

The Senate

Standing Committee on Economics

National Fuelwatch (Empowering
Consumers) Bill 2008

National Fuelwatch (Empowering
Consumers) (Consequential Amendments)
Bill 2008

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List of Recommendations

Recommendation 1

The committee recommends that any data collected by Fuelwatch be made available by the ACCC to independent academic researchers to allow open analysis of the scheme.

Recommendation 2

The committee recommends that the Government undertake close liaison with independent fuel retailers to monitor the operation of Fuelwatch. The impact on the competitiveness and market share of independent fuel retailers should be an important part of the one-year review of Fuelwatch which the Government has already promised.

Recommendation 3

The committee recommends that the Government examine the wording used in regard to 'standard prices' in the bill, and if there is a risk of ambiguity, adopt the wording that has been used in the Western Australian legislation instead.

Recommendation 4

The committee recommends that the designated review of the scheme after twelve months be undertaken in an open and transparent manner by an independent body.

Recommendation 5

The committee recommends that the Senate support the introduction of a national Fuelwatch scheme.

Chapter 1

Introduction and conduct of the inquiry

Introduction

1.1 Fuelwatch is one of a number of recent initiatives aiming to help consumers reduce their costs and sharpen competitive pressures in markets by reducing information asymmetries.¹ It does this by empowering consumers to shop around effectively. As Fuelwatch gives them access to useful information about today's and tomorrow's petrol prices (not just yesterday's), consumers can save money by buying petrol where it is cheapest. In so doing, they reward the vendors who offer low prices and so encourage lower prices for all customers.

1.2 The new Fuelwatch scheme will cover unleaded petrol, premium unleaded petrol, LPG, Diesel, 98 RON and biodiesel blends. It will cover metropolitan and major regional areas. The minister will have power to alter the areas covered, in light of submissions by relevant local governments. The scheme requires petrol retailers to notify the Australian Competition and Consumer Commission (ACCC) by 2 pm of their price for the next day (if it is changing) and this price must be maintained for 24 hours from 6 am. The ACCC will publish this information on a website by 4 pm. Penalties will apply to retailers who deviate from their stated prices, although some discretion will be given to the ACCC in the case of inadvertent breaches.

Background

1.3 Following receipt of a report by the ACCC (2007), the Prime Minister and the Minister for Competition Policy and Consumer Affairs announced on 15 April 2008 that a national version of the FuelWatch scheme currently operating in Western Australia would be introduced with the aim of improving price transparency for consumers in the retail petrol market. Fuelwatch is proposed to commence operating nationally on 15 December 2008. Its effectiveness will be reviewed a year later.²

1.4 On 17 June 2008 the Senate referred the National Fuelwatch (Empowering Consumers) Bill 2008 and the National Fuelwatch (Empowering Consumers) (Consequential Amendments) Bill 2008³ to the committee.

1 Other initiatives include reforms to trade practices legislation, the establishment of the GROCERYchoice website and requiring unit pricing in supermarkets.

2 Prime Minister and Assistant Treasurer; joint press release, 15 April 2008.

3 The latter bill amends the *Trade Practices Act 1974* so that it covers Fuelwatch.

1.5 The committee advertised the inquiry in the national press and invited written submissions by 7 July 2008. Details of the inquiry were placed on the committee's website and the committee also wrote to a number of organisations and stakeholder groups inviting written submissions.

1.6 The committee received 38 submissions. These are listed in Appendix 1.

1.7 Public hearings were held in Karratha (14 July 2008), Perth (16 July), Brisbane (17 July), Rockhampton (18 July), Adelaide (21 July), Sydney (1 August), Melbourne (7 August) and Canberra (11 August). No submissions were received from Tasmania or the Northern Territory but evidence was heard from Hobart and Darwin by teleconference. Witnesses appearing at these hearings are listed in Appendix 2.

1.8 The committee thanks those who participated in this inquiry. In particular, the committee appreciates the assistance of Informed Sources in providing data.

1.9 Unusually, rather than setting a date by which the report was required, the reference to the committee delayed the final report being tabled by requiring it '*not before 29 September 2008*'. Given the public interest in the topic and substantial discussion in the media, the majority of the committee believed it would be useful after the public hearings had been concluded to release an interim report to inform the public debate. Accordingly, an Interim Report was released on 27 August 2008.

1.10 This final report starts by discussing the economic arguments underlying Fuelwatch and the objections that have been raised. The experience with Fuelwatch in Western Australia is analysed in Chapter 3. As the impact on independents has been a particular concern, this is then accorded a chapter. Chapter 5 looks at some legal aspects and conclusions are presented in Chapter 6.

Chapter 2

The Economics of Fuelwatch

Addressing information asymmetries

2.1 Petrol is a very homogeneous product. While the petrol sold by a Coles Express service station, a BP station and a Gull station may be 'branded', in many cities it all comes from the same refinery so is really an identical product. Furthermore, petrol accounts for a sufficiently large proportion of household spending that it is worthwhile trying to buy it at a good price. These factors should lead to a very competitive market as customers compare prices and buy at the cheapest outlet. This in turn should drive prices down to the level at which petrol retailers are earning just enough profit margin to stay in business.

2.2 However, this potential competition is impeded, if not thwarted, by the unusual volatility of petrol prices. There are no other non-perishable consumer goods, or services, for which prices are so volatile.¹ As a Senate report from the previous parliament put it:

Daily and weekly fluctuations in the price of petrol cause significant bafflement to many Australians, resulting in confusion...²

2.3 The volatility makes it very hard for motorists to compare prices. For example, if a consumer is told by a friend that they saw on the way to work that a particular service station had a low price, this provides little incentive to divert to that station on the way home as that station and other stations' prices are likely to have changed (perhaps a number of times) during the course of the day. Even if the consumer himself drives past a station offering a good price on the way to work, he will not know it's a good price until he has gone past a run of stations with higher prices. He would then have to either backtrack (and risk being late to work) or hope the good price was still there in the evening.

2.4 There are certainly large signs outside service stations displaying the current price at that station. But this does not tell the customer how this price compares to that being charged by rival stations at that time and by the next day it is likely to have changed. Due to the unusual volatility in petrol prices, knowing today's price is not

1 Prices in financial markets, such as share prices and exchange rates are also volatile, but information and transactions costs are much lower in these markets so that prices quoted from different brokers will vary very little in contrast to the large differences in prices between service stations.

2 Senate Standing Committee on Economics (2006, p. 19).

much help in predicting what the price will be tomorrow at a given outlet and at its rivals.

2.5 This volatility does more than just add 'noise' to the market. It does not affect buyers and large sellers equally. Rather there is a problem of 'information asymmetry'. The large petrol retailers subscribe to a service from a company called 'Informed Sources'. The company collects price data from 3 500 retail sites by a combination of paying people to ride around noting down prices and having their subscribers send price data to them. Informed Sources then provides its customers with information every 15 minutes about what other stations are charging. Armed with this information, the large petrol retailers have an unchallengable advantage over consumers in the market.

2.6 This information asymmetry is likely to mean that the retail price of petrol is higher than in a competitive market. Firstly, consider the case of a normal, reasonably competitive market. Suppose a bookseller is deciding what price to charge for a popular title in an advertisement in the weekend newspaper. He notes the book has been selling well and is thinking of increasing the price. He knows that if other booksellers follow his price increase, he will lose few sales and so profits will rise. But if none of his competitors increase their prices for the book, he may lose a lot of sales and so profits may fall. There is therefore a risk attached to deciding to increase the price of the book.³

2.7 By contrast, information asymmetry greatly reduces this risk in the retail petrol market. A petrol retailer who puts up her price will know that her competitors will be aware of this almost immediately and she will be aware almost immediately of their response. So if the price rise is not followed it can be reversed, before consumers become aware that her price is higher than her peers, and so before there has been much loss of sales. Her rivals may well follow her lead in raising prices as they know if she changes her mind and cuts the price again, they can respond immediately.

2.8 Information asymmetry also discourages petrol stations from cutting prices. A lower price will reduce the profit on sales that would have been made anyway. Rivals will know of it immediately and may match it, removing any extra sales to the most price-conscious customers. Many other customers who might have been attracted by the lower price will be unaware of it, or unsure whether other stations have also lowered their prices.

2.9 The information asymmetry gives rise to 'lazy competition'.⁴ While the use of the Informed Sources information by the large retailers is not illegal, the ACCC has described it as being 'as being as close to illegal collusion as you can get'.⁵

3 This risk could be reduced by colluding with the other sellers to agree to all increase their prices, but this is illegal.

4 Mr Graeme Samuel, ACCC, *Proof Committee Hansard*, 7 August 2008, p. 12.

5 Mr Graeme Samuel, ACCC, *Estimates Hansard*, 5 June 2008, p. 21.

2.10 Fuelwatch will greatly reduce this information asymmetry. As stations are required to 'lock in' their prices for 24 hours, they will risk a loss of sales if they increase their price. As useful information about prices becomes more readily available to motorists, they will be more willing and able to shop around and buy petrol where it is cheapest, increasing the incentive for stations to cut prices. After 4 pm they will know both the current day's price and the next day's price at all their local stations. As more buyers will be able to switch their purchases to stations offering lower prices, the market will become more competitive.

2.11 The above argument for the benefits from Fuelwatch was put by the Australian Competition and Consumer Commission, the state department responsible for FuelWatch in Western Australia, independent academics and others:

By having to quote fixed fuel prices for a 24 hour period, petrol retailers will have to make better judged and more competitive choices on fuel prices.⁶

The disincentive to be the first to hike price is much greater under the 24-hour-rule. Without the rule, the price leader for a cycle knows that once its price is hiked, other firms can respond very quickly (within hours) by hiking their prices as well. If other firms do not respond quickly, the price leader can quickly retract its price hike to avoid losing much market share. However, under the 24-hour-rule, after a price leader hikes its price, other firms cannot respond within 24 hours. The price leader has to lose market share for an entire day – it cannot retract its price hike either.⁷

...it puts the real mettle on the sellers of petrol to get their prices as keen as possible. It was best explained to me by Michael Luscombe, the CEO of Woolworths, when he said to me: 'Graeme, Fuelwatch is going to operate to the disadvantage of consumers. If I have a site and I post a price at 2 pm today that is 5c higher than my competitor's site down the road, then the consumers will have to pay 5c more for their petrol.' I said to him: 'No, Michael, they will go down the road and you just won't sell any petrol. What that says to you is to be keen on your tender at 2 pm today. Get your price right. If you are too high you will lose sales. You might have a higher margin, but you will have a higher margin and almost no sales.'⁸

...it is definitely creating an environment where consumers are empowered with information to make choices, and, to a certain extent, that would force competition in the pricing of fuel.⁹

6 National Roads and Motorists Association, *Submission 23*, p. 2. A similar argument was made by Mr Aaron Rayner, WA Department of Consumer and Employment Protection, *Proof Committee Hansard*, 16 July 2008, p. 5.

7 Professor Wang, *Submission 27*, p. 6.

8 Mr Graeme Samuel, ACCC, *Estimates Hansard*, 5 June 2008, p. 22.

9 Mr Peter Callaghan, Commerce Queensland, *Proof Committee Hansard*, 18 July 2008, p. 15.

2.12 The committee does not believe opponents of the scheme ever offered a convincing rebuttal of this argument. The logic of the argument is that over time Fuelwatch will not only help those motorists using it to locate stations offering cheaper fuel, but the added stimulus to competition will push down average prices for all.

2.13 While the direction of the impact on prices from this improvement in competition is clear, the magnitude will vary over time and across locations. Not all customers will immediately start accessing the Fuelwatch information so the effect will build up over time. The impact should be larger in markets where information is currently harder to find.

2.14 The most important factor determining the retail price of petrol will remain the wholesale price, and therefore the world price of oil and the exchange rate (with about a week's lag).¹⁰ But even a reduction of a few cents per litre due to a more competitive retail market adds up to a significant saving for motorists. And unlike a cut in the excise duty, it is an amount shifted to consumers from large oil companies and retailers not from other taxpayers.

Could a modified scheme achieve a similar result?

2.15 An alternative suggested in a number of submissions was making more pricing information available but still allowing intraday price changes; 'Fuelwatch without the 24 hour rule'. The Service Station Association endorses requiring stations to notify the ACCC of their *opening* prices for the next day, but believes (at least small independent) stations should be able to *cut* (but not increase) their price during the day.¹¹

2.16 However, such an approach would not get around the problem that consumers would not know that what they were told was the lowest price in the area would still be the lowest by the time they made their purchase. It also weakens the disincentive Fuelwatch builds in for raising prices. The committee has seen many views that allowing prices to fall would vitiate the scheme:

I just do not see how that system could work.¹²

10 ACCC (2007, p. 13); Senate Standing Committee on Economics (2006, pp 5-7, 22). The Australian Institute of Petroleum correctly note that Australia has low petrol prices by international standards; *Proof Committee Hansard*, 11 August 2008, p. 18. However, the main reason for this is that Australia has relatively low taxes on petrol; among the 28 OECD economies in a comparison by the Department of Resources, Energy and Tourism only the three North American countries have lower taxes. On a pre-tax basis, petrol prices in Australia are similar to those in its peers; ACCC (2007, p. 45) and DRET cited in *Submission 2a*, p. 21.

11 Service Stations Association, *Submission 7*, p. 2. Similar views were put by the Motor Trades Association of South Australia, *Proof Committee Hansard*, 21 July 2008, p. 11 and Royal Automobile Club of Victoria, *Proof Committee Hansard*, 7 August 2008, p. 49.

12 Mr Mike Mullins, Gull Petroleum, *Proof Committee Hansard*, 16 July 2008, p. 13.

...that would undermine the whole value of Fuelwatch...not only does it tell consumers what the range of prices is on any given day...they have some certainty about buying at that price. If the retailers are able to vary their prices down, they have no idea then where the cheapest available price is. The other concern...is that it takes away the rigour that they have to go through at the moment in setting a price.¹³

...this would undermine the key objective of the scheme.¹⁴

Mr Buswell said [after receiving advice from his department that] his previous push for changes that would allow petrol stations to lower their prices on the same day to match competitors had been dismissed because it would 'undermine the integrity' of the system.¹⁵

2.17 For these reasons the committee believes the 24 hour rule is an integral part of the Fuelwatch scheme.

The demand for better information on petrol prices

2.18 Some opponents of Fuelwatch have argued that it is too costly or asked why similar schemes are not being applied to other goods and services. One response to these arguments is the points made above that petrol prices are unusually, almost uniquely, volatile; that the information asymmetry problem is particularly acute for petrol; and that petrol constitutes a significant amount of household budgets.

