ACCC analysis. For example:

Professor Don Harding: *“The most important thing is that the data is publicly available because without the data being publicly available it cannot be replicated independently. Replication is absolutely essential to science.”²⁴*

Professor Frank Zumbo: *“The essence of empirical research, analytical research, is that your data needs to be available for independent peer review. It is a fundamental precept of academic best research practice that your data be available to external parties to be able to replicate that analysis.”²⁵*

Professor Henry Ergas: *“I have not come across another instance in Australian public policy since the 1970s where a significant issue such as this has been said to be*

²²ibid., p 254

²³ Petrol – Further Econometric Analysis Undertaken by ACCC, 29 May, 2008

²⁴Committee Hansard, Standing Committee on Economics, 7 August, 2008, p 22

²⁵Ibid, 1 August, 2008, p 40, 41

determined on the basis of modelling and the results of that modelling have not been made available to the public."²⁶

The ACCC defended its position by saying that its data was "proprietary" information belonging to Informed Sources, and could not be publicly released.²⁷ However, Informed Sources suggested a process by which all the data could be released for peer review. Informed Sources CEO Alan Cadd said:

*"We were told that it is our data; we can release it. That is somewhat of a trite remark, because frankly we have no idea how they used what parts of our data to come up with a core basic data stream, and what that was; we have no idea how they allowed for the fuel quality differential in Perth; we have no idea what they did as far as volume weighting the averages across the state—it goes on and on. So, we were keen for it to get out into public scrutiny, but they seemed less inclined to do so."*²⁸

Quality of ACCC's Analysis

Most of those giving evidence on this point also disagreed with the ACCC's analysis and conclusions. For example:

***Professor Joshua Gans:** "There are a myriad of things that are relevant that were not taken into account in the average prices that were given to the ACCC."*²⁹

Professor Henry Ergas, of Concept Economics, also tested the ACCC's claims that FuelWatch had reduced the price of petrol in Perth by 1.9cpl. They found that the price had dropped by 1.9cpl but that the reduction was not as a result of FuelWatch but as a result of increased competition with the introduction of Coles into the Perth market:

"The entry of Coles led to a reduction of 1.6c per litre in the nominal price of petrol in Perth relative to the eastern state capitals. In short, our results suggest that FuelWatch had no significant effect on average petrol prices in Perth and that the negative FuelWatch effect found by the ACCC resulted from failure to test simultaneously for a FuelWatch effect and for other factors causing possible structural breaks.

*"We also note that the ACCC failed to correct for changes in transport costs over the period. These are likely to have increased prices on the east coast relative to those in Perth. We are surprised that the internal peer review and the peer review by Treasury did not uncover and correct these points."*³⁰

Professor Ergas also questioned the assertion made by the ACCC that FuelWatch yielded significant benefits from reduced consumer search costs and additional competitive keenness in pricing.

²⁶Ibid, 11 August, 2008, p 7

²⁷ Dr Stephen King, ACCC Commissioner, The Australian, 30 May, 2008, p6

²⁸ Senate Committee Hansard, Standing Committee on Economics, 17 July, 2008, p 22

²⁹Ibid, p 58

³⁰ Senate Committee Hansard, Standing Committee on Economics, 11 August, 2008, p 2

“Our view is that this analysis is, at best, incomplete and potentially quite misleading.”³¹

The conclusion of his study was:

“Given these changes in price structures, we do not see how the ACCC could have objectively concluded that FuelWatch did not have potential adverse effects, possibly for significant numbers of consumers.”³²

Professor Don Harding summarised the ACCC’s econometric analysis as follows:

“I find that the ACCC apply the wrong tests to the wrong variable. Specifically, they study the nominal retail margin when economic theory suggests that analysis of anything but the real retail margin to producers creates a mis-specified model inconsistent with the econometric assumptions used.”³³

He also noted:

*“The ACCC findings are not robust. When I apply the correct version of the procedures used by the ACCC to the correct variable I find that the data does not support the original ACCC finding. Specifically, **it is not possible** to conclude as the ACCC did that FuelWatch did not raise petrol prices in Western Australia”³⁴(emphasis added).*

Professor Harding also assessed the effect of the entry of Woolworths and Coles into the Western Australian market. He found this led to a reduction of unleaded petrol prices in Perth by about 2.67 per cent relative to Sydney:

“This finding contradicts statements made by the ACCC that the entry of Coles and Woolworths had effects that were small in comparison to those of FuelWatch.”³⁵

It is disappointing that when presented with this various evidence, the ACCC’s defence was to attack the witnesses rather than argue the facts. It did not enhance their case.

Volumetric Analysis

The Committee also heard evidence on the importance of taking the volume of petrol sold at a particular price into account, something the ACCC did not do.

RACQ: *“...To determine the impact of FuelWatch data needs to be analysed on a volumetric basis, however, the ACCC has not yet made this available.”³⁶*

Prof Frank Zumbo: *“A volumetric analysis is essential. Once again, until that analysis is done, I will not be convinced by the ACCC data.”³⁷*

³¹ Senate Committee Hansard, Standing Committee on Economics, 11 August, 2008,, p 3

³² Ibid

³³ Submission to Senate Economics Committee Inquiry, 15 August, 2008, p 2

³⁴ Ibid

³⁵ Ibid

³⁶ RACQ Submission to Senate Economics Committee FuelWatch Inquiry, July 2008, p 2

³⁷ 35 Committee Hansard, Standing Committee on Economics, 1 August, 2008, p 41

Senator ABETZ: “So it is not only an argument about what the average price of petrol is but the volume of petrol shifted out of service stations when the price is either high or low. Your evidence, as I understand it, is that when it hits the low, the sort of low that it does not reach with FuelWatch, is when you sell the vast majority of your petrol.”

Mr Craig Glasby: “That is correct.”³⁸

Effect on Price Cycles

Earlier, we noted evidence that the private motorist, as opposed to the business motorist, was highly sensitive to weekly price cycles. It was also noted that the price cycle in Perth had effectively ended, and this was attributed to FuelWatch.

Professor Frank Zumbo expressed concern about this effect being reproduced across the country:

*“If you look at the pricing data, the lowest average price in Sydney on cheap Tuesday is consistently lower than the lowest price in Perth under FuelWatch. So all those motorists that buy on Tuesday night—and I have to admit I do too—will be immediately denied that extra discount.”*³⁹

As to the amount of petrol sold at the lower points of the cycle:

*“The statistics are also very powerful. In Sydney, 64 per cent of petrol is sold on the four days where the average price on those days is below the weekly average. In Perth, the comparable numbers are only 40 per cent of petrol is sold on the three days where average prices are below the weekly average. So a significant percentage of people will be immediately disadvantaged. Now those people will be concerned.”*⁴⁰

His conclusion was:

*“Not only are there superior and much more efficient means for promoting transparency and competition, but transparency and competition can be delivered immediately and at a fraction of the cost of the proposed National FuelWatch Scheme”*⁴¹

Among the measures that Professor Zumbo suggests is giving the public access to Informed Sources’ pricing data, which is discussed later in this report.

