

Coalition Senators' critique of Labor's Interim Report into the proposed National FuelWatch Scheme

Introduction

The decision by Labor members of the Committee to produce an interim report is an indication of the Government's increasing desperation as it tries to ensure the passage of FuelWatch.

There was no requirement by the Senate that an interim report be prepared. It is not common practice to do so. It is unusual, to say the least.

Committee proceedings are publicly available. We do not accept that an interim report is necessary to inform public debate.

The Interim Report itself has the signs of having been rushed and consequently flawed. The nature of the introduction, with its talk of visiting "Granny in Ballarat", is a desperate attempt to obfuscate and to distract from its lack of content.

Everyone favours easily accessible and cheap petrol. We are all in favour of more information for consumers. However, any proposal to change the operation of such an important market as that of fuel retailing deserves full and careful consideration. The risk here is that in "empowering consumers," to quote Labor, we "empower" them to pay more for their petrol than they would otherwise have done. That would be a cruel fraud to perpetrate on the fuel consumers of Australia.

The evidence received by the Committee is not reflected in the Interim Report. The Interim Report is quite simply, biased.

It ignores the vast majority of evidence presented to the Committee that cast doubt on, or contradicted, Labor's premise that FuelWatch would result in lower prices. Concerns expressed about the position of independent retailers are at one point dismissed merely as "pessimistic." This is not the basis of good policy-making.

Even those in favour of FuelWatch seem confused about the alleged benefits.

The Prime Minister has referred to the ACCC's figure of a reduction of 1.9 cents per litre (cpl) in the 'relevant weekly average price margin.'¹ The Assistant Treasurer

1 *House Hansard*, Questions Without Notice, 28 May 2008.

referred to an ACCC analysis that found 'it puts downward pressure on prices by 2cpl.'²

The former Petrol Commissioner, Pat Walker, is on record that a national scheme would save 5cpl.³

Finally, the Treasurer estimates \$10 a tank.⁴ For a 50l tank, that equates to a saving of 20cpl.

The overwhelming weight of evidence suggested that there would be no savings and there may well be price increases – especially in South Australia.

Coalition members of the Committee will release a full, minority report on the hearings at the appropriate time. In this document, we confine ourselves to the failings of Labor's Interim Report. The following sections and paragraph numbers relate to sections in that report.

The Economics of FuelWatch – Outlawing price decreases hurts consumers

24 hour rule

FuelWatch, with its requirements to fix a price a day in advance and then to hold that price for 24 hours, does not make the market more competitive, and tends to a higher average price.

Paragraphs 3.5 to 3.9 refer to the 'information asymmetry' generated by some retailers subscribing to Informed Sources, and thereby gaining access to each other's prices in something approaching real time, information not available to the consumer. FuelWatch would reduce this asymmetry and result in a more competitive market, the report states.

We fail to see how fixing prices for 24 hours increases competition. In fact, however it would reduce competition, as the larger retailers are more able to withstand selling at a lower than realistic price at one or more outlets for 24 hours (the so-called "rolling price leaders" strategy) than are the smaller retailers.

FuelWatch will not make the market more competitive

Paragraphs 3.9 asserts that the implementation of FuelWatch will make the market more competitive. This general statement is not substantiated and is an unfounded assertion simply made to support the Government's case.

2 *House Hansard*, Matter of Public Importance, 14 May 2008

3 *Sunday Times*, 30 March 2008, p. 26 (He has since asserted he was misquoted although a clarifying statement was not issued).

4 *ABC Insiders* programme, 17 August 2008.

Paragraph 3.11 states:

The logic of the argument (that price fixing increases competition) 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.

Again, this is simply a bland assertion. There is no logic or argument. There is firstly a statement of the obvious in that motorists who use FuelWatch will go to outlets charging less, rather than more, for their fuel. Secondly, there is the unsupported assumption that FuelWatch will be a stimulus for competition. Thirdly there is the leap of faith that retailers will be competing at a lower, rather than a higher, price level.

Paragraphs 3.12 and 3.15 make general statements such as:

It is hard to quantify how large this impact will be.

It is not acceptable to fail to offer evidence of the desired effect of public policy because it is “hard” to do. Without quantification, we are left nothing.

Paragraph 3.33 attempts to sum up the section on the costs of various existing price information services. It states:

It seems clear that the resources devoted to collating and dispersing petrol price information will be much less under a national FuelWatch scheme than under the current arrangements, and the benefits it provides to consumers, much greater.