2.19 A more complete answer is to consider what signs there are that better information is desired and the most cost-effective means of providing it.

2.20 The committee heard of an enormous demand for better information about petrol prices, from both retailers and consumers.¹⁶ The dissenting report in the Interim Report states that 'we are all in favour of more information for consumers'.¹⁷ This is

13 Mr David Moir, Royal Automobile Club of WA, *Proof Committee Hansard*, 16 July 2008, p. 24.

14 Mr Jim Murphy, Treasury, *Proof Committee Hansard*, 11 August 2008, p. 27.

15 WA's Consumer Protection Minister cited in report in *West Australian*, 9 October 2008.

16 Among those advocating more information for consumers are the Royal Automobile Club of Tasmania, *Proof Committee Hansard*, 11 August 2008, pp 11-12; Royal Automobile Club of Victoria, *Proof Committee Hansard*, 7 August 2008, p. 48; National Roads and Motorists Association, *Proof Committee Hansard*, 1 August 2008, p. 16; Choice, *Proof Committee Hansard*, 7 August 2008, p. 61; Royal Automobile Club of Queensland, *Proof Committee Hansard*, 17 July 2008, p. 11; National Seniors, *Proof Committee Hansard*, 11 August 2008, p. 14 and Professor Zumbo, *Proof Committee Hansard*, 1 August 2008.

One practical suggestion to improve information displayed on boards outside stations would to standardise colours in which different types of fuel are advertised; Flynx, *Submission 36*, p. 5. Similar ideas are expressed by Informed Sources, *Submission 22a*, p. 4.

17 *Interim Report*, p. 31.

despite the large amount of resources currently being expended on collecting and distributing information on petrol pricing.

2.21 About half of surveyed motorists said they would be likely to use an internet site or email alerts to know about petrol prices.¹⁸

Reducing the cost of gathering and distributing information

2.22 Fuelwatch will introduce a single national gatherer and disseminator of petrol price information, giving rise economies of scale. The provision, processing, distribution and accessing of this information will also become cheaper as prices will not be varying as often.

2.23 The administrative costs of Fuelwatch will comprise initial capital costs of \$1.3 million and annual operating costs of around \$4½ million.¹⁹ The compliance costs of the proposed Fuelwatch scheme would be minimal, only requiring petrol stations making at most one daily call to a toll-free number or sending an email.²⁰ By contrast, the committee heard of much larger costs currently being incurred by large retailers, small retailers, motoring organisations and consumers in obtaining information on petrol prices.

2.24 The large petrol retailers mainly get data by buying it from 'Informed Sources', a private company that collates fuel price data. Informed Sources declined to disclose how much it costs them to gather their information or how much they charge for it, but it is clearly substantial. Some of the price information is gathered by Informed Sources' subscribers sending in the information, but they also gather information on prices charged by non-subscribers by sending drivers around to note down prices. The only estimate of the cost of the Informed Sources operation used by the large petrol retailers available to the committee was that made by FUELtrac:

It is estimated that this system of direct data exchange between participating Oil Companies and the Supermarket chains costs in the order of \$3 – \$4 million per annum.²¹

2.25 A television station told the committee that the cost of obtaining price information was high:

...it was going to cost us an extraordinary amount of money to pay MotorMouth [a subsidiary of Informed Sources] to collate that information...They quoted me \$50,000 per year per market..²²

18 ACCC (2007, p. 300).

19 *Explanatory Memorandum*, p. 7; *Budget Paper no. 2*, p. 291 and *Estimates Hansard*, 5 June 2008, pp 42-3. This estimate of operating costs seems plausible given that the WA government currently spends \$700 000 a year operating its FuelWatch system.

20 The *Explanatory Memorandum* says 'the estimated compliance cost for business is zero'.

21 Cited in Australian Automobile Association, *Submission 19a*, p. 19.

2.26 Informed Sources stated:

it currently costs in excess of \$50k pa for each car and driver we put on the road in capital cities to collect prices six hours per day across 350 days per annum and with each vehicle covering more than 100,000 kilometres each year.²³

2.27 National coverage would require such cars and drivers in every regional centre and multiples in cities, which would represent an annual cost of millions of dollars a year, which given the relatively inelastic demand for petrol is being passed on to motorists.

2.28 As well as the amount retailers pay Informed Sources for the data, there are the costs involved in staff sending price information every 15 minutes to Informed Sources to provide the data sold back to them.

2.29 Small independent operators cannot afford to subscribe to the Informed Sources service. Instead they spend time and money driving around town checking rival stations' prices:

Normally I check the fuel prices myself in my own area three times a day... I have to physically jump in a motor vehicle and look at price boards.²⁴

...on my way to work I drive around the 17 other sites in Bendigo and I write the price down. When I go out through the course of the day, I will go out and do the 17 sites... I am checking the price sometimes four or five times a day, because sometimes I will change the price two and three times a day. ...I look at price checking as another job that I do throughout the day. It is no different from sweeping the floor or stacking the fridge. That is what makes my business competitive.²⁵

2.30 Informed Sources estimate the cost of an independent station driving around twice a day to collect this information about their immediate competitors as over \$10 per day.²⁶ Even if the costs were as low as \$10 a day, which seems unlikely, this would imply a total annual cost of the order of \$2½ million a year.²⁷

22 Mr Stephen Marshall, WIN Television, *Proof Committee Hansard*, 18 July 2008, p. 17. This is disputed by Informed Sources, who claim they never provided a 'firm quotation'; *Submission 22a*, p. 9.

23 Informed Sources, *Submission 22a*, p. 9.

24 Mr Timothy Kane, Service Station and Convenience Store Association of Queensland, *Proof Committee Hansard*, 17 July 2008, pp 5-6.

25 Mr Carew, APCO, *Proof Committee Hansard*, 7 August 2008, pp 45-7.

26 Informed Sources, *Submission 22*, p. 23.

27 The AIP estimates there are 784 independent petrol stations in Australia (*Submission 2a*, p. 8), but a tenth of these may be in Western Australia.

2.31 Independent retailers also need to spend managerial time deciding how to respond to price moves through the day, rather than making a decision once a day under Fuelwatch.

2.32 As well as Informed Sources, another private company, FUELtrac, also collates and sells information on petrol prices. Shell has a website with information on prices at its stations. Various motoring associations, consumer groups and media organisations also spend money on collecting information on petrol prices.²⁸ As the NSW motorists' organisation pointed out:

That is not a costless exercise. It is a costly exercise.²⁹

2.33 Motorists' organisations will no longer have to undertake this costly exercise if Fuelwatch is rolled out nationally.

2.34 The WA government will save \$0.7 million a year from not needing a separate FuelWatch in Western Australia.

2.35 The ACCC's survey shows that outside Western Australia, the predominant source of information on petrol prices is boards outside service stations.³⁰ Some consumers will just look at the prices on roads along which they were travelling, but might then have to backtrack if they realise an earlier station had been the cheapest. (Without the 24 hour rule under Fuelwatch, they cannot look at the prices on the way to work in the morning and then buy on the way home, as the prices are likely to have changed.) Other consumers will drive out of their way to check prices at other stations. Others join queues on the assumption that these must be cheap stations. The extent of these search costs are often neglected in discussions of Fuelwatch:

Fuelwatch... reduces the search costs that they currently face in trying to work out where to find the cheapest petrol. Those costs include not just time; they also include money in the form of petrol driving to places that they did not want to be.³¹

28 The committee heard that fuel price information is posted on websites by motoring associations in New South Wales, Victoria, Queensland, South Australia and Tasmania. Of course this is a cost the Western Australian motoring organisation does not incur as a Fuelwatch scheme already operates in WA. Other websites with fuel prices include one operated by a radio station in the Northern Territory; Mr Robert Bradley, Automobile Association of the Northern Territory, *Proof Committee Hansard*, 7 August 2008, p. 66. These were discussed in more detail in the *Interim Report*, pp 9-10.

29 Mr Alan Evans, National Roads and Motorists Association, *Proof Committee Hansard*, 1 August 2008, p. 16. Similarly, the Royal Automobile Association of South Australia 'invest very heavily in tracking price movements'; Ms Sharon Hanlon, *Proof Committee Hansard*, 21 July 2008, p. 2.

30 ACCC (2007, p. 299).

31 Mr Gordon Renouf, Choice, *Proof Committee Hansard*, 7 August 2008, p. 61.

2.36 If a third of motorists spend just a dollar a year in extra driving looking for cheaper petrol, or queuing on Tuesday evenings, then saving this expense would pay for the running costs of a national Fuelwatch scheme.³²

2.37 Reducing these costs by introducing Fuelwatch removes a deadweight loss to the economy as a whole. The excessive time and money being devoted to collecting petrol prices can instead be redirected to more worthwhile activities.

2.38 Furthermore, all the expense currently incurred is merely providing a patchy coverage of what petrol prices *had been*. They do not provide what is actually most useful to motorists: what petrol prices *will be*. This is what Fuelwatch can provide. Furthermore, the information from Fuelwatch will also be more accurate than that gathered in other ways. As one independent retailer put it:

Because of the legislation and the fines Fuelwatch would be deadly accurate, so we think that would be an advantage.³³

Petrol price cycles

2.39 There are regular weekly price cycles in Sydney, Melbourne, Brisbane and Adelaide. (Price fluctuations are less regular or non-existent in Canberra, Hobart, Darwin and rural areas.) Typically prices peak on Thursdays and are lowest on 'magic Tuesdays'.³⁴ The large petrol retailers refer to these cycles as 'discounting cycles', but they could, perhaps more accurately, be called 'surcharging cycles'.

2.40 It is generally the stations affiliated with a refiner in that city that lead the price up in the cycle, when the wholesaler announces the withdrawal of price support to retailers.³⁵ However, the large petrol retailers operate sophisticated strategies which allow them to adjust prices on a localised basis.³⁶ Independent retailers used to be

32 At average earnings, two minutes of queueing or additional driving costs a dollar. There are 15 million cars registered in Australia ACCC (2007, p. 1). Allowing for some people with multiple cars, this implies over 13½ million motorists, so a dollar each for just a third of them would more than cover the annual running costs of Fuelwatch.

33 Mr Andrew Fischer, Australian Farmers Fuel, *Proof Committee Hansard*, 21 July 2008, p. 21.

34 The cycles have been around a long time but with gradual changes. A South Australian select committee (2001, p. 33) found 'a pattern of high prices around Tuesday/Wednesday chasing down to low prices around Sunday/Monday'. The term 'magic Tuesday' was coined by Mr Aivars Blums, Motor Trades Association of Queensland, *Proof Committee Hansard*, 17 July 2008, p. 1.

35 ACCC (2007, pp 14 and 136).

36 ACCC (2007, p. 14).

more aggressive discounters but this has been less common since the entry of the supermarkets with their shopper docket schemes.³⁷

2.41 A further complication is that the wholesalers may sometimes provide 'price support' to franchisees, owner-operators and supermarkets, temporarily lowering the wholesale price to allow the stations to 'discount' for a period, perhaps to match price cuts by rival stations. In some cases this price support may be dependant on the retailer not exceeding a maximum set by the wholesaler.³⁸

2.42 Most customers are well aware these cycles exist. Most motorists try to buy petrol when they think it is cheapest rather than just when they need it.³⁹ However motorists are limited in the extent to which they exploit their (imperfect) knowledge of the price cycles. An opinion poll conducted for the ACCC in November 2007 showed 74 per cent of motorists correctly nominate Tuesday as the best day to buy petrol but only 47 per cent buy petrol on Tuesdays. Only 20 per cent of petrol is sold on Tuesdays.⁴⁰

2.43 Regardless of the extent to which sales of petrol are artificially shifted to Tuesday evenings, it seems an inefficient practice. One example of the impact it causes was described by a witness:

the other night a police car was parked across the Shell service station on the corner of Chappell Road and Dandenong Road to stop traffic from going out into the road and blocking the trams.⁴¹

2.44 One indication of the uncertainty that consumers face about price cycles is indicated by some 'urban myths' that have grown up around them. One persistent belief is that petrol prices spike more before long weekends than other weekends.⁴² However the ACCC's analysis shows this is not the case. Customers also overstate the difference between prices at the peak and the trough of the cycle.⁴³

37 ACCC (2007, p. 137).

38 Mr Michael Ridley-Smith, Caltex, *Proof Committee Hansard*, 1 August 2008, p. 24.

39 The opinion poll commissioned by the ACCC in November 2007 showed that 70 per cent of motorists usually or always try to buy petrol when it is cheapest while 28 per cent just buy when they need it. The latter group includes many of the 8 per cent of customers for whom someone else (presumably mostly employers) pays for the petrol. An opinion poll conducted for the Australian Automobile Association showed that 49 per cent of motorists try to buy when petrol is cheapest, up from 41 per cent in 2005. ACCC (2007, pp 31-2).

40 ACCC (2007, pp 177-9, 290, 293).

41 Mr Terrence Conroy, Victorian Automobile Chamber of Commerce, *Proof Committee Hansard*, 7 August 2008, p. 33.

42 ACCC (2007, p. 31). 68 per cent of motorists were 'extremely concerned' about this, so presumably an even larger proportion believe it happens. See also Senate Standing Committee on Economics (2006, pp 26-7).

43 While the variation during the weekly cycle is typically 5-10 cents per litre, the average customer estimates it at 13 cents.

2.45 Those arguing that cycles are desirable assert they are predictable for consumers.⁴⁴ However, from time to time the cycle mysteriously disappear – as occurred in Melbourne for most of May 2008 (Chart 3.2) – or the timing of them shifts, further confusing customers.⁴⁵

2.46 These cycles are much more marked in Australia than in overseas retail petrol markets.⁴⁶ Despite extensive analysis by the ACCC, 'the causes ... are an enigma'.⁴⁷ Industry spokespersons also did not understand their cause.

2.47 The typical observed pattern of quick price rises followed by gradual declines is consistent with the Edgeworth cycles theory where a small number of competing retailers are continuously undercutting each other by small margins in an attempt to increase market share until a substantial price rise is required to restore viability.⁴⁸ This theory is supported by the large petrol retailers and Informed Sources.⁴⁹ It does not explain why the cycle has such a regular periodicity. It is also noteworthy that it is a theory about an oligopoly, not about a competitive market.