BP’s Evidence

BP commissioned independent research firm Access Economics, to conduct an analysis of the impact of FuelWatch in Western Australia, relative to the east coast markets.

³⁸ Craig Glasby, President, Service Station Association, Committee Hansard, Standing Committee on Economics, 1 August, 2008 p 32

³⁹ Professor Frank Zumbo, Senate Committee Hansard, Standing Committee on Economics, 1/ August, 2008, p 39

⁴⁰ Ibid, p 40

⁴¹ Ibid, p 38

At the request of the Committee, this information was presented on 2 September, 2008. While committee members had access to the report, it remains commercial in confidence. BP did, however, provide some quotes from the report for public release. BP reports:

"Access Economics has performed the same basic regression as the ACCC report, but has adjusted the margins in each market by the relevant freight costs faced in that city. When comparing average weekly prices, the ACCC analysis suggested FuelWatch had a downward impact of 1.9 cents per litre, whereas these results suggest that half of the matching results estimated by Access Economics were caused by changes in relative freight costs."

"Moreover, even the remaining effect allocated to FuelWatch assumes that the introduction of Coles to the Perth market has no effect on relative margins. To quote directly from the report 'attributing the final impact on margins to FuelWatch is not correct'."

"When comparing minimum weekly prices, the ACCC analysis suggested FuelWatch has had a downward impact on margins, **while results here suggest FuelWatch have (sic), if anything, lifted margins in Perth.**" (emphasis added).

Coalition Senators note that in the past Access Economics have been the ALP's economists of choice.

Conclusions

- ACCC head Graeme Samuel has conceded that FuelWatch is not about lowering prices;
- The ACCC was sceptical of FuelWatch in its 2007 inquiry into the price of unleaded petrol;
- Some months later (notably straight after the 2007 election), it changed its view allegedly on the basis of analysis that could (and probably should) have been done as part of the original inquiry, concluding that FuelWatch in WA "appeared" to have resulted in a small price decrease overall;
- However, the weight of evidence was to the contrary;
- Evidence given to the Committee was severely critical of the lack of any opportunity to peer-review the analysis;
- The assumptions underlying the analysis and the methodology were also criticised; in particular, the lack of volumetric analysis, the treatment of the Coles-Woolworths effect, and the effect of freight costs;
- The conclusions relating to a price reduction in WA are rigorously disputed by independent analysts;
- Motorists habitually buying at the low point of the price cycle (ie the majority) would pay more as a result of FuelWatch and its flattening of the cycle.
- Given the weight of evidence, the ACCC is very much out on a limb as regards its analysis of FuelWatch to the extent that we do not regard the ACCC's position as sufficient justification for the implementation of this policy.

Coalition Senators are therefore not persuaded, given the overwhelming weight of evidence, including the ACCC's previous assessments, that the ACCC's evidence in favour of FuelWatch is sufficiently reliable and robust.

4 The Treasury's view

According to the media⁴², four Government departments, including The Treasury, expressed reservations about a national FuelWatch scheme, advice that was ignored in favour of that from the ACCC.

However, the Treasury's Regulation Impact Statement (RIS) is, the only published example of departmental thinking on this subject.

The Treasury position is also significant because, when pressed on the issue of peer review, the ACCC has referred in its defence to The Treasury's examination of its analysis.

Scrutiny of ACCC Analysis

This is how Mr Jim Murphy, executive director at The Treasury, described his Department's scrutiny of the ACCC analysis:

"We did not originate our own analysis, but we looked at the ACCC's analysis to see if it stacked up. We looked at what it was purporting to show and then, through further questions, we tested what their analysis was. We have looked at the analysis which has been done by other parties. People can take different views on this. You can question some of the assumptions. The problem with any economic analysis is that it is going to be built off the assumptions in place."⁴³

And: **Senator ABETZ:** "Did you test it independently or not?"

Mr Murphy: "We tested it, but we did not originate our own analysis. We tested theirs. To say that is peer review may be going a bit far. The way we tested it was that we went through the analysis and we checked it out. We looked at where it adds up and where it is sensible. By asking them questions on which they did further work, we would say that there was a sufficient examination of it."⁴⁴ (emphasis added).

Coalition Senators note Mr Murphy's comments that any analysis is going to be built on the assumptions in place and that there was "sufficient examination." Yet on the basis of this examination, the Treasury was not able to provide an endorsement of the FuelWatch scheme, or support the ACCC's claim of an average price reduction of 1.9cpl.

Neither did Mr Murphy claim to have peer-reviewed the analysis.

⁴² Laurie Oakes, Channel 9 news, 28th May 2008

⁴³ Proof Committee Hansard, Senate Standing Committee on Economics, 11 August, 2008 p 29

⁴⁴ Ibid, p 29

Operation of FuelWatch

Paragraphs 26 to 35 of the Regulatory Impact Statement refer to the operation of the scheme in WA. The Treasury notes that the Northern Territory and Queensland Governments considered the introduction of a FuelWatch scheme:

“Both identified concerns about the potential effects of FuelWatch on competition and questioned the benefits of FuelWatch.”⁴⁵

Of the ACCC’s conclusion that the average price reduction was 1.9cpl, the RIS states:

“However, this analysis is not conclusive.”⁴⁶

It repeats a criticism made in evidence covered in the previous section of this report that:

“This analysis does not take into account the volume of petrol sold at different prices or the impact of transport and port charges on pricing. Finally, it is possible that the greater competition in the Perth retail market is due to external factors such as Perth’s relatively high recent growth and resulting larger market.”⁴⁷

The Treasury recalls the ACCC’s views on FuelWatch in 2006:

“The ACCC noted that the scheme (and in particular the 24-hour price commitment rule) has restricted the ability for independent retailers in the Western Australian retail petrol market to remain competitive....independent retailers are prevented from dropping their price at the right opportunity....”⁴⁸

“The ACCC also raised doubts about the effectiveness of the FuelWatch scheme in lowering price levels in Western Australia.”⁴⁹

Impact Analysis

The Treasury lists the following as consumer benefits from the introduction of a national FuelWatch scheme: increased price transparency; reduced consumer search costs; reduced price volatility; decreased intensity and amplitude of petrol price cycles.⁵⁰ It describes these benefits as “unquantifiable.”⁵¹

Furthermore, the introduction of a national scheme:

“...may have anti-competitive effects. Whilst consumers may benefit from potentially greater levels of competition and reduced search costs these benefits may be offset by potentially adverse anti-competitive effects. More importantly, the provision of this taxpayer

