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Reference: National Fuelwatch (Empowering Consumers) (Consequential Amendments) Bill 2008; National Fuelwatch (Empowering Consumers) Bill 2008

FRIDAY, 1 AUGUST 2008

SYDNEY

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**SENATE STANDING COMMITTEE ON
ECONOMICS**

Friday, 1 August 2008

Members: Senator Hurley (Chair), Senator Eggleston (Deputy Chair) and Senators Bushby, Cameron, Furner, Joyce and Pratt

Participating members: Senators Abetz, Adams, Arbib, Barnett, Bernardi, Bilyk, Birmingham, Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cash, Colbeck, Collins, Coonan, Cormann, Crossin, Ellison, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Hefernan, Hogg, Humphries, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, Marshall, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

Senators in attendance: Senators Abetz, Bushby, Cameron, Eggleston, Hurley and Joyce

Terms of reference for the inquiry:

To inquire into and report on: National Fuelwatch (Empowering Consumers) (Consequential Amendments) Bill 2008;
National Fuelwatch (Empowering Consumers) Bill 2008

WITNESSES

EVANS, Mr Alan H, President, NRMA Motoring and Services	11
FEATHERSTON, Mr Roger, Member, Trade Practices Committee, Business Law Section, Law Council of Australia	2
GLASBY, Mr Craig Edward, President, Service Station Association	30
RIDLEY-SMITH, Mr Michael, National Fuels Marketing Manager, Caltex Australia Ltd	20
TOPHAM, Mr Frank, Government Affairs and Strategic Communications Manager, Caltex Australia Ltd	20
ZUMBO, Associate Professor Frank, Private capacity	38

Committee met at 1.09 pm

CHAIR (Senator Hurley)—I declare open this meeting of the Senate Standing Committee on Economics. This hearing has been convened to receive evidence in relation to the committee's inquiry into the National Fuelwatch (Empowering Consumers) Bill 2008 and the National Fuelwatch (Empowering Consumers) (Consequential Amendments) Bill 2008. The inquiry's terms of reference require the committee to examine the National Fuelwatch Scheme and issues relating to the bill.

These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time. A witness called to answer a question for the first time should state their full name and the capacity in which they appear. Witnesses should speak clearly and into the microphone to assist Hansard to record proceedings. Mobile phones should be switched off.

[1.10 pm]

FEATHERSTON, Mr Roger, Member, Trade Practices Committee, Business Law Section, Law Council of Australia

CHAIR—I welcome here this afternoon the representative of the Business Law Section of the Law Council of Australia. Would you like to give an opening statement?

Mr Featherston—If I may, thank you. Thanks for the opportunity this afternoon to speak to the submission of the Trade Practices Committee and to answer questions that you might have. The Trade Practices Committee is a national committee of the Business Law Section of the Law Council and comprises over 120 lawyers and economists with expertise in trade practices law. I am a former chair of the Trade Practices Committee. I am also a former chair of the Business Law Section. I have practised in this area since 1975.

The Trade Practices Committee has put in a submission. The central point we wish to make is that if there is to be a law which regulates competition, there should be a clear and significant net public benefit resulting from that interference in competition. We note that the Australian Competition and Consumer Commission has suggested that the principal benefit from the Fuelwatch bills is to address information asymmetry between major retailers on the one hand and consumers and small independents on the other. The ACCC has pointed to a price exchange arrangement that is administered by a company called Informed Sources Pty Limited. It has suggested that that is a major contributing factor to the information asymmetry.

The Trade Practices Committee submits that if that price sharing arrangement causes a substantial lessening of competition in any market, the ACCC should prosecute the parties to that arrangement under the existing provisions of the Trade Practices Act, which prohibit arrangements that are likely to substantially lessen competition. If, however, that arrangement does not substantially lessen competition, we would question whether there is a significant problem here that needs to be addressed by the proposed legislation. We do point to the fact that information asymmetry is a feature of most markets and should not of itself normally justify interference in the competitive process.

In our submission, we have pointed out a number of concerns that we have as to why the proposed legislation may distort competition in petrol markets. Obviously, first and foremost, the legislation will clearly interfere with the competitive dynamics in the market by eliminating price competition within the course of each day. Each service station is going to be obliged to set its price for the following day and to hold to that price for 24 hours. That will eliminate any quick response that a service station might make or otherwise make to lower prices from nearby service stations.

Second, 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.

Third, 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. Fourth, as we explain in our submission, 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. Fifth, the proposed legislation may actually assist price leadership as it will facilitate the detection of cheating and will punish those who try to cheat. Finally, in relation to competition, we are concerned that the proposed legislation may encourage more unlawful price collusion between retailers who wish to avoid the risks of pricing errors.

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 docketts 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 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.

The Trade Practices Committee is also concerned with the proposal to implement infringement notices. We believe that that system might be appropriate for traffic violations but should not be the way in which penalties

are imposed in respect of business practices. We are concerned that it effectively reverses the onus of proof. Finally, the Business Law Section has proposed that if there is to be legislation, it should have a three-year sunset provision included in it.

Whilst the Western Australian experience is reassuring, no-one appears to understand why this has had so little effect on competition over there. There is no certainty that that experience will be repeated if this is applied to other markets in Australia. For those reasons, we do not believe at this stage on the evidence available that the proposed legislation has that clear and significant net public benefit that we believe is necessary. Thank you, Madam Chair.

CHAIR—Thank you, Mr Featherston. You say that you are disregarding the Western Australian experience even though you said it has been a relatively good experience. That is seven years of practical application of FuelWatch. Why would you disregard it?

Mr Featherston—Well, from the way we have looked at the evidence that has been presented, I do not think the ACCC has really allowed others to replicate their econometric studies of that system. We see the way that the ACCC has referred to it is more by way of reassurance rather than having any degree of confidence that that will necessarily be repeated. It would appear to us that people are saying that the Western Australian experience is reassuring, but we are not entirely sure why it has happened that way and we are not entirely sure whether it will actually be repeated elsewhere.

CHAIR—So you cannot prove it on paper. You want to disregard the actual fact that in Perth most people are happy with the system, they are using it extensively and it has resulted in the outcome that they wanted—that fuel prices have smoothed out, that the competition is still there and that independence is still there. Just because you cannot add it up on your piece of paper does not mean that it did not happen.

Mr Featherston—That may be a fair comment. But what we would point to is that our concerns are 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, I think there is a lot more to petrol competition than first meets the eye. If we had confidence that each of the markets would respond in the same way, the Perth experience would certainly be a lot stronger evidence.

CHAIR—So until you can prove absolutely that it works, you do not want the government to do anything?

Mr Featherston—When you say, with respect, Madam Chair, that the Perth system works, it seems to me that it has worked to the point of not making things any worse. It is not really clear whether the marginal benefit in pricing, for example, or the marginal change in the independents' share of the market is really worth interfering with the competitive process.

Senator JOYCE—You will be happy to know, Mr Featherston, that Mr Walker could not add it up either. He does not think it is going to work.

Senator ABETZ—First of all, I thank the Law Council and the business section for its submission. You are one of the few people coming before the committee that does not actually have, if I might use the term, 'skin in the game' or a particular vested interest, so I am particularly interested in your submission and the views that you have brought forward. So thank you for that. On page 2 of your written submission, you make the point that there are doubts as to whether the Western Australian experience is a reliable and safe guide to the introduction of Fuelwatch in other states. In fact, we heard in the home state of the Chair that the motoring bodies there were concerned that Fuelwatch would in fact increase fuel prices because the Adelaide market, according even to the ACCC, is the most competitive retail market in Australia. Are you aware of the Adelaide example, or is that the sort of thing to which you are pointing in your submission?

Mr Featherston—I am not really fully across the Adelaide example and, therefore, I do not know that it is appropriate for me to comment upon it. But certainly, we are concerned that there could be differences between the relevant capital city petrol markets.

Senator ABETZ—Your submission suggests that that might be a possibility. But you are not aware of the particular Adelaide experience. In relation to consumers being told what the price is and how price varies—I think somebody was saying today it was by 20c a litre in the city of Sydney, for example—are you aware in the business side of the law that grocery stores, such as Woolworths, sometimes sell bread at a cheaper price in one shop as opposed to another outlet around the city?

Mr Featherston—Again, I might have my personal knowledge, but I really cannot comment on that from a business point of view.

Senator ABETZ—All right. I want to ask you about the shopper docket system. Do you believe that that would be allowed under the legislation?

Mr Featherston—As I read the bill, that would be allowed. What is provided for in the bill is that a service station is to submit their standard price for petrol disregarding shopper dockets and other discounts. So if they submitted a price, for argument's sake, of \$1.46, the actual price at which they sold that petrol with a shopper docket could be less than \$1.46.

Senator ABETZ—So really what you could have is a dual system of displays, where you have to register your standard price and have that up on your billboard, but right next to it you could have a billboard that says, 'If you buy 5c worth of whatever, we will give you a further 3c a litre discount', which then allows that service station to meet the market?

Mr Featherston—It does appear to us that that could happen, yes.

Senator ABETZ—Thank you.

Senator JOYCE—Mr Featherston, I am very interested, because of your role on the Trade Practices Committee, to go through some of the issues there. I also want to bring into clear focus that we are also very interested in why Mr Ron Walker has stepped down from the position.

Senator ABETZ—Pat.

Senator JOYCE—Why Mr Pat Walker has stepped down from the position. We know where Pat has gone, but we do not why. I think some of the discussion today might throw some light on that. Can you inform me of any other laws that Mr Walker had at his disposal as the fuel price commissioner apart from those that were already there?

Mr Featherston—In Western Australia?

Senator JOYCE—No. As he walked into the role of the fuel commissioner on a Commonwealth level, was he going to have available to him any further laws or any beefing up on laws apart from the ability to monitor prices being locked in than was already there in the Trade Practices Act?

Mr Featherston—I was not aware of any proposal to enhance those laws at the time that he was appointed.

Senator JOYCE—Really he was going forward not so much as Pat but as a patsy—he had to go into a position with nothing at his disposal other than what was already there?

Mr Featherston—Well, I would not necessarily agree with the way in which you phrased your question. But in terms of the actual question of me, I am not aware that he had or was likely to have any additional powers.

Senator JOYCE—You brought clearly to our attention, and in your submission you talked about—Senator Abetz has also shone on a light on it—the fact that Coles and Woolworths, which represent, I think, about 44 per cent of the retail market, have the capacity to get around the whole concept of even locking in prices by just offering you a further discount through the shopper docket system. This makes the whole concept of locking in prices implausible.

Mr Featherston—Certainly, it would appear to me that the legislation requires those companies, amongst others, to actually make fuel available at the quoted price but does not prevent them from having some additional discount on some other condition, such as a shopper docket.

Senator JOYCE—You base your case, and rightly so, around the asymmetry that this legislation was supposed to address. But if asymmetry is your issue, Informed Sources already provides a more immediate response to that information asymmetry than FuelWatch. Would that be more correct?

Mr Featherston—Well, I understand that the commission's initial concern was that the Informed Sources data was only available to those who subscribed to their service. I read from the Informed Sources submission that they have other material that is available more broadly.

Senator JOYCE—But they could have made Informed Sources public to any person at any point in time so at a point-to-point time they could have known about fuel prices in any specific area. At the same time this would have given independents the chance to follow people down, because independents were truly exposed to this legislation, were they not?

Mr Featherston—Well, I understand that one of the concerns certainly that has been voiced by the ACCC has been the smaller independents not being privy to the same degree of price information that the major retailers have been.

Senator JOYCE—You talked about geographic price discrimination. That specifically is the capacity of the oil majors to basically surround an independent and drop the price there. Whether they find out about it 24 hours later or not, they could be out of the market without the capacity to go down to meet them.

Mr Featherston—That is certainly a concern.

Senator JOYCE—Are you aware of the wholesale buy-sell arrangements that the refineries have?

Mr Featherston—I have only got a general knowledge of those types of arrangements.

Senator JOYCE—From your general knowledge of the buy-sell arrangements, are you aware of anybody else being able to participate in the buy-sell arrangements apart from the oil majors?

Mr Featherston—Not from my general knowledge, but I am sure there will be other witnesses who are better able to answer that question.

Senator JOYCE—Do you suggest any alternative policies that could bring about a more competitive market, if this is what they want to produce, than the current policy of Fuelwatch?

Mr Featherston—Well, I think that the provisions of the Trade Practices Act do give the ACCC powers to monitor competition in relation to petrol. If there is any anticompetitive conduct, I am sure that the ACCC has the power to highlight that conduct, even if it does not amount to a breach of the act.

Senator JOYCE—And what section of the act would you think would be the most relevant in dealing with the removal of mechanisms to take independents out of the market or into breaking up collusive activity or activity that discriminates ultimately against the consumer?

Mr Featherston—Well, in terms of anticompetitive conduct, section 45, as you would be aware, is the key provision which prohibits any arrangement that might substantially lessen competition or is likely to substantially lessen competition. Section 46 is aimed, as you know, at unilateral market power. Our concern here is that section 46 would be unlikely to be able to be invoked in respect of the sporadic undercutting of small independents. Section 52, the general misleading and deceptive conduct provision, is also quite an important and powerful provision in terms of ensuring fair competition.

Senator JOYCE—Can you give any examples in recent times where there has been a successful case against one of the oil companies using section 45, section 46 or section 52?

Mr Featherston—In recent times, not off the top of my head, no, no.

Senator JOYCE—Do you think there is any reason why in recent times there has not been a successful case using section 45, section 46 or section 52?

Mr Featherston—I should qualify that. I am not sure whether your question was about majors or any oil company.

Senator JOYCE—Major oil companies. I know we have independents in Victoria.

Mr Featherston—It is really a question of, for a start, whether there is any conduct that actually might breach the act. The second question is whether the evidence is available to prove a case.

Senator JOYCE—So at this point in time, under the auspices of the ACCC, we have not had conduct that would be described as a breach of the act. In the experience so far, we have had no conduct that would be described as a breach of the act, yet this was the same act that Mr Walker had to go out and apparently save the world with.

Mr Featherston—I am not sure whether that is a question of me. I am not sure whether I will answer that question.

Senator JOYCE—Would you like to take Mr Walker's job?

Mr Featherston—No, I would not.

CHAIR—Here is the opportunity to apply.

Senator JOYCE—So do you think there is a capacity for there to be, for instance, a more robust participation by the ACCC using certain changes, especially to section 46, to maintain independents in the market if there are cases brought before it where they believe that people, especially major oil companies, are

knocking out independents? Is there the laws before them? Were there recent changes—to try not to load a question—brought about by the previous government that gave independents a greater capacity to take a case to the ACCC?

Mr Featherston—I do not believe that the way in which section 46 has been amended really does assist small independents that much. I think that section 46 is not designed to protect or preserve smaller players in the market. It is aimed at actually addressing anticompetitive conduct by a player with substantial market power. To the extent that any conduct by a major oil company which did take advantage of substantial market power—

Senator JOYCE—Substantial market share now.

Mr Featherston—Well, the recent amendments relate to market share, that is true, but the recent amendments also involved pricing for a sustained period.

Senator JOYCE—For a sustained period, yes.

Mr Featherston—I think the fear we have with this legislation is that the discounting could be more sporadic and that would avoid, for example, a sustained period issue under those amendments to section 46.

Senator JOYCE—If a major organisation were to be completely dogmatic and militant in how they dominated a market, although they may not be in breach of sections 45, 46 or 52, does Australia have any divestiture powers away from a brief period after a merger and acquisition?

Mr Featherston—No. The divestiture powers in the act relate only to acquisitions which would be in breach of section 50. So a company is entitled under the Trade Practices Act to lawfully build up its market share and its position in a market and does not fear divestiture under our act.

Senator JOYCE—Is there any share of a market that a person can get to which is not unlawful?

Mr Featherston—No. Depending upon how they increase their market share, there is no reason under the act why a company could not have 100 per cent of a market.

Senator JOYCE—So an oil company could end up with 100 per cent of the market and not be in breach of any part of the Trade Practices Act?

Mr Featherston—Yes. If it acquired that market share without making an acquisition, which would substantially lessen competition, or without acting by abusing its market power.

Senator JOYCE—In your knowledge of competition, do you find that a healthy position to be in? Does that get the best return to the consumer?

Mr Featherston—I do not have a personal problem with that policy. I think that it is a policy under the act that has served the country well. The act is not dependent upon limiting the share of a market that a company has. It is actually about preventing a company from increasing that share either through acquisitions or through unfair conduct rather than addressing the absolute size of its market share.

Senator JOYCE—I have two questions. But if they were to increase their share piece by piece by piece, bit by bit by bit in a creeping form, how would the act stop that?

Mr Featherston—At this stage, it is generally believed that the act cannot really stop that. The argument is that at some point one of those small acquisitions will tip them over the line. But it is very hard to actually prove where that point is.

Senator JOYCE—Can you give any example anywhere where one of those little acquisitions has actually been taken to the ACCC?

Mr Featherston—Well, I think there have been quite a few that have been taken to the ACCC, but I cannot think of any where the ACCC has had grounds to actually take them to court.

Senator JOYCE—This is my final question. You have knowledge of competition, of the dynamics of economics and of those things that affect economics, being predominantly supply and demand. That is, if you increase supply, price will go down. If you increase demand, price will go up. Alternatively, if you reduce supply, price goes up, and if you reduce demand, price goes down. Of those fundamental things that really and truly do affect price, which part, which is probably passe now, is the Fuelwatch scheme addressing? Is it addressing supply or demand, or is it not addressing either of them?