The report provides no evidence for this statement. It is not sufficient in matters of public policy to merely say that matters 'seem clear'. The purpose of an inquiry is to provide clarity, based on fact.

The section offers no analysis of the total costs to Informed Sources and other organisations who offer price information, no total figures in comparison to the funds allocated to a national FuelWatch scheme, and ignores the fact that currently such costs are borne by the private sector, rather than the taxpayer.

Finally, the claim of 'much greater' benefits is simply not substantiated.

Price cycles

Paragraphs 3.34 to 3.47 refer to petrol price cycles and are, in general, descriptive and speculative. However, we draw attention to the following two statements:

Paragraph 3.36 states:

However, motorists are limited in the extent to which they exploit their (imperfect) knowledge of the price cycles.

This statement is made on the basis of research conducted by the ACCC in 2007 and yet 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.⁵

This is in clear contradiction to the statement in the report yet Labor Senators have chosen to ignore it.

Furthermore, on the extent of motorists' knowledge, the Committee was told by Mr Jim Murphy, Executive Director, Department of Treasury, that:

We all know that Tuesday is the best day to buy petrol and the price increases as the week goes on..... The ACCC have sought for a number of years to try to do the right thing by consumers in telling them to do that.⁶

Paragraph 3.43 states:

Those who claim that the cycle results in a lower average price have to explain why the difference between the high and low points of the cycle appears to exceed the average margin on petrol. This implies that stations are selling at a loss at the low point of the cycle. The Committee has not heard a convincing explanation as to why stations would choose to do this permanently.

We have a number of issues with this statement. Firstly, it refers to 'the cycle'. But each price cycle in each urban centre is different and there is no indication here of an analysis that combines results from all price cycles that supports the general statement about price and high and low points. Secondly, there is the phrase 'appears to exceed'. Again, this is not good enough. We require proof that it exceeds or that it does not. Thirdly, in terms of consumer benefit, we do not need an explanation as to why stations might be selling at a loss; that is a matter for the retailers themselves. But clearly no station does so permanently.

Indeed, an explanation was provided in evidence from a franchisee:

The fuel is used as a drawcard. I have a very, very low margin on that. But without that turnover, without that volume of traffic coming in, I cannot generate my shop sales, which is where I actually make my money.⁷

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

6 Mr Jim Murphy, Treasury, *Proof Committee Hansard*, 11 August 2008.

7 Mr Damien Carew, Franchisee, APCO Service Stations Pty Ltd, *Proof Committee Hansard*, 7 August 2008, p. 44.

On a more general point, price cycles do not necessarily have to deliver a lower average price to benefit the consumer who consistently buys on the cheaper days.

Paragraph 3.46 refers to the “buying-below-the-average” fallacy and to “the irrelevance of the proportion of the sales made below the average price as a criterion.”

This treats with contempt those motorists, who, for very good reason, make efforts to buy below the average price. Labor Senators themselves state in the Interim Report (paragraph 3.12):

...even the reduction of a few cents per litre....adds up to a significant saving for motorists.

How, then, can this be an irrelevance?

Paragraph 3.47 refers to the unpopularity of intra-day price movements. We accept that such price movements are unpopular but note that the ACCC research referred to states that “a third” were willing to pay higher average prices if it meant no intra-day volatility.

Given the Labor Senators’ earlier statement that a saving of a few cents is significant, the support of only a third of motorists, for whom price is clearly not a critical issue, for a measure which would increase prices hardly justifies a move to end intra-day volatility.

FuelWatch in Western Australia

The evidence presented by Labor Senators in their interim report with respect to DOCEP, the department that administers FuelWatch in Western Australia, was peppered with vague comments that could not be adequately backed up.

Paragraph 4.5 states that FuelWatch is 'widely' used and quotes Ms Driscoll:

Currently, almost 300,000 people are accessing the FuelWatch website per month. 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.

However, DoCEP’s written submission to the Committee states:

During May 2008, there was a record 291,767 visits (our emphasis) to the FuelWatch website...

Allowing for Ms Driscoll rounding up the figure in her evidence, these two statements are not compatible. The number of visits to a website is not the same as the number of people using the website which would be a better indication of its overall use.