2.48 Another possible explanation is that refineries are trying to smooth their production by adjusting (wholesale) prices to even out demand across the week and this is flowing into retail prices.⁵⁰ However, there is no weekly price cycle evident in wholesale prices.⁵¹ Furthermore, a problem with the smoothing argument is that sales tend to be higher than average on the days prices are lower,⁵² which would imply that prices are being persistently over-cut.

2.49 The cycles are most likely a form of price discrimination. Retailers are trying to segment the market so they can sell at a higher price to those who buy petrol on a 'when needed' basis but still sell to more price conscious consumers on the

44 For example, Australian Institute of Petroleum, *Submission 2a*, and Royal Automobile Club of Victoria, *Submission 24*, p. 2.

45 Informed Sources suggests this happens when a large shipment arrives or there is a shutdown at a refinery; *Submission 22*, pp 25-6.

46 ACCC (2007, pp 162-3). An exception may be Norway, which has similar cycles; Informed Sources, *Submission 22*, p. 26.

47 ACCC (2007, p. 16). On their website, the ACCC describe the reasons for price cycles as 'complex' and include 'possible anti-competitive practices'.

48 ACCC (2007, pp 164, 350-2). The theory was first developed in Edgeworth (1925).

49 Informed Sources, *Submission 22*, pp 24-6; and Professor Wang, *Submission 27*.

50 It may go back to when workers were predominantly paid on a Friday and would fill the car up while out shopping on a Saturday morning; Neumann Petroleum, cited in ACCC (2007, p. 174). A similar explanation is put by Informed Sources, *Submission 22*, p. 25.

51 Australian Institute of Petroleum, *Submission 2a*, p. 14.

52 Cited in ACCC (2007, p. 177).

Tuesdays.⁵³ An analogy might be drawn with cinemas charging more for tickets on Saturdays than on Tuesdays.⁵⁴ However, unlike in the petrol market, cinemagoers may benefit from this as more people want to go to cinemas on Saturdays and there are capacity constraints on how many can attend. In general, price discrimination is a means of increasing profits at the expense of consumers, rather than an act of altruism on the part of sellers.

2.50 The committee heard a range of views about whether the existence of cycles implies a higher or lower average price of petrol. If the cycles are the result of price discrimination, then this implies that those buying on the 'cheap' day are getting the price that would prevail generally in the absence of information asymmetries and other market imperfections. The other customers are paying more than a competitive price. Measures that make the market more competitive would then tend to reduce prices on the more expensive days but leave them unchanged on the 'cheap' days, both dampening the cycle and lowering the average price. As some witnesses put it:

If the oil companies tell you the fuel cycle is good for you, then you have to be a bit suspicious, because it is good for them and I am not sure it is good for consumers.⁵⁵

The benefits accrue to the sellers of petrol, not to the consumers.⁵⁶

2.51 On the other hand, those who claim that price cycles result in lower average prices have to explain why the differences between the high and low points of the cycles in the Eastern capitals exceed the average margin on petrol.⁵⁷ This implies that

53 Although not using the term 'price discrimination', Professor Zumbo explains the cycle in essentially these terms; *Proof Committee Hansard*, 1 August 2008, p. 39.

54 Those on a 'date', wanting to go out with a large group of friends or not wanting a late night when working the next day may be willing to pay the higher price on a Saturday while individuals on a tight budget may prefer to buy the cheaper ticket on a Tuesday.

55 Mr Peter Fitzpatrick, Motor Trade Association of WA, *Proof Committee Hansard*, 16 July 2008, p. 19.

56 Mr Aaron Rayner, WA Department of Consumer and Employment Protection, *Proof Committee Hansard*, 16 July 2008, p. 5.

57 The difference between the low and high points of the cycle is typically 8-10 cents per litre (see Charts 3.1 and 3.2, and ACCC (2007, p. 157)) while the average margin between wholesale and retail prices over 2002-03 to 2006-07 was 4.7 cents per litre in Sydney, 4.9 cpl in Melbourne, 5.1 cpl in Brisbane and 3.7 cpl in Adelaide; ACCC (2007, appendix J). These estimates were supported by industry sources: 'the average amplitude of the cycle [in June 2008] was around 7 cents per litre', Australian Institute of Petroleum, *Submission 2a*, p. 15; 'the gross margin averaged close to 5 cents per litre in 2007-08', Australian Institute of Petroleum, *Submission 2a*, p. 14; 'in terms of the total costs of running a retail outlet of the size that we would normally run, you are probably looking at approximately 5c a litre to cover your costs'; Mr Wright, Neumann Petroleum, *Proof Committee Hansard*, 17 July 2008, p. 18; 'gross retail margin on fuel in metropolitan areas is usually of the order between two and three cents per litre', Motor Trades Association, Queensland, *Submission 12*, p. 1.

stations are selling at a loss at the low point of the cycle.⁵⁸ The committee has not heard a convincing explanation as to why stations would choose to do this persistently. If, as seems more plausible, stations are not selling at a loss on Tuesdays⁵⁹, then they are making supernormal profits on the other days of the week.

The 'buying below the average' fallacy

2.52 A commonly-used argument is that consumers benefit from the cycle as they buy petrol at below the average price. For example, the Australian Institute of Petroleum comment:

AIP members strongly believe that there is considerable evidence to suggest that consumers benefit significantly from buying heavily discounted petrol at the low point in the price cycle...Discount cycles favour the consumer, with over 60% of petrol sales occurring below the average price of the price cycle...[as the ACCC show] more than 60 per cent of weekly sales were made on the four days of the week (ie. Sunday, Monday, Tuesday & Wednesday) when the average daily price was below the average weekly price...⁶⁰

2.53 If consumers bought petrol completely at random, then one-seventh or 14 per cent of sales would occur each day. This would imply that 57 per cent of sales would be made on Sunday, Monday, Tuesday and Wednesday (or whichever four days had the lowest prices). No convincing argument was given that an extra, possibly insignificantly different, 3 per cent of sales occurring on these days should be a goal of policy.⁶¹

2.54 The proportion of petrol sold on days where the price is below the weekly average depends on how high prices go at the peak of the cycle. Indeed, to ensure that a large proportion of consumers paid less than the average posted price, one would double the price of petrol for a night a week, so that nearly 100 per cent of sales are made below the weekly average price. This is absurd of course, but it illustrates why 'the proportion of sales made below the average price' is not a sensible criterion for evaluating market structures.

58 This was claimed by Mr Gary Fites, Royal Automobile Club of Queensland, *Proof Committee Hansard*, 17 July 2008, p. 12 and Mr Terrence Conroy, Victorian Automobile Chamber of Commerce, *Proof Committee Hansard*, 7 August 2008, p. 34. One witness suggested that if stations were charging a price below cost, this may not be in consumers' interests: 'in the United States, where they do have prohibition against below cost pricing, those prohibitions have led to a lower price being paid by consumers for petrol'; Professor Frank Zumbo, *Proof Committee Hansard*, 1 August 2008, p. 40.

59 The dissenting report in the *Interim Report* says 'clearly no station does so permanently'; p. 33.

60 Australian Institute of Petroleum, *Submission 2a*, p. 18. The point was reiterated by their Dr John Tilley, *Proof Committee Hansard*, 11 August 2008, p. 18.

61 For a further discussion, see ACCC (2007, pp 175-6) and references cited there.

Intra-day price movements

2.55 In addition to the interday movements each week, there are often intra-day price changes which make it much harder for consumers to compare prices. This variation is very unpopular with consumers. The classic example is a customer who complained that the price had risen by 15 cents a litre while she was waiting in a queue.⁶² Indeed, 83 per cent of customers would prefer the same price apply all day.⁶³ A majority of customers would prefer no intra-day volatility even if, as Fuelwatch critics assert, this meant a less predictable weekly cycle. A third of all customers, even those who are most price conscious, would be willing to pay higher average prices if it meant no intraday volatility.⁶⁴ Fuelwatch's 24 hour rule will remove the annoyance of intra-day price variations.

Petrol prices in regional areas

2.56 Petrol prices are generally higher in regional areas. Over the longer term the average differential between regional and city prices is around 5 cents per litre.⁶⁵ The reasons are described by the Australasian Convenience and Petroleum Marketers Association:

The nature of a fuel retail business in regional and rural Australia differs greatly from that of a metropolitan site, lower population and smaller operations with a greater reliance on petrol margins than on other complementary profit centres necessitates a model of operation vastly different to what the majority of consumers would recognise. The higher prices in the country compared to the city are principally due to, higher service station operation costs, higher cost of supply to service stations and more sites and therefore more competition in the metropolitan area. Additionally, with lower passing trade, discounting in most cases does not necessarily translate into more customers and sales.⁶⁶

62 Cited by the Hon Chris Bowen MP, *House Hansard*, 29 May 2008, p. 3870.

63 ACCC (2007, pp 280-1, 295-6). The dissenting report in the *Interim Report* also states that 'such price movements are unpopular'; p. 35.

64 44 per cent of motorists nationwide are 'extremely concerned' about intraday volatility (the national average being pulled down by Perth motorists where intra-day variation is prohibited). 63 per cent would prefer a uniform price all day even if this meant a less predictable weekly cycle. Given a choice 33 per cent of motorists would prefer no intraday variation and 48 per cent would prefer a lower average price. ACCC (2007, pp 280-1, 295-6).

65 ACCC (2007, p. 146).

66 ACAPMA, *Submission 6*, p. 2. Doubts were expressed in Karratha about the reasons given for petrol prices there being higher than in Perth given that the north-west is closer to sources of imported oil; *Proof Committee Hansard*, 14 July 2008.

2.57 There is a longer delay between oil prices reflecting in regional petrol prices than in city prices, which means the country-city differential initially narrows when oil prices rise and widens when it falls.⁶⁷

2.58 The ACCC expressed concern about the impact of Fuelwatch in rural areas due to 'the increased potential for anti-competitive effects in rural and regional areas due to the more concentrated nature of the market there'.⁶⁸ Concerns have also been expressed by a small business organisation:

In many small communities there may only be one supplier to the local market, and again free competition is not available. A business will inevitably then maximise return and offset risk. Where price projections are being required, the cost/price risk will be factored in. This will then elevate the overall price average...The only simple way in which an operator (particularly a small operator) can offset risk is in risk premium pricing. The average would inevitably trend higher.⁶⁹

2.59 Some regional witnesses referred to the utility of Fuelwatch:

I think it is productive in regional areas...I think people are aware of it, and they do use it to their benefit around towns... everyone is really quite for FuelWatch for the consumers...⁷⁰

2.60 Informed Sources suggest that increasing competition in the cities would result in higher prices for rural customers:

Assuming that most businesses in competitive markets are operating at or near to minimum economic return then a reduction in margin in the cities must be made up through increases in other parts of the business. One logical area would be to recover this reduction by increases in the rural area of Australia through higher prices.⁷¹

2.61 However, if the markets are truly competitive than a chain attempting to offset lower margins in the cities by raising margins in rural areas would find themselves losing business there to independents who did not operate in the city.

67 ACCC (2007, p. 147).

68 ACCC (2007, p. 17).

69 Rockhampton Chamber of Commerce, *Submission 3*, p. 2.

70 Ms Leann Cooper, Karratha and Districts Chamber of Commerce and Industry, *Proof Committee Hansard*, 14 July 2008, p. 9.

71 Informed Sources, *Submission 22*, p. 14.

The 'Fuelwatch of the future'

2.62 Some submissions have referred to how in the future there may be alternative ways of making the retail petrol market more competitive.⁷² Emerging technology will mean that motorists will be able to get an analysis from an on-board computer of the cheapest petrol outlets in the area, their distance from the car's current position, and directions on how to get there. It will also be possible to send a message to the service station locking in the price of petrol. A further development would be a computer, possibly onboard the car, automatically emailing all nearby stations asking for them to make a bid, binding for say the next hour, to supply petrol.

2.63 These possibilities are interesting, and offer potential for a more competitive market. However, as it will be years yet before such technology is widely available, it is no reason not to proceed with the introduction of Fuelwatch now.

72 SEP Consultants, *Submission 38*; Informed Sources, *Submissions 22, 22a*.

Chapter 3

FuelWatch in Western Australia

3.1 The national Fuelwatch scheme is not just a theoretical construct. A FuelWatch scheme is already operating in Western Australia. It was introduced by a state Liberal government in January 2001 in response to a parliamentary select committee report, and supported by subsequent state Labor governments. The incoming Liberal Treasurer and Consumer Protection Minister has said that FuelWatch has his full support as it was working successfully and the new Premier said it was working well.¹

3.2 The WA scheme involves daily monitoring of prices for petrol, diesel and automotive LPG within metropolitan Perth and 52 regional areas (in total covering about 80 per cent of retail outlets). The prices provided by 2 pm each day, which are posted on a website by 4 pm, must be maintained from 6 am the next day to 6 am the following day. FuelWatch also operates a personalised email service, and its information is disseminated in the evening news on TV and in the main morning newspaper. FuelWatch allows customers to choose where to buy tomorrow, and if prices are going up gives fourteen hours to buy at today's prices.

Opinions of FuelWatch in WA

3.3 The WA Government argues 'FuelWatch enables motorists to make informed decisions about their fuel purchases, which puts downward competitive pressure on fuel prices.'² Given the variation in petrol prices at stations across Perth, 'on average at present consumers can save between 13c and 14c for most types of fuel in Perth...about \$7 a trip to the petrol station'.³

3.4 The Royal Automobile Club of Western Australia supports the scheme:
we know from general community support and general use of the FuelWatch scheme, both if you like in an active way and in a passive way, that it is something that has worked well here in WA for consumers.⁴

3.5 Consumer surveys have shown over 90 per cent of WA motorists are aware of FuelWatch.⁵ It is widely used:

1 *West Australian*, 9 October 2008.

2 WA Department of Consumer and Employment Protection, *Submission 5*, p. 5.

3 Ms Anne Driscoll, WA Department of Consumer and Employment Protection, *Proof Committee Hansard*, 16 July 2008, p. 2.

4 Mr David Moir, Royal Automobile Club of Western Australia, *Proof Committee Hansard*, 16 July 2008, p. 24.

...RAC surveys show that 57% of consumers do [use the FuelWatch service]...⁶

Over 32 000 are receiving personalised emails daily so they can make choices about where they buy their fuel...60 per cent of people have indicated that they actually use FuelWatch.⁷

...demand for FuelWatch information from the community increases in line with increasing petrol prices.⁸

Because FuelWatch is available on the evening TV news, on the radio and in the newspaper on a daily basis, you are aware generally of the span of prices available tomorrow or that day. You do not have to be the concerned buyer who actively seeks the information by email or SMS or rings up on a daily basis or when you are about to buy the fuel.⁹

3.6 The scheme is popular with consumers in Western Australia. Consumer surveys have shown two-thirds support it.¹⁰ Another measure of the scheme's popularity is the support for it across the political spectrum, as noted above.