⁴⁵ Para 30, Regulation Impact Statement, Petrol Price Transparency and Competition, 29 May, 2008

⁴⁶ Para 33, Regulation Impact Statement, Petrol Price Transparency and Competition, 29 May, 2008

⁴⁷ Ibid

⁴⁸ Para 34, ibid

⁴⁹ Ibid

⁵⁰ Para 56, ibid

⁵¹ Para 57, ibid

*funded service creates greater opportunities for price coordination among retailers, especially in more concentrated markets.*⁵²

The Treasury refers to evidence from independent contractors that FuelWatch in WA has harmed their competitive position by allowing large operators to adopt a strategy of rolling price leaders, with different stations under the same banner being publicised as the cheapest for a region or suburb at different times.⁵³

Treasury Recommendation

The RIS favours the introduction of a national FuelWatch scheme (as opposed to reducing the opportunities for retailers to price-share or expanding petrol price information to consumers) because “it is most suited to realising the Government’s objectives to address petrol price volatility, allay consumer anxiety, reduce consumer search costs and enhance retail petrol price transparency.”⁵⁴

However, it goes on to note that it remains “unclear” whether the scheme would be successful in delivering lower retail petrol prices,⁵⁵ discounting evidence from the Western Australian Government that it had the capacity to do so.

Conclusions

- The ACCC quotes The Treasury’s examination of its analysis in its defence of its position on the lack of open peer review. But Treasury admit its examination did not amount to peer review;
- Treasury’s Regulatory Impact Statement says the analysis is not conclusive on prices and expresses concern about possible anti-competitive effects;
- Treasury notes the lack of volumetric analysis and the failure to take into account transport or port charges;
- Treasury warns of anti-competitive effects;
- While Treasury recommends the scheme as the best option for achieving the Government’s objectives, these objectives make no reference to prices. The RIS concludes it remains unclear whether lower prices would result;
- On the basis of the evidence given to the committee, we would go further and say that it is more than likely that higher prices would result.

5 Motoring Organisations

Given that FuelWatch has operated for more than seven years in WA, there has been ample time to gather a body of evidence on the extent to which motorists use the scheme. However, as we have noted in the chapter on the WA Experience, such evidence that has been provided to this committee is confused and anecdotal.

⁵² Para 59, Regulation Impact Statement, Petrol Price Transparency and Competition, 29 May, 2008

⁵³ Para 60, *ibid*

⁵⁴ Para 108, *ibid*

⁵⁵ Para 112, *ibid*

There is no credible evidence of the value of this scheme to individual motorists.

Therefore, the views of the motoring organisations, expressed on behalf of their members, were of particular interest.

The NRMA

The NRMA's president, Alan Evans, is a supporter of FuelWatch and believes that the scheme delivers cheaper petrol. We were therefore curious about the basis for his belief, as he described it to the Committee:

“What I have done over the last several years, in fact, is I have watched petrol prices in Sydney, Melbourne, Adelaide, Perth and Brisbane. In Perth, it has been made much easier because what I was able to do in Perth with FuelWatch was plot a range of journeys that, if I was working in Perth, I would make from my workplace to my destination of home or vice versa. Each afternoon I would get on my phone or my Blackberry a list of the prices on those tracks or those passages, which would enable me to do comparisons of a similar journey from home to a destination in Sydney, such as an office. I was looking at similar suburbs, Senator. If I lived in particular suburbs in the west, the east or the north in Sydney, I looked at similar types of suburbs in Perth. So I was fairly confident from that preliminary investigation that there were substantial differences in prices which would benefit a motorist.”⁵⁶

Senator ABETZ—Your research involved tracking through the northern, western and eastern suburbs of Sydney. **Did you do that as a personal exercise?**

Mr Evans—**Absolutely.** (emphasis added)

Yet, in spite of the evidence above from Mr Evans (albeit his personal, Blackberry assisted study) the NRMA submission actually stated:

“However, the NRMA wishes to see evidence that the proposed FuelWatch scheme results in lower costs to motorists”⁵⁷

The two statements are clearly contradictory. In comparison to the various econometric analyses presented to us, and the above statement, we feel that little, if any, weight, can be given to Mr Evans' contribution.

Furthermore, while the ACCC in its inquiry into petrol prices has noted a “significant degree of price competition,” the NRMA made the following statement in its written submission to the Committee:

“There is little evidence the fuel market is competitive as there is no evidence of price wars in the fuel market”⁵⁸

We cannot accept the bizarre assumption that the absence of “price wars” means that the market is not competitive.

⁵⁶ Alan Evans, NRMA, Senate Committee Hansard, Senate Standing Committee on Economics, 1 August, 2008, p 11

⁵⁷ NRMA Submission to Senate Economics Committee FuelWatch Inquiry, July 2008, p 2

⁵⁸ NRMA, Submission to Senate Economics Committee FuelWatch Inquiry, 16 July, 2008, p 2

Effect on Prices

The Royal Automobile Club of Western Australia (RACWA) is generally supportive of FuelWatch. However, when questioned by the Chair as to whether he felt FuelWatch had reduced prices in Western Australia, Mr David Moir Executive Manager, Member Advocacy, of RACWA, said:

“We do not have any evidence that the average fuel price in Western Australia has reduced as a result of FuelWatch, but the biggest value that FuelWatch does provide is as a community or consumer education tool.”⁵⁹ (emphasis added).

Furthermore:

“There is no evidence that the average price in Perth over time is significantly lower than the average prices in Melbourne, Sydney and Adelaide, which are the three comparable capital cities.”⁶⁰

The Royal Automobile Club of Queensland (RACQ) was also sceptical:

“At a national level, the benefits of FuelWatch are marginal, and do not adequately offset the implementation and recurrent costs associated with operating the proposed national scheme”.⁶¹

“There has been no comprehensive assessment of the value of a national FuelWatch scheme. Neither the Federal Government or the ACCC have presented a clear case for the benefits associated with FuelWatch; nor have concerns regarding the associated risks of implementation been addressed.”⁶²

So was the Royal Automobile Club of Victoria:

“Sufficient information has been made available to the Federal Parliament from many interested parties on this matter and it is clear that the overwhelming consensus is that Fuel Watch in its current form will not deliver cheaper fuel prices to Australia.”⁶³

Price Cycles

The presence or absence of a price cycle, and the volume of petrol bought at the low point of a cycle, where one exists, are crucial factors in deciding whether a national FuelWatch would be beneficial or not. Therefore the views of the motoring organisations on this point were of great interest to Coalition Senators.