Or are we to assume that the two figures are correct and people only visited the site once a month? If so, this would suggest that they hardly find it an essential part of the process of buying petrol, or if they did, they only bought petrol once a month.

Opposition Senators consider that the national publicity surrounding FuelWatch during May 2008, played a significant part in increasing visitor figures as curiosity may have led to people outsider of Western Australia visiting the site.

Paragraph 4.7 states:

Some consumers were alarmed when they heard about opposition to a national scheme, fearing WA FuelWatch might be abandoned.

A total of four emails are quoted in the interim report with a reference to DoCEP's Submission 5a, where we find a total of 6 un-attributed emails, including the four already quoted.

In the absence of any further evidence, we feel it would be accurate to say instead: 'six consumers were alarmed'.

Full details of these surveys were promised to Senators but not provided.

Comparison of fuel prices between Perth and Eastern States

Paragraphs 4.8 to 4.16 deal with a comparison of fuel prices in Perth with those in other capitals.

At this point, we would remind Labor Senators of the evidence given by Mr Aaron Rayner, Deputy Prices Commissioner, DoCEP, in response to this question from 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 replied:

We have not done a study ourselves or scrutinised the econometric analysis in any great detail.⁸

We are surprised that DoCEP has not done more work to scrutinise the performance and effects of its own initiative.

Paragraph 4.9 refers to Chart 4.1, provided by the NRMA, showing average prices in Sydney and Perth from 26 April, 2008, to 14 July, 2008, the Perth average tending to be lower. This "suggests" that FuelWatch has lowered average prices. There is no evidence in this section to support this limp assertion.

We do not accept that a comparison over a matter of weeks is of value when FuelWatch has been running since 2001. It is just a snapshot. Other factors may have been at work. Furthermore, the price differential may have been the same or similar before FuelWatch.

Paragraph 4.10 quotes further evidence from Ms Driscoll stating that Perth prices were lower than those in Melbourne, Brisbane, Sydney (again) and Adelaide. The footnote notes that the comparison was “done as at June 2008” suggesting, if anything, that prices were surveyed over the whole month. Ms Driscoll, in fact, prefaced her remarks with:

In the month of June we observed that.....⁹

We therefore know very little about the significance of these figures and the period over which they were collated. In any case, the same qualifications would apply to Ms Driscoll’s figures as to those from the NRMA. Even if they were collated over the whole of June, that is an even shorter period than cited by the NRMA.

Paragraphs 4.11 to 4.17 provides an inconclusive discussion of margin comparisons and possible differences between the Perth market and other markets.

Economic Analysis of FuelWatch’s impact in Perth

Paragraph 4.18, referring to the previous chapter of the interim report, states:

Economic theory would suggest FuelWatch would lead to a fall in average prices.

We do not accept that this statement is supported by the previous chapter and note again the un-supported statement in Paragraph 3.11 that:

the added stimulus to competition will push down average prices for all.

Paragraph 4.19 concludes this section:

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.

This statement is deceptive, to say the least, and flies in the face of the evidence given to the committee. The point is not that economists or econometricians cannot agree on precise estimates but that the majority of those giving evidence to the committee (Concept Economics, Access Economics, Professor Harding, Professor Zumbo) agreed that the ACCC analysis was flawed.

After acknowledging the complexity of the analysis, it seems strange that Labor Senators are prepared to accept the ACCC's conclusions alone as a basis for policy-making, without taking into account the many opposing views.

Lack of Volumetric Analysis

Paragraph 4.21, on volumetric data, states:

Simple unweighted averages of listed petrol prices may not be a good basis for econometric tests.

Paragraph 4.22 states:

Ideally, the average observation for each day and market should refer to prices paid weighted by the amount sold at that price.

It adds that any such analysis would make FuelWatch more attractive because it would reveal the result of motorists buying more fuel at cheaper outlets. This is pure conjecture. It may be the case, but it might also be the case that because of reasons of convenience, time-management, locality etc, ie real-life considerations taking precedent over economic theory, motorists are not buying at the cheaper outlets, even though they may be aware of them.

This was supported in evidence by Mr J Murphy, of the Treasury:

It seems to us that the consumers are not active or energetic enough in seeking out bargains.¹⁰

We also recall the following evidence from 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.¹¹

Paragraph 4.23 states:

Unfortunately, the data were not available to make the comparison using consumption-weighted prices.

