

# 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.<sup>1</sup>

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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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> It suggested some measures that could make the market more competitive.<sup>6</sup>

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...<sup>7</sup>

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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.<sup>8</sup>

4.9 There is evidence suggesting they make consumers less price-responsive, and harder for independents to attract.<sup>9</sup> 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.<sup>10</sup>

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...<sup>11</sup>

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.<sup>12</sup>

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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.<sup>13</sup>
- 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'.<sup>14</sup> Choice were also critical: 'you should rather take action about shopper docketts, which confuse consumers'.<sup>15</sup>
- 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.<sup>16</sup>
- 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.<sup>17</sup>
- 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

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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.<sup>18</sup>

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.<sup>19</sup>

### *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.<sup>20</sup> 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.<sup>21</sup>

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:

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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.<sup>22</sup>

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.<sup>23</sup>

### ***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.<sup>24</sup>

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.<sup>25</sup>

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

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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.<sup>26</sup>

### **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.<sup>27</sup> 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.<sup>28</sup>

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:

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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.<sup>29</sup>

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.<sup>30</sup>

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'.<sup>31</sup> 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.<sup>32</sup>

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

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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.



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

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'<sup>34</sup> rose from 34 to 35 per cent; the proportion operated by 'independent chains'<sup>35</sup> was steady at 13 per cent and the proportion of 'unbranded independents'<sup>36</sup> rose from 2 to 6 per cent.<sup>37</sup>

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.<sup>38</sup>

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.<sup>39</sup>

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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.

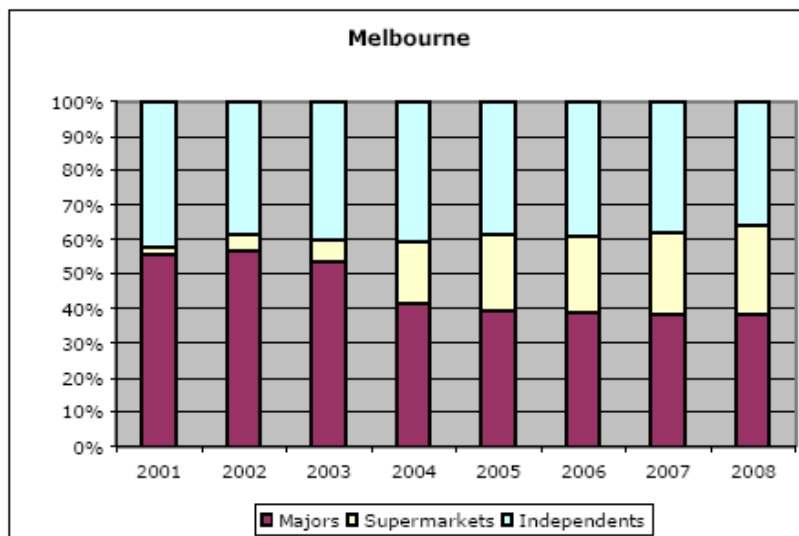
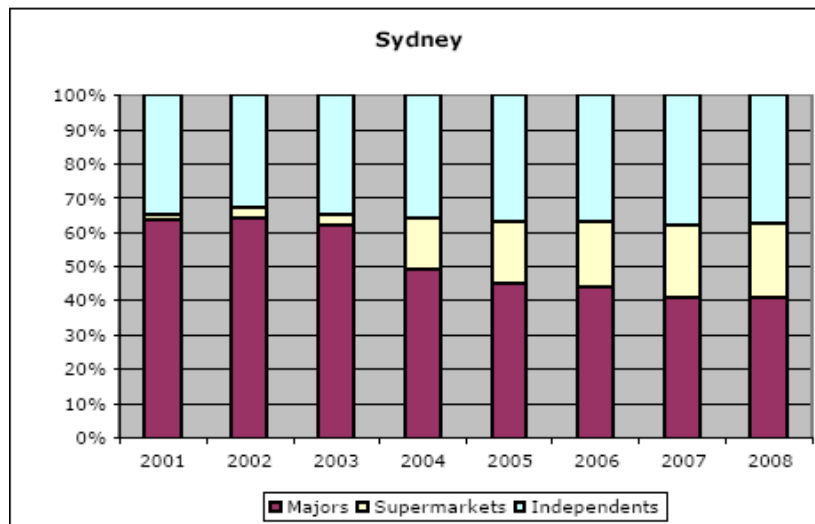
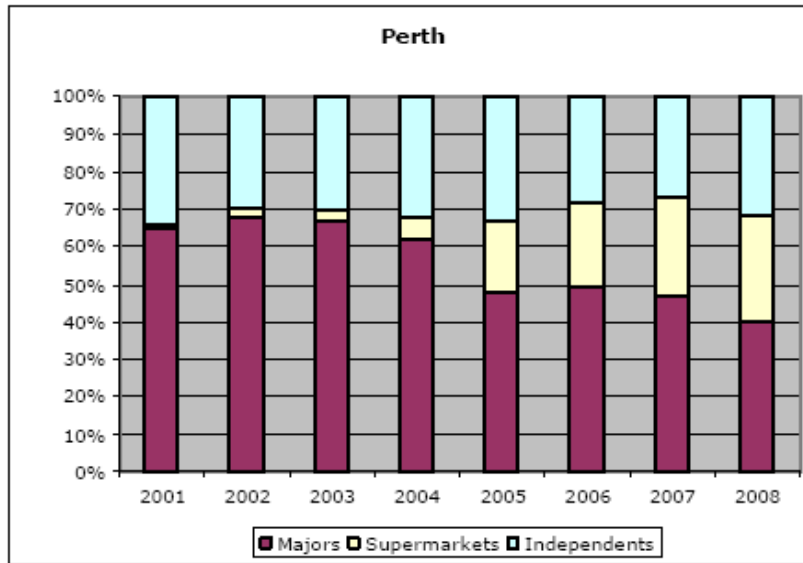
35 These are sites that are owned by a large independent company. In Western Australia, these companies are Gull, Peak and United. These sites are predominantly located in the Perth metropolitan area.

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.<sup>40</sup>

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.'<sup>41</sup>

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.<sup>42</sup>

## 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.<sup>43</sup>

## 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.**

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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.