3.7 Some consumers were alarmed when they heard about opposition to the national Fuelwatch scheme and feared it meant that the WA FuelWatch scheme might be scrapped. They sent emails to the WA Department of Consumer and Employer Protection, saying:

...the FuelWatch service is invaluable!

Please ensure the service is retained...A great Government service!!

I was appalled to hear on the radio yesterday some senator saying that the WA FuelWatch scheme had not done anything to reduce petrol prices.

...I find it invaluable...¹¹

3.8 An industry representative in WA saw some benefit:

5 WA Department of Consumer and Employment Protection, *Proof Committee Hansard*, 16 July 2008, p. 5.

6 Royal Automobile Club of Western Australia, *Submission 20*, p. 2.

7 Ms Anne Driscoll, WA Department of Consumer and Employment Protection, *Proof Committee Hansard*, 16 July 2008, pp 2 and 5.

8 Mr Aaron Rayner, WA Department of Consumer and Employment Protection, *Proof Committee Hansard*, 16 July 2008, p. 3.

9 Mr David Moir, Royal Automobile Club of Western Australia, *Proof Committee Hansard*, 16 July 2008, p. 27.

10 WA Department of Consumer and Employment Protection, *Submission 5a*.

11 Concerned consumers, cited in WA Department of Consumer and Employment Protection, *Submission 5a*. The Department notes that 'no negative comments about FuelWatch were received by Consumer Protection'; *Submission 5a*, p. 3.

for the battlers of the world who are struggling to fill up their cars at the moment and who are prepared to take the time to go onto a website, yes, they will be able to get cheaper fuel...¹²

The 6 am price change

3.9 Some submissions raised concerns about whether 6 am was a good time to require price changes to take effect and some operational difficulties.¹³ In Western Australia this problem is handled in a pragmatic manner:

One issue that we have recently encountered...is that one retailer in particular has complained about issues around making the change precisely at 6 am. This goes to the logistics of doing the price boards as well as changing the actual dispensers of fuel. This is a matter that we have been very pragmatic about. We accept that right on 6 o'clock precisely there may be some issues, and so in dealing with any complaints about people not actually imposing that change right at the point of 6 am we tend to be quite reasonable in terms of looking for practical ways to manage such situations and a reasonable outcome. We have generally taken the approach that this is clearly about the principle as opposed to being pedantic about small issues that can arise from time to time.¹⁴

Comparison of Perth fuel prices with other capitals

3.10 In the preceding chapter, it was argued that while the primary focus of Fuelwatch is to empower consumers to find the best price, a consequence of this is to make the retail petrol market more competitive, and this would place downward pressure on average prices and shift prices in the rest of the week down to what was charged on 'magic Tuesdays'.

3.11 A simple comparison of Perth petrol prices with those in Sydney and Melbourne over recent months suggests this is exactly what has happened (Charts 3.1 and 3.2). The weekly cycle in petrol prices has disappeared in Perth, although it took several years for this to happen. (There had been an intermediate period when Perth moved from a weekly cycle like that in other capitals to a smaller fortnightly cycle.) Perth consumers are able to buy petrol at the time of the week convenient to them. It is little wonder they are less focused on which day of the week to buy petrol. Perth consumers have not 'dumbed down'¹⁵; they just do not *need* to monitor petrol prices as

12 Mr Peter Fitzpatrick, Motor Trade Association of WA, *Proof Committee Hansard*, 16 July 2008, p. 19.

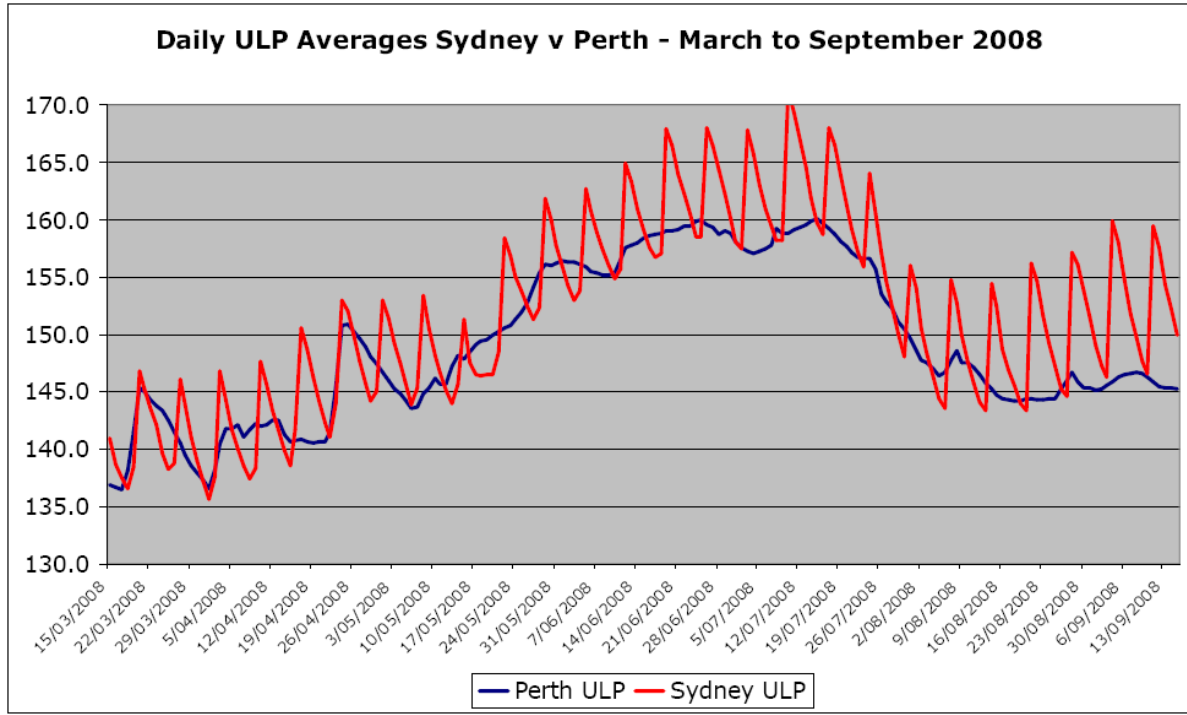
13 Mr Wayne Rowe, service station franchisee, *Submission 11*, p. 1; Caltex, *Submission 14*, p. 7; Woolworths, *Submission 28*, p. 8.

14 Ms Anne Driscoll, WA Department of Consumer and Employment Protection, *Proof Committee Hansard*, 16 July 2008, p. 3.

15 Senator the Hon. Eric Abetz, *Proof Committee Hansard*, 11 August 2008, p. 28.

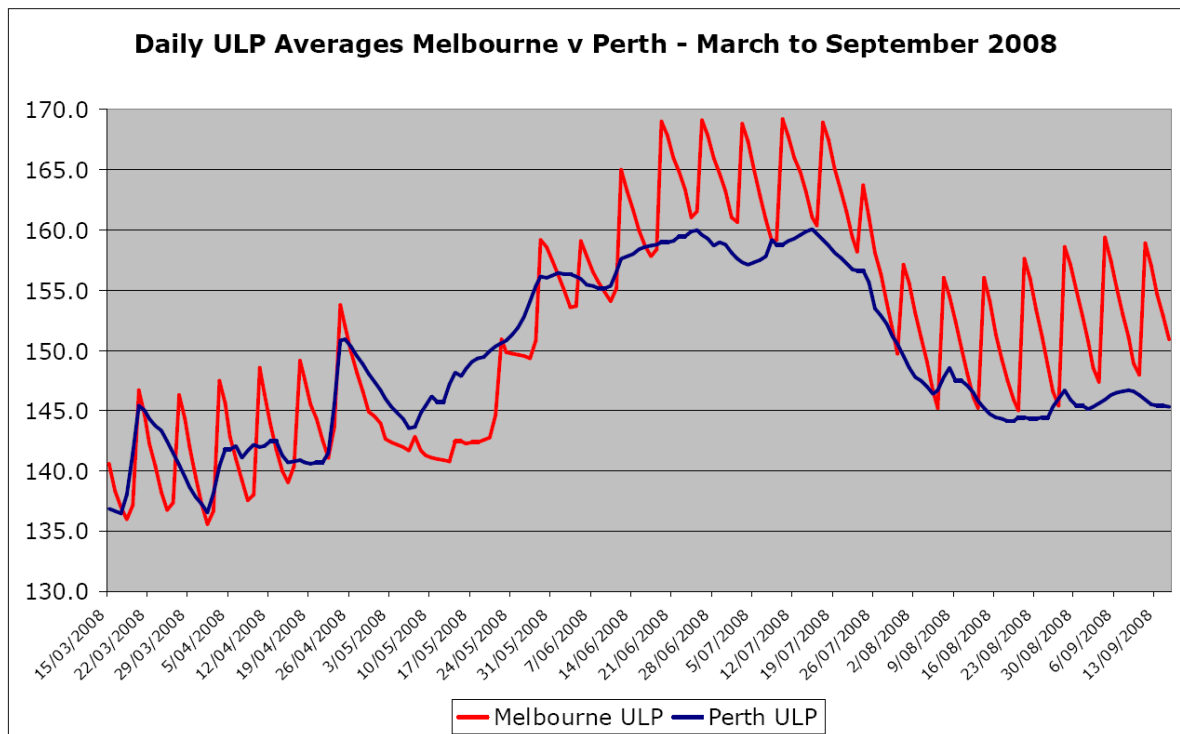
closely. It is interesting to note that the big petrol retailers call the very volatile Sydney and Melbourne prices 'predictable' and the stable Perth prices 'unpredictable'.

Chart 3.1



Source: Informed Sources

Chart 3.2



Source: Informed Sources

3.12 Charts 3.1 and 3.2 only compare Perth prices with Sydney and Melbourne. Average petrol prices are also lower in Perth than in other capital cities. During the inquiry the committee was told:

...the average price for petrol was 3c cheaper than in Melbourne, 4.2c cheaper than in Brisbane—without the subsidy—2.4c cheaper than in Sydney and 2.6c cheaper than in Adelaide.¹⁶

3.13 This has continued to be the case. On the most recent 'magic Tuesday', the average price for a litre of unleaded petrol in Perth was over a cent lower than in Adelaide and Sydney, almost 3 cents lower than in Melbourne and almost 6 cents lower than in Hobart. A couple of days later, Perth prices were over 10 cents below Sydney, Melbourne and Adelaide, and even less than the subsidised price in Brisbane.¹⁷

3.14 While this comparison suggests that FuelWatch in WA is working as would be expected, it not a conclusive argument. Aside from any effect from FuelWatch, there are three factors that would tend to make petrol prices higher in Perth than in other capitals, and one that may make them lower:

- there is only one refinery in the Perth area whereas there are two each around Sydney, Melbourne and Brisbane,¹⁸
- Western Australia has tighter standards on the proportion of methyl tertiary-butyl ether in petrol, which means a premium is added to the price there,¹⁹
- the Queensland government provides an 8.4 cents a litre subsidy (although some studies suggest this does not get fully passed on to retail prices),²⁰ and
- the closer proximity of Perth to Singapore may act to make prices lower than in other capitals.²¹

16 Ms Anne Driscoll, WA Department of Consumer and Employment Protection, *Proof Committee Hansard*, 16 July 2008, p. 3. The comparison was done as at June 2008.

17 Prices for 16 and 18 September 2008, taken from motormouth.com.au, a subsidiary of Informed Sources.

18 ACCC (2007, p. 50).

19 ACCC (2007, p. 83). The WA limit is 0.1 per cent, compared to 1 per cent in the rest of Australia and 15 per cent in Europe (in other respects the Australian and European requirements are virtually the same as those in Europe). Informed Sources suggest this quality premium translates into a premium of 2 cents a litre; *Submission 22*, p. 12.

20 Smaller subsidies were removed in Tasmania and Victoria during 2007. The NT government has 1.1 cents a litre subsidy. NSW and SA have some subsidies in rural areas but not in Sydney or Adelaide. ACCC (2007, pp 88-90).

3.15 A better approach is to look at *margins* rather than *prices*. Over five years, the ACCC found that the average retail margin in Perth was 3 cents per litre, the lowest in Australia.²²

3.16 When Caltex was asked how profitability in Western Australia compared to other states, they replied 'the profitability is broadly similar'.²³ BP claimed 'FuelWatch has not had any noticeable impact on the profitability of our business in Perth'.²⁴ Another piece of anecdotal evidence came from a Caltex franchisee in WA who remarked:

There are very few markets left in Western Australia where there is a healthy margin on fuel...Unless you go to somewhere way out, like Exmouth, ...nowhere else in Western Australia has any big margins in fuel.²⁵

3.17 An even better approach may be to compare margins in Perth relative to other capitals before and after the introduction of FuelWatch. While the WA Department of Consumer and Employment Protection, who administer FuelWatch, claim it lowered petrol prices in Perth relative to other capitals, Informed Sources claim it raised them by 1 to 1½ cents per litre.²⁶

3.18 An unusual objection to comparisons between Perth prices and those on the Eastern seaboard is that the Perth market is inherently 'different'; that Western Australians 'just think differently to what Victorians think'.²⁷ This could mean that Fuelwatch is more effective in other parts of the country.

3.19 In a similar vein, Professor Harding suggests changes in tax policy around 2000 may have had different effects on petrol station margins in Western Australia to

21 Woolworths estimates the difference in shipping costs is 1.3 cents a litre; *Submission 28a*, p. 1. Concept Economics suggests the rise in freight charges could have 'added as much as an additional cent to eastern state petrol prices compared to Perth petrol prices'; *Submission 35*, p. 36. BP gives a similar estimate; *Submission 31a*, p. 2.

22 The comparable figures were 3.7 cents in Adelaide, 4.7 cents in Sydney, 4.9 cents in Melbourne and 5.1 cents in Brisbane; ACCC (2001, p. 141 and Appendix J).