⁵⁹ David Moir, Senate Committee Hansard, Senate Standing Committee on Economics, 16 July, 2008, p 24

⁶⁰ Ibid, p 25

⁶¹ RACQ, Submission to Senate Economics Committee FuelWatch Inquiry, July 08, p 3

⁶² RACQ, Ibid, p 6

⁶³ RACV, Submission to Senate Economics Committee FuelWatch Inquiry, July 08, p 4

In his opening statement to the committee, Mr Matthew Hanton, Senior Analyst at the Royal Automobile Association of South Australia (RAA), spoke of the RAA's work in ensuring motorists were aware of the cheapest days of the week to purchase fuel:

“Extensive educating of the South Australian public by the RAA now sees more than 76 per cent of motorists—indeed, 89 per cent in metropolitan Adelaide—are already aware that Tuesday is the cheapest day of the week to buy fuel and are changing their purchasing behaviour accordingly.”⁶⁴

Mr Hanton said that these figures were comparable with those of the ACCC, which indicated 72 per cent of motorists were price sensitive and bought fuel when it was at its cheapest. Mr Hanton also confirmed the savings that the RAA had calculated for South Australian motorists over Perth motorists.

“We know that Tuesday in Adelaide is the cheapest day to buy..... Extrapolating that out over the course of the year, you are looking at a saving of in excess of \$100. And we feel that that could be lost if FuelWatch were introduced.” (emphasis added).

“What we see in Western Australia is a distinct two-weekly cycle which is much flatter than what we are experiencing here in Adelaide and in a couple of the other capital cities around the country. We also know that motorists look to fill up on a weekly basis in the main. What we are saying is that every second week they would be denied that opportunity to buy at the lowest point, which is where our cheap Tuesday comes in.”⁶⁵

That is, if FuelWatch were introduced in South Australia, it would cost 89 percent of Adelaide motorists (those who are aware of, and use, the price cycle to their advantage) an extra \$100 per year.

The RACQ also referred to the numbers of consumers purchasing fuel on the cheaper days of the week.

“This is because a greater volume of fuel, 65 per cent, is purchased on cheaper days, at the trough of the price cycle.”⁶⁶

Mr David Cumming, Manager of Government and Corporate Relations for the Royal Automobile Club of Victoria (RACV), made many contributions to the debate about motorists' knowledge of when to purchase the cheapest fuel, of which this is the most succinct:

“We do not particularly like the cycle, but we do like the fact that we get cheaper prices on Monday, Tuesday and Wednesday each week. That is when our members fill up.”⁶⁷

Mr Craig Glasby, President, Service Station Association, said:

⁶⁴ Matthew Hanton, Senate Committee Hansard, Senate Standing Committee on Economics, 21 July, 2008, p 2

⁶⁵ Ibid, p 5

⁶⁶ RACQ, Submission to Senate Economics Committee FuelWatch Inquiry, July 08, p 6

⁶⁷ David Cumming, Senate Committee Hansard, Senate Standing Committee on Economics, 7 August, 2008, p 48

"I have a lot of my customers that only come on a Tuesday because they know it is cheap. They will only come on a Tuesday and they will fill right up. I actually see them on other days, but they do not buy fuel on other days. They might buy some bread and some milk. That is because I have got the type of store that attracts customers for the bread, the milk and the butter and all that sort of stuff."⁶⁸

Many state motoring groups gave evidence of their surprise at the lack of discussion with the ACCC over the issue of fuel prices, given that these organisations represent millions of motorists Australia-wide. In fact, the RACQ told the Committee that the ACCC did not even provide its assessment of the scheme when specifically requested to by the Australian body that represents the major motoring groups:

"The commission has declined a request from the Australian Automobile Association on behalf of the state motoring organisations to share that information with us."⁶⁹

Conclusion

- There is a difference of opinion between Mr Evans, of the NRMA, and that organisation's written submission as to whether FuelWatch had resulted in price reductions;
- The majority of evidence from motoring organisations was that price reductions had not resulted;
- A majority of motorists understand the operation of price cycles and take advantage of them to buy when prices are at their lowest;
- Removal of the price cycle would result in a majority of motorists paying more for their petrol – especially in South Australia.

6 Informed Sources

The services provided by the private company, Informed Sources, has played a central part of the FuelWatch debate.

Briefly, the company provides market monitoring and consulting services for clients in the petroleum and retail industries. Its Oil PriceWatch system collects fuel prices from retailers and the data is provided to subscribers.

Its subsidiary, MotorMouth, lists daily more than 7,000 petrol prices covering Sydney, Melbourne, Adelaide, Hobart, Perth, Brisbane, and the Sunshine and Gold Coasts. The MotorMouth Partner Programme provides information to the RACV, RACQ, NRMA, CarsGuide, IGA supermarkets, the Austereo Network, and News Limited papers.

Information Asymmetry

Much has been made of the so-called "information asymmetry" resulting from Informed Sources' activities, particularly in the Interim Report on Committee proceedings released by

⁶⁸ Senate Committee Hansard Senate Standing Committee on Economics, 1 August, 2008, p 31

⁶⁹ Gary Fites, RACQ, Senate Committee Hansard, Senate Standing Committee on Economics, 17 July, 2008, p 9

Labor Senators. The point made is that, thanks to Informed Sources, retailers have access to better information than consumers and this distorts the market in favour of the retailers.

Retailers in most markets monitor each other's prices on a regular basis (for instance, as we heard in the ACCC's inquiry into grocery prices) and we would be surprised if this monitoring did not occur. One might expect the monitoring to be more sophisticated in the market for a necessity such as petrol.

Furthermore, any asymmetry is at least partially addressed by the information provided by MotorMouth. While we would expect retailers to spend more time and effort monitoring prices than consumers, information is available to consumers through this site.

Notably, independents largely do not subscribe to Informed Services.

When questioned by Senator Cameron about Informed Sources, Mr Roger Featherston, of the Law Council of Australia, replied:

*"I think it may suggest that there is information asymmetry there. But the question is: what is the impact of that on the ordinary consumer? It seems to me that most consumers get a good feel for petrol prices in their locality, and that is what is important to them."*⁷⁰

This was the view given to the Committee by Australian Farmers Fuel:

*"...we certainly use MotorMouth and the like that are published now to see what the market is doing. So we are all doing it. The submission I have given you was sourced from MotorMouth."*⁷¹

The asymmetry argument also assumes the operation of a perfect market, ie that, given the information, the consumer will always buy at the lower price. But, particularly in the case of petrol, consumers' behaviour is also driven by convenience, need, and whether the cost and inconvenience of driving to the cheapest outlet outweighs the saving to be made.

It may be that most retailers have more information than most motorists but it was not proven that this was to the detriment of motorists, particularly given the evidence we heard about the high level of their knowledge of the operation of price cycles.

Legal or Illegal?

The ACCC itself has formal contracts with Informed Sources for the supply of a price distribution report for each capital city at 9 am each morning which shows the range of prices by brand. They also supply a monthly report to the ACCC that gives daily averages for each capital city, and other services. Informed Sources has supplied the ACCC with this data for more than 15 years.