Mr Featherston—I think the Fuelwatch bills appear to be trying to improve the flow of price information to consumers. To that extent, I suppose, they are addressing the ability of consumers to access the lowest prices. But I am not sure that that is necessarily something that would lead to higher demand as such.

Senator JOYCE—Your submission says that it was ineffective even as a window to see through the dynamics of the market. So if it was ineffective as a window, it did not address supply and it did not address demand, the only logical conclusion is that it did nothing, and that is possibly what Mr Walker saw.

Mr Featherston—Well, I cannot comment upon what Mr Walker saw.

Senator CAMERON—Thanks, Mr Featherston. Thanks for being here this afternoon. Are you aware of the work of Joseph Stiglitz?

Mr Featherston—I have come across it, yes.

Senator CAMERON—Are you aware of his work on price asymmetry?

Mr Featherston—I am not closely familiar with it. I cannot answer questions specifically upon that work.

Senator CAMERON—You have given evidence on price asymmetry here and you are not aware that Joseph Stiglitz won a Nobel Prize in economics on the issue of price asymmetry?

Mr Featherston—I am not for a moment making a submission that price asymmetry is not an issue in markets. Certainly, lots of economists have won Nobel Prizes for work they have done on aspects of the economics of supply and demand and the functioning of markets. The point that we are making is simply that the price asymmetry that has been pointed to does not appear to be of sufficient concern that it would substantially lessen competition.

Senator CAMERON—You are not an expert on price asymmetry?

Mr Featherston—No. I do not profess to be an expert on price asymmetry.

Senator CAMERON—So we have to take your evidence on the basis that it is not expert evidence on this very important issue?

Mr Featherston—Our submission does not say that price asymmetry is not a problem in certain circumstances. What we are just simply pointing to is that if you take one extreme view that price asymmetry is always going to be a problem, you should be regulating every market in Australia. If you take the view that petrol is unique and the price asymmetry in petrol is a particular concern, all we are pointing to in our submission is that it does not appear to be of sufficient concern to the ACCC that there is a substantial lessening of competition.

Senator CAMERON—We received evidence in Rockhampton. That evidence basically went to the point that television in Rockhampton conducted their own ad hoc Fuelwatch scheme. Steve Marshall, the state news director for WIN TV, sought to give evidence because he felt it was important for their position to be put forward. He indicated that they had asked MotorMouth, the organisation that provides information on the price of petrol, whether they would give WIN television, as part of a community service, access to the information available to the retailers. Mr Marshall's evidence was that he was told, 'No, we're not prepared to give you that. We're not even prepared to give it to you if you recognise us and put our logo on your segment on TV. But we will give you the information if you give us \$50,000 for every region in Rockhampton', which is a quarter of a million dollars for WIN television. Is this not a clear example of price asymmetry, where the retailers who can afford access to the Informed Sources area can get that information and yet the ordinary punter, who is out there battling to get the cheapest petrol, is denied because they do not have that sort of money or access to that information? Is that not a problem?

Mr Featherston—Well, I might make two comments, I suppose. Informed Sources obviously have a business model that allows them to make those sorts of requests or demands.

Senator CAMERON—It is a good model.

Mr Featherston—The competition lawyer in me says, well, that just means that there is an opportunity for someone else to come in and offer a similar service for a cheaper price.

Senator CAMERON—Fantastic.

Mr Featherston—In terms of your question, Senator, 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.

Senator CAMERON—But you are not an expert?

Mr Featherston—No, I am not, and I am not suggesting that I am.

Senator CAMERON—Information asymmetry—you have conceded that point.

Mr Featherston—I have.

Senator CAMERON—So, really, for you to make any arguments arising from your uninformed position, we have to take that into account. Can I say we also received evidence in Rockhampton from a local business. That local business indicated that they did not want prices to go up and down. We have questioned witnesses in Queensland, including Rockhampton, about what is called magic Tuesday. Are you aware of magic Tuesday?

Mr Featherston—No. I am not aware of magic Tuesday. I am not aware of the situation in Rockhampton, Senator.

Senator CAMERON—Well, magic Tuesday is the cheap day. In the trade, they describe it as magic Tuesday. I have asked witnesses to describe to me how magic Tuesday operates—whether it is black magic or white magic or how consumers can have any idea how it operates. Given your evidence on this and your assertions in your evidence, can you explain magic Tuesday to the committee?

Mr Featherston—Well, there are no assertions in our evidence. As to magic Tuesday, I would have thought it is fairly widely recognised that in Australia we do have price cycles. In most markets they are weekly price cycles. The FuelWatch system in Perth has been accredited with slowing down those price cycles in Perth. But no-one seems to be suggesting that this legislation would prevent those sorts of price cycles occurring in the future.

Senator CAMERON—You question in your evidence whether there is a significant problem. I suppose whether there is a problem depends on what petrol prices are doing to your budget every week. Can I ask what kind of car you drive?

Senator BUSHBY—Of what relevance is that?

Mr Featherston—I drive a Volkswagen Caravelle.

Senator JOYCE—Of what relevance is that question?

Senator CAMERON—Because, like most people, you would be looking to try and reduce your petrol consumption because of the impact. Really, you are talking about the special status of an industry. Surely, an industry people are reliant on to get to work every day to take their family out is becoming like an essential service. If there is no petrol or petrol becomes outside the capacity of ordinary working people to afford, this is a problem. Your argument that there is no problem diminishes the needs of ordinary working people in this country.

Mr Featherston—Well, if you are putting to me that this legislation is likely to significantly reduce fuel prices, I would—

Senator CAMERON—No. I am not putting that to you. I am not.

Senator ABETZ—The government is.

CHAIR—No. Not anymore.

Senator ABETZ—Not anymore?

Senator CAMERON—I do not know what the babble is over here, Senator, but I did not interrupt you, so just give me an opportunity to ask my questions.

Mr Featherston—But it seems to me, Senator, that, as I understood the question, you are asking me whether petrol prices are a problem for working families. Well, that is a separate issue, I would suggest, to whether that is a problem that is addressed by this legislation.

Senator CAMERON—The question I am asking is whether it is a problem that ordinary families cannot access appropriate information to find the lowest prices. In the current circumstances, is that a problem?

Mr Featherston—Well, I suppose what I would say, consistent with our submission, is that we are concerned about the information that is to be promulgated through the website as a result of this legislation. It may not be the effective prices in the market because of the presence of shopper dockets and other discounts. Therefore, the actual effective price that a consumer could obtain may be significantly less than the published price. I think in our submission we have referred to the fact that recently there has been at least one set of

outlets that has offered not only the 4c from a shopper docket but an additional 4c if you buy, say, \$2 worth of goods from their shop. So that is effectively 8c off their published price.

Senator CAMERON—Is not shopper dockets another issue?

Senator JOYCE—Not really.

Senator CAMERON—Here we go again.

Mr Featherston—I am putting to you, Senator, that what is proposed by this legislation in the explanatory memorandum and so forth is that the prices that are published will be an effective way for consumers to actually understand what prices are available in the market. It seems to me that that is not necessarily going to be the case.

Senator CAMERON—Your submission goes to the aim and says, ‘Unless Fuelwatch can be shown to be compelling’. Why do you use such a definitive word about Fuelwatch? If it is beneficial, if it assists the proper operation of the market and if it reduces price asymmetry, why would there have to be ‘compelling’ in your submission?

Mr Featherston—Because what we are saying is that those sorts of benefits have to be weighed against the risks of interfering with the competitive process.

Senator CAMERON—Are you sure you cannot tell me about magic Tuesday? You are not an expert on price asymmetry and yet—

Senator JOYCE—Cheap Tuesday.

Senator CAMERON—Magic Tuesday they called it. That was the evidence. Really, you cannot come here as an expert on these issues, can you? You do not come here as an expert?

Mr Featherston—I am not coming here purporting to be an expert on fuel prices.

Senator CAMERON—That is good.

Mr Featherston—I am coming here as a representative of the Trade Practices Committee saying that it is very easy for parliament to make regulations interfering with the competitive process. One of the benefits that we have had over the last 30 plus years of the Trade Practices Act is that we have an act which has basically universal coverage of the Australian economy. That is the sort of regulation of competition that we prefer. If parliament is to actually make industry specific regulations of competition, it should only do so if there is a clear net public benefit. All I am questioning, Senator, is whether there is a clear public benefit. We cannot see it, but you may.

Senator CAMERON—This is my last question. In your submission you say that there should be a three-year sunset clause if the legislation is introduced. Do you mean a sunset clause finish or do you mean a review after three years?

Mr Featherston—What was intended was that it should automatically come to an end unless it is renewed.

Senator CAMERON—Not on the basis that—

Senator JOYCE—That was the last question.

Senator CAMERON—This is still the same question. So it does not matter how effective or how well liked it is or what benefits it provides. Your submission is that after three years it is finished?

Mr Featherston—No. It is effectively a review after three years.

Senator CAMERON—That is what I asked you.

Mr Featherston—It comes to an end unless there is a positive step taken to actually renew it.

Senator CAMERON—Well, that is a different answer. That is okay. I am happy with that.

CHAIR—Thank you, Mr Featherston. I will now call the NRMA to the table.

Senator BUSHBY—Excuse me. I have a couple of questions. I let you know a long time ago that I had questions.

CHAIR—Well, I think we have reached the end of our time.

Senator BUSHBY—Well, I asked you 10 minutes ago to call Senator Cameron to order.

CHAIR—Well, I am sorry, but we have reached the end of our time.

Senator BUSHBY—Well, can I ask at least one question, please? It is a quick question, a short question. Thank you. Mr Featherston, in your view, how would a regulation such as Fuelwatch have been viewed in the context of the national competition policy process which Australia has gone through over the last 15 years?

Mr Featherston—Well, I believe it would have been viewed as something requiring special justification because the competition policy is to avoid industry specific regulation unless there is a clear benefit from, or need for, that regulation.

Senator BUSHBY—And given your background and who you are representing—

CHAIR—Thank you, Mr Featherston. I will call the NRMA to the table now.

Senator ABETZ—A very good question.

[1.53 pm]

EVANS, Mr Alan H, President, NRMA Motoring and Services

CHAIR—Welcome. Would you like to make an opening statement, Mr Evans?

Mr Evans—No, thank you, Senator. I think our views are contained in our written submission.

CHAIR—Thank you.

Senator ABETZ—Thank you, Mr Evans, for the submission. I have had the opportunity of reading your submission dated 16 July. You tell us about welcoming the proposed introduction in relation to greater competition and transparency into the market for transport fuels. But then you say:

However the NRMA wishes to see evidence that the proposed FuelWatch scheme results in lower costs to motorists.

I understand that today on the radio you were reported as telling listeners that there would in fact be such a saving of about 2c a litre. So what I want to know is: what evidence has come into your possession between 16 July and 1 August to allow you to say what you did today on radio about reduced prices?

Mr Evans—Well, Senator, there are a couple of things that I think you should understand. Firstly, what I said on the radio today was that our analysis of the prices of fuel in Sydney and the prices of fuel in Perth since the announcement of FuelWatch has on average been a 2c differential in favour of Perth. For the 94 days we have monitored, on 55 of those days, Perth has had a lower price on average of 2c a litre. The second thing is when we have looked at the data and we have looked at the submissions from the ACCC and we have seen their analysis, again it shows to us that there is prima facie evidence that there is an impact on prices.

But what we have put in our submission is to not take it that you introduce legislation and all the world will change in favour. I have to say my view of oil companies is that their ambition to achieve profits knows no bounds. As you would have heard overnight, Mobil Exxon announced it had a record quarterly profit of \$11.7 billion. Most of that came from upstream. Now you and I happen to be on the upstream part of the petrol chain or the oil chain, so I know where that record profit was generated from. But what we do say is to make sure when you are examining any legislation and reviewing it that it does achieve the effects you want and that if it is not, maybe you need to alter it or finetune it. It may be, worst case scenario, that its intended purpose was not achieved and you have to modify it. So we are not saying it does not work now. We believe it does. We are of the view, on the evidence we have seen to date, that it will work. But in this uncertain world and the world in which four very large multinational companies operate, do not take it as read that what you expect to happen will happen.

Senator ABETZ—You told us that the evidence you have looked at is simply between Sydney and Perth after the announcement of Fuelwatch—the trend over those 50 plus days.

Mr Evans—Ninety-four days, Senator.

Senator ABETZ—Sorry?

Mr Evans—Ninety-four.

Senator ABETZ—Ninety-four days. On 14 April 2008, which was about the time of the announcement, you were telling people, according to Australian Associated Press general news, that prices could drop by up to 5c per litre. I am just wondering if you have undertaken research since the announcement of Fuelwatch. What allowed you to say on 14 April that prices could drop up by up to 5c per litre?

Mr Evans—I will go back to AAP. I would have to recollect the 14th. 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 Brisbane, you have to take out the fact of the subsidy that comes back. 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.

Senator ABETZ—Yes. But I am asking you about the specific sum of 5c per litre, which just also happened to be the specific sum that Mr Pat Walker was quoted as offering on the front page of the *Daily*

Telegraph but which he then said was a misquote when he was before a Senate estimates committee. I have to take it on face value that he was misquoted. But I am interested that you have not denied that you put into the marketplace that 5c per litre could be the price reduction. Can I tell you I do not know of anybody else, even the ACCC, which has done a backflip on this and at the most is saying 1.9c per litre.

Mr Evans—Senator, I can take you today—

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.

Senator ABETZ—Right.

Mr Evans—I can take you today, Senator, to where the price differential between Perth and Sydney was greater than 5c. It was up to 12c and 15c. It had to be a factor. I can tell you the other thing that comes through very quickly is that you will get jumps of 12c to 15c at the pump in Sydney. But in Perth you will get that message in the afternoon and you will then know on the way home that night, if you want to avoid a 12c to 15c increase in the price, what you are going to pay for fuel when you top up tomorrow or you fill up on the way home. The ability to do that in Sydney is non-existent.

Senator ABETZ—Well, that is all very good. The question was about the specific sum of 5c a litre. Mr Pat Walker, the former petrol commissioner, when he was quoted as saying that, categorically denied that he had asserted such a thing. So are you saying that your research and your experience ought to be preferred by this committee over that which Mr Pat Walker gave to the Senate estimates committee?

Mr Evans—That is a choice you will make, Senator.

Senator ABETZ—We will indeed. Can I ask or confirm that the NRMA used to have a public relations manager by the name of Brett Gale?

Mr Evans—We certainly did, Senator.

Senator ABETZ—He is now the chief of staff of Minister Chris Bowen, who is in charge of Fuelwatch?

Mr Evans—Yes.

Senator ABETZ—Have you and Mr Gale been in any discussions over the past week?

Mr Evans—In fact, Mr Gale was present at a function we held on Tuesday night to officially open our new premises. So, yes, I had a conversation with him.

Senator ABETZ—Have you had any other conversations with him in the past week?

Mr Evans—Not that I am aware of, Senator. In fact, it was an exchange of pleasantries on Tuesday night.

Senator ABETZ—Yes. I am worried about not only Tuesday night but the past week. Have there been any discussions between you and Mr Gale or you and Mr Bowen?

Mr Evans—No. I certainly have not had any with Mr Bowen.

Senator ABETZ—What about Mr Gale?

Mr Evans—I rang up Mr Gale when I heard the news yesterday at a function at Blacktown to get confirmation that in fact it was true, because I had just got a voicemail saying that Mr Walker resigned.

Senator ABETZ—Right. So you have had a discussion with Mr Gale, which you were not all that willing to volunteer, if I might say, about the resignation—

CHAIR—Senator Abetz—

Senator ABETZ—You did not interrupt Senator Cameron.

Mr Evans—Can I just stop you there for a minute, Senator.

CHAIR—As Chair, I am telling you to make—

Mr Evans—You say ‘discussion’. To me, a discussion is an interchange that occurs over some time. Mine was simply—

Senator ABETZ—Right. So you can have a very brief discussion. I see.

Mr Evans—No. It was a question.

Senator ABETZ—How long does it have to be to be a discussion, Mr Evans?

Mr Evans—In my mind, it would be more than, ‘Is it true that Pat Walker has resigned?’ ‘Yes.’ ‘Thank you.’ Finish. I was getting voice information that he had resigned. I did not want to act on, at that stage, information which was second-hand. But certainly, if anyone knew that Mr Walker had resigned, it would have been Mr Gale.

Senator ABETZ—What sort of action would you have taken or were thinking of taking as a result of Mr Pat Walker’s resignation?

Mr Evans—As I have publicly articulated, great disappointment. I have expressed that publicly. I think after several months in the job he was probably just getting his feet under the table and starting to get in control. For someone who has been a former public servant, you do not get the ability to work in somewhere like the ACCC and all the complexities of the game with the job he has got in a week. It will take some time. Now it will take someone else a period of time to actually get familiar and get their feet under the table and be an effective operator.

Senator ABETZ—Can you rule yourself out as a contender?

Mr Evans—Absolutely, Senator. I am getting too great a deal of satisfaction out of the job I am doing now. Whilst I am a Canberra resident, I have had my stint in the Public Service.

Senator ABETZ—You have made comments about variability in the price of petrol in a particular city. Would you agree with me from your own consumer knowledge and behaviour that you can bowl up to one Woolworths store and buy a can of baked beans, for example, or eggs or bread at a particular price, go to the next suburb and exactly the same Woolworths store and buy it for a different price?

Mr Evans—Yes, you can, Senator.

Senator ABETZ—Yes. And cups of coffee as well. You bowl into one cafe and they might charge you \$2.50. This morning I think I was stung at the Sheraton about \$7 for a cup of coffee. Better not put that on the record.

CHAIR—It just is.