23 Mr Michael Ridley-Smith, Caltex, *Proof Committee Hansard*, 1 August 2008, p. 25.

24 Mr Gavan Jackman, BP, *Proof Committee Hansard*, 7 August 2008, p. 35.

25 Mr Trevor Rowe, *Proof Committee Hansard*, 14 July 2008, p. 17.

26 Both cited in ACCC (2007, p. 246).

27 The Royal Automobile Club of Victoria's David Cumming put this view; *Proof Committee Hansard*, 7 August 2008, p. 53. (Some odd things were mentioned as examples of differences; Mr Cumming drawing attention to the fact that Melbourne has a head office of a supermarket, and is in a valley, as reasons why Fuelwatch would operate differently there.) Mr Roger Featherston of the Law Council of Australia stated that 'other petrol markets in Australia may be structured differently to the Perth market. In terms of the nature of the independents and the nature of competition in those markets, the number of refiners in those markets and the number of import facilities and so forth'; *Proof Committee Hansard*, 1 August 2008, p. 3.

eastern Australia.²⁸ He gives no possible explanation as to why the GST should have one effect in WA and another in other states.

Econometric approaches

3.20 Opponents of Fuelwatch have claimed that it led to higher petrol prices in Western Australia. The reasons why shifting market power from large retailers to consumers would have this effect were not stated. Nonetheless, the ACCC conducted an econometric study to test this assertion, which formed a few pages (Appendix S) of their 2007 report. It has led to a 'battle of the models' between economists supporting and opposing Fuelwatch.²⁹

3.21 As discussed in the previous chapter, economic theory implies that empowering consumers with the information to buy where petrol will be cheapest should lead to a fall in average prices. The magnitude of the fall would depend on how competitive the market had been previously and how many consumers make use of the Fuelwatch information in deciding when and where to purchase petrol.

3.22 The overall conclusion from the econometric studies is that the average retail margin in Perth relative to other mainland capitals has fallen since FuelWatch was introduced. This emerges from the studies by the ACCC, Professor Davidson, Professor Harding, Access Economics and Concept Economics.³⁰

3.23 What is in dispute is the extent to which the fall can be attributed to FuelWatch or to other factors. The average difference between terminal gate prices and retail prices is around 5 cents a litre. Part of this is used to pay for staff and other operating costs of service stations. So the impact of FuelWatch on average prices is likely to be a few cents a litre. Furthermore, it appears that the full impact took a long time to be felt. Given the numerous other changes to the factors driving petrol prices in recent years, it is therefore unsurprising that the econometric studies are not able to agree on precise estimates of the impact of FuelWatch on WA petrol prices. Furthermore, as Professor Wang points out, no amount of econometric sophistication will get around the problem that assessing the impact of FuelWatch when there is only

28 Professor Don Harding, *Submission 4a*, p. 19.

29 The dissenting minority in the *Interim Report* overstates the opposition; 'the majority of those giving evidence to the committee (Concept Economics, Access Economics, Professor Harding, Professor Zumbo) agreed the ACCC analysis was flawed' (p. 37). Access Economics did not give any evidence to the committee (although BP in their *Supplementary Submission 31a* after the *Interim Report* refers to some unpublished work by Access) and Professor Zumbo is a lawyer not an econometrician, who did not critique the ACCC's analysis himself. On the other hand, evidence from Treasury and Professor Gans supported the ACCC analysis.

30 ACCC (2007, 2008); Professor Davidson, *Submission 17*, p. 6; Professor Harding, *Submission 4b*, charts on pp 5-6 and regression results on p. 14; BP, *Submission 31a*; and Mr Henry Ergas, Concept Economics, *Proof Committee Hansard*, 11 August 2008, p. 2. It is also evident in the chart by Informed Sources, *Submission 22*, p. 11 and in the data from FUELtrac cited by the AAA, *Submission 19a*, p. 6.

one capital city that has implemented it means that there is effectively a single observation.³¹

3.24 All the studies basically adopt the approach of testing whether the retail margin fell significantly after a particular event at a certain date, referred to as a 'break'. The test assumes that there was an immediate and sustained impact of a constant size as a result of the event. The ACCC's (2007) results suggested the average differential dropped by a statistically significant 1.9 cents per litre after the introduction of FuelWatch.³²

3.25 Further analysis has attempted to distinguish the effect of the introduction of FuelWatch from the effect of the entry of Coles into the Perth market. The ACCC's (2008) results showed that the entry of Coles had a much smaller impact than did FuelWatch.³³ By contrast, Professors Harding and Davidson and Concept Economics conclude the entry of Coles was the only factor lowering the WA retail margin and that FuelWatch had no impact. A similar claim is made using a chart rather than econometrics by Neumann Petroleum.³⁴

3.26 However, Dr Stephen King questions whether some of the FuelWatch impact is being wrongly attributed to the Coles entry in these tests.³⁵ No convincing argument has been put as to why the entry of the supermarkets should have affected Perth petrol prices in a different way to its impact in the eastern states. As Professor Wang comments, 'one cannot separate out the effect of the Fuelwatch from that of Coles or Woolworths by comparing the Perth market and the Melbourne or Sydney markets. Supermarkets entered all the major petrol markets.'³⁶

3.27 It is worth emphasising that the break tests assume the events had an immediate and constant impact. But it appears that the introduction of FuelWatch had

31 Professor Wang Zhongming, *Submission 27*, p. 10.

32 The results compare the period August 1988 to December 2000 with that of January 2001 to June 2007.

33 Dr Stephen King, ACCC, *Estimates Hansard*, 5 June 2008, p. 39.

34 *Submission 15*.

35 Dr Stephen King, ACCC, *Proof Committee Hansard*, 7 August 2008, p.7.

36 Professor Wang Zhongming, *Submission 27*, p. 10. Similarly, Ms Anne Driscoll, WA Department of Consumer and Employment Protection, comments 'these same supermarket chains were establishing themselves and increasing their market penetration in the eastern seaboard at the same time as they were in WA'; *Proof Committee Hansard*, 16 July 2008, p. 10.

quite a gradual and protracted impact.³⁷ It would be hard for a break test to disentangle these effects.

Replication and 'peer review' of the ACCC study

3.28 The ACCC has been criticised for not having a blind review done of its econometric work, as would be done with an article published in a scholarly journal.³⁸ A full peer review of this kind would be time-consuming and potentially breaching the confidentiality of cabinet advice. Instead, the work was reviewed within the ACCC. The ACCC's methodology was also examined and found 'reasonable... valid and robust' by Treasury.³⁹ There were also complaints that the ACCC have not made public as much information as they might about the procedures they used in conducting their tests.⁴⁰ Professor Joshua Gans described the ACCC's work as 'a far more rigorous investigation of the WA scheme than anyone had ever done'.⁴¹

3.29 The ACCC was also criticised for not making the Informed Sources data it had used for its study available to other researchers. The organisation had provided the data to the ACCC (it is not clear whether voluntarily or under subpoena⁴²). The ACCC did not want to make this proprietary data publicly available but was happy for Informed Sources to make it available to academics.⁴³ (Similarly, the ACCC had been provided with confidential data from the refineries on the impact of fuel quality premia.)

37 Similarly, rather than a constant impact, some witnesses thought the entry of the supermarket chains would lead to an initial decrease in prices but in the medium-term an increase in prices. For example, Mr Aivars Blums from the Motor Trades Association of Queensland said that 'to construe a reduction in fuel prices by the majors is not a difficult circumstance for them if they so desire. The question is for how long will the fuel price reduction exist in any circumstance'; *Proof Committee Hansard*, 17 July 2008, p. 8. It is claimed this is what happened in Europe when the large supermarket chains entered the retail petrol market; Mr Peter Fitzpatrick, Motor Trade Association of WA, *Proof Committee Hansard*, 16 July 2008, p. 20.

38 This criticism was made by Professor Don Harding (*Submission 4a*) and by Opposition senators at June 2008 estimates hearings.

39 Mr Jim Murphy, *Proof Committee Hansard*, 11 August 2008, pp 29, 37; *Estimates Hansard*, 4 June 2008, p. 85. There was no evidence provided supporting the contention of the dissenting minority senators that 'Treasury was among the government departments which had reservations about the national Fuelwatch scheme'; *Interim Report*, p. 39. (The senators may have based this statement on the assertion by Professor Davidson; *Submission 17*, p. 9.) Indeed Treasury's Jim Murphy explicitly said 'we support Fuelwatch'; *Proof Committee Hansard*, 11 August 2008, p. 35.

40 Mr Henry Ergas, Concept Economics, *Proof Committee Hansard*, 11 August 2008, p. 2.

41 *Submission 1*, p. 2.

42 Informed Sources referred to some data being provided under 'written formal contracts'; *Proof Committee Hansard*, 17 July 2008, p. 21. The ACCC chairman has referred to subpoenaing some data; *Estimates Hansard*, 5 June 2008, p. 11.

43 Informed Sources referred to their data as 'commercially a very valuable item' which they guard very closely; *Proof Committee Hansard*, 17 July 2008, p. 22.

3.30 Informed Sources have chosen to supply it to some but not all academics who requested it. They say they apply two criteria in deciding whether to release their data; academics must be 'entirely independent of any organisation related to the Inquiry and that the analysis and subsequent report by the analyst will in no way compromise the commercial status or value of the Informed Sources pricing data'.⁴⁴ There have been suggestions that there may be another test; that 'the data have been released to parties who had previously expressed ... opposition for Fuelwatch'.⁴⁵

3.31 The Committee regrets that academics who had not previously expressed opposition to Fuelwatch, and so might bring an open mind to the analysis, have not been allowed access to the necessary data.

Recommendation 1

3.32 The committee recommends that any data collected by Fuelwatch be made available by the ACCC to independent academic researchers to allow open analysis of the scheme.

Volumetric data

3.33 Simple unweighted averages of listed petrol prices may not be a good basis for econometric tests. For example, if there are two service stations, one that sells its petrol for \$1 a litre and another for 50c a litre, the (unweighted) average price is 75c per litre. But if the service station that sells its petrol at 50c a litre sells all the petrol, the average price paid by consumers is not 75c but 50c a litre. The committee therefore notes that the quantity of fuel sold at any stage of the price cycle is a vital component of any study.

3.34 Ideally, the average observation for each day and market should refer to prices paid weighted by the amount sold at that price. The failure to use consumption-weighted or 'volumetric' data would understate the benefits of FuelWatch as it would not capture the effect of consumers being better placed to switch from buying petrol at dearer stations to cheaper stations.

3.35 A similar argument applies to buying on cheaper rather than more expensive days from a given station. Unfortunately, the data were not available to make the comparison using consumption-weighted prices. The closest approximation to a volumetric analysis was in the ACCC's original study. The true volumetric result (which would reflect some substitution) would be bounded by the estimated fall in the unweighted average weekly price (which assumes no substitution effects on volume)

44 Informed Sources, *Submission 22a*, p. 7.

45 Mr Graeme Samuel, ACCC, *Proof Committee Hansard*, 7 August 2008, p.7. This interpretation is given some support by the comments by Professor Harding who said after his first paper attacking Fuelwatch came out, 'Informed Sources gave the data to me. They said they were impressed with my work. It was not available to other academics'; Professor Don Harding, *Proof Committee Hansard*, 7 August 2008, p. 24. Informed Sources confirmed that they had refused to release their data to Professor Gans; *Submission 22a*, p. 8.

and in the minimum weekly price (which assumes an extreme substitution effect on volume). The ACCC found that prices were lower whether calculated on average (1.9 cents per litre fall) or minimum price (0.7 cents per litre fall).⁴⁶ The implication of their econometrics is therefore that a test done on a volumetric basis would also show that FuelWatch was associated with lower petrol prices in WA.⁴⁷

Other criticisms of the ACCC study

3.36 Professor Don Harding's main criticism in his first paper (*Submission 4a*) is that the difference between the retail petrol price margins should be deflated by a price index. This argument apparently did not convince other Fuelwatch critics as Professor Davidson and Concept Economics were content to present results using undeflated margins. However even Professor Harding's own preferred methods suggest the relative margin in WA is more likely to have fallen rather than risen after the introduction of FuelWatch.

3.37 There are various weaknesses in Professor Harding's study. It would be interesting to know whether other economists would support his assumption that the margin varies with the fuel price or that it is better to deflate the weekly price margins by the interpolated fuel component of the CPI rather than the weekly price itself.⁴⁸

3.38 Having already dismissed the scheme as 'foolwatch', Professor Harding's second paper (*Submission 4b*) benefits from access to Informed Sources data. Instead of comparing Perth prices to those in the rest of Australia, he just compares them to Sydney. The ACCC's Dr King believes this was done because comparisons with other cities put FuelWatch in a good light, a selective use of data which means the test 'has no statistical validity'.⁴⁹ Notwithstanding his criticism of the ACCC on this issue, Professor Harding's own paper is not peer-reviewed and the data used are not made available.

3.39 Professor Davidson from the Institute of Public Affairs and Concept Economics were also provided with data by Informed Sources and conducted econometric tests, also not peer-reviewed and also without making the data used available, and concluded that Fuelwatch had not reduced relative petrol price margins in WA.⁵⁰ However Concept Economics' credibility as independent analysts of the

46 ACCC (2007, pp 247, 375-7); ACCC (2008); and Dr Stephen King, ACCC, *Estimates Hansard*, 5 June 2008, p. 51.

47 For further discussion, see Mr Joe Dimasi, ACCC, *Estimates Hansard*, 5 June 2008, pp 19 and 40.

48 Serially correlated errors might be introduced by interpolating 13 observations from quarterly CPIs given that fuel prices do not move smoothly.

49 Dr Stephen King, ACCC, *Proof Committee Hansard*, 7 August 2008, p. 6. Mr David Martine from Treasury was also concerned about a possible 'bias' introduced by Professor Harding's approach; *Proof Committee Hansard*, 11 August 2008, p. 40.

50 *Submission 17*.

topic was somewhat reduced by their chairman having previously called those giving weight to the ACCC's support for Fuelwatch as 'a fitting subject for psychiatric investigation'.⁵¹

Conclusion

3.40 The various econometric studies consistently show that compared to the eastern capitals, petrol prices in Perth are lower now than before FuelWatch was introduced. This change did not occur instantly upon the introduction of FuelWatch but over time. Some critics argued the reduction is due to the entry of the supermarkets into the Perth market, but this seems unlikely given that the supermarkets also entered the eastern markets. The committee therefore concludes that there is no compelling reason on the basis of the econometrics to overturn the reasoning in Chapter 2 that a national Fuelwatch scheme would place downward pressure on average retail petrol prices.