⁷⁰ Roger Featherston, Law Council of Australia, Senate Committee Hansard, Senate Standing Committee on Economics, 1 August, 2008, p 7

⁷¹ Andrew Fischer Managing Director and Shareholder, Australian Farmers Fuel Pty Ltd, Senate Committee Hansard, Senate Standing Committee on Economics, 21 July, 2008, p 19

Ironically, the ACCC Chairman, Mr Graham Samuel has repeatedly referred to the company as offering a service to retailers that is *“as close to an illegal collusion as you can get, but it is not illegal”*⁷².

Coalition Senators find this a strange remark, particularly given the apparent lack of intention to address what in the ACCC’s view is clearly a problem. We refer again to The Treasury’s Regulatory Impact Statement which stated that the ACCC had identified *“two main contributory factors”* to the information in-balance and lack of price transparency, namely *“price volatility”* and *“price sharing services provided by Informed Sources.”*⁷³

While FuelWatch is intended to deal with the former, the ACCC has merely recommended amendment of the Trade Practices Act to clarify the meaning of the term *“understanding.”*⁷⁴ While the use of Informed Sources’ services may be more sophisticated than price monitoring operations in other markets, we fail to see how the use of near real-time information on petrol prices amounts to collusion in this, but not other, markets.

Having identified two main factors at fault in the market, the ACCC and the Government propose to address one with the introduction of FuelWatch, the effects of which on fuel prices will be detrimental to consumers, and the other with a recommendation for legal clarification, having already stated that Informed Sources is not acting illegally.

Informed Sources vs FuelWatch

An alternative put to the Committee was that, rather than launch a new scheme like FuelWatch, Informed Sources’ data should be made available to the public and the question was raised as to why the ACCC had not already done so. Informed Sources’ CEO, Mr Alan Cadd, told the Committee:

*“There has been no attempt by the commission to avail themselves of the very data that the petrol companies—I am talking about large petrol companies right the way down to very, very small petrol companies—use in order to do pricing. At the moment they only take from one snapshot of the market at 9 o’clock in the morning. But the opportunity has been there. We have provided them with formal submissions to enable them to take site-specific data and to receive the exact data that every subscriber to the Informed Sources service currently gets.”*⁷⁵

When asked by Senator Abetz whether the information would be available for the ACCC, Mr Cadd replied:

*“As a marketer, I would be delighted to write the sale. It has been available since day dot.”*⁷⁶

Professor Frank Zumbo noted:

“Informed Sources already collects extensive retail price information. This information is real-time and is already in place and can be made available to

⁷² Sellers back petrol scheme, The Age, 26 June, 2008

⁷³ Para 14, Regulation Impact Statement, Petrol Price Transparency and Competition, 29 May, 2008

⁷⁴ Para 23, *ibid*

⁷⁵ Senate Committee Hansard Senate Standing Committee on Economics, 17 July, 2008, p 22

⁷⁶ Senate Committee Hansard, Senate Standing Committee on Economics, 17 July, 2008, p 22

*motorists without the government incurring the considerable costs of starting a website from scratch.*⁷⁷

Making Informed Sources' data available to the public would obviously address the alleged "information asymmetry" and "empower consumers", to quote the Bill, and thus achieve the Government's aims.

Unlike the introduction of FuelWatch, this would not entail fixing prices for 24 hours. Much has been made of motorists' frustration with intra-day price changes and we acknowledge the irritation that these can cause. **However, we believe motorists would be far more irritated if the introduction of FuelWatch resulted in higher prices**, as the majority of those giving evidence to the Committee believe it would.

There was discussion about whether motoring groups would be able to – or could have by now if adequately supported – provide regularly updated fuel price data on their respective websites for the benefits of transparency for motorists. The RAA said:

*"We think it is something that the RAA could provide online, probably for under \$30,000 a year."*⁷⁸

Mr Gary Fites, General Manager of External Relations at the RACQ took a similar view:

*"In South-East Queensland people can go to our own website, they can go directly to MotorMouth, and see there where the cheapest prices are—indeed, a full range of prices."*⁷⁹

*"Dare I suggest that, given what we are currently doing in terms of providing price information, with a little bit more resourcing, motoring organisations could do it considerably cheaper than \$20 million."*⁸⁰

Recently, Google, in conjunction with MotorMouth (Informed Sources) launched their "Petrol Price Tracker Gadget" which enables users to search current petrol prices in their locality.⁸¹

While only in its early stages, one has to ask the obvious question: why is the Government seeking to intervene and spend almost \$21 million on providing a price monitoring service when it appears the private sector is already well on the track to doing the same thing, for no cost to the taxpayer?

Conclusions

- The portrayal of Informed Sources in this debate as the cause of the problems in the retail petrol market is something of a red herring;

⁷⁷ Senate Committee Hansard, Senate Standing Committee on Economics, 1 August, 2008, p 38

⁷⁸ Matthew Hanton RAA, Senate Committee Hansard, Senate Standing Committee on Economics, 21 July, 2008, p 6

⁷⁹ Gary Fites, RACQ, Senate Committee Hansard, Senate Standing Committee on Economics, 17 July, 2008, p 11

⁸⁰ Ibid

⁸¹ <http://www.news.com.au/technology/story/0,25642,24388834-5014239,00.html>

- Evidence was given that MotorMouth as an alternative supplier of market price information at least partially counteracts any asymmetric effect of the service provided to retailers;
- Indeed, making Informed Sources' real-time data available to the public would address many of the stated problems without any of the adverse effects of FuelWatch described to the Committee – and this is already happening;
- If a private sector price monitoring service was to be provided - other than MotorMouth - motoring organisations believe it could be provided at a lower cost than FuelWatch.

7 Effects on Independents

Coalition Senators note the Majority's frequent use of evidence from Mr Andrew Fischer, of Australian Farmers Fuel, in contending that FuelWatch will not harm independents.

We note the following extract from hearings in Adelaide, disappointingly overlooked by the Majority for their report:

Senator BUSHBY—That is fine, but what I am trying to work out is what you see as the ultimate outcome of this legislation. **If you are saying that you see this leading to more consistent and more realistic markets, then ultimately that probably means, without addressing the wholesale side of it, a consistently high price for the motorist.**

Mr Fischer—I agree. That would be our wish, yes.⁸²

In other words, Mr Fischer, who represented the only independent to endorse FuelWatch to the Committee, believed that FuelWatch would increase fuel prices for consumers.

Independents in WA

The effect of FuelWatch on independent retailers is of particular concern. Not only is there the question of the future of small businesses and the people they employ, but, if the effects are adverse, then we face a concentration of the market, inevitably around the larger retail chains with corresponding effects on consumers.