Senator ABETZ—Even in Sydney there is a huge variation in prices, even in the price of cups of coffee.

Mr Evans—This is the reason why the NRMA has such a focus. It is a motoring organisation. We are not representing coffee consumers. We are representing motorists. A key factor in the life of motorists, and indeed a key factor in the life of all Australians, is the cost of petrol. You cannot deny, given the nature of transport systems in this country, that road transport, be it of people or goods, is absolutely significant.

Senator ABETZ—Absolutely.

Mr Evans—The cost of petrol is significant. Go to work.

Senator ABETZ—We all know that. We all know that. What I am asking you about—

CHAIR—Senator Abetz, can you allow—

Mr Evans—The most critical issue that gets raised with us, be it on a daily basis or when it comes to the question of buying a motor car, is the cost of petrol and the consumption of petrol.

Senator ABETZ—But you have been in the marketplace asserting 5c a litre. I think you are now down to a differential of 2.2c a litre.

Mr Evans—No. Senator—

Senator ABETZ—Of course, in Western Australia, you would agree that their cost of transportation is 0.7c a litre cheaper than in the eastern states. So if you were to take into account 0.7c of a litre transportation, your figure of 2.2c would be down to 1.5c. So of course it narrows down. As I understand the government’s assertion with this legislation now—there has been a huge change since the announcement—in fact Fuelwatch will not impact on the price of petrol paid by the consumer. Indeed, I specifically asked the Western Australian department that runs FuelWatch in Western Australia what price reduction they could point to for Western Australian consumers as a result of FuelWatch. They said, ‘We can’t.’ So I like all the hyperbole about the high cost of fuel and what dent it is making, but even FuelWatch in Western Australia is not asserting the sort of figures that you are asserting. It just sounds passing strange.

Mr Evans—Well, it is not, Senator, because if you are a consumer of petrol—I do not know how much petrol you buy, but I buy it regularly and I travel quite a deal on the road and I have to pay for my own petrol—what strikes most motorists is the ability to buy petrol at a cheaper rate. We have heard talk about

magic Tuesday. Can I tell you that magic Tuesday is now magic Wednesday. Behind us are oil companies reps, and I suggest you ask them. What they tell me is the real determinant of the price of petrol is the competition in the marketplace and the size of the marketplace. Therefore, for a market like Sydney, which is the largest market in the country, why would it have an average petrol price 2c higher than Perth? Perth is a much smaller market. We are all getting played on a break here.

Senator ABETZ—Well, it is very interesting that you provided us with a graph. That is what you base your assertion on. You would have had figures going back before that date, would you not?

Mr Evans—I have loaded in my computer figures going back for about three years, Senator.

Senator ABETZ—You have provided figures. FuelWatch has been going for seven years. Why did you only pick the 90 days or three months since FuelWatch was announced and not the whole FuelWatch experience in Western Australia? The FuelWatch managers and the department itself say they cannot point to any reduction in fuel prices. So you have taken a nice little picture but not the whole trend. The whole trend would suggest that in fact people cannot buy petrol as cheaply in Western Australia as they can in Sydney.

Mr Evans—There are a couple of reasons, Senator. You will have noted when FuelWatch was announced there was great condemnation from the oil companies, which said this would be the end of the world.

Senator ABETZ—No.

Mr Evans—Well, they certainly did in this part of the world.

Senator ABETZ—No. The independents—

CHAIR—Senator Abetz, can you allow Mr Evans to finish, please, and other senators as well. It is Senator Cameron's questions next.

Mr Evans—If they were therefore about destroying FuelWatch, the one thing that I thought they would have done in the period between the announcement of FuelWatch and today was to make sure that prices in Perth were higher. Otherwise, if there were no other variables in the market in Perth, why would you want to make sure that you are lower?

CHAIR—Senator Cameron.

Senator ABETZ—Well, the fact they—

CHAIR—Senator Cameron.

Senator CAMERON—Mr Evans, I am—

Senator ABETZ—Your argument—

Mr Evans—I think that the one variable is FuelWatch.

CHAIR—We will have Senator Cameron's questions.

Senator EGGLESTON—They are allowed to finish their exchange.

Senator CAMERON—Mr Evans, I am still on the search for the holy grail. Maybe you can help me find it.

Senator JOYCE—Is that Mr Walker?

Senator CAMERON—On the issue of magic Tuesday, wonderful Wednesday or whatever it becomes, can you explain why a so-called free market would behave in such a bizarre manner?

Mr Evans—Look, I cannot, Senator. There have been numerous attempts to convince me that it is an Edgeworth cycle, which was a phenomenon that was observed particularly in Canada. But when you look at the attributes of an Edgeworth cycle, they are not replicated in the Australian environment. So I do not believe it is an Edgeworth cycle. In the ACCC report, they also attempt, I think, to try to divine the cause behind it. It is an enigma, and I actually have to go along with them. As I said, you can see it shift. In the last two weeks, for example, the lowest priced day in Sydney has been Wednesday, not Tuesday. We have seen this practice in Sydney of motorists queuing up on a Tuesday to get petrol. They get a surprise when they realise that in fact it is cheaper the next day. They spent whatever time they spent in the queue at a petrol station in fact wasting fuel to get it at a cheaper rate to find it was cheaper the next day. It is an enigma. There is no logic in it because one tends to move and the others follow. That one will be the same for some time and then it might shift. But I cannot understand the rationale for it.

Senator CAMERON—Are you aware of any other commodity that behaves in such an irrational manner?

Senator ABETZ—The share market, air tickets.

Senator CAMERON—If the share market behaved in that way, there would be a lot of rich Australians.

Senator EGGLESTON—But it does. It goes up and down every day.

CHAIR—Can you allow Mr Evans to answer.

Mr Evans—But not a commodity that the general public uses in the same way that they use fuel. Water does not change that way. Electricity to the consumer does not change that way. It may at the wholesale level, but certainly not at the retail level. So there is no product in the essential category which behaves in the same way.

Senator CAMERON—Obviously, this committee has to be very concerned about the welfare of the Australian community and their capacity to meet their weekly bills. Senator Abetz talks about the hyperbole of high fuel prices. I am not sure that there is too much hyperbole going around when working people are finding it really difficult to fill their petrol tank every week. Could you just comment on whether it is hyperbole or whether there is a real issue here?

Mr Evans—There is a real issue, Senator. We have 2.3 million members. We have surveyed them. When we have had the high petrol prices, what we have found is that many people who have no option in terms of the availability of public transport or the lack of availability of public transport have to use their private motor vehicle to get to work. They actually reduce in the essentials, for example, in order to be able to fill their tank to get to work to get to that next stage of being able to pay the mortgage and put some food on the table. That was a concern to us. You then see it flow through into others in small business, for example. We have a very large small business membership. Again, we surveyed them. The high petrol prices have resulted in them having to lay off staff or not employ staff when that has occurred. So it does have quite a strong ripple effect through the economy. It is a key part of the economy. I have no doubt—and I publicly air it—that when we see these high petrol prices, it works right through from the farm, right through the farm gate and through the transport of goods, products and produce right through to the home.

Senator CAMERON—Professor Joshua Gans is the economics professor of the Melbourne Business School. He has put a submission to the inquiry. He says that the greater use of information technology to provide consumers with price and non-price information is important. Do you think that the Fuelwatch program can contribute to consumers having access to better price information through the national use of IT?

Mr Evans—That is one of the major reasons we support it. It is a service which is in effect provided by government to all consumers. We have certainly been engaged with and talking about it through a company we have invested in to try and find another way of getting information to consumers with Informed Sources and others to see if there is a way we can get that information out and get it distributed to the broader public. But it is not a cheap exercise and not a technically feasible exercise at this stage. But it is something we will continue to work on. We do know from surveys that the key issue they want to know is, when they have to fill their car, where they are going to get the best benefit in terms of filling their car with the distance they have to drive.

Sydney is a classic example. I noted this the other day, for example—and we are going to continue to work on this—when I drove down from Newcastle. Having lived on the northern suburbs of Sydney, I know the back route. When I hit Hornsby, I saw the price of petrol there. As I went through the back route, I saw off the major highway it was cheaper. So I then came back on the major highway and ducked on and off the highway. I had the time and the inclination to do it. I could find, for example, that off the major highway, off the Pacific Highway, coming through from Newcastle to Sydney it was cheaper than it was on the highway. I then got back to the office and probably spent an hour and a half finding out similar information but not complete information. If I had had something like FuelWatch, as I hit Sydney, I could have made sure I could actually know where to get the best price for petrol on the way into the city. That is where Fuelwatch would provide a great benefit, I think.

Senator CAMERON—Thank you.

CHAIR—Mr Evans, the RAA in Adelaide suggested that they might be able to perform a similar service to FuelWatch for around \$30,000 a year, I think. I think they were only referring to the monitoring. What would you think about a national focus on that? Would it be better for someone like the NRMA to do it?

Mr Evans—Well, we actually do provide what I would call a limited service. We have petrol watch on our website. That provides information in the morning and the afternoon for Sydney and a post event for regional areas on the price of petrol. But we cannot give it for every site and you cannot actually track. What we can tell you is where the highest priced petrol was and where the lowest priced petrol was and what the average price is. That is not a costless exercise. It is a costly exercise. To get it to the point where we could track on a

real-time basis would involve a substantial sum of money. That is one of the reasons we think Fuelwatch is beneficial. The capacity to track on a real-time basis would be very costly unless everyone was prepared to cooperate. But still it can move so rapidly that you would really need significant technology to achieve that outcome to get the information to consumers. So Fuelwatch gives you the ability to set the price and the motorists can know prior to their journey starting that the price is going to remain constant generally for the period if it occurs within the day. So we do it. It is costly. But it is limited. So you know what the price should be. You can gauge as you drive down the road whether you are getting a medium, an average or a high price. But the beauty about Fuelwatch is—I get it every day—that you will know, for example, the company is going to increase their price by 12c tomorrow so that you can fill up on the way home.

CHAIR—It has been suggested in evidence that people are happy to queue on whichever is the cheaper day, whether it is Tuesday or Wednesday, and that they know that cycle and that they do not need to have additional information. That is despite the fact, as you mention, that they might be queued up at a service station wasting petrol for some time in the morning and make themselves late for work or whatever. Is that your experience from membership feedback?

Mr Evans—It is not that they are not happy. They do it because they are trying to save money. But there could be a better option, a better way of doing it, such as having some control over prices so you did not see those leaks. The biggest complaint we get, and the real complaint—we just get flooded—is when you get those smart changes in price and people are caught out by surprise. That happens, as I said. You can see this pattern in the last couple of weeks, where the people got in the habit of buying on Tuesday only Wednesday is now the cheaper day. The information asymmetry is just significant. So it is one of the few areas where consumers will need the product on a regular basis but the ability to get information is limited.

CHAIR—I think that criticism of the price spikes is, I understand, one of the driving factors behind the introduction of the FuelWatch in Western Australia. Politicians basically are responding to responses that are coming in to them. Consumers find it highly annoying that just when their fuel tank is empty they go in and there has been a bit of a price jump or they might pass a service station selling cheap petrol in the morning and then return in the afternoon with their empty car and find that it has spiked up. Is that your experience as well?

Mr Evans—Yes. It certainly is, Senator. I have had some very annoyed members ring me up as they have sat there waiting to queue at the service station only to see the price roll up before they got to the pump. That, I think, probably outrages them more than ever. But it is that change and that marked change when they were not expecting it.

Senator JOYCE—I have three questions, so I will keep them brief. Mr Evans, if the market is not corrupted and not influenced and there is no manipulation in the market, what affects the price of fuel? Is it supply, demand or something else?

Mr Evans—There is a variety of factors. It is supply, demand and, as one chief executive of an oil company told me, ‘What I think the market will bear.’

Senator JOYCE—So does the Fuelwatch scheme affect supply or demand?

Mr Evans—Fuelwatch does two things. It provides information, which then allows the consumer to maybe impact demand at specific sites.

Senator JOYCE—So it does not affect supply. It does not put it down. But you infer that—

Mr Evans—No. It does affect demand. If I as a consumer know that I if I shop at point A rather than point B because point A is cheaper, then point B is going to lower their prices.

Senator JOYCE—So if you believe that there is some form of corruption or manipulation in the market—and I do not for one moment say that there is not; I am saying that there might be some collusion or some trickery going on in the market—can you please explain to me what changes to the trade practices law were brought about to deal with that?

Mr Evans—Sorry, I do not quite understand your question.

Senator JOYCE—Well, if you are saying that the market is manipulated and by doing this we can get a more honest appraisal of the market and we will not have this roguery and trickery of putting up and putting down prices, can you just please explain to me the strengthening of the trade practices powers that Mr Walker was given so as to deal with this roguery and trickery?

Mr Evans—Well, I am not aware that he was given any additional powers to those that already existed.

Senator JOYCE—That is exactly right. My final question is this: do you understand—

Mr Evans—That is not to say we do not—

Senator JOYCE—Do you understand buy-sell arrangements at the terminal gate?

Mr Evans—Yes.

Senator JOYCE—Who can participate in the buy-sell arrangements at the terminal gate?

Mr Evans—The four oil majors.

Senator JOYCE—And anybody else?

Mr Evans—No.

Senator JOYCE—Was the fuel commissioner or Mr Walker before he left—he understands the role better than anybody else, and he has bolted—given any powers to deal with that?

Mr Evans—Senator, this is one of the things we made representations about. You need to do something about the domination by the four oil majors. Either you have to open that up or you have to change some of the systems in place. The other option we believe should be pursued is to create the environment where true independents can come into the market in Australia. To do that, you need terminal capacity, which just does not exist. Until you have terminal capacity, you will not get real competition outside the four majors.

Senator JOYCE—So because of the lack of powers and now the desertion of the post by Mr Walker, the whole scheme is a complete shambles, really, is it not?

Mr Evans—Well, I would sincerely hope not, Senator. I do not think any of us in this world are irreplaceable. Whilst it is regrettable that Mr Walker has gone, I am sure that the government will find a replacement. It will not be me, Senator Abetz.

Senator JOYCE—I hope the ETS is not like the Fuelwatch scheme.

Senator EGGLESTON—Mr Evans, would you agree that we have seen a marked change in the petrol market since the supermarkets came into the field—Coles and Woolworths?

Mr Evans—Yes.

Senator EGGLESTON—Do you think that that has had an impact here in New South Wales on the price of fuel?

Mr Evans—Well, Senator, it is interesting that you ask that question because our observations—and they are observations—are that where they have come in and been able to move the independents out of the market, the competition does not exist between the two of them. The prices are absolutely identical. But where there is an independent still operating, the price can often be lower than where there are two chains. The problem is, Senator, in reality that the independents have been squeezed out. Unfortunately, Oilcode, I think, contributed to that. Both the government and the opposition at the time supported that. I think the independents—I have tried to work with some of them—have basically given up. They think their life is limited.

Senator EGGLESTON—Exactly. The supermarkets have forced out the independents. In Western Australia where I come from, the supermarkets now control about 60 per cent of the market. So progressively—

Mr Evans—Same here.

Senator EGGLESTON—The same in New South Wales?

Mr Evans—Yes.

Senator EGGLESTON—So progressively we are seeing less competition because the independents are not there to offer a different price to either the major fuel chains or the supermarkets.

Mr Evans—Can I just say that one of the arguments we put at the time of the introduction of the Oilcode is that the two supermarket chains should have been brought under the auspices of Oilcode, which might have had, I think, some effect.

Senator JOYCE—That would be a good idea.

Mr Evans—We put that, but we did not get much support, Senator.

Senator JOYCE—I supported you.

Mr Evans—I know you did, Senator. I know you did. We did not get much support.

Senator EGGLESTON—Mr Evans, are you aware of some work done by the Institute of Public Affairs in Western Australia that suggests that rather than FuelWatch having brought down the prices of fuel in Western Australia, in fact, it was the impact of the supermarkets, which began operating in Western Australia in a big way in the fuel market a year before the introduction of FuelWatch? In fact, the reduction of price, which it is claimed FuelWatch brought in in Western Australia, was actually a Coles-Woolworths supermarket effect?

Mr Evans—I am aware of that, Senator.

Senator EGGLESTON—Because they squeezed.

Mr Evans—I have to confess that I was an advocate of a system like Fuelwatch being on a national basis long before it was contemplated. I had some discussions on a regular basis with the ACCC, which did not agree with that view I was putting—that it had a positive impact. I have to say that I have looked at the work they have done now and seen their change in attitude. I know a number of those commissioners reasonably well and I never thought some of them would have been put in what I call the radical class of economists; I would tend to put some of them on the conservative side. To see their shift in ground to me was quite a marked indication that they had some belief in the analysis they had done, which did actually demonstrate that FuelWatch had an impact.

Senator EGGLESTON—Well, within the system, are you aware that in Western Australia the supermarket chains manipulate the system in the sense that in each of the regions into which Perth is divided a supermarket chain will put in at two o'clock the previous afternoon a low price, which they are locked into for the next day? This means that the independents, which might vary their price to match the supermarkets' low price, no longer have any flexibility. So to that extent—and it is a very big extent—competition is eliminated from the Western Australian fuel market by the effect of the supermarkets manipulating the FuelWatch scheme.

Mr Evans—That poses an interesting question from the consumer's point of view. If they are actually going in under the price, the others in the market will soon learn of that behaviour and, I would think, counter it. That is one of the things that I—

Senator EGGLESTON—They have no option to vary.

Mr Evans—No. But the next day they will realise. But if you are saying that what they are doing is one out of a number in a region and it was on my journey, they will pitch at a low price and the others will have a higher price trying to force the independents down to a lower price to get them out of the market. That is the sort of behaviour we will have to look at in seeing that addressed by our Trade Practices Act.

