



PARLIAMENT OF VICTORIA

Law Reform, Road and Community Safety
Committee

Inquiry into fuel drive-offs

March 2016

LRR CSC Report No. 1, 58th Parliament



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Ordered to be published

VICTORIAN GOVERNMENT PRINTER
March 2016

PP No 143, **Session** 2014-16
ISBN 978 1 925458 14 5 (print version)
978 1 925458 15 2 (PDF version)

Committee functions

The Victorian Law Reform, Road and Community Safety Committee (the Committee) is established under the *Parliamentary Committees Act 2003* (the Act).

The Committee comprises seven members of Parliament: five from the Legislative Assembly and two from the Legislative Council.

Section 13 of the Act sets out the functions of the Committee:

1. The functions of the Law Reform, Road and Community Safety Committee are, if so required or permitted under this Act, to inquire into, consider and report to the Parliament on any proposal, matter or thing concerned with –
 - a. legal, constitutional or parliamentary reform;
 - b. the administration of justice;
 - c. law reform;
 - d. the use of drugs, including the manufacture, supply or distribution of drugs;
 - e. the level or causes of crime or violent behaviour
 - f. road trauma;
 - g. safety on roads and related matters
2. It is not a function of the Committee to inquire into, consider or report to the Parliament on any proposal, matter or thing concerned with:
 - a. the joint standing orders of the Parliament
 - b. the standing orders or rules of practice of the Council or the Assembly

Committee membership



Mr Geoff Howard MP
Chairperson
Buninyong



Mr Bill Tilley MP
Deputy Chairperson
Benambra



Hon Martin Dixon MP
Nepean



Mr Khalil Eideh MLC
Western Metropolitan



Ms Fiona Pattern MLC
Northern Metropolitan



Ms Natalie Suleyman MP
St Albans



Mr Murray Thompson MP
Sandringham

Committee secretariat

Staff

Ms Yuki Simmonds, Executive Officer until 9 October 2015

Mr Andrew Homer, Acting Executive Officer from 12 October 2015

Mr John Aliferis, Research Officer

Ms Christianne Castro, Administrative Officer until 7 Sep 2015

Ms Sarah Kate Terry, Administrative Officer from 17 Sep 2015

Committee contact details

Address Law Reform, Road and Community Safety Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

Phone 61 3 8682 2846

Email lrrcsc@parliament.vic.gov.au

Web www.parliament.vic.gov.au/lrrcsc

This report is also available online at the Committee's website.

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Terms of reference

Inquiry into fuel drive-offs

That under s. 33 the Parliamentary Committees Act 2003, the Law Reform, Road and Community Safety Committee is required to inquire into, consider and report no later than 7 December 2015* on fuel ‘drive-offs’, (that is, cases in which a person fills a vehicle with fuel at a petrol station and drives off without paying for the fuel) and, in particular, the inquiry will include, but not be limited to:

- (a) a review of fuel drive-offs in Victoria and other Australian and overseas jurisdictions to understand the extent and nature of the problem, and its cost to industry and the community;
- (b) consideration of best practice approaches to preventing fuel drive-offs in Australia and overseas, including educational and technological measures;
- (c) examination of ‘loss prevention’ measures in other industry sections in Victoria, and other jurisdictions, that may be relevant and capable of being adopted in relation to fuel drive offs;
- (d) current civil and criminal remedies available to address fuel drive offs and theft, and the efficacy of those remedies;
- (e) possible linkages between fuel drive offs and crime, such as number plate theft and vehicle theft;
- (f) analysis of regulatory, technological or other interventions that could be adopted by industry (including peak bodies), in concert with Victorian government agencies, to support the availability and application of civil remedies to respond to fuel drive offs;
- (g) examine the feasibility of introducing co-regulatory approaches to enforcement, including use of technology such as CCTV, or practices such as pre-payment and pre-registration and implications such approaches for privacy.

Received from the Legislative Assembly of the 58th Parliament, 5 May 2015.

*The reporting date was subsequently extended to 31 March 2016.