Again, we would have hoped for some firm evidence as a result of the operation of FuelWatch in WA. However, while the Committee were presented with some evidence by DoCEP that the proportion of independents was roughly stable, there was no comparison with other areas of Australia,⁸³ and the figures did not account for the fact that during this period Mobil sold all of its outlets, many to the large branded independents.

DoCEP also produced figures showing a decline of 23pc in the number of metropolitan sites since the introduction of FuelWatch and of 12pc in the number of non-metropolitan sites since the expansion of the FuelWatch boundaries in 2003.⁸⁴ This may indicate an adverse effect, but, again, there is no comparison with other areas.

⁸² Andrew Fischer, Australian Farmers Fuel, Committee Hansard, Adelaide, 21st July

⁸³ Table 4, WA Department of Consumer and Employment Protection, Submission to Senate Inquiry into the Proposed National FuelWatch Scheme, July, 2008

⁸⁴ Table 3, *ibid*

The Committee was presented with very limited evidence on the proportion of sales by volume, and only for 2004 and 2005. This showed that the supermarket share rose while that of independent chains and company controlled outlets fell.⁸⁵ Once again, there is no comparison with other areas.

The Committee were offered this anecdotal evidence from Mr Peter Fitzpatrick, CEO of the Motor Trade Association of Western Australia:

*“There is another thing of concern to people such as me, representing primarily the independents in the fuel industry. You will hear contrary evidence, but you really have to look a bit more closely when you hear people saying that this has had no effect on independents. It has. **The number of independents has reduced.**”⁸⁶(emphasis added).*

Competitive Position

The evidence presented to the Committee was clear: FuelWatch harms the position of independent retailers because they are less able to spread the costs of cutting the price at a particular site over a number of other sites (the rolling price leader strategy). Their position is also harmed by the flattening or removal of the price cycle. For instance:

“There is an incredible difference in the economics of operating a price watch scheme as an operator who has two or maybe three sites versus an oil company who operates 600 sites. Their ability to spread the costs amongst those 600 sites versus that of somebody who has three sites means there is no comparison.”⁸⁷

...we are concerned that the Western Australian experience suggests that a FuelWatch system might flatten price cycles and thereby reduce the period when independent retailers may have a price advantage as prices are coming down.⁸⁸

The Committee was told by the Victorian Automobile Chamber of Commerce (VACC) that the majority of independents’ trade with private motorists was done at the lowest points of the weekly price cycle:

“We have members who say, ‘I might as well go and play golf from Wednesday afternoon until Monday morning because nothing comes through.’ You have only to drive past any service station on your way home to see that they are not barren but very few cars are there. Those who are there are the ones who are not affected by price or who do not get a discount—fleet vehicles or people who financially do not need to buy at the bottom price.”⁸⁹(emphasis added).

Senator ABETZ: *“Well, you have spoken to us with some genuine concern about the impact on yourself. What you are saying is there are a lot of other independents who will not be submitting to us that would feel it even worse than you would?”*

⁸⁵ Table 1, Additional Information, Volume of Sales Data, DoCEP, July, 2008

⁸⁶ Senate Committee Hansard, Senate Standing Committee on Economics, 16 July, 2008, p 18

⁸⁷Theodor Kruys, Chairman, Service Station Division, Motor Trade Association SA, Senate Committee Hansard, Senate Standing Committee on Economics, 21 July, 2008, p 14

⁸⁸ Roger Featherston, Member, Trade Practices Committee, Business Law Section, Law Council of Australia, Senate Committee Hansard, Senate Standing Committee on Economics, 1 August, 2008, p 2

⁸⁹ Terrence Conroy, Victorian Automobile Chamber of Commerce, Senate Standing Committee on Economics, Melbourne Hearing, 7 August, 2008, p 33

Mr Glasby: *“That is what I am saying. That is correct.”*⁹⁰

*“[FuelWatch] ...will not allow small business to compete competitively with the larger groups. Maybe in 10 years’ time we will be sitting here having another discussion and saying, ‘How do we get independents back into the market?’”*⁹¹

*“Our position is that we believe the theory of FuelWatch is flawed because independent owners will not be able to compete individually against centrally controlled networked numerous and strategically located supermarket sites. We think that competition is likely to be reduced by exiting independents and would further concentrate market power with the supermarkets.”*⁹²

*“FuelWatch does have in it the potential to expose independents to the full extent and maybe to a magnified extent of the market power of the majors that operate in the fuel area. This would result in the independents being displaced from the markets and therefore a mitigation of competition to the detriment of consumers.”*⁹³

The 24-hour Rule

Equally, there was near unanimity on the adverse effect on independents of the requirement to fix prices for 24 hours.

*“...We are concerned that small independent retailers might be disproportionately punished for making errors in their pricing. So each time they misjudge the market and quote a price that turns out to be higher than their nearby competitors’, they will be out of the market for the day and they will lose not only their petrol sales but also their sales from their shop. This could quickly affect their financial viability.”*⁹⁴

*“...The 24-hour rule will not work. It will only lead to higher prices. That I can guarantee you. I believe it will drive independents out of the market.”*⁹⁵

*“...What worries me as a service station dealer where I will not be able to compete in the market place because I am locked into a price for 24 hours. If one of my competitors posts a lower price, my customers will be disadvantaged because I will not be able to post a price equivalent to that.”*⁹⁶

“The fact that the independents feel particularly threatened by the requirement to hold prices for 24 hours under FuelWatch should be ringing alarm bells amongst those responsible for drafting the relevant legislation. To deny independents or,

⁹⁰ Craig Glasby, President, Service Station Association, Senate Committee Hansard, Senate Standing Committee on Economics, 1 August, 2008, p 33

⁹¹ Nicholas Moulis, General Manager, Australasian Convenience and Petroleum Marketers Association, Senate Standing Committee on Economics, 7 August 2008, p 21

⁹² David Russell, Senior Manager, Government and Public Affairs, Victorian Automobile Chamber of Commerce, Senate Committee Hansard, Senate Standing Committee on Economics, 7 August, 2008, p 28

⁹³ Aivars Blums, Group Chief Executive, Motor Trades Association of Queensland, Senate Committee Hansard, Senate Standing Committee on Economics, 17 August, 2008, p 2

⁹⁴ Roger Featherston, Member, Trade Practices Committee, Business Law Section, Law Council of Australia, Senate Committee Hansard, , Senate Standing Committee on Economics, 1 August, 2008, p 2

⁹⁵ David Cumming, Senate Committee Hansard, , Senate Standing Committee on Economics, 7 August, 2008, p 48

⁹⁶ Timothy Kane, Chairman, Service Station and Convenience Store Association of Queensland, Committee Hansard, , Senate Standing Committee on Economics, 17 July, 2008, p 5

*indeed, any retailer, the opportunity to move prices down to remain competitive on any given day is, by definition, anticompetitive and therefore not good for motorists as far as we are concerned.*⁹⁷

*“Through the 24-hour rule, it adds an additional risk element to the independents who can more easily be held out to dry. They do not have the opportunity to respond to strategies that the larger chains will put out.”*⁹⁸

*“As a consequence of the 24-hour price set rule, the independent discounters are adversely affected if they get the price wrong and spend the day uncompetitive for the next 24-hour period. There would be no reward for APCO as a fuel discounter to drop prices under FuelWatch if we do not always have the choice and the flexibility to either match or drop below our competitors.”*⁹⁹

In their Interim Report, Labor Senators referred to evidence by Mr Charles Wright, of Neumann Petroleum, opposing the ban on price-cutting during the 24-hour period¹⁰⁰ and dismissed his position as “rather pessimistic.”