Senator EGGLESTON—Absolutely anticompetitive. It is what is happening in Western Australia. The supermarkets can absorb the loss that the independents and others cannot because of the other factors that come in to the price of petrol charged by the supermarket. I would suggest to you that in Western Australia the supermarket effect has been the key issue, not FuelWatch.

Mr Evans—That is an analysis that I guess is in dispute. But it raises one of the other issues about the ability of the independents to obtain fuel at a wholesale price at the same price as the chains. That is something we are deeply concerned about. We think there has to be some change to the Trade Practices Act so that you can, if you are independent, get the same discounts as the chains. In that way, you can give real competition. At the moment, and I know somebody else is—

Senator EGGLESTON—Fuelwatch is not going to help the competition.

Mr Evans—in the field now, they are being pressured by the chains to give them significant discounts, which allows them to actually add to their profits.

Senator ABETZ—Let us assume we pass Fuelwatch. By how much would petrol prices go down in Sydney the next day?

Mr Evans—I am not going to answer that one, Senator.

Senator ABETZ—So you think that—

Mr Evans—No, sorry, Senator. When you said the next day—

Senator ABETZ—All right. Within a week.

Mr Evans—Well, I do not know what day you are going to pass it. I do not know what stage of the cycle we are in—whether we are on the upside of the cycle or the downside. There are a range of factors. As I have said, you have seen in recent months a number of factors influence the price to drive it upwards. You have seen those same factors reversed in driving it down. It depends on which point in the cycle we are. So there are

a number of factors. But if all the circumstances were the same and Fuelwatch were introduced, I would say it would have an impact.

Senator ABETZ—Yes. How much?

Mr Evans—Look, it is not the magic bullet. It is not going to save people a fortune in fuel. But it will contribute to a saving—

Senator ABETZ—Thank you for that.

Mr Evans—No. It will contribute to a saving. I have to tell you, Senator, for many people \$1.20 to \$2 a saving on a tank full of petrol is a significant saving to them. It may not be to you or I, but to many people \$2 is a significant saving because it means they can give the kids lunch money for school.

Senator ABETZ—Absolutely. But where do you get the figure of \$2 from? Are you asserting yet again, with nobody else supporting you, that it is going to go down by 5c a litre on a 40-litre tank?

Mr Evans—Well, Senator, most tanks are a bit bigger than that.

Senator ABETZ—So what is your price? You said \$2.

Mr Evans—I said \$1.20 or \$2. For many people, Senator—

Senator ABETZ—What is your price? You have been on air, Mr Evans, claiming 5c.

CHAIR—Senator Abetz, I think Mr Evans is attempting to answer the question.

Senator ABETZ—Excuse me, Chair. I know it is embarrassing.

Mr Evans—No. It is not embarrassing to me, Senator.

Senator ABETZ—But 5c one day and 2.2c a litre another day. You are saying you cannot answer the question because all things are not equal, yet when you give these gratuitous interviews on the media, we can flick out 5c with no equivocation, no caveats. Just then you were willing to say \$1.20 up to \$2.

Mr Evans—All right, Senator.

Senator ABETZ—You did not make all these equivocations.

Mr Evans—Or \$12 if I know that, because of seeing FuelWatch, down the road is a station that is selling it 20c a litre different to the station around the corner from where I live. That information I do not know at the moment unless I go driving to find it. But if I had FuelWatch, as I said, there is a 20c spread in Sydney from the highest to the lowest in terms of the price of a litre of petrol. If I know where I can get 2c, 5c, 10c or 20c difference, I will exercise that choice if it saves me money.

Senator ABETZ—You are talking about consumers.

CHAIR—Thank you, Mr Evans.

Proceedings suspended from 2.31 pm to 2.42 pm

RIDLEY-SMITH, Mr Michael, National Fuels Marketing Manager, Caltex Australia Ltd

TOPHAM, Mr Frank, Government Affairs and Strategic Communications Manager, Caltex Australia Ltd

CHAIR—Welcome. Do you have an opening statement, Mr Topham?

Mr Topham—Yes. We would like to make an opening statement, if we can. Pardon me if I read it. It is just for accuracy. Caltex does appreciate the opportunity to be here to address the committee today and to take questions on the national Fuelwatch scheme. We made a submission to the inquiry which focused on the legal and operational issues arising from the legislation. We had hoped to make an additional submission drawing together company and market information which we had previously provided to the ACCC and to the parliament in various inquiries relevant to the Fuelwatch legislation, but this has not been possible in the time available to us. What we would like to do is provide the inquiry with whatever information we can today and take any additional requests by the committee on notice and, if necessary, on a confidential basis. So we are very happy to provide information to the best of our ability not only today but after today.

We are opposed to additional regulation unless there are clear market failures that must be addressed. We believe that fuel markets are highly competitive in all parts of the supply chain, including retail, and we question the need for further regulation. We are on the record with the view that the Western Australian 24-hour rule so-called restricts competition by not allowing discounters to undercut the prices of competitors. However, we recognise that the government and the ACCC believe intervention is necessary to enhance the information on retail prices provided to consumers and to provide additional certainty on prices by limiting retail price movements to 24-hour periods. Others disagree with this position. Given the diversity of views on the legislation, Caltex has not taken a stance for or against the Fuelwatch legislation specifically. That is a matter for the parliament. There is probably very little value in Caltex saying it is for or against. What we can do is provide information to the committee and make its recommendations to the parliament and help inform debate.

As with any regulation, the introduction of a Fuelwatch 24-hour rule across Australia will likely benefit some stakeholders and disadvantage others. Motorists who fill up weekly on Tuesdays at the bottom of the normal discount cycles could be disadvantaged if price cycles become dampened. Other motorists who fill up whenever their tanks are empty could benefit if the high points on the price cycle are dampened. Experience with the Western Australian FuelWatch scheme suggests prices overall would be broadly similar with or without the national Fuelwatch regulation. However, each market has its own competitive characteristics, so only experience with a national Fuelwatch scheme would be able to suggest if this is correct.

Caltex is primarily a wholesaler of petrol with only a limited number of service stations where we are the site operator. The majority of Caltex branded service stations are run by franchisees and other independent operators. Concerns have been raised about the 24-hour rule. The government's view is that the 24-hour rule is essential to the Fuelwatch scheme. Many service station operators oppose this restriction on discounting. Caltex supports greater price transparency but has concerns about the 24-hour rule because for all service station operators, including ourselves, the inability to be flexible with board prices in response to competition can adversely impact the viability of service stations. We have operated as a wholesaler and retailer in Western Australia for many years under the state scheme. The experience that we have gained in Western Australia would help us operate under a national scheme. If the national scheme is legislated, we will certainly work constructively with the government and the ACCC to help implement it. We would be happy to take questions you might have. In answering questions, with your indulgence, perhaps between us we can best answer them. If you want to direct them to any one of us, of course we are happy. But if we could perhaps just chip in to best inform the committee, we will try to do that.

CHAIR—Thank you.

Senator JOYCE—Mr Topham, Mr Graeme Samuel from the ACCC said that Caltex is part of a cosy club. Do you feel in the oil companies that you are part of a cosy club?

Mr Topham—Absolutely not. The market is highly competitive and there is no club.

Senator JOYCE—Do you have buy-sell arrangements at the refining gate?

Mr Topham—Yes. There are arrangements for the sale of petroleum products from refineries and there are arrangements for us to purchase—that is the buy part—petroleum products from other petroleum refineries in

Australia. That is often collectively referred to as buy-sell, but in reality they are two completely different sets of agreements—some to buy and some to sell.

Senator JOYCE—Can I be part of a buy-sell arrangement if I turn up to one of your refineries?

Mr Topham—If you have the physical capacity to take the product, you can.

Senator JOYCE—Okay. So it is not restricted just to oil companies?

Mr Topham—Certainly not.

Senator JOYCE—So anybody can be part of it?

Mr Topham—They certainly can. It is a commercial business.

Senator JOYCE—So how many refineries are typically in any state?

Mr Topham—It varies. It is either one or two. So there is probably no typical number, but it is either one or two.

Senator BUSHBY—Or zero.

Senator JOYCE—So if there are one or two or zero—

Mr Topham—Or zero, indeed, yes.

Senator JOYCE—So if there is four major oil companies and a couple of major retailers, being Coles and Woolworths, and about seven per cent independents, that means that Caltex might be buying off BP at an agreed price or BP may be buying off Caltex at an agreed price. That price does not vary. You have an agreed price and that is what it works out at the refinery gate?

Mr Topham—The formula is renegotiated every six months and it varies with parameters—mainly the price of petrol or diesel in Singapore.

Senator JOYCE—So what magical thing happens between the refinery gate and the retail outlet that all of a sudden encourages competition when competition does not exist at the refinery gate and you have an agreement of what price you buy the product at?

Mr Topham—Well, there is a great deal of competition at the refinery gate because we have the choice of one or two refineries to purchase from or imports. We certainly make sure that commercially we put the screws on our sources of supply to make sure we get the best possible price, and vice versa, I might say.

Senator JOYCE—It does not seem that there is much competition if there is only one person to buy it from.

Mr Topham—No. In fact, there is usually more than one person to buy it from. As I say, there are import supplies. We have the ability to import. And there are one or two refiners in each state in most states. In some states there are none so we have to rely on imports.

Senator JOYCE—So what effect did FuelWatch have on your buy-sell arrangements at the refining gate in the capacity for getting greater participation in the market?

Mr Topham—Well, FuelWatch is unrelated to the arrangements for the purchase or sale of fuel from the refinery. And I distinguish between the refinery and the terminal gate.

Senator JOYCE—In the past, there was a thing called the Oilcode, was there not, brought about by the coalition government, I think in 1980, which restricted the number of retail sites that oil companies were allowed to operate from? Is that correct?

Mr Topham—That is correct.

Senator JOYCE—That was repealed, was it not?

Mr Topham—When you say the Oilcode, I think you are referring to the Sites and Franchise Act. But collectively the policy has become the Oilcode, yes.

Senator JOYCE—The Sites and Franchise Act was repealed, was it not?

Mr Topham—That is correct, yes.

Senator JOYCE—The Labor Party supported that repeal, did it not?

Mr Topham—The Labor Party supported the repeal of the act; that is correct.

Senator JOYCE—Thank you very much. I hear lately that they have been trying to get Saudi Arabia to release more oil on to the market. Why would they want to do that? Why are the Americans pushing for that?

Mr Topham—My understanding is that this is related to the international price of crude oil. If more supply were on the market, the international prices would hopefully come down.

Senator JOYCE—So more supply forces the price down?

Mr Topham—Indeed. That is the way economics usually works.

Senator JOYCE—It is very important that we get that on the record, because apparently Fuelwatch is going to force the price of fuel down. I am just working out how Fuelwatch is actually going to force down the price of fuel.

Mr Topham—Well, I think that is a question you could put to the government if they indeed make that contention. It is not Caltex's contention. We do not make that contention.

Senator JOYCE—So if it is not going to force down the price of fuel, what would be the purpose of Fuelwatch, since it cannot do that because it does not increase supply, apart from the fact that it is there to annoy us?

Mr Topham—Well, my understanding from the government's point of view is that they want to increase transparency in the marketplace, provide greater certainty of price for consumers over a 24-hour period and redress the asymmetry, as they call it, in power between consumers and suppliers. But that is not to say that we agree with those propositions necessarily.

Senator JOYCE—Thank you. I am just going to go to that asymmetry. What portion of the market does Coles have in the market of retailing fuel?

Mr Topham—From memory, about 24 per cent.

Senator JOYCE—And Woolworths? What portion do they have?

Mr Topham—Similar, I believe.

Senator JOYCE—About 24 per cent. So 24 and 24 is 48. So they have 48 per cent of the market. And they avail themselves of the shopper docket system, do they not?

Mr Topham—They do.

Senator JOYCE—So 48 per cent of the market is actually right from the start outside the Fuelwatch scheme. It is completely implausible that it is going to work from the word go. But just for a moment, what stops you selling me a Cherry Ripe for \$2 in a Caltex store and giving me a shopper docket?

Mr Topham—Well, one of the concerns that we raise in our submission to the committee was that the wording in the bill relating to the standard price either bans discounts or leaves the ability to discount so open that it could be used to subvert the bill. We advocate that the bill be amended so as to clarify that situation one way or the other.

Senator JOYCE—So obviously far from giving transparency, it made the whole thing opaque, cloudy and possibly completely impervious to any sort of real view of the marketplace whatsoever?

Mr Topham—Well, we would certainly like the drafting to be clarified so that we understand what the clear intent of the bill is.

Senator JOYCE—Would you want Mr Walker's job?

Mr Topham—No. I would not want Mr Walker's job. I do not like living in Melbourne.

Senator JOYCE—Do you think Mr Walker, for want of a better word, was set up for the dump right from the word go?

Mr Topham—I would not like to comment on that.

Senator JOYCE—I think I might let one of my colleagues—Senator Bushby—speak.

Senator BUSHBY—I just have one question. You mentioned at the beginning of your statement just then that you suspect that prices may be broadly similar under Fuelwatch to what they were. But you did say that they would need to be operated under the national market to test that suspicion. But if it does turn out that way, do you see that there is any value in spending over \$20 million of taxpayers' funds and imposing costs and obligations on retailers by implementing the scheme if it makes little difference?

Mr Topham—Well, we do note from various submissions that there have been alternatives proposed to Fuelwatch. Those alternatives have not been probably sufficiently clearly defined for us to pass judgement on them. We accept that the government believes that Fuelwatch is the best scheme to achieve its objectives. That does not say that other schemes might not also achieve those objectives.

Senator ABETZ—Thanks, Chair. Thank you for your submission, Mr Topham. I read through it. It literally goes page after page dealing with uncertainties in the legislation and technical issues. Can I ask whether you or anybody in the petroleum sector were actually consulted on a draft copy of the legislation?

Mr Topham—No. There was no consultation on the draft legislation.

Senator ABETZ—No. Because if you had been consulted on the draft legislation, the consultation would have to have taken place between 1.00 pm and 1.45 pm, when the Prime Minister announced it, because this was all cobbled together, as we have found out from Senate estimates, in a 37-hour around-the-clock exercise. Since you have put this submission together, has the government come to you to discuss these technical issues?

Mr Topham—There was some consultation with the government relating to the operation of the market, which I think was background on the bill. But we were not consulted in any way on the bill itself.

Senator ABETZ—Because you have genuine technical issues, such as what the definitions of retail sale and service station actually mean and the impact. You also raise the very practical issue of how you change—I think it is in your submission or it might be somebody else's—the price board.

Mr Topham—It is in our submission, yes.

Senator ABETZ—So the price board has to be changed at, what, 6.00 am in the morning, as I understand it. Of course, if you are a one-person service station operating and you have somebody at the bowser at 5.59 am, you would want to serve that person. Then, of course, 6.01 might tick over and you are in breach of the legislation and you can get fined courtesy of an infringement notice. The Law Council had something to say about that. Do you think there needs to be some flexibility in relation to this quite ham-fisted approach that we have been presented in the legislation?

Mr Topham—The answer is yes. But perhaps Michael might elaborate on some of the operational issues that would be involved.

Mr Ridley-Smith—It does make it difficult to change prices right at 6.00 am. There are mechanical breakdowns with price boards. You do have the staffing issues. It is not realistic to expect that in every instance you can change precisely at 6.00 am.

Senator ABETZ—So you would suggest a window of opportunity for that to occur? How much time would you suggest?

Mr Ridley-Smith—We have proposed a half-hour, or 30-minute, window to be able to make that change.

Senator ABETZ—You have also discussed the issue of a petrol retailer who in fact might not be a company.

Mr Ridley-Smith—Correct.

Senator ABETZ—A mum, dad, father and son or whatever operation it might be. Do you have any legal advice in relation to that that you might wish to share with us? The federal government tells us that it is undertaking Fuelwatch courtesy of the corporations power. Of course, if a mum and dad service station is not incorporated, one wonders how they could be captured.

Mr Ridley-Smith—We have not taken any external legal advice. We have read through the legislation. We have identified a concern. But we have not taken external legal advice on that.

Senator ABETZ—Then, of course, we have the issue of standard price. What is your reading of the definition of standard price? Would that allow a shopper docket system to continue?

Mr Topham—Well, our literal reading of the definition of standard price is that it would not allow discounts to continue to be operated.

Senator ABETZ—I would assume that from a consumer point of view and from a retailer point of view it would be very helpful if something like that were clarified.

Mr Topham—Indeed. We do not believe it is the intent of the government to ban shopper dockets.

Senator ABETZ—So coming back to my initial point, chances are but for a political stunt, rushing this legislation from beginning to end over a 37-hour period, a little bit of consultation and less indecent haste and we may have had a better put together piece of legislation?

Mr Topham—Well, as a matter of principle, business would always appreciate the opportunity to review draft legislation, at the very least for any technical issues.

Senator ABETZ—And, of course, this legislation only starts in December this year. That is the proposal, is it not?

Mr Topham—That is my understanding.

Senator ABETZ—So there would have been plenty of time for a draft to have been circulated around the community to get the sort of input that you are now providing to this committee and then have a final draft with plenty of time for the parliament to consider before I think 15 December, which is the start-up?

Mr Ridley-Smith—It is proposed that it starts on 15 December.

Senator ABETZ—Yes. It is a 15 December start-up date. That would once again suggest that the reason this was rushed was for a political stunt. The ink was hardly dry on it before the Prime Minister was trying to wave it around in front of a press conference. Thanks, Chair.