Chairperson's foreword

I am pleased to present the Law Reform, Road and Community Safety Committee's final report on an Inquiry into Fuel Drive-Offs.

The Terms of Reference to undertake the Inquiry were given to the Committee by the Legislative Assembly on 5 May 2015. However, Members were only appointed to the Committee in June 2015, with our first meeting taking place on 9 June 2015.

The Inquiry enabled the Committee to learn more about the modern business practices of the fuel retail industry as we considered the appropriate legislative regime and law enforcement responses to prevent patrons driving away without paying for fuel. I trust that the recommendations presented within our report will be able to be implemented and the instances of fuel drive-offs will be able to be shown to have reduced as a result.

I wish to thank my Committee colleagues for their considerable contributions during the various Inquiry stages. I also wish to thank the persons and organisations that made valuable contributions through written submissions and in addition those who went on to give further evidence at public hearings. Their contributions enlivened debate within the Committee and ultimately gave great assistance to us in the formulation of our final recommendations and findings.

Finally, the Committee is indebted to the dedicated work of our secretariat staff, Yuki Simmonds, Executive Officer, Andrew Homer, Acting Executive Officer, John Aliferis, Research Officer, and Christianne Castro and Sarah Kate Terry, Committee Administration Officers. Their professional research, drafting and administrative support were very much appreciated by the Members throughout the Inquiry.



Mr Geoff Howard MP
Chairperson
March 2016

Findings and Recommendations

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The nature and extent of fuel drive-offs

FINDING 1: Anecdotal evidence suggests that there may be a connection between fuel thefts and stolen numberplates, but there is insufficient, reliable, data available to assess the extent of that connection. 24

FINDING 2: It is not possible to ascertain the extent to which changes in Victoria Police's practices have led to an increase or otherwise in fuel thefts. 40

FINDING 3: Without accurate data it is not possible for the Committee to make substantive findings about the true nature and extent of fuel drive-offs. 40

RECOMMENDATION 1: That Victoria Police develops an online fuel drive-off incident report form and a withdrawal of complaint form. 41

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The legislative and regulatory environment

RECOMMENDATION 2: That Victoria Police works with its officers to enhance compliance with the 2013 Instruction to investigate fuel drive-offs where there is clear evidence of criminality. This would include reporting mechanisms for drive-offs and the adoption of a clear, consistent response by police to such reports, in particular to repeat fuel drive-offs committed by the same person. 53

FINDING 4: Personal information held by public sector agencies is subject to a number of overlapping legislative protections. These are intended to deal with the significant risks of that data being made available to third parties, matters of equity and more broadly the importance placed on the appropriate use of personal data. Based on these limitations and the potential risks posed by aggressive debt collection agencies pursuing civil debts, it would be difficult to justify the provision of this information to private entities, except by an order of a court. The Committee considers that it is inappropriate to amend Victorian privacy law and VicRoads' enabling legislation in order to allow fuel retailers to access registration information. . . . 63

RECOMMENDATION 3: That the Victorian fuel retail industry, through its representative groups and associations, develop options for an entity based on the British Oil Security Syndicate model. These options should be developed in conjunction with the Victorian Government, Crime Stoppers Victoria and agencies including Victoria Police and VicRoads. 63

5 Preventative measures to address fuel drive-offs

RECOMMENDATION 4: That the Victorian Government facilitates the implementation of a state-wide fuel drive-offs education campaign developed in partnership by Victoria Police, Crime Stoppers Victoria and the fuel retail industry.88

RECOMMENDATION 5: That Victoria Police conducts six monthly forums with the fuel retail industry to discuss the issue of fuel drive-offs. Potential areas of discussion include:

- The need for improved reporting of such incidents to Victoria Police;
- Victoria Police working with industry to explain the complexity of the theft offence;
- The operation of Victoria Police’s 2013 Instruction;
- Industry examples of crime prevention measures;
- Community education campaigns; and
- Other issues relating to forecourt safety.89