3.41 The committee notes in passing that the critics of Fuelwatch are introducing a demanding standard for changes in policy. If economic policy changes were only made after supportive econometric studies that satisfy all critics, and give precise estimates of the benefits from new policies, then there would have been no floating the dollar, allowing in foreign banks, introducing the GST, cutting taxes or phasing out high tariffs. It would also deny governments the ability to take political judgments on economic reforms.

51 Henry Ergas, 'Kevin 24-7 or 7-11', *The Australian*, 3 June 2008.

Chapter 4

Fuelwatch and independent operators

4.1 A number of submitters expressed concern that a decline in the number of small independent operators in the retail petrol market would erode competition and ultimately lead to higher prices for consumers. The committee respects these concerns. However, it is important to distinguish long-term influences on the number of independents that would occur with or without Fuelwatch from any impact arising from Fuelwatch itself. The committee heard varying views, including from independent retailers themselves, on how Fuelwatch would affect independents.

The role of independents in petrol retailing

4.2 There are only essentially four main players importing, refining and wholesaling petrol; namely Shell, Caltex, Mobil and BP. At the retail level, there are four main types of operation:

- refiner-marketer owned sites, which may be managed by an individual on a commission basis (where the refiner-marketer determines the price) or franchise basis (where the franchisee has some discretion over the price);
- owner-operator sites who usually sell a single brand of petrol but are able to set their own price;
- supermarket operated sites; and
- independent operators selling their own brand.

Challenges facing independents

4.3 Small independent petrol chains face many challenges in competing with the petrol retailing operations of the major oil companies and this challenge has become harder since the large supermarket chains have entered the markets. The large companies have the benefits of diversification, can afford large-scale advertising campaigns and achieve economies of scale in many areas of their operations. Some see these problems are virtually insurmountable:

The inevitable rationalisation of the industry will see a continued decline in the smaller independent petrol retailer.¹

1 Northern Territory Government, *Submission 37*, p. 3.

4.4 Furthermore, the large companies can buy petrol from the refineries at a lower price than can small independents; indeed some independents say they face a wholesale price above the retail price charged by the large retailers.² One perspective on this is that it is just a normal 'bulk discount':

...prices that are set in the marketplace reflect the sizes and the negotiating power of the various players.³

4.5 Others point out that the same handful of very large companies are the principal importers, refiners, wholesalers and retailers in the Australian market.⁴ They would then question whether the arrangements in the wholesale petrol market are truly competitive or whether they are unfairly stifling the growth of independents.

4.6 The ACCC described the wholesale fuel market as a 'comfortable oligopoly' where competition 'is not fully effective', and commented that the 'buy-sell' arrangements between the major oil companies give them a competitive advantage over independent wholesalers and retailers.⁵ It suggested some measures that could make the market more competitive.⁶

4.7 While the operation of the wholesale fuel market involves important issues, they are outside the scope of this report on Fuelwatch. As the ACCC remarked:

The fate of those smaller independent operators is almost entirely in the hands of the refiners and the wholesalers that supply fuel to them. If they do not supply fuel to them at a price that enables them to compete with others in the marketplace they will not be able to compete. It is not to do with FuelWatch...⁷

2 Claims along these lines were made by Mr Peter Fitzpatrick, Motor Trade Association of WA, *Proof Committee Hansard*, 16 July 2008, pp 17, 20; Mr Adrian Ellson, Pilbara Regional Council, *Proof Committee Hansard*, 14 July 2008, p. 7; Mr Aivars Blums, Motor Trades Association of Queensland, *Proof Committee Hansard*, 17 July 2008, p. 2; Mr Kruys, Motor Trades Association of South Australia, *Proof Committee Hansard*, 21 July 2008, p. 13; Mr Andrew Fischer, Australian Farmers Fuel, *Proof Committee Hansard*, 21 July 2008, p. 18; Mr David Russell, Victorian Automobile Chamber of Commerce, *Proof Committee Hansard*, 7 August 2008, p. 28; Mr Peter Anderson, APCO, *Proof Committee Hansard*, 7 August 2008, p. 45.

3 Mr Topham, Caltex, *Proof Committee Hansard*, 1 August 2008, p. 27. The ACCC (2007, p. 11) also suggest that volume purchased is the most important factor determining wholesale prices

4 The four oil companies (Shell, Caltex, Mobil and BP) and the two supermarket chains (Coles and Woolworths) between them account for 100 per cent of refining, over 90 per cent of importing, over 95 per cent of wholesaling, and over 90 per cent of retailing; ACCC (2007, pp 6-7 and 77). The ACCC identified a number of impediments to any large scale importing of petrol by a rival firm; ACCC (2007, p. 20).

5 ACCC (2007, pp v, 12, 199).

6 ACCC (2007, p. 23). The new Fuel Commissioner-designate has indicated he will be focusing on impediments to competition in wholesale markets; *The Australian*, 2 October 2008.

7 Mr Graeme Samuel, ACCC, *Proof Committee Hansard*, 7 August 2008, p. 14.

Shopper docketts

4.8 A further challenge posed to independents by the supermarket chains is that the chains offer 'shopper docketts'. The majority of customers using Coles-Shell and Woolworths-Caltex outlets get a 4 cents per litre discount by presenting a shopper docket obtained by spending over \$30 in one of the affiliated supermarkets. Their importance is emphasised by the Australian Institute of Petroleum, who refer to:

shopper docketts that have enabled independently operating supermarket chains to sell approximately 45% of the retail petrol and diesel in metropolitan Australia... up to 4 million shopper docketts are now being utilised each week. Consumer surveys indicate that up to 75% of consumers are using shopper docketts.⁸

4.9 There is evidence suggesting they make consumers less price-responsive, and harder for independents to attract.⁹ The role played by shopper docketts was strongly criticised in some submissions from independent retailers:

Supermarket discount docketts are doing nothing to excite competition on both groceries and fuel. Discount docketts are only distorting what the consumer or customer is actually paying for their products. It is pushing up the fuel prices at the pump, in our belief, and it is certainly pushing up grocery prices on the shelves. The shopper docket system should be banned to allow for true transparent competition. It is only then that you will achieve improved competition between the supermarkets at the grocery shelves. You will also find that fuel prices at the pump and the board prices might come down quite substantially, because the fuel price at the top end of the price cycle will no longer have to subsidise the fuel discount docketts in the market.¹⁰

Woolworths' and Coles' fuel discount schemes (which is clearly anti-competitive third-line forcing dressed up as a public benefit) has resulted in a significant erosion of competition...[and will] further destroy independent fuel retailers...[they have] used shopper docketts as a Trojan horse to eradicate competition...¹¹

Grocery fuel vouchers, and so on are a negative long term influence on fair competition where large chains are using undue market influence to structure and corrupt buyer free choice.¹²

8 AIP, *Submission 2a*, pp 6, 9. The ACCC (2007, p. 32) refer to a survey by the AAA which found that 79 per cent of motorists had used shopper docketts during 2007.

9 A survey conducted for the ACCC showed that 29 per cent of motorists do not check prices at other service stations before using a shopper docket; ACCC (2007, p. 195).

10 Mr Robert Anderson, APCO Service Stations, *Proof Committee Hansard*, 7 August 2008, p. 41.

11 AA Holdings, *Submission 34*, p. 3.

12 Rockhampton Chamber of Commerce, *Submission 3*, p. 2.

- 4.10 They have also been criticised in an academic study:
such bundling may result in a considerable loss of consumer welfare and a long-term erosion of competitive pressures.¹³
- 4.11 They were even more bluntly criticised by a motorists' organisation which described them as 'one of the biggest cons of all times' and 'an absolute disgrace'.¹⁴ Choice were also critical: 'you should rather take action about shopper docketts, which confuse consumers'.¹⁵
- 4.12 The shopper docketts scheme may have constituted 'third line forcing' (a type of 'exclusive dealing') and therefore been in breach of section 47 of the *Trade Practices Act* were it not for the supermarkets having notified the ACCC and the ACCC not taking action against them.¹⁶
- 4.13 While a challenge to independents, these docketts are offered both in WA where Fuelwatch operates and in the eastern States where it does not.

Concerns raised by independents about Fuelwatch

- 4.14 Independent retailers are disadvantaged by the current market situation where the majors have access through Informed Sources to much better price data than do the independents. Fuelwatch would even things up. The independents would have access to the same pricing information as the major chains.
- 4.15 Some independents are worried about the 24-hour rule leaving them with an uncompetitive price:
We particularly oppose the prohibition on any downward price movement in the notified price in a 24-hour period. This means a retailer is unable to meet market forces in his trading area if he is off the pace or he gets it wrong when he sets his price for the 24-hour period.¹⁷
- 4.16 However, if the independent has nominated too high a price for a day, their sales will be lower for that day only. But equally if their large rival has nominated a higher price, the independent will achieve very strong sales and the large chain's

13 Gans and King (2004, p. 312).

14 Mr Cumming, Royal Automobile Association of Victoria, *Proof Committee Hansard*, 7 August 2008, p. 49.

15 Mr Gordon Renouf, Choice, *Proof Committee Hansard*, 7 August 2008, p. 62.

16 Shopper docketts are discussed further in ACCC (2004) and ACCC (2007, chapter 12 and Appendix Q). The ACCC (2004, p. 40) defined 'third line forcing' as 'the supply by one party of a discount or other offering in relation to goods or services on condition that the purchaser has acquired goods or services from a third party'.

17 Mr Charles Wright, Neumann Petroleum, *Proof Committee Hansard*, 17 July 2008, p. 15. A similar argument was put by Mr Roger Featherstone, Law Council of Australia, *Proof Committee Hansard*, 1 August 2008, p. 2.

station will be unable to respond until the next day. With the current informational advantage removed, independent stations who know their neighbourhoods better may be better placed than large chains to set a good price.

4.17 The opposition to the '24 hour rule' was not shared by all independents. Australian Farmers Fuel said:

We have no problem with the price being locked for a period of time...We all take our chances in the market as long as it is fair and equitable.¹⁸

4.18 Providing better access to price information for consumers should benefit independents:

if I am an independent station and I do not have a brand, and I do not have any advertising machinery, now consumers do not care about that and they are logging onto a website and just looking at price, and that spells opportunity. So I do not necessarily see that, as a matter of principle, this central provision of information is going to be a bad thing for independents.¹⁹

The 'Cherry Ripe' strategy

4.19 Some concerns were raised that the large chains could try to subvert Fuelwatch by offering other forms of discounts to lower the effective price to motorists.²⁰ For example, they may offer a 3 cents a litre discount to motorists who buy a cherry ripe at the station. Treasury did not believe this would be allowed under the proposed legislation.²¹

4.20 Even if allowed, however, this strategy could prove expensive if large numbers of motorists are using Fuelwatch. The cherry ripe discount would not be reflected in the Fuelwatch price listings so it would not attract any more Fuelwatch users to the station. However, all the customers going to the station anyway may take advantage of it when they are there.

4.21 The same would apply if supermarkets tried to increase temporarily the discount they offered customers with shopper docketts. This was a concern raised by an independent chain who noted:

18 Mr Andrew Fischer, Australian Farmers Fuel, *Proof Committee Hansard*, 21 July 2008, p. 19.

19 Professor Joshua Gans. *Proof Committee Hansard*, 7 August 2008, p. 60.

20 Among variants suggested are discounts for locals, happy hours, lucky dips and member discounts; Informed Sources, *Submission 22*, p. 15. See also Mr Roger Featherston, Law Council of Australia, *Proof Committee Hansard*, 1 August 2008, p. 2.

21 Mr Jim Murphy, Treasury, *Proof Committee Hansard*, 11 August 2008, pp 32-3.

All of their price boards have the ability to change the voucher value on the day...both major supermarket chains have digital boards at the moment and they can move that gap out.²²

4.22 Asked about whether new forms of discounting had been a problem for the WA FuelWatch scheme, the relevant WA department replied:

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.²³

The 'rolling price leaders' strategy

4.23 Another potential concern expressed by independents themselves and the ACCC was that the large supermarket chains can employ a 'rolling price leaders' strategy:

FuelWatch has harmed the competitive position of independents as it allows large operators to adopt a strategy of rolling price leaders. Media reports of FuelWatch price information highlight retail stations with the lowest prices. This provides an opportunity for larger competitors with bigger networks of retailers to have rolling price leaders in the market, with different stations under the same banner being publicised as the cheapest for a region or suburb at different times. Operators with smaller networks are less able to employ this pricing strategy placing these retailers at a competitive disadvantage in the market.²⁴

so-called rolling price leaders where the bigger operators have the ability to deliberately underprice some of their sites so that they get into the top 10 or top 20 cheapest lists ...Because they are a fair size, they can even in a sense be selling petrol at a loss to get their sites into those lists whereas independents do not have the financial wherewithal to do that. The argument is that the majors are able to create an impression that they are cheapest because they are in the top 10 cheapest sites.²⁵

4.24 However, this strategy may be *less* effective under Fuelwatch than under the various backward-looking petrol price reporting schemes currently in operation. At

22 Mr Andrew Fischer, Australian Farmers Fuel, *Proof Committee Hansard*, 21 July 2008, p. 19.

23 WA Department of Consumer and Employment Protection.

24 Gull Petroleum, cited in ACCC (2007, p. 246). Concerns about this rolling price strategy are also expressed by the Australasian Convenience and Petroleum Marketers Association, *Submission 6*, p. 5; the Trade Practices Committee of the Business Law Section of the Law Council of Australia, *Submission 21*, p. 5; Royal Automobile Club of Queensland, *Submission 8*, p. 4; and Informed Sources, *Submission 22*, pp 16-7.

25 Mr Barrie Cassidy, ACCC, *Proof Committee Hansard*, 7 August 2008, p. 14.

present, a chain can arrange for a handful of its stations to offer a very low price one day. These may be reported on the nightly news as the cheapest outlets but by the time customers are attracted to these stations the following day the price has gone back up so the chain does not lose much profit. By contrast under Fuelwatch, viewers will be able to go to the few stations offering a very low price the next day, rather than other stations operated by the same chain, and so the strategy would be quite expensive for the chain.