CHAIR—Thank you, Senator Abetz. Caltex run their service station system a little differently. We have heard a lot of information about the majors versus the independents and how they will all cope with the system. The independents have been accusing the majors of planning to manipulate the market. Caltex, as I understand it, runs differently from most of the majors in that they have a franchising system. Could you explain that a bit more and how that works within Caltex?

Mr Ridley-Smith—Maybe I can talk to our network. We supply petrol to about 2,000 stations in Australia. There are about 6,500 stations nationally. We have over 300 franchisees. They are generally individual site franchisees. Some of them may have two or three franchises, but they operate as an individual site franchise. We have a very large supply arrangement with Woolworths. We have some sites which we own and operate. We have a large network of what we describe as resellers or distributors, who also own and operate their own sites. So in our network of 2,000 sites, there are only about 170 sites where we set the price.

CHAIR—Right. So in one sense your franchisees could be said to operate as independent retailers?

Mr Ridley-Smith—They are independent operators of a service station under a franchise arrangement.

CHAIR—Have you had feedback from those retailers that they share fears about Fuelwatch in a similar way to the way we have had evidence from independents in that they see themselves being squeezed out?

Mr Ridley-Smith—I have not had any discussions directly with a franchisee about that.

CHAIR—And they have not contacted you with any concerns?

Mr Ridley-Smith—Not directly to me.

Senator JOYCE—Madam Chair, I just want to make one point. You are not speaking in any way, shape or form to your franchisees about the price at which they sell their petrol?

Mr Ridley-Smith—They buy at a wholesale price, a list price, under their agreement. From time to time we provide price support. When we provide price support, we set a maximum resale price.

Senator JOYCE—Thank you very much. I think it is very important we get that. As an accountant, I used to see those figures all the time.

Mr Ridley-Smith—That is the situation.

CHAIR—Thank you. And just in terms of price moving versus a day or two days in the week when you have a price drop, what is your view of the relative merits of that? I understand you cannot do it from the point of view of motorists, but in terms of a service station proprietor, do you think that they benefit in terms of profit from one system or another?

Mr Ridley-Smith—We are on the record as saying that price cycles are not of a benefit for Caltex. We struggle with the truck movements around the busy days. We struggle with moving vehicles and customers through the sites on those days. It is a result of vicious competition, which we have to work within. So it is not by design.

CHAIR—Right. From your experience of Western Australia, where they have had FuelWatch for seven years, has it made much difference to the profitability or otherwise of the Caltex system there?

Mr Ridley-Smith—The profitability is broadly similar, but from site to site profits do change quite dramatically, whether it is one of the latest convenience stores where we have spent considerable money or whether it is a site that is looking a little bit tired and has a workshop. The mix of the profitability from a site is very dependent on what ancillary businesses are on the site. At the moment, on a normal convenience store, only 30 per cent of the profitability of the site is from the sale of fuel. Seventy per cent is from the sale of shop items.

CHAIR—Right. I see. Seventy per cent of the profitability is from shop items. The profit on the shop items is of a greater percentage than the fuel sales?

Mr Ridley-Smith—The gross margin on a dollar for dollar basis is greater.

CHAIR—Thank you.

Mr Topham—I will just add to that in terms of overall profitability. Our overall profit on petrol after tax is about 1.5c per litre. That was in our half year profit outlook. It was a similar kind of profit level last year. So that just gives some idea that over the course of a cycle the average level of profit is pretty low.

Senator JOYCE—That is right through from the oil well to the bowser, is it?

Mr Ridley-Smith—It is not in the oil well. It is Caltex Australia. Caltex Australia does not operate any upstream business.

Senator JOYCE—You are 50 per cent owned by an entity that is, though, are you not?

Mr Ridley-Smith—We are a listed entity in Australia. Fifty per cent of our shares are owned by Chevron Corporation.

Senator JOYCE—And Chevron certainly has interests in oil wells, or did last time I looked.

Mr Ridley-Smith—It does. But we have a board in Australia that makes all of the decisions on the future of Caltex in Australia.

Senator JOYCE—The transfer pricing—

CHAIR—Thank you, Senator Joyce. I think it is my line of questioning. From your feedback from your franchisees in Western Australia, are they reasonably happy with the FuelWatch system? Are the customers happy with the FuelWatch system?

Mr Ridley-Smith—I have not had a retailer over there say they wish they had something different. I have not had them say either way. I have not had feedback on it either way.

Senator CAMERON—So Caltex can live with Fuelwatch?

Mr Ridley-Smith—It currently operates in WA.

Senator CAMERON—But you can live with a national Fuelwatch system?

Mr Ridley-Smith—Yes.

Senator CAMERON—Yes?

Mr Ridley-Smith—Yes.

Senator CAMERON—Can I ask you whether you can explain magic Tuesday or wonderful Wednesday? Can you just explain to me how it works because nobody before this committee has been able to do so far. Given that you are right at the heart of the industry, how does magic Tuesday work?

Mr Ridley-Smith—There are two questions: how does it work, and why has it occurred that way? I think there has been a lot of information put into different inquiries on how it actually works. Obviously, there is vicious competition. Stations are competing vigorously for volume. As one competitor lowers their price below one station, the local market will try to match that or better it. As the cycle proceeds, you will get to a point where the margins are either slim or negative. Someone's business model will require them to try to make some money. You cannot lose money indefinitely. As a result, someone will choose to raise their prices and then the rest of the market is free to make a decision about whether or not they follow or do not follow. Sometimes they do and sometimes they do not.

Senator CAMERON—Your evidence on profitability would be counterintuitive to what most people would think the industry is doing. What was Caltex's last 12 months profit?

Mr Ridley-Smith—In 2007, our after tax profit on a replacement cost of profit basis was \$444 million.

Senator CAMERON—It was \$444 million?

Mr Ridley-Smith—Yes.

Mr Topham—From both refining and marketing activities.

Senator CAMERON—What is your ROI on that, your return on investment?

Mr Ridley-Smith—I am not sure off the top of my head, but we have many billions of dollars of assets in Australia.

Senator CAMERON—Could you get me that figure?

Mr Ridley-Smith—We could get that figure.

Senator CAMERON—You would not say that \$444 million profit would lead you to want to move out of the Australian market, would you?

Mr Ridley-Smith—At this stage, our future remains in Australia. We are a listed Australian company. We are trying to make a decent return for our shareholders in Australia. We have no offshore operations and we have no upstream operations.

Senator CAMERON—Could that \$444 million profit be seen by the public to be profiteering, from where we are?

Mr Ridley-Smith—There are many large companies that have lots of money invested in their operations that earn far more significant sums than that. We have many billions of dollars invested. When you do it on a dollar spent on petrol, you find that we make 1c on every dollar spent on petrol. We have to return money to our shareholders as well. We have a capital investment program over the next three years of over \$1 billion. I think it is a fair return on what we provide in keeping more than one-third of the country moving with their fuel needs.

Senator JOYCE—Mr Ridley-Smith, I will comment on that same point to assist. I think you are not being clear with your answer, because you are 50 per cent owned by Chevron. So if we were to take the profit you make on a litre of fuel or the profit Chevron makes from a litre of fuel sold in Australia between the oil well and the bowser in Australia, it is going to be substantially more than 1.5c, especially when they are selling it on the streets of Iran and Iraq at the moment at about 10c a litre. So the difference between 10c and what we are paying is government taxes, transport and profit, of which I imagine Chevron is making quite a large sum. So the fact that you are talking about the transfer price that Chevron makes when it sells it to itself in Australia is not telling us the full story, is it?

Mr Ridley-Smith—Well, the full story is that we buy our crude on the open market. We do not buy all our crude from Chevron. We have to pay a dividend to Chevron just as to any other shareholder. We buy lots of crude from lots of different players around the world.

Senator JOYCE—How much of your crude do you buy from Chevron?

Mr Ridley-Smith—I do not have the exact figures in front of me.

Mr Topham—I can say, Senator, the number would be quite low. Most of our crude oil comes from Vietnam, New Guinea, Malaysia and other places. We would be happy to supply you with the figure, but the volume would certainly be very low. It may even be zero. But we can get you a figure on that.

Senator JOYCE—But the point that people lose is that the extraction cost of oil is not that great. Chevron as a parent company is making record profit such as it has never made before. That is the 50 per cent owner of Caltex in Australia. All Caltex has to do is move the product in Australia. The profits are already made by the time those tankers reach Australia.

Mr Topham—I was going to say that Caltex is an Australian company which is completely independent of Chevron.

Senator JOYCE—It is 50 per cent owned by Chevron.

Mr Topham—They are a shareholder, yes.

Senator CAMERON—Senator Abetz, in one of his questions, spoke about the hyperbole of the high cost of fuel. It is not really hyperbole, is it? Fuel is at almost record levels. Fuel costs are creating significant financial stress for ordinary families. Would that not be the case?

Mr Topham—That is absolutely correct, Senator.

Senator CAMERON—So there is no hyperbole when people are talking about high fuel costs?

Senator ABETZ—It was in relation to Alan Evans. Get a life.

Mr Topham—I am merely commenting, of course, on the fact that oil costs are very high, not on the statement about hyperbole. I am not familiar with that statement.

Senator CAMERON—Mr Evans also gave evidence to say that the market would operate more effectively and provide more competition if the independents had access to the same discount from terminals as some of your major customers. What is your comment on that?

Mr Topham—The comment is that the largest independents in Australia are Woolworths and Coles. The volume that they take far exceeds the volume of the next independents. However, there are some very large independent operators in Australia, including United, Gull, and 7-Eleven. The prices which those companies would be able to obtain would be highly competitive. When you get down to single site independents, they are only buying a minuscule percentage of the volume that those very large chains buy, so it is inevitable, as in all markets, that their price will be higher. But we obviously aim to supply as many customers as possible at competitive prices.

Senator CAMERON—Do you have a relationship with any of the retailers?

Mr Topham—Which particular retailers? Woolworths?

Senator CAMERON—Yes.

Mr Topham—We have an arrangement for co-branding with Woolworths, where there are a large number of sites which are co-branded with Caltex and Woolworths. We have a supply agreement with them and they set the price at all those co-branded sites.

Senator CAMERON—So you are actually selling to your own brand name from the terminal, and Woolworths, in part of that relationship, gets that competitive advantage over the independents. Is that correct?

Mr Topham—I do not believe they have a competitive advantage because I believe the prices that are set in the marketplace reflect the sizes and the negotiating power of the various players. It is a highly competitive market. There are quite a number of suppliers which independent operators, whether they are large or small, can go to. They certainly can obtain the best price by shopping around amongst those various suppliers.

Senator CAMERON—We do see on the odd occasion now the international benchmark price for crude oil coming down. Why does it take so long for that to be reflected back into the market here?

Mr Topham—Our research and the work undertaken by the ACCC for their inquiry shows that the responses are symmetrical. In other words, prices fall at the same rate as they increase. What is often confused, and perhaps deliberately sometimes, is that the fall in crude oil prices, as opposed to the fall in the ex refinery prices, is in Singapore. For example, most recently there have been statements about the fall in crude oil prices and whether these falls have been passed on into petrol prices. However, the fall in the Singapore ex refinery price, which is the basis for Australian petrol prices, has not been nearly as great or as rapid as the fall in crude oil prices. The two things will come into line over time, but I think there has been some confusion in the marketplace about that. I guess there is also a perception commonly that when international prices fall, people are naturally keen to see local prices fall quickly. When prices go up, they are quite happy for prices to stay down and not rise quickly. So people are much more interested in price falls than rises. I have heard that give rise to misconceptions.

Senator JOYCE—What is the purchase price of a litre of ethanol?

Mr Topham—The purchase price of a litre of ethanol obviously varies. I would prefer not to give our prices in open committee.

Senator JOYCE—A rough idea.

Mr Topham—But it is fair to say that the price for ethanol is a little bit under a dollar, I would say, typically.

CHAIR—Senator Cameron.

Senator JOYCE—Why do you not sell more of that?

CHAIR—Senator Cameron.

Senator CAMERON—Are executive salaries, share options and bonuses within the Caltex group rising consistent with petrol prices or with the CPI?

Senator JOYCE—What has this got to do with Fuelwatch?

Mr Topham—I would have to take that on notice. Those arrangements are fully disclosed in our annual report.

Senator CAMERON—Sorry, I missed that because I could not hear for Senator Abetz. I am sorry.

Mr Topham—I would have to take that on notice, Senator. Those things are fully disclosed in our annual report. I am happy to provide you a copy of that and if you have any follow-up questions, take those as well.

Senator CAMERON—Thank you.

Senator EGGLESTON—You said you had 2,000 stations around Australia that you supply to. What percentage of those are Woolworths sites?

Mr Ridley-Smith—About a quarter.

Senator EGGLESTON—So 25 per cent of your sites are Woolworths sites?

Mr Ridley-Smith—Yes.

Senator EGGLESTON—And do you have any role in the price setting for the Woolworths sites?

Mr Ridley-Smith—We have a wholesale arrangement with them.

Senator EGGLESTON—A wholesale arrangement only. Not a retail arrangement?

Mr Ridley-Smith—Yes.

Senator EGGLESTON—So are you suggesting that Caltex as the parent company would play no role in Woolworths' activities in, for example, game playing within the FuelWatch system in Western Australia in setting low prices in each region on a daily basis?

Mr Ridley-Smith—I cannot comment on whether or not they are game playing. But we play no part in setting the price at a Woolworths-Caltex co-branded service station.

Senator EGGLESTON—Are you aware that Woolworths does game play within the FuelWatch system to set low prices which independents are unable to match because of the arrangement under which prices are fixed for 24 hours?

Mr Ridley-Smith—I am not personally aware of that.

Senator EGGLESTON—Thank you.

CHAIR—Thank you.

Senator JOYCE—Can I ask a question?

CHAIR—If it is on the reference.

Senator JOYCE—It is. If ethanol is worth less than a dollar and you are only making 1.5c profit, why are you not promoting that product as something that would obviously get to the consumer at a far cheaper price? Why be so slow in trying to get this alternative product, unless you are worried about an alternative form of supply?

Mr Ridley-Smith—We are not worried about an alternative form of supply. We currently import a considerable proportion of the product that we sell, so every litre that we buy locally is a litre that we do not import. We are making great strides in rolling out the sale of ethanol at our service stations. An impediment has been making investment in our infrastructure at terminals. We have spent considerable amounts of money—more than \$6 million on our terminals—so that we can do it efficiently and safely. We have completed just recently work at our Banksmeadow terminal and our Lytton terminal in Queensland and are aggressively rolling out ethanol to service stations.

Senator JOYCE—And Fuelwatch promoted that?

Mr Topham—There are 225 sites currently selling E10 fuel.

Senator EGGLESTON—Given that 25 per cent of your stations are Woolworths stations, presumably they would buy in bulk and get a discounted price because of the large volume they purchase.

Mr Ridley-Smith—They get an attractive price given their volumes.

Senator EGGLESTON—Could it be a very attractive price?

Mr Ridley-Smith—It is a commercially negotiated price which we are comfortable with and we assume they are comfortable with.

Senator EGGLESTON—So, in other words, this enormous supermarket chain is probably getting petrol at a lower price than probably any other customer of yours in Australia?

Mr Ridley-Smith—Well, I would not want to go into a lot of detail, but given that they are our largest customer, that is a fair assumption.

Senator EGGLESTON—A very fair assumption.

Senator CAMERON—Could you supply the committee with details in camera of this very good commercial price and the differential between this very good commercial price and the price you supply to the independents?

Mr Ridley-Smith—We would have to seek the consent of Woolworths to talk about that arrangement. There is confidentiality—

Senator CAMERON—Would you seek that consent, because I think it would help us understand the nature of the industry that we are investigating.

Mr Ridley-Smith—We can seek that consent.

CHAIR—Thank you.

Senator ABETZ—Chair, I want to make a point in relation to that.

CHAIR—Well, you can ask a question, Senator Abetz.

Senator ABETZ—No. The committee, I understand, has requested the witness to take something on notice. My view would be, and the committee might like to consider this, if we ask one commercial player to provide that sort of information, it would only be fair and reasonable to then seek it of all the commercial players. They should also be aware that just because you provide it to us in camera does not necessarily mean it will stay in camera. It becomes the property of the Senate committee and the Senate. They then of their own volition can decide whether or not that information is published. You should be appropriately warned about that prior to making any commitments. Thanks, Chair.

CHAIR—Thanks, Senator Abetz, and thank you to the Caltex representatives for appearing here this afternoon. I will now call the Service Station Association representative.

[3.24 pm]

GLASBY, Mr Craig Edward, President, Service Station Association

CHAIR—Welcome, Mr Glasby. Do you wish to make an opening statement?

Mr Glasby—I am also an independent retailer of fuel and an ex Caltex franchisee. The Service Station Association has made a submission. We will just stand by that.

CHAIR—Thank you. You mentioned that you are an independent service station operator and an ex Caltex franchisee. You might have heard Caltex management just say then that they regard their franchisees very much as independent operators. Would you agree with that?

Mr Glasby—No. I do not agree with that assertion at all. I would regard Caltex franchisees as not much more than employees who actually have their houses and their livelihoods put on the line to make a profit for Caltex.

CHAIR—Were you one of the franchisees in that you have set your own prices and so on, or were you one of the operators that accepted direction from Caltex?

Mr Glasby—Technically, I set my own price, but in reality if the price I set was not in accordance with what Caltex wanted, I would not sell any fuel. If you would like an example for me to go further, I can.

CHAIR—Yes, if you could.