RECOMMENDATION 6: That Victoria Police develops a guide for industry on fuel drive-off prevention, with reference to the value of reporting incidents and sharing intelligence when drive-off incidents occur.89

RECOMMENDATION 7: That VicRoads completes and implements its project for access to its publically available database, including access to numberplate matched vehicle description data, stolen numberplates and stolen vehicles. VicRoads should work with Automatic Number Plate Recognition and other technology providers to ensure that this data can be suitably and appropriately accessed.97

RECOMMENDATION 8: That the Victorian Government, in consultation with industry groups and key agencies, considers measures to assist the fuel retail sector to implement prepayment systems to prevent fuel drive-offs.108

Acronyms

AACS	Australasian Association of Convenience Stores
ACAPMA	Australasian Convenience and Petroleum Marketers Association
ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
AFP	Australian Federal Police
AIP	Australian Institute of Petroleum
ANPR	Automatic Number Plate Recognition
BOCSAR	Bureau of Crime Statistics and Research
BOSS	British Oil Security Syndicate
CCTV	Closed-Circuit Television
CEO	Chief Executive Officer
CPOP	Center for Problem-Orientated Policing
cpl	cents per litre
CSV	Crime Stoppers Victoria
EFTPOS	Electronic Funds Transfer at Point of Sale
ERS	Electronic Reporting System
IPP	Import Parity Price
IPR	Integrated Partnership Response
LEAP	Law Enforcement Assistance Program
LGA	Local Government Areas
LPG	Liquefied Petroleum Gas
Mogas 95	Singapore Mogas 95 Unleaded
NEVDIS	National Exchange of Vehicle and Drive Information System
NSW	New South Wales
NZ	New Zealand
OECD	Organisation for Economic Co-operation and Development
PDPA	<i>Privacy and Data Protection Act 2014</i>
PSO	Protective Services Officers
QLD	Queensland
RACQ	Royal Automobile Club of Queensland
RACV	Royal Automobile Club of Victoria
RFID	Radio Frequency Identification
ROA	<i>Regulatory Offences Act 1985 (Qld)</i>

Acronyms

RSA	<i>Road Safety Act 1986</i>
SA	South Australia
TAS	Tasmania
UK	United Kingdom
US	United States of America
VACC	Victorian Automobile Chamber of Commerce
WA	Western Australia

1.1 Inquiry process

The Committee received the Terms of Reference for the Inquiry on 5 May 2015. The Terms of Reference were advertised with a call for submissions in various Victorian-based metropolitan and regional newspapers in June 2015.

A total of 30 submissions were received from government agencies, non-profit organisations, industry representative groups, private individuals and companies. A list of written submissions received is provided in Appendix 1.

Public hearings were held in Melbourne during September and October 2015. A list of persons giving evidence at public hearings is provided in Appendix 2.

The Committee expresses its appreciation to those persons and organisations making submissions and giving evidence. The Committee is grateful to these people and organisations for generously sharing their time, expertise and ideas. Their contribution has provided useful guidance to the Committee in arriving at its recommendations.

1.2 What are fuel drive-offs?

Fuel drive-offs occur when an individual fills their vehicle with fuel at a retail site and drives off without paying for it. Incidents occur when drivers intend to steal and when drivers inadvertently leave the retail site without paying. Anecdotal evidence from fuel retailers, as reported in news articles, suggests that fuel drive-offs occur up to six times a week at some service stations in Victoria.¹ Other fuel retailers report never experiencing a fuel drive-off.² Fuel drive-offs are clearly not unique to Victoria and are experienced in other Australian and overseas jurisdictions.

The Committee received evidence suggesting a correlation between fuel theft and other forms of criminality such as vehicle and numberplate theft. The Committee also heard that there is a correlation between fuel price and failure to pay for fuel, either deliberately or inadvertently.

1 Megan Bailey, 'Police claim staff forced to pay for petrol drive-offs, attendants agree', *Berwick Leader*, viewed 16 June 2015, <www.heraldsun.com.au>.