4.25 Again, the WA experience is illuminating. The Royal Automobile Club of Western Australia observe:

While there is a risk of large companies with many sites gaming the system, the RAC does not have any hard evidence that it is occurring to any significant extent.²⁶

Predatory pricing and Fuelwatch

4.26 Another problem for the independents is that the major chains can spread losses at one station over a number of other stations. This makes it easier for them to engage in a predatory pricing strategy of very aggressively cutting prices at a station next to an independent to drive out the independent (or at least discourage it from trying to undercut the price set by the major station), and covering the loss at this station from profits at their other stations.²⁷ For example, the Law Council suggested:

...larger retailers might take advantage of the legislation to damage smaller retailers by deliberately quoting a low price at a nearby service station. The large retailer could obviously afford to do this, but the small retailer may soon incur losses which would force it out of business.²⁸

4.27 This strategy is *less* likely to work under Fuelwatch, as more motorists will switch from the profitable stations of the major company to the one offering the low price, reducing the chain's ability to cross-subsidise its loss.

4.28 Furthermore, Fuelwatch makes it much more obvious when larger retailers are engaging in predatory pricing and would make it much easier for an independent victim to gather the evidence to show a court or the ACCC.

4.29 With a change in other regulations, Fuelwatch is potentially an important weapon in independents protecting themselves against predatory pricing. Two independent petrol retailers said:

26 RACWA, *Submission 20*, p. 4.

27 This sort of behaviour was alleged by Mr Trevor Rowe, 'it seems to me that Woolworths are going to be cheaper until that competitor has left the market, and then you will have the same issue: up go the prices'; *Proof Committee Hansard*, 14 July 2008, p. 13.

28 Mr Roger Featherston, Law Council of Australia, *Proof Committee Hansard*, 1 August 2008, p. 2.

I run my own tanker fleet, and there is no mechanism whereby I can fill my tankers up at the forecourts of those service stations because the law says that you can only put a maximum of 20 litres into a container. That is the law.²⁹

Yesterday it would have been cheaper for me to take the fuel tanker down to the Safeway service station and give in a 4c a litre docket, fill it up and get 50,000 litres. It would be cheaper.³⁰

4.30 Currently, even if the law about the maximum size of containers was changed, if an independent pulled a tanker up at a major retailer's outlet where petrol was being sold at below the wholesale price, the major would just immediately increase the price. But with Fuelwatch, the major would not be able to do this. With Fuelwatch allowing small independents to know exactly where majors were pricing below wholesale price, this is potentially a powerful weapon against predatory pricing. Changing this law is unlikely to lead to independents' tankers actually filling up at the majors' stations. Rather the threat of them doing so will deter the majors from engaging in predatory pricing.

4.31 The Law Council has expressed concern that Fuelwatch 'may encourage more unlawful price collusion'.³¹ The counterargument is that Fuelwatch makes it much more obvious were this to occur and would make it much easier for an independent victim to gather the evidence to show a court or the ACCC.

The experience of independents under FuelWatch in Western Australian

4.32 When asked to give an 'assurance' that a national Fuelwatch would not have an adverse impact on independents, the ACCC replied that:

Is there any reason why FuelWatch could or should have an adverse impact? The answer is no.³²

4.33 The ACCC supported this by reference to the Western Australian experience under FuelWatch there:

we had a fairly close look at that...we just could not see any evidence that independents in Western Australia had been adversely affected by FuelWatch. Sure, they had declined, but independents have declined across Australia. Indeed, they have been declining for the last 20 years... we had evidence presented to us that suggested that independents in Western

29 Mr Andrew Fischer, Australian Farmers Fuel, *Proof Committee Hansard*, 21 July 2008, p. 18.

30 Mr Peter Anderson, APCO, *Proof Committee Hansard*, 7 August 2008, p. 45.

31 Mr Roger Featherston, Law Council of Australia, *Proof Committee Hansard*, 1 August 2008, p. 3.

32 Mr Graeme Samuel, ACCC, *Proof Committee Hansard*, 7 August 2008, p. 14.

Australia, following the introduction of FuelWatch, had probably done a bit better than independents in other states.³³

4.34 This view that independents had fared relatively well in WA was confirmed by the relevant state department. Between 2001 and 2008, within the FuelWatch boundaries, the proportion of service stations operated by 'branded independents'³⁴ rose from 34 to 35 per cent; the proportion operated by 'independent chains'³⁵ was steady at 13 per cent and the proportion of 'unbranded independents'³⁶ rose from 2 to 6 per cent.³⁷

4.35 An alternative data series on market shares was provided by Informed Sources. It divides petrol retailing sites into 'majors', 'supermarkets' and 'independents'. The data show little difference in the share of sites operated by independents between Perth and the other largest cities. (In Adelaide a new independent chain has increased the presence of independents there.) The data for Sydney, Melbourne and Perth are compared on the following page.

4.36 The motorists' organisation in Western Australia also thought FuelWatch had not hurt independents:

We have not seen any evidence that FuelWatch has been a detriment to independent retailers in Western Australia...There is no evidence that we are aware of that ...the rate of decline of independents post-FuelWatch is any different from the rate of decline of independents pre-FuelWatch.³⁸

4.37 Caltex had not heard any complaints about FuelWatch from their franchisees:

I have not had a retailer over there say they wish they had something different.³⁹

33 Mr Barrie Cassidy, ACCC, *Proof Committee Hansard*, 7 August 2008, p. 14.

34 A service station owned by an independent operator, but having the branding of an oil company or independent chain. This type of site makes up a majority of regional sites.

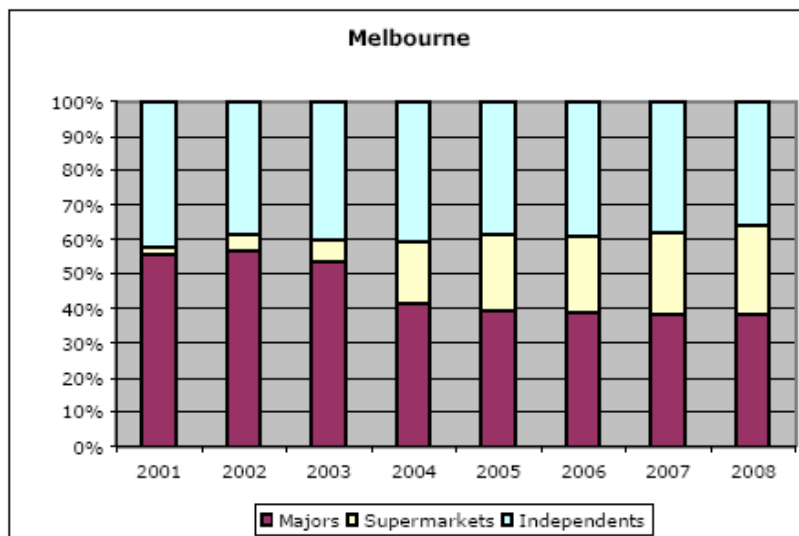
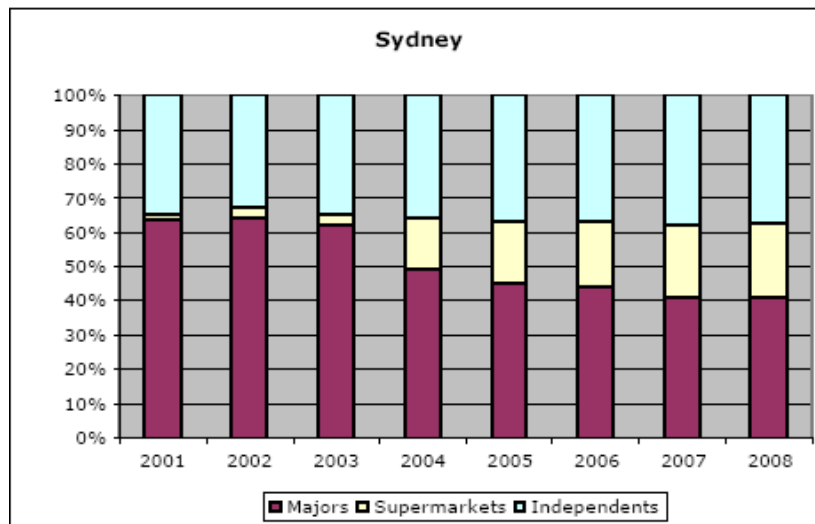
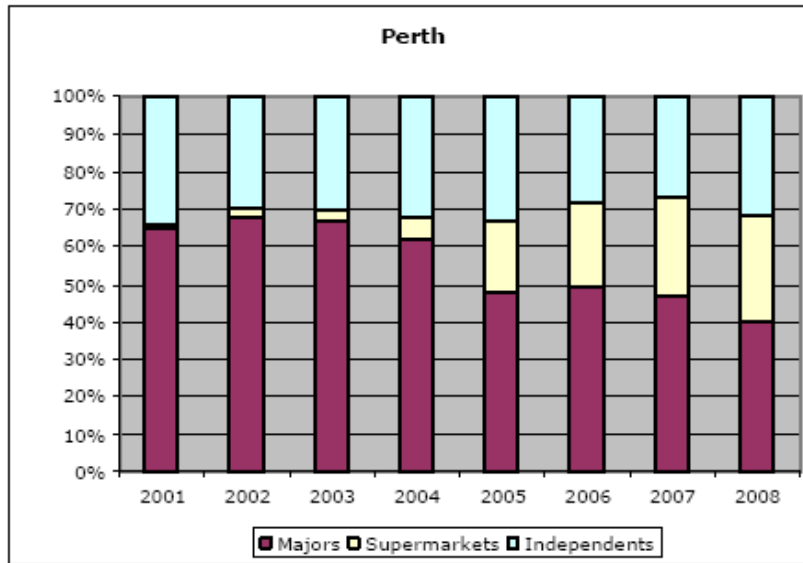
35 These are sites that are owned by a large independent company. In Western Australia, these companies are Gull, Peak and United. These sites are predominantly located in the Perth metropolitan area.

36 These are sites that have no branding, and are owned by an independent operator.

37 WA Department of Consumer and Employment Protection, *Submission 5*, p. 13.

38 Mr David Moir, Royal Automobile Club of Western Australia, *Proof Committee Hansard*, 16 July 2008, p. 26.

39 Mr Michael Ridley-Smith, Caltex, *Proof Committee Hansard*, 1 August 2008, p. 25.



Source: Informed Sources

4.38 An independent chain in WA was asked their impression of FuelWatch:

What FuelWatch has done is provide readily available information into fuel prices and held them constant so that that information can support purchases, and I am sure there is a segment of the market that values that...FuelWatch has added some value.⁴⁰

4.39 The same chain were also asked about whether FuelWatch there was overzealous in enforcement. They replied that it was:

'fair and reasonable enforcement ... there has not been a heavy hand in any penalties. There has been an understanding of clerical errors and so on.'⁴¹

4.40 The committee also heard what independent stations in WA had told their Queensland peers:

The only comment that we had from the independents in Western Australia was that there was very little change from prior to the introduction of FuelWatch to current status in terms of their viability and profitability.⁴²

Conclusion

4.41 As noted above, there are concerns about the operations of the wholesale fuel market and whether independents have a 'fair go' in it. This committee is not downplaying or dismissing these concerns. But there is no reason to think that the wholesale market will operate in a fairer or more efficient manner if Fuelwatch is not introduced into the retail market.

4.42 This committee has examined the impact of Fuelwatch on independents. On the balance of evidence it agrees with the assessment of Mr Jim Murphy of Treasury that:

...I do not think Fuelwatch is going to put independents in a more disadvantageous position than they are at present; it may benefit them.⁴³

Recommendation 2

4.43 The committee recommends that the Government undertake close liaison with independent fuel retailers to monitor the operation of Fuelwatch. The impact on the competitiveness and market share of independent fuel retailers should be an important part of the one-year review of Fuelwatch which the Government has already promised.

40 Mr Mike Mullins, Gull Petroleum, *Proof Committee Hansard*, 16 July 2008, p. 13.

41 Mr Mike Mullins, Gull Petroleum, *Proof Committee Hansard*, 16 July 2008, p. 12.

42 Mr Charles Wright, Neumann Petroleum, *Proof Committee Hansard*, 17 July 2008, p. 16.

43 Mr Jim Murphy, Treasury, *Proof Committee Hansard*, 11 August 2008, p. 36.

Chapter 5

Legal aspects

Legal basis for the legislation

5.1 The Australian government imposed price controls on petrol from 1939 to 1948. From the 1970s to 1990s a variety of authorities regulated petrol prices.¹ After prices were deregulated in 1998 the ACCC was tasked with monitoring petrol prices and has conducted a number of inquiries, the most recent reporting in December 2007.²

5.2 Section 51(xx) gives the Australian government power to legislate with respect to 'foreign corporations and trading or financial corporations formed within the limits of the Commonwealth'. Some small petrol retailers are not corporations, which has led to some speculation that the proposed national legislation may not be constitutional.³

5.3 However, Treasury has reported that they had 'taken advice from the appropriate authorities that the bill is constitutional'.⁴ They commented:

The advice from the Australian Government Solicitor in preparing the legislation is that the corporations power is not restricted to laws addressed to constitutional corporations. It also supports laws addressed to noncorporations insofar as a constitutional corporation acts through them—that is your example of a partnership structure at the retail level—or where a noncorporation's conduct is, or is capable of, affecting a constitutional corporation's activities, functions or business.⁵

5.4 All state and territory governments have legislation under which petrol prices could be regulated.

1 The Prices Justification Tribunal (1973-1981), Petroleum Products Pricing Authority (1981-1984) and Prices Surveillance Authority (1984-1998).

2 ACCC, *Petrol Prices and Australian Consumers*, December 2007.

3 This view is attributed to Tom Hughes QC in an article in *The Age*, 9 June 2008, p. 8. It is also raised by Caltex, *Submission 14*, pp 5-6 and Australian Institute of Petroleum, *Submission 2a*, p. 28.

4 *Estimates Hansard*, 4 June 2008, pp 88-100.