Mr Glasby—As an independent, I would buy my fuel now probably 7c or 8c a litre cheaper than a Caltex franchisee would. You asked Caltex representatives whether they could explain the price cycle. Part of the price cycle is keeping a lid on the profitability of Caltex franchisees. This is my opinion only. If I am buying, to give an example, at \$1.50, Caltex franchisees are buying at \$1.57. The price is set at retail by the Caltex franchisee at probably about \$1.60. Now of course as an independent I can go below. Caltex has to give permission for the franchisee to drop its price because Caltex is giving rebates to the franchisee. So that franchisee, he might say, 'Look, I want to match that site down the road. Caltex has guaranteed me 3c a litre.' But that site down the road is a bit of a dirty site. It has not got as good facilities. It has not got as good customer service or goods inside the store. So if that Caltex franchisee said, 'I might put my price 1c above to see if I can make an extra margin because I've got all these other things in my business that attract customers', Caltex would then remove their support. So in that way Caltex is dictating what retail price the franchisee can set.

CHAIR—It is interesting to hear you say that as an independent now you can get wholesale fuel at a cheaper rate than you could as a Caltex franchisee when a lot of the evidence we have heard is that independents feel they cannot buy the fuel at the same rate as oil majors' service station operators.

Mr Glasby—Okay. My experience is that is incorrect. Caltex sells fuel cheaper to larger independent groups, as they would Gull or 7-Eleven, those such groups, or United. They sell to their franchisees at top dollar and those franchisees have to pay COD. I am in the independent market. As an individual independent, I am branded Liberty, so I buy my fuel through Liberty, which comes from either Caltex or Mobil.

CHAIR—So why do you think we have evidence from some independent service station operators that they will be disadvantaged under Fuelwatch?

Mr Glasby—Well, that is another matter entirely. Under Fuelwatch, I think we will be disadvantaged as well. At the moment, we have a situation where we usually have one price rise a week. We have many price reductions during the week. There is evidence that you might have two or three price reductions in the one day. Under Fuelwatch, you have to set the price the previous day. You have to board that price at 6.00 am in the morning, which is a busy period in the Sydney metro area. It is even busier in the Central Coast. Everything starts an hour earlier in the Central Coast because they have travelling time. You usually only have one person on. So it makes life difficult there. With the setting of the price, with the current price cycle and the independent market having to follow the price cycle, they cannot sell at the bottom of the cycle continually because they will not make any money at all. I will admit that on some days I make 10c a litre. The problem is that I only sell about 5,000 or 6,000 litres. On the day that I make 1c a litre, I might sell 15,000 or 20,000 litres. So of course our averages are about 3c a litre. So when the majors go up, we have to follow to try and make up the margins that we have lost when we are selling at 1c a litre.

If you look at the price of \$1.50 and credit card fees—and probably 60 per cent of our sales for fuel are on credit card—you find that we are not making much money at all, if any, when we are at the bottom of the market. So we have a regular price cycle, which the independents have to follow. So with Fuelwatch, we are expecting that, yes, on a Tuesday or Wednesday—whatever day it is depending on the state and the city—the prices are all going to go up. So the independent will say, ‘Yep, I’ll go up too because I have to. I’ve got to make some money.’ To me, there seems to be evidence in Western Australia that one site of all the majors does not go up. There will be one Caltex, one Shell, one BP and one Mobil that just does not go up. That independent has gone up 10c and all of a sudden he is out of the market. That can destroy him in a matter of months if that continued.

CHAIR—But there is evidence that puzzles me a little, because it has been the independents that have criticised the smoothing out of the cycle. Under your scenario, it seems to me that would advantage you because you would not get the peaks and the lows. You would have a much more manageable retail cycle and that would actually make your business more manageable.

Mr Glasby—I do not think there is any evidence of that in Western Australia.

CHAIR—Well, that has been a consistent criticism, I have to say, in evidence we have had from independents and others—that there is a smoothing of the cycle and that there are not the cheap Tuesdays, the magic Tuesdays, and the other days when it is high, that there is a smoothing out of the cycle under Fuelwatch.

Senator EGGLESTON—We hear that it is not a factor, Madam Chair.

Mr Glasby—If there is a smoothing out—you find that the lower price comes up and the higher price comes down—I do not see how that actually advantages the motorist at all because the Australian motorist is conditioned to buy on Tuesdays and Wednesdays.

CHAIR—And if Fuelwatch comes in, they will get conditioned to buy whichever is the cheapest on their television screens at night, on their mobile phone screens or on the Internet. They will get conditioned by them.

Mr Glasby—Yes. They will be conditioned, but the prices will not be as low. That is what we are suggesting. That is what I just heard from you—if we smooth it out, the low prices will not be as low and the high prices will not be as high. Yes, that may make it easier for the independent market, but when you add it to what seems to be happening in Western Australia with that single site from the major that stays down, I think you will find that—

Senator EGGLESTON—In each region.

CHAIR—And yet we had evidence in Perth that independents did not seem to have suffered unduly in the marketplace.

Senator ABETZ—Well, that depends on your interpretation of the evidence.

CHAIR—But certainly independents are still operating. There are several large—

Mr Glasby—Independents are very resilient and they will find a way to make money. When I have been asked about whether Fuelwatch will reduce the price of fuel, I have always said that the average will probably stay the same, the lows will not be as low and the highs will not be as high. I thought the idea of Fuelwatch was to get the lowest possible price. The people who chase the lowest possible price are the Aussie battlers who really need the lowest possible price. If it comes up 2c, I do not see how that is an advantage to them. 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.

CHAIR—But if the high is, say, \$1.65 and the low is \$1.60 and the smoothing out produces a price around \$1.62½, they will still be buying cheaper than at the cheapest rate. If they care to chase the lowest price even within that smoothing out, people who are price sensitive—the battlers—will buy at the lowest service station in their area, which could save them more again.

Mr Glasby—That is assuming that the battlers are going to go to the service station that is cheapest and it is going to be in their area. I think you will find that in Western Australia when I said that the majors are keeping one site down, I think you will find that some of your customers are going to have to drive 10 or 20 kilometres to get that cheap price, which means it is no saving to them at all.

CHAIR—We will go on to Senator Abetz.

Senator ABETZ—Thanks, Chair. It is really good to hear the SSA support the Aussie battler. That is something that I was expecting the NRMA to in fact have in its brief. They did not seem to want to make the point that, if I might say, you did very well, and that is that the prices will not be as low under Fuelwatch. The double whammy of that, of course, is your evidence as well that when the price is right low, that is when you sell about three times as much volume of petrol.

Mr Glasby—That would be correct.

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 Glasby—That is correct.

Senator ABETZ—Now in a week's cycle, would you sell, say, 50 per cent of your fuel on a Monday and Tuesday or on the two days that the prices are the lowest? Just some rough figures.

Mr Glasby—The two days for me on the Central Coast are Tuesday and Wednesday.

Senator ABETZ—Tuesday and Wednesday, then.

Mr Glasby—I would probably sell 40 per cent or 45 per cent of my fuel on those two days.

Senator ABETZ—Forty to 45 per cent within two days. So clearly much higher volumes. The consumers somehow know about this, do they, without the benefit of a \$20.9 million Fuelwatch scheme?

Mr Glasby—Well, we have price boards, so they can drive past and see.

Senator ABETZ—Well, in fact, you may be interested—I have come across some evidence from the University of Western Australia which was referred to in our hearings over there—that location, convenience and billboards, even in Western Australia, are the overwhelming drivers of consumer behaviour and where they go and not information provided by FuelWatch. But allow me to continue. 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.

Senator ABETZ—Well done. Can I also ask about communicating the price. Let us say you are going to set the price at \$2.15. Your price has to be in by 2.00 pm. So at 1.45 pm or even 1.50 pm you are about to report your price. You are a one-man operation. Something happens on the apron. There is an accident outside. There is a real chance that the one-man band is going to slip past the 2.00 pm time limit to phone in their price. Do you know what happens if you do not phone in your price because of an intervening circumstance such as that?

Mr Glasby—I assume that your previous day's price stands.

Senator ABETZ—And that could have a devastating impact on your market the next day because you went off to help somebody who had been involved in an accident just outside your service station. Can I ask you about the submission—I assume you have read it—prepared by Mr Bowden.

Mr Glasby—Yes.

Senator ABETZ—Thank you. It says the SSA doubts whether any advantages would accrue to east coast consumers from the Fuelwatch proposal. That is your consideration from the independent service station point of view?

Mr Glasby—Yes.

Senator ABETZ—How long have you been in the service station game?

Mr Glasby—I started as a casual console operator when I was 20, so 25 years.

Senator ABETZ—You are a young looking 45. You are doing well. Can I ask you how long you have been an independent?

Mr Glasby—Four years.

Senator ABETZ—Four years. If you were still a Caltex franchisee, would you be as concerned about the introduction of Fuelwatch as you are today as an independent operator?

Mr Glasby—No. I do not believe I would be because as a Caltex franchisee my pricing is virtually set by Caltex anyway, so it would not make much of a difference, I do not believe.

Senator ABETZ—And in paragraph 4 of the submission, we are told at the last sentence:

In the eastern states, the many years of intense competition have achieved optimum trading conditions with many site closures in recent times testifying to the fact that there is no longer any “fat” left in the system.

That is your considered opinion and experience as well?

Mr Glasby—That is correct.

Senator ABETZ—Are you willing to share with us how much you make from your site from the sale of petroleum product or petrol as opposed to shop sales?

Mr Glasby—Last month I made a total gross profit—

Senator ABETZ—Just percentages will do. We do not need the—

Mr Glasby—I could not tell you the percentages because I have just looked at the figures.

Senator ABETZ—All right. If you are happy to tell us those figures, that is fine, but I do not expect you to divulge.

Mr Glasby—That is fine. The gross profit that my computer said I made was \$96,000 for the month. Out of that, fuel was \$14,000. The car wash was around about \$7,000. The rest was made up from the shop.

Senator ABETZ—Right. So would it be fair to say that the petrol price you offer determines the throughput in your shop?

Mr Glasby—It does, yes.

Senator ABETZ—And so if you are unable to compete with the fuel price on an intradaily basis, your shop sales will take a pounding. That is in fact what you are concerned about as well. It is not just the petrol price but it is the whole viability of your operation.

Mr Glasby—Exactly. I must clarify that my store is a big store. We are branded FoodWorks. So I am not personally as sensitive to it as much as other independents would be. But I know that if I am 2c out of the market, I know that my shop sales are going to be down. Now if I was not branded FoodWorks and as big as I was, the percentage down would be greater.

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?

Mr Glasby—That is what I am saying. That is correct.

Senator ABETZ—Thanks, Chair.

Senator CAMERON—Mr Glasby, can I just clarify whether it is \$96,000 a month profit or turnover. Profit?

Mr Glasby—Yes, gross profit before expenses. It did not go into my pocket, believe me. The expenses would have been about \$95,000.

Senator CAMERON—Thanks for your evidence. You say that the independents are resilient.

Mr Glasby—Yes.

Senator CAMERON—That would seem to line up with the Western Australian experience, where the independents are still maintaining their position in the market.

Mr Glasby—Yes.

Senator CAMERON—So Fuelwatch is not doom and gloom or the end of an independent fuel retail system in this country, is it?

Mr Glasby—It will not be the end and, yes, the independents are resilient, but as in any situation, the better independents will survive and the ones that are not so good will not survive.

Senator CAMERON—It seems to me the more I hear is that we have a very complex and distorted market in the retail fuel area. Would you agree with that?

Mr Glasby—I would agree with that, yes.

Senator CAMERON—You have almost put a proposition of some predatory pricing in the market.

Mr Glasby—Yes.

Senator CAMERON—And that predatory pricing is you are pointing to a manipulation by some groups by keeping one petrol station down below the price.

Mr Glasby—That is correct.

Senator CAMERON—Do you see that as an unfair practice?

Mr Glasby—Absolutely.

Senator CAMERON—Do you think the ACCC should look at that?

Mr Glasby—I would love them to look at it.

Senator CAMERON—Do you know the company Informed Sources?

Mr Glasby—Yes, I do.

Senator CAMERON—And MotorMouth?

Mr Glasby—Yes.

Senator CAMERON—Do you take services from them?

Mr Glasby—No. I do not.

Senator CAMERON—Is it true that if you called another petrol retailer and asked them what their prices were, you could be in breach of the law?

Mr Glasby—I would not take the chance.

Senator CAMERON—But if you paid, say, \$25,000, or whatever the cost is, for Informed Sources and MotorMouth, you can simply look the computer up and find out what all your competition is doing. Is that your understanding?

Mr Glasby—That is my understanding.

Senator CAMERON—So is that not information that is available to the retailers that is not available to the general public?

Mr Glasby—That is correct, yes.

Senator CAMERON—So why should the general public not have access to the same price information that the bulk of the retailers—not your station—has access to? Why should they not have access to that information?

Mr Glasby—I think they already have access to that information via MotorMouth. I do not know why Informed Sources does not create a side company and sell their own information that they sell to the oil companies.

Senator CAMERON—But the evidence we have received is that it is \$25,000 to access information from Informed Sources and MotorMouth. I do not know too many battling western Sydney motorists who can access \$25,000 to find out the price of petrol around the place. It is just not an option, is it?

Mr Glasby—It is not an option for the battling motorist, no, but it is an option for the NRMA. They could do that for their members.

Senator CAMERON—Well, I do not know how many regions the NRMA would cover, but I know we received evidence from WIN News in Rockhampton to say that if they accessed Informed Sources, the cost would be \$50,000 per region. That is what they were quoted. They had five regions to cover in the Rockhampton area. So how could the NRMA afford that and provide that service?

Mr Glasby—Obviously they could not. I was not aware how much it cost for Informed Sources. I have never even looked into it. I know it exists because when I was a Caltex franchisee I knew of their existence. That is basically all I knew about them. I knew what they did. I did not know what they cost at all.

Senator CAMERON—So really if you had a system where you could look at the prices the same as the general public and get an idea of what you think you need to set your prices at for the following day, would that not be a help to you rather than being blind as to what is happening in areas?

Mr Glasby—If it was just information that I could access, that would be helpful, yes.

Senator JOYCE—Thank you very much. As you know, this is an inquiry about Fuelwatch, so I want to go back to that. Do you find that Fuelwatch, being a person who has grown up in the independent industry, is going to be of assistance to you or of assistance to the major oil companies?

Mr Glasby—I do not think it is going to assist anybody.

Senator JOYCE—By ‘anybody’, you would certainly mean consumers there as well?

Mr Glasby—Exactly.

Senator JOYCE—You gave very important evidence that the whole thing about the graph is not correct because it does not take into account the volumetric amounts of fuel that are moved.

Mr Glasby—That is correct.

Senator JOYCE—So that 45 per cent of your fuel bought on the two cheapest days means that that particular little dip where it is cheap is where those who are struggling get their advantage. Fuelwatch will get rid of that dip?

Mr Glasby—That is correct.

Senator JOYCE—That is by reason of Fuelwatch, is it not?

Mr Glasby—Yes.

Senator JOYCE—So people who struggle cannot buy cheap petrol equals Fuelwatch. We have received evidence that people who are buying from Caltex have the right to sell at whatever price they want. Would you agree with that? They did clarify that a 3c subsidy came in. Do you find that a relationship with a major oil company is pretty well determined, that they do not like you to move outside certain frames of what you sell your fuel at?

Mr Glasby—Yes. That is correct. You are free to set your price at the top of the market when there are no subsidies given. So you can set it at whatever you want. But once you want to match your local area and drop below what your cost is as a Caltex franchisee, you must follow what Caltex say.

Senator JOYCE—Very good. So there is very much a strong determination. Did FuelWatch assist in that process at all? Did FuelWatch say, ‘We’re going to give you greater leverage to sell at whatever price you want and we’re going to bring in legislation to stop that sort of arrangement and give you a greater freedom of movement?’

Mr Glasby—No, I do not think.

Senator JOYCE—When FuelWatch came in, did you wake up that morning as a celestial choir of angels descended from heaven and said, ‘We are now going to give you the sort of trade practices protections that will produce a more dynamic, free and open market for more participants to come in so as to give us greater competition and reduce prices’, or was it just a case that you were going to have to tell us what you sell fuel at and then you are stuck with it?

Mr Glasby—I would not really like to say what I actually said, but it was not anything good.

Senator JOYCE—Would it be the case that a major oil corporation or one of the major retailers, which is basically ipso facto one of the major oil corporations, has the capacity to actually use Fuelwatch to knock an independent out of the market?

Mr Glasby—I believe they can, yes.

Senator JOYCE—And if independents go out of the market by reason of Fuelwatch, is that going to in the long term put the price of fuel down or put the price of fuel up?

Mr Glasby—I would say it would put the fuel price up.

Senator JOYCE—So it would be fair to say the more participants in the market, the more likely there is competition and competition gives you a better price?

Mr Glasby—That is correct.

Senator JOYCE—Now you are aware that the Labor Party supported the repeal of the Sites and Franchise Act to give the major oil companies open slather on how many retail sites they can operate from?

Mr Glasby—I am, yes.

Senator JOYCE—Do you also acknowledge that if we had a greater mechanism of supply from alternative sources, you would have a greater capacity to possibly get a better deal back to your consumers? If there were more product from different sources that you could sell, you would probably be in a better position rather than with just one, at most two or possibly no refineries in a state?

Mr Glasby—Yes. 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.

Senator JOYCE—So alternative supply and alternative product that can be sold from your forecourt is going to, in essence, bring that sort of outcome about?

Mr Glasby—That is correct.