2 David Jeans, 'Fuel drive-offs cost service stations more than \$10 million a year', *The Courier*, 7 July 2014, viewed 5 June 2015, <www.thecourier.com.au>.

The Committee noted evidence that a proportion of fuel drive-offs were opportunistic, and committed by people who believe that detection and prosecution of the offence is sufficiently remote to make it worth ‘taking the chance’.

The Committee also received submissions and evidence that some people, through sheer oversight, leave the station forgetting to pay for the fuel. In some cases people return some hours or days later to pay for the fuel after realising their oversight.

Throughout the Inquiry process the Committee has been mindful of the varied reasons for fuel drive-offs. It also became apparent to the Committee that there are diverse industry practices, police responses and legislative regimes in place to address the issue among jurisdictions reviewed by the Committee. Chapters four and five explore these issues in some detail.

1.3 Inquiry overview

An early challenge identified by the Committee was to establish, with some precision, the extent of fuel drive-offs, as data is not consistently collected by either industry or enforcement agencies.

In Chapter three the Committee notes that much of the evidence presented to it from the fuel retail industry was anecdotal. The practices and processes for recording fuel drive-offs incidents varied, and in some instances attempts at enforcement were abandoned.

The Committee also notes that there are inconsistencies in the data provided or claimed by the retail industry and the official data available from the Victorian Crime Statistics Agency.

From a public policy perspective, anecdotal evidence and an inconsistent retail industry approach have made it problematic for the Committee to make recommendations in either a legislative or commercial context. For this and a number of other reasons the Committee has not proposed any changes to Victorian legislation.

Another key challenge for the Committee in this Inquiry was determining to what extent the fuel retail industry should be responsible for addressing the problem of fuel drive-offs, and what is and should be the role of the Victorian Government in providing legislative and enforcement solutions.

The Committee also identified differing opinions between the fuel retail industry and Victoria Police concerning the question of whether fuel drive-offs should be dealt with as a civil or criminal matter. The submission by the Australasian

Association of Convenience Stores (AACS) urged the Committee to recommend that petrol theft be treated as a criminal matter, with offenders punished accordingly, rather than allow fuel drive-offs to be treated as a civil matter.³

In his evidence to the Committee, Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, noted some of the complexities surrounding the treatment of fuel drive-offs as civil or criminal matters:

I think the law is quite specific in terms of what we need to prove and there are a lot of people who honestly forget to pay. The other thing is that there are some people who cannot afford to pay and they go in and fill out a notice. That is clearly a civil matter as opposed to theft. What we are looking at is where there are clear offences of theft, where someone has deliberately gone there, they have no intention of paying — they might be in a stolen car or they might be in a car with stolen numberplates and they are not going to pay — and it is quite clear from their behaviour that it is clearly a theft.⁴

Loss-prevention is important when addressing the issue of fuel drive-offs. In the course of the Inquiry the Committee focused on identifying appropriate and effective solutions to prevent fuel drive-offs. The Committee's report also identifies appropriate responses after incidents have occurred. While various retail industry loss prevention solutions are available, the Committee notes that the adoption of these measures is ultimately a matter for the industry to determine.

Finding the right balance for the legitimate commercial concerns of the fuel retailing industry and the enforcement resource implications for Victoria Police is difficult. The absence of simple and immediate solutions are reflected in the Committee's recommendations.

³ Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 11.

⁴ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 75.

Setting the background: The Fuel Retail Sector in Australia

This Chapter provides a brief overview of the fuel retail industry, its structure and the competitive business pressures faced by the industry.

An understanding of the business models adopted by the modern fuel retail sector gives context to the cost of business challenges faced by the retail fuel sector in respect to the problem of fuel drive-offs.

2.1 Nature of the industry

The last three decades has seen a dramatic reduction in the number of retail fuel outlets operating in Australia, from over 20,000 in 1970 to 6,067 in 2014.⁵ The sector has moved to fewer, larger volume retail sites located in strategic high traffic areas.