With respect to Labor Senators, we find this remark insulting. We believe that Mr Wright has more experience of petrol retailing than our Labor colleagues and his evidence should not be dismissed in this way. Neither should the evidence referred to above, which was not mentioned in the Interim Report.

Conclusions

- The only independent to endorse FuelWatch believed it would increase fuel prices for the consumer;
- The overwhelming weight of evidence presented to the Committee is that FuelWatch has been harmful to independent retailers in WA and would be so if implemented elsewhere;
- We find the lack of serious consideration of this issue by the former WA Government disturbing, particularly in the light of the views expressed to the Committee.

8 Rural and Regional Australia

We have previously noted the importance of the issue of petrol prices in rural and regional Australia where, due to lack of public transport and comparative isolation, people are generally more dependent on their own motor vehicles than those living in urban areas. The legislation offers no benefits to rural and regional Australia.

Equity

The Treasury’s Regulatory Impact Statement notes that a national scheme would be premised on coverage of “*approximately 72 pc of Australian retail sellers.....this is because the*

⁹⁷ Gary Fites, RACQ, Senate Committee Hansard, , Senate Standing Committee on Economics, 17 July, 2008, p 9

⁹⁸ Michael Roth, Executive Manager Public Policy, Royal Automobile Club of Queensland, Senate Committee Hansard, , Senate Standing Committee on Economics, 17 July, 2008, p 11

⁹⁹ Mr Peter Anderson, Director, APCO Service Stations Pty Ltd, Proof Committee Hansard, , Senate Standing Committee on Economics, 7 August 2008, p. 41

¹⁰⁰ Proof Committee Hansard, Senate Standing Committee on Economics, 17 July, 2008, p 15

benefits of a national scheme are likely to be very limited in rural and regional areas... (where) increased price transparency has only limited scope to deliver consumer benefits."¹⁰¹

Coalition Senators agree with this, and also with The Treasury's next point that:

*"The application of this option [a national FuelWatch scheme] to 72pc of retail sites rather than on a nationally uniform basis presents questions of equity and fairness of treatment between metropolitan, regional and rural customers."*¹⁰²

While the percentage of sites not covered is 28pc, given the sparsity of petrol retailers in these areas, it represents a far greater geographic area of the country than that figure would suggest.

Prices and Competitvity

The Government's response has been to offer these areas the possibility of FuelWatch, based on population, size of locality, number of registered vehicles, number of service stations and their ownership arrangements and submissions made by local government.

From the evidence presented to the Committee, we would be surprised if this option were taken up:

*"If we look at the Western Australian experience, over time it has been expanded into regional areas of Western Australia. What we find is that in towns of comparable population size and distance from the capital prices are higher. That is the fear: because they will be forced to lock a price in, they will not be as willing to go as low as they could because they know that they cannot adjust it. We remain of the opinion that regional motorists may be forced to pay more."*¹⁰³

*"...The discrepancy between metropolitan, regional and rural is another concern of National Seniors, given the reliance, out of necessity, by rural, older people on their own transport."*¹⁰⁴

Concerns were expressed about the future of independent retailers in regional areas where FuelWatch was introduced:

*"We are concerned about the future of the independents in this State (Victoria). You just had APCO on. The reason why we want to see APCO survive is because they are mainly in country Victoria. They are helping country consumers bring their prices down. There are very few independents in country Victoria. We would really hate to see these guys leave the market because they are very concerned that eventually the supermarket chains will control the price of fuel, and that means the price will be continually higher."*¹⁰⁵

¹⁰¹ Para 74, Regulation Impact Statement, Petrol Price Transparency and Competition, 29 May, 2008

¹⁰² Para 75, *ibid*

¹⁰³ Mr Matthew Hanton, Senior Analyst, Royal Automobile Association of South Australia, Senate Committee Hansard, Senate Standing Committee on Economics, 21 July, 2008, p 5

¹⁰⁴ Jonathan Kennedy, Senior Policy Officer, National Seniors Australia, Senate Standing Committee on Economics, 11 August, 2008, p 16

¹⁰⁵ David Cumming, RACV, Senate Committee Hansard, Senate Standing Committee on Economics, 7 August, 2008, p 50

“Mums and dads, small businesses and small enterprises really are the backbone of the fuel industry, especially in rural and regional Australia. I think we need to be mindful that in rural areas these businesses employ many people. If FuelWatch threatens anything it threatens that backbone. It threatens the ability for businesses to make a reasonable profit. I do not think anybody should question that. However, I believe that if it threatens that ability it threatens the ability for us to employ people in a given market and to support those communities.”¹⁰⁶

Conclusions

- The Government is proposing to introduce a scheme - at a cost to all taxpayers - that will only cover urban Australia, and will omit those areas most dependent on private motor transport;
- Given FuelWatch is likely to increase petrol prices, the lack of coverage for rural and regional Australia will hopefully save rural and regional Australia from a similar fate.

9 Wholesale Market

The retail market, of course, operates to a large extent on the basis of prices in the wholesale market.

The Select Committee Report¹⁰⁷ in Western Australia that led to the establishment of FuelWatch made recommendations with regard to the wholesale market, as did the ACCC in its 2007 report into the price of unleaded petrol.