Senator JOYCE—So in the future we would have to start looking at the use of alternative supply from such things as ethanol or maybe the development of shale or whatever to try to make sure that you can keep the major oil companies honest so that they are not the only people who you can buy the product off?

Mr Glasby—Yes. That would be good.

Senator JOYCE—Thank you. Did Fuelwatch talk to any of that? Did Fuelwatch have a vision into the future of getting new supply on to the market?

Mr Glasby—Not that I am aware of.

Senator JOYCE—Do you believe that the belief of the Australian people before the election when Fuelwatch came in was that Fuelwatch was going to reduce prices? Do you think that that was the fair view that people believed?

Mr Glasby—I cannot really comment.

Senator JOYCE—I know what you believe. I want to know what the rest of us found out.

Mr Glasby—I must admit that, of those I spoke to about Fuelwatch about, I did not listen to what they said. I just said, 'It's not going to work.'

Senator JOYCE—And who was right—you or them?

Mr Glasby—Well, I believe I am right.

Senator JOYCE—Are you aware of the recent resignation of Mr Pat Walker?

Mr Glasby—Yes.

Senator JOYCE—Would you have liked Mr Pat Walker's job?

Mr Glasby—No.

Senator JOYCE—You are representing Mr Bowden here. Do you believe that if you were not part of the Liberty group, if you were an independent just out there by yourself, under the Fuelwatch scheme your position would become immensely precarious?

Mr Glasby—For the general independent, yes. When you say part of the Liberty group, Liberty is just a supplier like Coca-Cola and Pepsi are. So I am out there by myself. They do not give me any support. They just provide me a brand and fuel.

Senator JOYCE—But would you be saying what you are saying to us now if you were working under a major oil company franchise, or would you have a concern that when you got home tonight there might be a phone call for you tomorrow?

Mr Glasby—If I was still a Caltex franchisee, quite frankly, I could not afford to come here. The way margins are squeezed for all of us, they cannot afford to do anything but remain in their stores. Having said that, I would not be here anyway because I would think that Fuelwatch would not affect a Caltex franchisee.

Senator JOYCE—We have had discussions with Caltex and Caltex said that they make about 1½c a litre. Do you think that is a fair reflection of the market, or do you think that is avoiding the fact that about 50 per cent of Caltex is owned by a company called Chevron, which is doing quite well, thank you very much?

Mr Glasby—I would like to find out how much in royalties Caltex Australia is paying to Chevron for the use of the delta image.

Senator JOYCE—So there is an abundance of wealth to be made by extracting a black material from the ground because that really does not cost too much. It is when you control the market and control all the retail outlets, control the mechanisms of supply, refining and transport, that is where the premium comes from being in the fuel game?

Mr Glasby—That is correct.

Senator JOYCE—Did FuelWatch address that problem?

Mr Glasby—I do not believe so.

Senator JOYCE—Do you think this government has the fortitude, capacity and technical ability to address that problem?

Mr Glasby—I am not sure any government has.

Senator JOYCE—Do you think that a government that comes up with a Fuelwatch scheme is capable enough to put together an emissions trading scheme?

CHAIR—Senator Joyce, really. I will ask the witness not to answer that. It is well outside the scope of his ability. Senator Cameron.

Senator CAMERON—Mr Glasby, can I just ask you how you would describe yourself. Given the nature of your business, where it is \$96,000 overall profit and fuel is \$14,000 and \$7,000 is for other parts of your business—I think that was the car wash—

Mr Glasby—Yes.

Senator CAMERON—would you describe yourself as a traditional petrol retailer or a mixed business or a retailer with an add-on of fuel? How do you describe your business?

Mr Glasby—I am predominantly a petrol retailer, if you look at the turnover. For instance, out of that \$96,000, I gave you the break-up, the profit. But the actual total turnover was \$800,000 for the month, of which \$250,000 was shop, \$7,000 or \$8,000 was car wash and the rest was fuel.

Senator CAMERON—Is that a standard sort of break-up across the industry, or have you got a bigger retail shop?

Mr Glasby—I have got a bigger retail market than most. Am I typical? I believe that I will be typical in the not-too-distant future because I think you will find that the smaller sites that are not controlled by an oil company will have to increase their shop offering and offer other goods and services to survive.

Senator CAMERON—Thank you.

Senator BUSHBY—I have one question for Mr Glasby on price asymmetry. Could not the benefits of price information for consumers be provided without placing restrictions on the ability of retailers to price to the market, particularly without putting in place a restriction on their ability to reduce prices?

Mr Glasby—I believe so, yes.

CHAIR—Thank you for coming and filling in today and giving evidence to the committee.

[4.00 pm]

ZUMBO, Associate Professor Frank, Private capacity

CHAIR—Professor Zumbo, do you have an opening statement?

Prof. Zumbo—Yes, I do.

CHAIR—Please go ahead.

Prof. Zumbo—Firstly, of course, I would like to thank the committee for the opportunity to appear today. It is probably the second inquiry this committee has had that I have appeared in over as many years. I have to say that if all the problems were going to be solved, we would not be having all these inquiries. Having said all that, having been a very close and long-time observer and occasional consultant in the oil industry, I have to say from the outset that I am deeply concerned about the proposed Fuelwatch scheme. In fact, I strongly believe that the proposed adoption of the national Fuelwatch scheme is a deeply flawed strategy which will fail to deal with the numerous underlying problems within the oil industry. My only concern is to get the best result for motorists, and I do not believe that the proposed Fuelwatch scheme will do that. The proposed Fuelwatch scheme fails on so many fronts that I will not have time today to go through all of them. I will comprehensively outline those failures in a detailed submission, which will come very shortly.

For present purposes, it is important to note that the proposed Fuelwatch scheme would not even deliver on the alleged competitive and transparency benefits that the government is claiming the scheme will deliver regarding retail pricing. Not only are there superior and much more efficient means for promoting transparency and competition but transparency and competition can be delivered immediately to motorists and at a fraction of the cost of the proposed national Fuelwatch scheme. So transparency is very important, of course, but it must be real-time transparency, it must be delivered immediately and it can be immediately delivered, as in tomorrow, and at a fraction of the cost being proposed.

More dangerously for motorists, the proposed Fuelwatch scheme will worsen the existing problems in the oil industry by leading to less transparency and less competition on petrol pricing. The main failings of the proposed Fuelwatch scheme, I believe, include the following. The first is a failure to deliver transparency on a timely and efficient basis. The proposed Fuelwatch scheme is an inefficient and costly mechanism for seeking to deliver transparency in retail prices. The proposed scheme is inefficient as it seeks to duplicate at considerable expense and with a lengthy implementation process an existing retail pricing collection scheme we all know to be Informed Sources. Informed Sources already collects extensive retail price information. This information is real-time and is already in place and can be made available to motorists without the government incurring the considerable costs of starting a website from scratch.

We have heard about the cost of accessing Informed Sources. There are a number of responses to that. Firstly, it would be interesting, if the government did take the opportunity to seek to negotiate a deal with Informed Sources, to see whether there could be any savings to begin with. Secondly, and this is something that I am not sure has been picked up very much in the media or in the commentary, once the Fuelwatch system is in place if it is passed by the Senate, Informed Sources will not have a business. Because Informed Sources will not have a business, I would have thought that would have given the government considerable negotiating power to seek a very efficient pricing arrangement if the choice is no business—that is, your business goes out the window—or coming to a deal with the government. I think that saner minds would have prevailed in that instance. So I leave that for the committee to consider.

I also believe that there will be a failure to deliver real competition between retailers. The proposed Fuelwatch system would create an artificial environment. It would force retailers to stick to a price for 24 hours. It would remove pricing competition within that 24 hours. Price is the essence of competition. Therefore, the proposed Fuelwatch is an interference in that pricing mechanism.

There are some false assumptions that underlie comments that particularly Graeme Samuel has made that retailers will be forced to give their best price. Well, we need to define and be careful about what is the best price. We have heard that independents do not buy at the same prices as Coles and Woolies, so the independent could quite legitimately and genuinely present the cheapest price that they can having regard to the fact that they cannot buy at the same price as Woolworths and still be out of the market under Fuelwatch. And they would be out of the market for 24 hours under Fuelwatch. However, as it happens now, if the prices around them at those service stations owned by Woolies and Coles and what have you do dip, the independent can respond and make a judgement call: ‘Okay, I may make a loss, but I have to meet that price. But I will have

people coming through my business and they may come in and buy milk and they might buy other items.' So they today can make a judgement call to put their prices down below their cost price just to survive and to get the throughput. Under Fuelwatch, they will be denied that opportunity.

There is also a failure to deliver full transparency at the retail level. There are a number of elements to this that I think have not been picked up in the commentary. One is that motorists may be confused under the Fuelwatch system as to which particular service station is the cheapest. We have heard evidence and allegations that Coles and Woolworths in particular play games. They play games where they may keep one site low, one site high or they may have some of their sites at a higher price and some of their sites at a lower price. So on the website you may have five or 10 sites operated by, say, Coles in that region. They may have the cheapest price on that website. They may have the most expensive price on that website. The motorist logging on to the computer may see, 'Well, Coles is the cheapest. I'll go by the Coles store.' However, when they drive out, the Coles store they might turn up to may not in fact be the cheapest location.

I have to say this is not a conspiracy theory; this is just what Commissioner Walker, when he was prices commissioner in Western Australia, alluded to. In a media release dated Monday, 19 November, petrol commissioner Pat Walker said, and I quote:

Coles Express was effectively playing games with Perth motorists, keeping some of their retail outlets at the cheapest prices.

Coles Express will have the 10 most expensive service stations tomorrow. Ironically, they also have the cheapest three ...

There is pricing detail provided. It continues:

This could fool motorists, who may only be able to catch the name of the cheapest outlet listed in the media and might inadvertently drive in to one of the most expensive.

Senator BUSHBY—Is that a separate media release?

Prof. Zumbo—That is a media release which I am very happy to table.

Senator BUSHBY—Thank you.

Prof. Zumbo—They were former petrol commissioner Pat Walker's own words. The other evidence we have heard today, and I have to emphasise that this is the real problem—both Caltex and the Law Council have outlined this; this is a real problem—the Fuelwatch scheme will only fix the headline price, if I can describe it that way. There is no disclosure on the Fuelwatch website in relation to discounts. More importantly, there will not be any disclosure about credit card surcharges. For example, a retailer could have the cheapest headline price. However, because there is often 1c or 2c in it, you might find that they turn up and the motorist may end up paying more at that site because that service station happens to charge a credit card surcharge. That is not disclosed.

In terms of the discounting strategy, if discounting was an open possibility, you may have independents or even Caltex, Coles and Woolies enter into a strategy to, if they have this particular service station that is out of the market, say 'Daily special' on a big board or 'Buy petrol here. Get a free loaf of bread.' That is not disclosed. But motorists driving by could see and drive in. So if you lock up the headline price, all that may do is create the opportunity for games to be played where alternative strategies are adopted, where there may be less transparency. You may know what the headline price is, the top price on the board, but you may not have that and you will not have that disclosure about all the other discounts and surcharges on the Fuelwatch site. Now that is very, very important to understand.

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.

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.

I stress transparency is very important but it must be real-time transparency. In terms of Fuelwatch suggesting there is a cheaper price, you have to be very careful to analyse that. Earlier, we heard the cheapest price might be 20 kilometres away. It might be five kilometres away. If it is not within, say, a 10-minute driving range, people will not bother. You might save \$6 in the cheaper petrol out at Penrith, but if you were living in Randwick, you would have to travel 50 kilometres and waste a lot of petrol. The bottom line is those motorists like cheap Tuesday, and that will completely change.

The other point to stress is that the cheapest price in Sydney comes around every week. The experience in Perth has been the cheapest price, which is still consistently higher than the cheapest price in Sydney, is every two weeks. So motorists who need to buy petrol every week will also be disadvantaged because in Perth they have to wait two weeks for the bottom price, which is still not the cheapest.

Predatory pricing is a big issue. There is some discussion about the so-called Birdsville amendment. The Birdsville amendment was designed to be an effective prohibition against predatory pricing. We have heard questions about why the ACCC does not take action. Since the Boral High Court decision in 2003, it has been clear that the old threshold of market power was too narrowly interpreted. Therefore, the ACCC will not waste its money taking those cases because they will lose.

The government is proposing to remove the market share test and restore that discredited market power test. We will see what we have seen for the last five years since the Boral case; no case has been taken under the market power threshold. That is very important, because US research—I am happy to provide the committee with this research—shows that 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. Now it is very important research that the committee should be aware of that effective prohibitions against below cost pricing do lead to lower prices for consumers based on that research.

We have talked about the petrol commissioner. I can confirm that the petrol commissioner was not given any additional powers. Yes, there was price monitoring. However, there is no power for the petrol commissioner to direct that the oil companies comply with the Singapore benchmark. The petrol commissioner could say that our local prices are out of kilter with the Singapore prices, but the petrol commissioner had no powers to enforce that. So without those powers, sadly, the petrol cop on the beat just cannot enforce a lower price. Unfortunately, unless a new petrol commissioner is given new powers to deal with those sort of issues, the petrol commissioner will become a punching bag in the same way the previous one was simply because they have no way to enforce lower prices. They have no additional powers.

We have heard about the buy-sell arrangements. Well, they need to be carefully looked at. The ACCC did call them a cosy club. There is evidence that it is only restricted to the oil companies. Others have had difficulty getting in. That is a question for the ACCC to assess. The ACCC did make a very strong suggestion to the oil companies that they should undertake to proceed to get an authorisation for that conduct. That is a very strong hint by a regulator to suggest that we have very serious concerns about the buy-sell arrangements. Therefore, you should have these tested in a public process called the authorisation process under the Trade Practices Act. It may survive an authorisation process. It may not. But the ACCC has given a very strong suggestion. Ultimately, the ACCC does have the power to seek a court ruling on whether those agreements do substantially lessen competition in breach of section 45. We have been told that is a matter of the ACCC's reviewing. We would like to hear that decision very quickly.

The oil companies have a stranglehold over terminal space and storage facilities. That is an issue that the ACCC has been looking at. It is something that needs to be resolved very quickly. If you cannot import sufficient quantities, you cannot offer competitive tension.

About the ACCC analysis, firstly, I would have to say that there is some controversy about that analysis. I think that controversy can be put out very quickly by the ACCC releasing its data. If that data were released, it could be tested. 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. Now until that analysis is replicated, I draw no comfort from that analysis simply because it has not been independently peer reviewed. That analysis does not undertake an assessment of volumes. A volumetric analysis is essential. Once again, until that analysis is done, I will not be convinced by the ACCC data.

I am a lawyer and I always look for the fine print. There is a lot of fine print in relation to the ACCC analysis. They call it caveats. I call it the fine print. The caveats are that there may be some reason totally external that has led to any price differences that the ACCC may have identified. That is the econometric way of saying, 'We're confident. We may be comforted by this, but we may be totally wrong.' I am not comforted by that caveat. There may be factors particular to Perth. Issues such as transportation have not been factored into that analysis. Perth experienced dramatic growth. That may have led to economies of scale. There was the entry of Coles Express. There is clear evidence to suggest that did have a lowering impact on prices in Perth. So, for all those reasons, I am not comforted by the ACCC analysis. However, if that analysis could be replicated, we can certainly have this discussion again. But, in this context, I am not comforted by the ACCC analysis.

In terms of econometric analysis, I also have to stress that there are other econometricians who have done their own analysis and suggested different results. Econometric analysis is very sensitive to the variables that you choose. It is very sensitive to the time periods that you choose. Until all that information and all the data the ACCC has is fully made available to independent researchers for rigorous peer review, as I said, I will not be comforted by that assessment.

In the end, I have to say that there are fundamental issues in the oil industry. We would not keep having these inquiries if everything were rosy. There are distortions in the market. It is an imperfect market. There are market failures. My concern is that we try to let markets operate as best they can when they do operate. But when there are market failures, imperfections and a lack of transparency, we need to intervene. But the transparency needs to be real-time transparency. I do not think anyone disagrees with the importance of transparency. The one thing that I think there is fundamental disagreement about and perhaps some growing consensus is the 24-hour rule. That locks the price in artificially for that 24-hour rule. If the government does not want to negotiate with Informed Sources, the government should consider a real-time price information system. There have been concerns about Informed Sources data being used as a cloak for some untoward conduct. All those concerns would be removed if that Informed Sources data were available to everyone, including motorists.

In the end, I conclude by saying that we need a comprehensive package of reform. There is no one suggestion. I have put together a 10-point plan, which I will briefly consider and put to the committee. One is to allow motorists immediate access to pricing data, preferably by Informed Sources. But if the government wants to set up a website, it should be real-time transparency. There should be an immediate review of the current operation and possible abuse of import parity pricing. I think it is time we look at import parity pricing. There is upwards of 8 per cent of the wholesale price that is a notional number based on an assumption of landing petrol in Australia from Singapore. We refine upwards of 85 per cent of petrol in Australia from both local and international sources. Although we refine 85 per cent, the price is based on 100 per cent being import parity. We need to look at that very carefully to see if there is any justification, continued justification or abuse.

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.

All the talk today has been about unleaded petrol. What about diesel? What about LPG? The government could move to allow the ACCC to formally monitor LPG and diesel prices under the Trade Practices Act. They have given the ACCC formal powers to monitor unleaded petrol. They could give that power to the ACCC in relation to diesel and LPG. There is a lot of angst and unhappiness about diesel prices. I am sure you have heard it yourself.

The Birdsville amendment needs to be enforced, not weakened. Maybe there is consideration to be given to stronger below cost pricing in the same way as many US states have. Those US states, from research that is available, suggests that those below-cost statutes do lead to a lower price for motorists.