5 Mr David Martine, Treasury, *Proof Committee Hansard*, 11 August 2008, p. 34.

Definition of 'standard price' in the bill

5.5 Caltex asks whether the requirement in the bill that petrol be only sold at the 'standard price' notified to the ACCC the previous day (which the bill states should disregard shopper dockets) would make it illegal for stations to offer a lower price to customers with shopper dockets or loyalty cards.⁶ Shopper dockets are still offered in WA under FuelWatch, but the WA legislation uses different wording. A case can be made that it would be a good thing to remove shopper dockets from the market (Chapter 4), but it would appear that this is not intended. The Law Council did not consider that the bill would prevent the use of shopper dockets.⁷

5.6 Similarly, the Motor Trades Association of Queensland were concerned about possible confusion arising from the treatment of the 8.4 cents per litre subsidy provided by the Queensland Government. Service stations:

... currently display a price net of the 8.4c discount provided by the state subsidy. Under Fuelwatch, we understand that the intention is that gross prices would have to be shown.⁸

5.7 BP submitted:

...as drafted, section 10(2) is too prescriptive in that it imposes a positive obligation to sell fuel (even where we may have none for sale due, say, to a stock out). This is quite distinct from an obligation, if an offer to sell is made, to sell at the notified price. The WA legislation makes it clear that it is only if a retailer offers fuel for sale that they must sell it at the notified price.⁹

5.8 The Australian Institute of Petroleum commented:

AIP also notes that civil penalties will apply where retailers notify a price for the 24 hour period, but do not sell fuel at the notified retail price. There is no explanation in the legislative package of what this means in the context of 'stockouts' of fuel at service station sites running out of fuel and what evidence will be required to satisfy inspectors that there is no hoarding occurring.¹⁰

6 Caltex, *Submission 14*, pp 6-7. Similar concerns were expressed by Mr Aivars Blums, Motor Trades Association of Queensland, *Proof Committee Hansard*, 17 July 2008, p. 2.

7 Mr Roger Featherston, Law Council of Australia, *Proof Committee Hansard*, 1 August 2008, p. 4. Nor did the Motor Trades Association of Australia; *Submission 16*, p. 5.

8 Mr Aivars Blums, Motor Trades Association of Queensland, *Proof Committee Hansard*, 17 July 2008, p. 2.

9 BP, *Submission 31*, p.7.

10 AIP, *Submission 2a*, p. 28.

Recommendation 3

5.9 The committee recommends that the Government examine the wording used in regard to 'standard prices' in the bill, and if there is a risk of ambiguity, adopt the wording that has been used in the Western Australian legislation instead.

Review provisions

5.10 The Law Council advocated a three-year sunset provision, whereby Fuelwatch would lapse unless specifically renewed following a review.¹¹

5.11 There have been calls for the Fuelwatch scheme to be reviewed after it has operated for some time:

...there should really be a mechanism in place for appropriate evaluation. We have recommended in our submission that that should be 12 months.¹²

...the current proposed Fuelwatch scheme is best viewed as a work in progress and that we should leave room open for it to be tweaked, reformed drastically, or what have you, as we learn more.¹³

...the NRMA recommends that once introduced, the Government undertake a thorough public review of Fuelwatch after 12 months...¹⁴

5.12 The Explanatory Memorandum states that 'the Government will review the effectiveness of the scheme 12 months after its commencement'.¹⁵

Recommendation 4

5.13 The committee recommends that the designated review of the scheme after twelve months be undertaken in an open and transparent manner by an independent body.

11 Mr Roger Featherston, Law Council of Australia, *Proof Committee Hansard*, 1 August 2008, pp 3, 9.

12 Mr Jonathan Kennedy, National Seniors Australia, *Proof Committee Hansard*, 11 August 2008, p. 13.

13 Professor Joshua Gans, *Proof Committee Hansard*, 7 August 2008, p. 55.

14 NRMA, *Submission 23*, p. 2.

15 *Explanatory Memorandum*, p. 12.

Chapter 6

Summary and conclusions

6.1 The committee's *Interim Report* asked some simple questions which captured the essence of what Fuelwatch is about:

Wouldn't it be good to be able to take the family from Melbourne this Saturday to see Granny in Ballarat and be able to check on Friday exactly which station along the highway would have the cheapest petrol? Wouldn't it be better to be able to get a good price for petrol without having to queue up on a Tuesday night and hope you had picked the right station? And wouldn't it be better for small independent petrol retailers to have the same information about prices as the big supermarket chains so they can compete on fairer terms?¹

6.2 The committee believes the answers to these questions are 'yes'. These are real advantages that a national Fuelwatch scheme would bring. It will give consumers a fair go. Consumers using Fuelwatch will save themselves time and money by knowing which petrol stations have the lowest prices. Even consumers that do not use the scheme can indirectly benefit, as having better informed consumers seeking out good prices will reward retailers who lower prices for all customers.²

6.3 For the community as a whole, the cost of monitoring, analysing and distributing petrol price information will be reduced.

6.4 The committee notes that, relative to margins in the eastern capitals, retail petrol margins in Perth have fallen since FuelWatch was introduced. No alternative factor affecting Perth but not the eastern capitals was established as an explanation for the drop in the relative price of petrol in Perth.

6.5 The committee notes concerns that independent petrol retailers face challenges, mainly in getting good prices in the wholesale market. However, introducing Fuelwatch will not make things more difficult for them. By evening up the retail playing field, and making the market more transparent, it will help them compete with the major retailers. The committee notes that independents have not been adversely affected by the introduction of FuelWatch in Western Australia.

Recommendation 5

6.6 The committee recommends that the Senate support the introduction of a national Fuelwatch scheme.

1 *Interim Report*, p. 1.

2 The same argument applies to measures such as unit pricing, which can also empower consumers to compare prices and find the best deal.

Senator Annette Hurley
Chair

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.
- 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 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 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 - monitoring 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

⁸⁷ Theodor 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 discounter is 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 KRUYSS, 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

APPENDIX 1

Submissions Received

Submission

Number

Submitter

1	Professor Joshua Gans
2	Australian Institute of Petroleum (AIP)
3	Rockhampton Chamber of Commerce Inc.
4	Professor Don Harding
5	Department of Consumer & Employment Protection (DOCEP)
6	Australasian Convenience & Petroleum Marketers Association (ACAPMA)
7	Service Station Association Ltd
8	Royal Automobile Club of Queensland (RACQ)
9	Queensland Consumers Association
10	7-Eleven Stores Pty Ltd
11	Caltex Star Marts Karratha, Carnarcon, Busselton & Caltex Roadhouse Kalgoorlie
12	Motor Trades Association of Queensland (MTAQ)
13	Pilbara Regional Council
14	Caltex Australia Ltd
15	Neumann Petroleum
16	Motor Trades Association of Australia (MTAA)
17	Institute of Public Affairs
18	Royal Automobile Association of South Australia
19	Australian Automobile Association (AAA)
20	Royal Automobile Club of Western Australia
21	Business Law Section, Law Council of Australia
22	Informed Services
23	NRMA Motoring & Services
24	Royal Automobile Club of Victoria (RACV)
25	National Seniors Australia
26	Mr Damian Carew
27	Assistant Professor Zhongmin Wang
28	Woolworths Ltd
29	APCO Service Stations
30	Dr Ray Trewin
31	BP Australia Pty Ltd
32	Coles Group Ltd
33	Dr John Carmody
34	AA Holdings Pty Ltd
35	Concept Economics
36	Flynx Pty Ltd
37	Northern Territory Government
38	SEP Consultants

Additional Information Received

- Received on 21 August 2008, from Enffue – Environment Friendly Fuel. Brochure Pack;
- Received on 7 August 2008, from Mr David Russell, Senior Manager, VACC. '*Fuelwatch – VACC Submission*';
- Received on 3 September 2008, from The Treasury. Answers to Questions taken on Notice on 11 August 2008;
- Received on 2 October 2008, from the ACCC. Answers to Questions taken on Notice on 7 August 2008.

TABLED DOCUMENTS

- 14 July 2008, KARRATHA WA:
 - Mr Adrian Ellson, Pilbara Regional Council, '*Fuel: The Mass Debate*' Paper;
 - Mr Adrian Ellson, Pilbara Regional Council, '*The West Australia*' Newspaper and tax invoice receipt;
 - Mr Adrian Ellson, Pilbara Regional Council, '*History of Zone Rebate, Peter Hicks, Economics, Commerce and Industrial Relations Group, 27 March 2001*' Parliamentary Library Article.
- 16 July 2008, PERTH WA:
 - Ms Anne Driscoll, WA Government, '*Perth and Eastern States Retail ULP Prices*' graphs and charts;
 - Mr Aaron Rayner, WA Government, '*ULP Retail Price Difference between Metropolitan and Major Regional Centres*';
 - Mr Peter Fitzpatrick, Motor Trades Association of WA. Letter addressed to Mr Fitzpatrick from Mr Alvin Lee regarding FuelWatch and fuel prices – consumer perception and behavioural research.
- 21 July 2008, ADELAIDE SA:
 - Enffue – Environment Friendly Fuel, '*Petrol Pricing Snapshot, 22nd February 2008, For Graeme Samuel AO Chairman, ACCC*'. Report presented to committee.
- 1 August 2008, SYDNEY NSW:
 - Professor Frank Zumbo, '*Consumers warned on pumped up petrol prices*'. Media Statement dated Monday 19 November 2007, from Department of Consumer and Employment Protection, WA Government.
- 7 August 2008, MELBOUNRE VIC:
 - Mr Terry Conroy, Manager, VACC, '*Fuel Watch Issues to be Addressed*'.

APPENDIX 2

Public Hearings and Witnesses

KARRATHA, MONDAY, 14 JULY 2008

- COOPER, Ms Leann, President,
Karratha and Districts Chamber of Commerce and Industry
- ELLSON, Mr Adrian John, Executive Officer,
Pilbara Regional Council
- ROWE, Mr Wayne,
Caltex Franchisee, Karratha

PERTH, WEDNESDAY, 16 JULY 2008

- DRISCOLL, Ms Anne Marie, Commissioner for Consumer Protection,
Department of Consumer and Employment Protection, Western Australia
- MOIR, Mr David, Executive Manager,
Member Advocacy, Royal Automobile Club of Western Australia
- MULLINS, Mr Mike, General Manager,
Gull Petroleum
- RAYNER, Mr Aaron, Deputy Prices Commissioner,
Department of Consumer and Employment Protection, Western Australia

BRISBANE, THURSDAY, 17 JULY 2008

- ANDERSON, Mr Garth, General Manager, Matilda Fuel Supplies/Neumann Petroleum Pty Limited
- BLUMS, Mr Aivars, Group Chief Executive, Motor Trades Association of Queensland
- CADD, Mr Alan Stephen, Managing Director, Informed Sources (Australia) Pty Limited
- DEWAR, Ms Kellie, General Manager, Member Services and Support, Motor Trades Association of Queensland
- FITES, Mr Gary, General Manager External Relations, Royal Automobile Club of Queensland
- FURZE, Mrs Susan, Senior Transport Economist, Royal Automobile Club of Queensland
- GANNON, Mr Robert, Group Manager, Government Relations, Motor Trades Association of Queensland
- KANE, Mr Timothy, Chairman, Service Station and Convenience Store Association of Queensland
- PRICE, Mr Alan George, General Manager, MotorMouth, Informed Sources (Australia) Pty Limited
- ROTH, Mr Michael, Executive Manager Public Policy, Royal Automobile Club of Queensland
- WRIGHT, Mr Charles, Executive General Manager, Neumann Petroleum Pty Limited

ROCKHAMPTON, FRIDAY, 18 JULY 2008

- ASSAY, Mr Dennis Charles, Director, Rockhampton Cab Company Limited
- CALLAGHAN, Mr Peter, Regional Chairperson, Commerce Queensland
- CRANNY, Mr Michael (Mick), Deputy Chairman, Rockhampton Regional Development Ltd
- DAVEY, Mr Wayne Desmond, Director, Rockhampton Cab Company Limited
- MARSHALL, Mr Stephen Wayne, State News Director, WIN Television
- PALMER, Mr John Nevil (Rick), Acting Chief Executive, Rockhampton Regional Development Ltd
- SMITH, Mr Bryan Thomas, Chief Executive Officer, Rocky's Own Transport

ADELAIDE, MONDAY, 21 JULY 2008

- CHAPMAN, Mr John Clifford, Executive Director,
Motor Trade Association SA (Inc)
- FISCHER, Mr Andrew William, Managing Director and Shareholder,
Australian Farmers Fuel Pty Ltd
- HANLON, Ms Sharon, General Manager,
Public Affairs, Royal Automobile Association of South Australia
- HANTON, Mr Matthew, Senior Analyst,
Royal Automobile Association of South Australia
- KRUYS, Mr Theodoor, Chairman,
Service Station Division, Motor Trade Association SA (Inc)

SYDNEY, FRIDAY, 1 AUGUST 2008

- EVANS, Mr Alan H, President,
NRMA Motoring and Services
- FEATHERSTON, Mr Roger, Member,
Trade Practices Committee, Business Law Section, Law Council of Australia
- GLASBY, Mr Craig Edward, President,
Service Station Association
- RIDLEY-SMITH, Mr Michael, National Fuels Marketing Manager,
Caltex Australia Ltd
- TOPHAM, Mr Frank, Government Affairs and Strategic Communications
Manager,
Caltex Australia Ltd
- ZUMBO, Associate Professor Frank

MELBOURNE, THURSDAY, 7 AUGUST 2008

- ANDERSON, Mr Peter Joseph, Director,
APCO Service Stations Pty Ltd
- ANDERSON, Mr Robert Francis, Director,
APCO Service Stations Pty Ltd
- BRADLEY, Mr Robert Desmond, President,
Automobile Association of the Northern Territory
- CAREW, Mr Damien, Franchisee,
APCO Service Stations Pty Ltd
- CASSIDY, Mr Brian, Chief Executive Officer,
Australian Competition and Consumer Commission
- CONROY, Mr Terrence Philip, Manager,
Service Station and Convenience Store Division, Victorian Automobile
Chamber of Commerce
- CUMMING, Mr David James, Manager,
Government and Corporate Relations, Royal Automobile Club of Victoria
- DAVIDSON, Mr Brett Jonathan, Strategic Pricing Manager,
BP Australia Pty Ltd
- DIMASI, Dr Joseph, Executive General Manager,
Regulatory Affairs Division, Australian Competition and Consumer
Commission
- GANS, Professor Joshua
- HARDING, Professor Don
- JACKMAN, Mr Gavan, Director,
Government Affairs, BP Australia Pty Ltd
- KING, Dr Stephen, Commissioner,
Australian Competition and Consumer Commission
- MOULIS, Mr Nicholas, General Manager,
Australasian Convenience and Petroleum Marketers Association
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CANBERRA, TUESDAY, 12 AUGUST 2008

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APPENDIX 3

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