Evidence was given to this Committee that action at the wholesale level was, if anything, more important:

“We need complete transparency about wholesale pricing. We need transparency at all levels of the chain. Dealing with transparency at the retail level is only part of the issue. We need it at a wholesale level also. We need immediate action against the cosy buy-sell arrangements. We need to look at that. We need a definitive statement by the ACCC as to whether those arrangements are okay or a decision by the oil companies to seek authorisation. We need immediate action to unlock the oil companies’ stranglehold over terminal and storage facilities. That is an issue the ACCC is looking at. We would like to see an immediate answer.”¹⁰⁸

¹⁰⁶ Nicholas Moulis, General Manager, Australasian Convenience and Petroleum Marketers Association, Senate Committee Hansard, Senate Standing Committee on Economics, 7 August, 2008, p 17

¹⁰⁷ *Getting a Fair Deal for Western Australian Motorists*, Select Committee on Petroleum Products Pricing in Western Australia, October 2000

¹⁰⁸ Professor Frank Zumbo, Senate Committee Hansard, Senate Standing Committee on Economics, 1 August, 2008, p 41

“On several occasions during its submission I heard the ACCC talk about the oligopoly that has occurred at the refiner and terminal gate, or behind the terminal gate in Australia. That really is the underlying problem.”¹⁰⁹

“The MTA believes that any introduction of a scheme which supports retail price transparency needs to be accompanied by a scheme which introduces transparency at the wholesale pricing level.”¹¹⁰

“We see the greatest market failure at the moment lying at the wholesale level..... Our solution to that would be probably less of the regulatory approach and perhaps a bit more of the approach whereby government could encourage and facilitate greater access by independents at the terminal wholesale level.”¹¹¹

“If the wholesale market were opened up and became more competitive, you would find that the retail market was competitive enough to take advantage of it and reduce retail prices.”¹¹²

Conclusion

- The wholesale and terminal gate price are the real determinants of the ultimate retail price paid by consumers. FuelWatch, while impotent on retail prices, is just as ineffectual at the wholesale level.

10 Technical Aspects

Evidence was submitted that some technical aspects of the legislation had not been thought through.

This is little wonder, given the legislation was rushed, without proper consultation, and that Treasury officials were required to work for 37 hours straight to finalise the legislation in order to meet the Government political objectives.

Shopper Dockets

Fears were expressed that shopper dockets, or other mechanisms, could be used to circumvent the 24-hour rule. The situation was summed up by the Law Council of Australia:

“We have also pointed out in our submission that there is a possibility that the objectives of the act might be circumvented. The bills at the moment disregard shopper dockets and other discounts and yet seek to establish a price that is fixed as both a maximum and a minimum. It seems to us that it would be quite feasible for service stations to actually develop a system of ad hoc discounts, which would enable them effectively to lower their price. That would avoid one of the objectives of the act

¹⁰⁹ Nicholas Moulis, General Manager, Australasian Convenience and Petroleum Marketers Association, Senate Standing Committee on Economics, 7 August, 2008, p 18

¹¹⁰ John Chapman, Executive Director, Motor Trade Association SA, Senate Committee Hansard, Senate Standing Committee on Economics, 21 July, 2008, p 10

¹¹¹ Gary Fites, RACQ, Senate Committee Hansard, Senate Standing Committee on Economics, 17 July, 2008, p 11

¹¹² Craig Glasby, President, Service Station Association, Senate Committee Hansard, Senate Standing Committee on Economics, 1 August, 2008, p 36

in terms of creating incentives not to quote high. It would also mean that the legislation would not achieve the objective of ensuring that consumers were fully informed of the effective prices in the market."¹¹³

*"You will have to put a board out the front, 'Come inside and say your name's Joe and we will give you 0.4c off.' There are so many ways around this scheme."*¹¹⁴

*"There appears to be no power to stop a retailer offering to double the discount on a Shop-A-Docket—for example, from 4c to 8c a litre—by simply advertising a daily special for a particular site or sites. Such behaviour would allow manipulation of the price of fuel to such a degree that the FuelWatch Scheme would be rendered worthless, as retailers would simply use another mechanism to reset their prices. We have raised this matter with the ACCC and with fuel pricing commissioner Pat Walker but have yet to receive a response."*¹¹⁵

*"But there is nothing to stop them from putting a sign out the front and saying, 'For your shopper docket that you got yesterday for 4c, today, as a one-off, I will actually give you 12c.' That would very simply undermine the other operator, who may well be priced at exactly the same price; he would be severely undermined."*¹¹⁶

Coalition Senators note that while DoCEP stated in their supplementary submission:

*There is no evidence that this has operated to defeat the intention of the Western Australian legislation. If it became apparent that loyalty discounts or similar activities were being used to undermine the intent of the legislation then advice would be provided to the Government for appropriate action.*¹¹⁷

The Treasury was less sure:

Senator ABETZ—But other than by shopper docket can I then put a sign outside my service station that says, 'Come in and say your name is Jo and I'll give you a 4c a litre discount on the board price'? Would that be allowed under this scheme?

Mr Murphy—I would say no.

Senator ABETZ—Interesting. What if I were to say that you could get a 4c a litre discount on petrol if you bowl into my service station and buy a Mars bar?

Senator JOYCE—Or a Cherry Ripe.

Senator ABETZ—Yes, or a Cherry Ripe—sorry, Senator Joyce.

Mr Murphy—No.

Senator ABETZ—So that would not be allowed?

Mr Murphy—I do not *think* it would be allowed.¹¹⁸

Price Changes

¹¹³ Roger Featherston, Member, Trade Practices Committee, Business Law Section, Law Council of Australia, Senate Committee Hansard, Senate Standing Committee on Economics, 1 August, 2008, p 2

¹¹⁴ David Cumming, Senate Committee Hansard, Senate Standing Committee on Economics, 7 August, 2008, p 54

¹¹⁵ John Chapman, Executive Director, Motor Trade Association SA, Senate Committee Hansard, Senate Standing Committee on Economics, 21 July, 2008, p 11

¹¹⁶ Theodoor KRUYIS, Chairman, Service Station Division, Motor Trade Association SA, Senate Committee Hansard, Senate Standing Committee on Economics, 21 July, 2008, p 17

¹¹⁷ Department of Consumer and Employee Protection, Supplementary Submission

¹¹⁸ Proof Committee Hansard, Canberra, 11th August 2008, p. 37

The legislation stipulates for price boards and bowser displays to be changed at 6am. Failure to do so renders the retailer liable to a fine and yet, particularly in small operations, there may be valid operational reasons why changes cannot be made at that time.

Senator ABETZ: *“You have indicated that setting the price by a particular time could be difficult. I would assume that there would be a number of independents that only have one person working at the service station.”*

Mr Glasby: *“That is correct.”*

Senator ABETZ: *“So if you had to change the billboard by 6.00 am, there could be difficulties if at the same time you have a customer at the apron at, let us say, 5.57 am or 5.58 am and, instead of wanting \$20 worth of petrol, they want \$100 worth of petrol. Do you interrupt them, change your price and let them wait at the apron for however long? Can you see the need for a window of opportunity apart from changing your price at 6.00 am?”*

Mr Glasby: *“Absolutely. I would like a 24-hour window of opportunity.”¹¹⁹*

Conclusion

- The rushed nature of the legislation has seen a number of valid criticisms of the legislation being aired. The lack of consultation needs to be remedied.

¹¹⁹ Craig Glasby, President, Service Station Association, Senate Committee Hansard, Senate Standing Committee on Economics, 1 August, 2008, p 32