Notwithstanding, Paragraph 4.24 then boldly states:

...the implication of the econometrics is that a test done on a volumetric basis would also show that FuelWatch was associated with lower petrol prices in WA.

The source for this statement is given as Mr J Dimasi, of the ACCC.¹²

10 *Proof Committee Hansard*, 11 August 2008, p. 28.

11 *Proof Committee Hansard*, 7 August 2008, p. 55.

12 *Proof Committee Hansard*, 5 June 2008, pp 19 and 40.

This is another remarkable assumption. The Interim Report says that, ideally, a volumetric analysis needs to be done; that there is no volumetric data available; but, if it were, it would show that that FuelWatch resulted in lower prices; and it quotes a minority view in support of this.

This is how Professor Ergas described the analysis that led to that minority view:

...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.¹³

ACCC analysis was not peer reviewed

Paragraphs 4.25 and 4.26 refer to the issue of peer review in relation to the ACCC study and the general practice of making data and methodology available for others to examine and validate.

The Interim Report states:

The work was reviewed within the ACCC.

This clearly misses the point of peer review. It goes on to say that the Treasury found the ACCC's methodology robust; but the Treasury was among the Government departments which had reservations about a national FuelWatch scheme.

Paragraph 4.26 quotes Professor Gans describing the ACCC study as

A far more rigorous investigation of the WA scheme than anyone had ever done.

We are only aware of one earlier investigation, by DoCEP. As we have noted, we do not regard the DoCEP evidence as conclusive and, anyway, it draws heavily on work done by the ACCC. The statement therefore does not, in our view, amount to a ringing endorsement, as presented in the Interim Report.

We also note that those commenting on the ACCC analysis made their data and methodology public, which the ACCC did not.

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

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.¹⁴

The essence of empirical research, analytical research, is that your data needs to be available for independent peer review. It is a fundamental

13 *Proof Committee Hansard*, 11 August 2008, p. 3.

14 Professor Don Harding, *Proof Committee Hansard*, 7 August 2008, p. 22.

precept of academic best research practice that your data be available to external parties to be able to replicate that analysis.¹⁵

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 determined on the basis of modelling and the results of that modelling have not been made available to the public.¹⁶

Furthermore, we find it remarkable that the Treasury, according to Mr J Murphy, was under the impression that the information had been made available:

My understanding was that the ACCC gave other econometricians access to a lot of this information, actually.¹⁷

We note that the Interim Report devotes only two short paragraphs to this important point whereas it devotes six, mostly lengthy paragraphs (4.27 to 4.32), to criticising the contributions made by critics of the ACCC. Again, we do not feel this reflects the weight of evidence given to the inquiry.

The criticisms are partial, and not conclusive. Again, the statement in Paragraph 4.29 that Professor Harding's work is not peer-reviewed is deceptive as the Professor has made his data and methodology available.

Paragraphs 4.34 offers a conclusion, of sorts, to this chapter. The Interim Report states that 'no definitive conclusion' can be drawn from the various econometric studies. It would be more accurate to say that the majority of evidence disputes the analysis by the ACCC on which the Government is basing its policy.

The paragraph continues: '...there seems no reason on the basis of econometrics to overturn the reasoning....that a national FuelWatch scheme would lead to a modest decline in average retail petrol prices.'

This is simply a travesty of the evidence, which was that there is little or no good reason to assume that a national scheme would lead prices to fall. It is also a bizarre statement to make, given the earlier assertion that "no definitive conclusion" can be drawn.

15 Professor Frank Zumbo, *Proof Committee Hansard*, 1 August 2008, p. 40.

16 Henry Ergas, *Proof Committee Hansard*, 11 August 2008, p. 7.

17 *Proof Committee Hansard*, 11 August 2008, p. 30.

Fuelwatch and Independent Operators

Paragraph 5.1 notes that:

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.

This is precisely the point with regard to prices that the Interim report fails to establish.

Paragraph 5.7 refers to the responsiveness of independents to price cuts by major retailers and to the alleged commercial advantage provided to major retailers through access to Informed Sources and states: “FuelWatch would even things up.” If independents, as suggested, currently benefit by being more responsive, then we fail to see how removing their ability to respond through the 24-hour rule would improve their position.

Paragraphs 5.8 and 5.9 refer to evidence by Mr Charles Wright, of Neumann Petroleum, particularly opposing the ban on price-cutting during the 24-hour period.