The contraction in the number of outlet sites has been accompanied by the adoption of mixed business models with retail operators increasingly dependent on revenue from the sale of non-fuel products. These products are broadly characterised as impulse or convenience store purchases.⁶

In its submission, the Australasian Convenience and Petroleum Marketers Association (ACAPMA) made broad observations about the industry in Victoria, including:

- There are currently 1455 petrol convenience outlets in Victoria;
- Approximately 29% (i.e. 422) of these outlets are owned and operated by an oil or grocery major;
- The remaining 71% (i.e. 1033) are independently owned small to medium businesses; and
- It is estimated that 780 of the 1033 independently owned outlets operate under 'traditional franchise' or 'commission agent' arrangements with either an oil company, a grocery company, or a specialist fuel retailer (e.g. 7-Eleven). The remaining 253 outlets market their products independently [Independents].⁷

5 Australasian Association of Convenience Stores (AACS), *State of the Industry Report 2014*, Melbourne, 2014, pp. 3, 7; Australian Institute of Petroleum Ltd, 'Facts about the Australian Retail Fuels Market & Prices', viewed 10 July 2015, <www.aip.com.au>.

6 Australian Institute of Petroleum Ltd, 'Facts about the Australian Retail Fuels Market & Prices', viewed 10 July 2015, <www.aip.com.au>.

7 Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, pp. 2-3.

The diversity of business models found in the fuel retail industry was highlighted in the evidence given by Mr Mark McKenzie, Chief Executive Officer (CEO) of the ACAPMA:

I think something that is not well understood in our industry is just because you see a Shell or a Caltex brand that does not mean it is a Shell or Caltex-owned site that is running. Three out of every four sites, if you look at the latest ACCC report, are owned and operated by small businesses. They can be as small as a family business that has got two to three sites, or they could be quite a moderate to medium-sized business that has 35, 40 or 50 sites.⁸

Similar evidence was given by Mr Geoff Gwilym, Executive Director of the Victorian Automobile Chamber of Commerce (VACC):

Looking back at some of the other submissions made and some of our own research, I think there is an underlying belief in communities that if somebody runs a fuel service station and it has got a convenience store attached to it, they are making a lot of money. When you look at the data, that does not stack up at all. One of the messages that we would like to really impart to this committee is that while some people might feel that some of these figures are low in terms of overall loss of income to a business, these are small to medium businesses. These are not multinational conglomerates.⁹

In its regular reporting on the state of the Australian petroleum industry, the Australian Competition and Consumer Commission (ACCC) monitors changes in the fuel retail sector, including retail business types and the share of retail sales volume by brand among the refiner-wholesalers (BP, Caltex, Mobil and Shell), supermarkets (Coles and Woolworths) and large independent retail chains (7-Eleven, On the Run, and the retail operations of Puma and United). The ACCC does not monitor the non-major branded independent sites.

In 2014 the ACCC reported that in 2013-2014 the majority of fuel retailers in Australia were owned and/or operated by distributors, franchisees, independent retailers or commission agents.¹⁰ Only 8.9 per cent of fuel retailers were directly owned and operated by the refiner-wholesaler with the brand on site. Almost a quarter (24.6 per cent) of fuel retailers were owned and operated by Coles Express and Woolworths. They are the only two companies that directly operate the business on all sites displaying their brand.¹¹

8 Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 14.

9 Mr Geoff Gwilym, Executive Director, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 85.

10 Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014.

11 Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. 26.

Ms Cheryl Collier, Safety and Return-to-Work Specialist at Woolworths, gave evidence concerning the growth of Woolworth's fuel retail outlets across Australia:

We began operating in 1996 with the aim of widening the services we provide to our customers and the community. Our business now consists of 520 petrol sites across the nation. In terms of our Victorian market we have been operating for nearly 20 years, and in that time we have grown to now owning and operating 146 petrol sites... Woolworths will continue to grow each year by approximately 18 to 20 sites nationally, of which 3 to 5 will likely be situated in Victoria.¹²