We need to strengthen Oilcode regulations. We need to ensure independents have a continued role. We need to deal with geographic price discrimination. We have talked about the same brand selling at one price in one suburb and at a higher price in another suburb. They can get away with that. Fuelwatch will not make a difference to that because of at the end of the day all the games that can be played, and I have discussed them earlier. Ultimately, you can get 100 per cent of the market. There is nothing the Trade Practices Act or the ACCC can do. It is time we had a divestiture power. That is a real deterrent. We are talking about deterrents. The government has suggested that they will have cartel legislation to put perpetrators in jail. That was announced in December last year. We are still waiting. We need to have the toughest anti-cartel legislation, where people go to jail and where there are phone-tapping powers. One of the concerns about Fuelwatch is that it provides a fertile ground for collusion. Once a day you can ring around, have a discussion on the phone and you can set your price. The wonderful thing about Fuelwatch in terms of enforcing discipline—

CHAIR—Professor Zumbo—

Prof. Zumbo—This is my last comment. The last point is that, in a cartel, the biggest problem is enforcing discipline amongst the cartel participants. But the Fuelwatch scheme will impose that discipline because it sets the price for 24 hours. Thank you.

CHAIR—Thank you. We have had a lot of information and we do not have any kind of submission. It is a bit difficult to go through all of those points.

Prof. Zumbo—I will provide a submission, I promise.

CHAIR—Yes. But we do not have the benefit of it now before we ask questions. That is going to make it very difficult.

Senator ABETZ—I have a few if you cannot think of some.

Senator CAMERON—I have a couple as well.

Senator ABETZ—You as well. Good.

CHAIR—Your championing of Informed Sources as the source of real-time information, otherwise having the government set up real-time information, is interesting to me. I am sure it would cost the government a lot more than \$20 million-odd to set up a real-time information system. I understand that Informed Sources operate on having the majors agree to provide a direct link into their IT operations in their service stations. Under the very simple system the government is proposing, where people ring in or key in their prices, we are still hearing independent service station operators complain about that inconvenience. If Informed Sources had to go into every independent service operation, there would have to be dedicated IT systems and there would have to be links into every service station around Australia.

Prof. Zumbo—Madam Chair, can I respond to that?

CHAIR—Yes.

Prof. Zumbo—Obviously you will take evidence and speak to Informed Sources. My understanding—

CHAIR—We have.

Prof. Zumbo—is that a lot of the information Informed Sources has is immediately downloaded by Caltex, Coles, Woolies and the subscribers. So a lot of that information is picked up. In terms of the information that they do not pick up, they have people driving around checking those prices. So they have a business model. They collect that information. It is very comprehensive information. The ACCC would not express a concern about Informed Sources if it were not a comprehensive system of information. My proposition is that I have not seen the analysis, if an analysis is being done, of whether it would be cheaper for the government to go to Informed Sources. I do not know whether the government has negotiated with Informed Sources. I do not know if Informed Sources would make that available. I have indicated that Informed Sources would not have a business under the Fuelwatch scheme.

CHAIR—They have actually assured us that they will have a business.

Prof. Zumbo—They may. Maybe the government can be a competitor to Informed Sources—give them some competition as competitors. So in terms of the real-time, if you log in once a day under Fuelwatch, I would have thought you could do that under a real-time system. But I would like to see if there was analysis done on a real-time alternative. That is all I am asking for. Real-time information is far superior to this snapshot view, this artificial environment, being created by Fuelwatch.

CHAIR—In terms of analysis, then, can you tell me whether it would still be possible or indeed probable that a motorist who used to buy on cheap days would pay the same medium price for fuel under Fuelwatch if they chased the cheapest price in their local area?

Prof. Zumbo—People buy petrol at different times for different reasons. I am talking about those price sensitive people who want—

CHAIR—So am I. I said in my question the person who used to buy only on the cheap days.

Prof. Zumbo—They will be disappointed, Madam Chair.

CHAIR—You are categorical about that?

Prof. Zumbo—Yes. Absolutely. There is no doubt about it.

CHAIR—With what guarantee or percentage of accuracy, if you are criticising it? You have done the analysis, have you?

Prof. Zumbo—Madam Chair, I looked at the chart. I have seen it in various places. I have seen it in the NRMA submission most recently. There it shows that the lowest price in Sydney consistently on cheap Tuesdays is lower than the line relating to Perth, which is higher. So I have seen that in the NRMA submission. That is publicly available information. It fits nicely into a high-low strategy. It is like going to the supermarket. If you buy under the average price, it is going to be higher. If you wait for the specials, it is lower.

CHAIR—You are referring to this graph?

Prof. Zumbo—I do not have it in front of me, sorry.

CHAIR—No. It actually shows in Perth that recently, in the last month, the price has drifted around among the lowest price and is lower than the lowest price on a couple of occasions. So I would query your analysis of the NRMA graph.

Prof. Zumbo—Look beyond that. With all due respect, look at the rest of the analysis. Look at the line. Do not look at one part of the equation. Look at the whole line.

CHAIR—I am sorry. You are telling me always. You said in your response—

Prof. Zumbo—I said consistently. I did not say always. You cannot tell me Fuelwatch will always be cheaper.

CHAIR—No, I cannot. And the government has not made that undertaking either.

Prof. Zumbo—Why are we doing this? Why are you spending a lot of money if I can tell you that consistently in Sydney I can get it cheaper on a Tuesday?

CHAIR—That NRMA graph shows that you can get it cheaper. But if you do not happen to be able to buy it on Tuesday, you probably buy it higher the next day. So the Perth buyer can sometimes buy it cheaper than the cheapest price in Sydney, given that it is a smaller market.

Prof. Zumbo—Can I respond?

CHAIR—When I finish my question.

Prof. Zumbo—Sure.

CHAIR—What I am saying to you is you are criticising the ACCC econometric model and asking for complete and absolute certainty. How can anyone guarantee complete and absolute certainty given the difference in the market and the difference in the way of measuring things?

Prof. Zumbo—On the one hand you prove my point. The Perth market is different, so there may be different reasons which underline the analysis. That is number one. Number two, in terms of the ACCC analysis, I said I am not comfortable with that. I am not comforted by it. I want to see the underlying data being tested independently. When that happens, I may have a greater level of comfort. But what I am saying is that there is other econometric evidence that disputes the ACCC finding. Now in terms of cheap Tuesday, I think you have to give the motorist much more credit than you are, with all due respect, Senator, because motorists plan to buy their petrol on Tuesday. They do not line up because it is a random time to line up. They line up because they know that is the cheapest price in that particular area. Now as far as transparency, they will drive around. They see the service stations consistently high or cheaper. They see on Tuesday that it is cheaper. That is what I do. That is what a lot of motorists do. They know cheap Tuesday is there. They will work out the lowest price in that particular area. Give them a bit more credit, Senator.

CHAIR—And why would they not, if you had Fuelwatch, consistently chase the cheapest price in a much easier fashion?

Prof. Zumbo—Because the price might be higher.

Senator ABETZ—No, they do not.

CHAIR—Any day of the week.

Prof. Zumbo—Because the price might be higher. It might be higher, Senator. I am telling you that on that charter consistently it is lower, Senator.

CHAIR—It might be cheaper.

Senator ABETZ—I in fact do have this graph that Mr Evans relied upon in his submission. It shows that on 17 May prices were cheaper in Sydney. That was on 17, 24 and 31 May, 7 June, 14 June, 21 June and 28 June. Of course, what he mischievously and continually says is that we are talking average prices. But average price does not tell us the picture, does it, Professor? It is the volume sold at the price. The example I have been using in these hearings is if there are only two retail providers, one is selling at \$1 a litre and the other at 50c a litre, you could argue the average price is 75c a litre. However, if the service station or retailer that sold at 50c a litre sold 100 per cent of the fuel in that town, the average price of fuel sold to the consumer would be 50c a litre and not 75c a litre. That is why the champions of Fuelwatch mischievously, continually and studiously avoid the volumetric analysis because, as Mr Glasby and you have pointed out, when the price is right down low, cheaper than it gets in Perth, that is when you have about 40 per cent or 45 per cent sold in two days. Can I ask whether you agree that volume is a very important component of any analysis?

Prof. Zumbo—Senator, volume is absolutely essential because, as I said, there is a discrepancy in the difference of the volume. So you need to factor in the volume differences.

Senator ABETZ—Your analysis and part of the argument put forward by the ACCC is about transparency. The motorist is entitled to transparency. Yet surprisingly when we apply the transparency test to the ACCC on their econometric modelling, they are less than willing to be transparent. Of course, Professor Don Harding now has given them the rounds of the kitchen not only once but twice. In fact, he says that if he does the modelling from the Sydney market back to Perth, he gets a completely different analysis. Have you read Professor Harding's articles?

Prof. Zumbo—Yes. I have read it.

Senator ABETZ—Do you agree with his thesis? I dare say you would not bring yourself before this committee as an expert on econometric modelling, but you understand how it works?

Prof. Zumbo—Yes. Absolutely. I see that there is a conflict between the ACCC data and a learned economist in that case. The dispute can be easily put to rest by the ACCC providing the data. The ACCC should do so.

Senator ABETZ—So you are not comforted by the fact that they had an internal review of the econometric modelling?

Prof. Zumbo—Absolutely not. That is contrary to academic best research practice. In fact, every university of any standing will have a code of conduct that states categorically that you have to as a researcher be able to provide your research to independent external review so that it can be replicated. Because if it cannot be replicated, there is a huge cloud over that data.

Senator ABETZ—Can I ask whether you have been a student of variation in petrol prices over the years or not?

Prof. Zumbo—I watch it very, very closely.

Senator ABETZ—Are you aware—the chair will undoubtedly correct me—that we have had about 46 inquiries in this country into petrol prices.

Prof. Zumbo—Yes.

CHAIR—Too many.

Prof. Zumbo—More.

Senator ABETZ—More. All right.

Prof. Zumbo—Absolutely.

Senator ABETZ—Nobody will argue with a figure of about 40. It seems that the ACCC has continually had a consistent line against Fuelwatch and then surprisingly in the month of November or December last year they seemed to change their position. On your reading of the ACCC analysis, their change of position is solely based on their econometric modelling. Is that correct?

Prof. Zumbo—As far as I can see, yes. They put 100 per cent of confidence in their econometric analysis.

Senator ABETZ—And that is the econometric analysis that they are not willing to share with the rest of the econometric community, if I can use that term, for independent analysis?

Prof. Zumbo—Senator, to put it bluntly, from where I sit, if that econometric analysis is wrong, all the arguments underpinning the ACCC in support of Fuelwatch will disappear completely.

CHAIR—Senator Abetz, we are under time pressure. Senator Cameron has a couple.

Senator ABETZ—We will not ask how much time you used in your questioning of the witness.

CHAIR—I used seven minutes. The witness took most of the time.

Senator ABETZ—He did indeed. He did indeed.

CHAIR—You have had an equivalent amount of time. But if you can just—

Senator ABETZ—No.

Prof. Zumbo—I will keep my answers short.

Senator CAMERON—Professor Zumbo, thanks for your evidence. You indicated that you are a consultant to the industry. Could you just let me know what consultancies you have done in the industry and for whom you have done them.

Prof. Zumbo—For about three or four years I consulted for an organisation called the Australian Petroleum Distributors Association, or APDA, representing independent petroleum distributors. From time to time I have consulted, some of it not paid, and provided advice to organisations like SSA and MTAA over many years. I have not consulted in the oil industry for over 10 years. When I consulted, they were all largely independents, all those petroleum distributors. The dynamic of the distributor sector has changed dramatically. They are all largely oil company owned. I have never consulted for the oil companies or for Coles or Woolworths.

Senator CAMERON—Thanks. Are you seriously putting a proposal to government that they go Informed Sources and basically say to them, ‘Give us your information, give us your business or we’ll shut you down with an alternative model?’ Is that a real proposition?

Prof. Zumbo—Absolutely not, Senator. With all due respect, Senator, please do not put words into my mouth. I certainly did not say that. I am suggesting that the government should approach Informed Sources—I would like to know if they have—to try to come to an arrangement, a cooperative public partnership. We talk about cooperation between industry and government. I would have thought that could have been explored. Has it been explored? I do not know. If the government does not want to deal with Informed Sources, that is a matter for them. They can have a real-time website. I ask that they explore that.

Senator CAMERON—I am having difficulty hearing you.

Prof. Zumbo—I am sorry, Senator.

Senator CAMERON—Would it surprise you that for WIN News in Rockhampton to access Informed Sources in that region for five different areas would cost a quarter of a million dollars a year?

Prof. Zumbo—Well, Senator, Informed Sources has market power. They choose to exert it. They do that by charging whatever price they feel the market can bear. Senator, that is a matter you can take up with Informed Sources. I would have thought that if a government was negotiating a national—

Senator CAMERON—No. I am not asking—

Prof. Zumbo—Yes, but it has to be in context, Senator.

Senator CAMERON—I am raising it in a context with you. I am simply saying would it surprise you that that is what they are receiving?

Prof. Zumbo—Senator, to answer that question fairly, I would have to mention their economies of scale with dealing with the government nationally. If you want it for a particular region, there may not be those efficiencies. If you buy more of the data, there may be efficiencies. It is like Woolworths buying more fuel. They might get a discount by buying across the country. I have to accept the validity of those figures.

Informed Sources does have market power and they choose to exert it. That is an issue that is related. But at the end of the day, the government can negotiate a much better deal than that.

Senator CAMERON—You say you are not comforted by the ACCC analysis. That is not going as far as to say it is wrong, is it?

Prof. Zumbo—Senator, how can I say it is wrong when I cannot see the underlying data?

Senator CAMERON—That is right. The point I am making is that you do not know, do you? You do not know whether it is wrong.

Senator ABETZ—You are supposed to have faith.

Prof. Zumbo—So I have to trust the ACCC? Look, Senator, if I get it wrong, no-one loses. If the government gets Fuelwatch wrong, every motorist in Australia loses. I would have thought that the ACCC would be bending over backwards to provide that information for independent testing, Senator, with all due respect.

Senator CAMERON—I simply say to you that you are not certain that the methodology or the modelling is wrong. You cannot say that.

Prof. Zumbo—Senator, you provide me with the data and I will get you the answer. All right, Senator. I want to see that data. I think every motorist is entitled to see that data. Best practice suggests that we should see that data. The ACCC should provide it immediately, Senator.

Senator CAMERON—You say there should be an effective prohibition against below cost pricing. Have you made submissions to government over the last decade that this should be looked at?

Prof. Zumbo—Senator, for the last five years I have done nothing other than provide submissions on section 46 and below cost pricing to all sides of politics. It is very expensive data. I helped write the Birdsville amendment so I provided that advice. I also have been speaking to your side of politics with the Democrats and others in politics. A lot of people come to me for advice. I have tirelessly given submissions on below cost pricing for the last five years and beyond, Senator.

Senator CAMERON—Why do you think it has not been picked up by the previous government?

Prof. Zumbo—Well, they picked up the Birdsville amendment. The Birdsville amendment was picked up by the previous government. This government is going to water it down.

Senator CAMERON—But you believe there should be more regulation in the industry to bring about a fairer market?

Prof. Zumbo—Senator, I am concerned about market failures. We need to fix market failures. We have an imperfect oil market. If we do not fix it, we are going to have another inquiry in a year's time.

Senator CAMERON—What are the key market failures, from your perspective?

Prof. Zumbo—A lack of real-time transparency, Senator, the distortions of market power that may be exerted by Coles and Woolies and the oil companies, the locking up of the buy-sell arrangements, the locking up of the terminal space and diesel prices not being formally monitored. Senator, I can go on.

Senator CAMERON—I would like you to.

Prof. Zumbo—I will.

Senator CAMERON—Can you just—

Prof. Zumbo—Well, I have given you a 10-point plan, Senator. We need more powers.

CHAIR—However, I think there are—

Senator ABETZ—We are getting a detailed submission, are we not?

Prof. Zumbo—Yes.

CHAIR—Well, we will not have a chance to question you on it, unfortunately.

Prof. Zumbo—Are there written questions on it, Madam Chair?

Senator CAMERON—I have one last question. You say that basically motorists understand magic Tuesday, as it is described in Queensland, and they like it. What would give you the idea that they like it if there was a better system than having to queue up on a Tuesday? Why would people like it? What effect does this have—

Prof. Zumbo—Senator—

Senator CAMERON—Just let me finish. What effect does this have on people's work-life balance? Have you looked at what this does to the productivity in the economy—people being locked into this huge Tuesday line-up?

Prof. Zumbo—Senator, those people who line up on Tuesday do it out of desperation because they feel that it is the best deal, the best thing they can do to help themselves because they feel abandoned by government. In terms of a better approach, Senator, I have given you a better approach. I have given you a better approach than Fuelwatch. Fuelwatch is flawed. It will create new problems and new distortions. Senator, I have offered an alternative. I am happy to leave that with you.

Senator CAMERON—Which is to take over Informed Sources?

Prof. Zumbo—No. Not a takeover. A real-time system either negotiating with Informed Sources or the government having a real-time system plus all these other proposals. Senator, you want the best solution. I am giving you the best solution.

Senator CAMERON—Is it cost effective?

Prof. Zumbo—Let us do the analysis, Senator, and let us make that analysis publicly available.

CHAIR—Thank you. That will conclude. The committee is adjourned. Thank you, Professor Zumbo.

Prof. Zumbo—Thank you for having me, Madam Chair.

CHAIR—Thank you to Hansard and broadcasting and the secretariat.

Committee adjourned at 4.46 pm