The report dismisses 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.

It was also the view of the Motor Trade Association (SA) that:

The proposed Fuelwatch Scheme does not provide independents with the opportunity to lower their pricing in order to be competitive with other sites in the event that they may not get their individual pricing strategy correct on any one day.¹⁸

The Interim Report goes on to note that if the independents’ price is too high, their sales will drop, and vice versa: but this takes no note of the fact that independents are less likely to be able to weather the effects of being locked into a higher price than their rivals.

As we were told by Royal Automobile Association of South Australia:

If you are forced to lock that price in at that lower level and your competition do not follow you, then there is the potential that over time that price will inevitably rise to a point where you are comfortable with the

18 John Chapman, Executive Director, Motor Trade Association SA (Inc), *Proof Committee Hansard*, 21 August 2008, p. 10.

margin. We know that the oil majors have the ability to spread that risk out over a number of sites. Independents are limited to one or two outlets.¹⁹

Rolling price leaders

Paragraphs 5.13 to 5.15 refer to the “rolling price leaders” strategy, whereby larger operators nominate a particular outlet to lower its price, relative to others in the chain. Customers are then driven to the operator’s other outlets on the back of the low price.

It is suggested that this strategy “may be less effective” under FuelWatch. Under backward-looking reporting schemes, the low price reported by the media in the course of an evening may have been raised by the next day. If the price were fixed, the strategy would be more expensive for the chains.

One might also argue that, with careful pricing, the strategy could benefit the chains as they would have a full 24 hours to take advantage of the strategy before any independent could undercut them. It also assumes that motorists do not realise that they are viewing a current, rather than a forward price. Once again, this is speculative, rather than conclusive.

The Interim Report leans on a submission by the RACWA and quotes:

While the RAC has not carried out a full economic analysis of the economic costs and benefits of the WA FuelWatch scheme, it appears the benefits to consumers of the scheme outweigh the costs.²⁰

We note the lack of full analysis and the use of the word 'appears'.

Experience and numbers of Independents

Paragraphs 5.16 to 5.19 refer to the experience of independents under FuelWatch in WA and opens with a statement from evidence by the ACCC to the effect that there was no reason why a national FuelWatch scheme 'could or should' have an adverse impact on independents.

The ACCC is then quoted as saying:

..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.²¹

19 Matthew Hanton, Senior Analyst, Royal Automobile Association of South Australia, *Proof Committee Hansard*, 21 August 2008, p. 4.

20 RACWA, *Submission 20*, p. 5.

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

Paragraph 5.18 then draws support for this stance from the DoCEP's Submission 5 to the inquiry that shows the proportion of various kinds of independents as static or rising between one and four per cent.

By DoCEP's own admission, we know that it relied on the ACCC for much of its analysis of FuelWatch, in this instance, on 'a fairly close look' by the ACCC. To quote DoCEP's figures in support of the ACCC is therefore not adding much to the argument.

In spite of the reference above by the ACCC to the position of independents elsewhere in Australia, the DoCEP's figures are not related to changes in independents' market share elsewhere in Australia; we do not therefore know whether they are faring better or worse under FuelWatch.

Neither do we know whether in WA their market share is increasing or decreasing.

Conclusions

This document was prepared by Coalition Members of the Senate Economic Committee in response to the Interim Report by Labor Members. It deals solely with the contents of the Interim Report and is not intended as a minority report of the Committee hearings, which will follow in due course.

On the basis of its contents, we can see no need for the release of the Interim Report.

It was suggested that the purpose of its release was to inform public debate. All the evidence presented to the Committee is already available to the public.

Furthermore, the use of evidence in the Interim Report is so partial as to provide a dis-service to the public and, in general, it relies more on speculation rather than fact.

It does not answer the crucial questions of what effect FuelWatch has had on the petrol market in Western Australia, with regard to price, the level of competition, or the effect on independent retailers. Therefore neither does it offer any guidance on what the effects might be if the scheme were introduced across Australia.

We regard the Interim Report as a failed attempt to justify the Government's efforts to get the FuelWatch legislation passed by the Senate.

Senator Dr Alan Eggleston

(Deputy Chair)

LP

Senator David Bushby

LP

Senator Barnaby Joyce

LNP

Senator the Hon. Eric Abetz

LP