Over the last decade, the major supermarkets have significantly increased their share of petrol sales, from 10 per cent in 2002-03 to 48 per cent in 2013-14. During the same period the petrol sales share of the large independent retail chains also increased from 6 to 19 per cent.¹³ By contrast, during the same period the combined share of the refiner/wholesalers of branded retail petrol sales reduced from 83 to 33 per cent.¹⁴

The Committee heard that the consolidation of fuel retail sites and the adoption of mixed business models by fuel retailers have resulted in major structural changes to the fuel retail industry over the last few decades. Mr Mark McKenzie, the CEO of the ACAPMA, told the Committee:

... it needs to be recognised here that you have got a very fragmented industry, not only fragmented in terms of the major brands that are actually operating but also we have an inconsistency in the commercial arrangements that operate between the large number of retail businesses I talked about and the fuel marketing company.¹⁵

Mr McKenzie also noted that industry fragmentation has led to reluctance by fuel retailers to exchange sensitive commercial information. It was his view that the reluctance to share commercial information had adversely affected the industry's capacity to measure and record the true impact of the fuel drive-offs problem.¹⁶ The issue of information sharing is further discussed in Chapters four and five.

12 Ms Cheryl Collier, Safety and Return-to-Work Specialist, Woolworths Ltd, *Transcript of evidence*, 5 October 2015, p. 113.

13 Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. xivi.

14 Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. 25.

15 Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 16.

16 Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 16.

2.2 The structure of the fuel retail industry

The business model of fuel retailers could be characterised as one built on high volume sales with low unit/margin returns.¹⁷ The Committee understands that there is a perception in the community that fuel retailers are highly profitable¹⁸ and an associated concern from the ACCC is that some retailers may engage in business practices to the detriment of consumers.¹⁹ The Committee notes that frequent media publicity of the ACCC's scrutiny of the industry has amplified this perception in the community:

Few industries attract the attention of the general public like the petrol industry does. This is for good reason: petrol costs represent a large share of household expenses; prices are printed on large signs, are highly visible and fluctuate wildly day-to-day in ways that appear to be independent of wholesale prices; and there is a high degree of retail price dispersion across stations despite the fact that petrol is a relatively homogenous product. For these reasons anti-trust authorities like the Australian Competition and Consumer Commission (ACCC) closely monitor the industry, and consumers worry that companies are colluding.²⁰

2.2.1 Key influences and components of fuel prices

Fuel retailers have limited discretion regarding fuel pricing, which is largely influenced by factors outside their control.

Influences

Retail fuel prices in Australia are primarily influenced by the international price of refined fuel (which largely reflects crude oil prices) and the A\$-US\$²¹ exchange rate.²²

The key petrol pricing benchmark for Australia is the price of refined petrol in the Asia-Pacific region, referred to as Singapore Mogas 95 Unleaded (Mogas 95). Singapore is the major trading centre in Asia for petroleum products and the closest major refining and distribution centre to Australia.²³

17 Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 16; Mr Aslam Kazi, Member and Proprietor of BP Clayton South, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 88; Ms Cheryl Collier, Safety and Return-to-Work Specialist, Woolworths Ltd, *Transcript of evidence*, 5 October 2015, p. 113; Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 3; Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 1.

18 Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 3.

19 Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. ix.

20 David Byrne, 'Fuelling Australia: Structural Changes and New Policy Challenges in the Petrol Industry', *Australian Economic Review*, vol. 47, no. 4, 2014, p. 1.

21 Note: The international crude oil index is expressed in USD.

22 Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. xxv.

23 Australian Institute of Petroleum Ltd, 'Facts about the Australian Retail Fuels Market & Prices', viewed 10 July 2015, <www.aip.com.au>.

The price of the Mogas 95 is largely based on crude oil pricing benchmarks, particularly the Tapis, Brent and Dubai.²⁴ Crude oil is the major input into the production of refined fuel and accounts for a significant proportion of total refinery costs.²⁵

As Australia is a significant importer of petroleum products, volatility in the crude oil market has a significant effect on wholesale and retail prices. Diesel pricing in Australia is similarly driven by the international benchmark price, the Singapore Gasoil, as well as crude oil prices.²⁶

The A\$-US\$ exchange rate also has a significant influence on fuel prices. Variables such as commodity prices, economic developments in major trading partner nations, and competitive suppliers coming on stream are key factors that affect the exchange rate at any point of time.

Components

The price of unleaded petrol in 2013-14, in the five largest state capital cities was comprised of the following cost components:

- 54 per cent Mogas 95 (for refined petrol);
- 34 per cent government taxes; and
- 12 per cent other costs associated with transporting and selling fuel.²⁷

The price of diesel had a similar distribution of cost components in 2013-14.²⁸

The ACCC defined 'other costs' associated with transporting and selling fuel to include:

... the degree of competition at the wholesale and retail levels (including the regular price cycles that occur in the largest capital cities), the level of excise and taxes, international and domestic freight costs, the fuel quality premium (which includes a component for producing petrol to Australian fuel quality standards), and other wholesale and retail costs and margins.²⁹

²⁴ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, pp. 31, 32.

²⁵ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, pp. xxxi, 161.

²⁶ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. 64.

²⁷ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. 59.

²⁸ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. 66.

²⁹ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. 52.

Wholesale and retail costs and margins

The wholesale price of petrol in Australia accounts for a small but important part of the retail fuel price. It is largely based on the Import Parity Price (IPP) and government taxes, and to a smaller extent, the costs associated with storing and handling fuel once it arrives in Australia and prior to its distribution to the domestic market. It may also include a small wholesale margin or profit.³⁰

In 2013-14, the IPP and government taxes accounted for approximately 97 per cent of the wholesale price.³¹

Given Australia's increased reliance on refined petrol imports the IPP has become a more significant influence on wholesale pricing in recent years. Australian refineries have increasingly been replaced by import terminals.³² Refiner-wholesalers such as BP, Caltex and Shell continue to supply refined petrol from domestic refineries.

The IPP comprises three main components:

- The benchmark price of the petrol at the main source of imports;
- Any quality premium required to account for the difference between the price of petrol refined to Australian fuel standards and petrol meeting the benchmark specifications; and
- Costs that would be incurred in importing petrol, such as freight, wharfage and other incidental costs.³³

Overall, wholesale margins and operational costs of fuel in Australia account for around five cents per litre (cpl) of petrol.³⁴ There are a number of other retail costs such as road freight, administration and marketing, and retail site operational costs (such as wages, rent and utilities), as well as a retail profit margin. These costs collectively account for about five per cent of the retail fuel price, which is paid to fuel retailers to cover these costs.³⁵

Price cycles and local area competition

Fuel price cycles also affect retailer fuel pricing. Price cycles refer to the practice of moving retail fuel prices from a low to a high point and then to a subsequent low point and repeating the cycle in a regular, if not always predictable pattern. The practice bears little or no correlation to import pricing.

³⁰ Australian Institute of Petroleum Ltd, 'Facts about the Australian Retail Fuels Market & Prices', viewed 10 July 2015, <www.aip.com.au>.

³¹ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. 39.

³² David Byrne, 'Fuelling Australia: Structural Changes and New Policy Challenges in the Petrol Industry', *Australian Economic Review*, vol. 47, no. 4, 2014, p. 1.

³³ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. 41.

³⁴ Australian Institute of Petroleum Ltd, 'Facts about the Australian Retail Fuels Market & Prices', viewed 10 July 2015, <www.aip.com.au>.

³⁵ Australian Institute of Petroleum Ltd, 'Facts about the Australian Retail Fuels Market & Prices', viewed 10 July 2015, <www.aip.com.au>.

The ACCC refers to the low points as a ‘trough’, which it defines as having occurred when:

- the increase in price from the trough to the peak is 3 per cent or more of the trough price; and
- the decrease in price to the subsequent trough is also 3 per cent or more of the first trough price.³⁶

The ACCC noted in 2014 that in the eastern capital cities of Melbourne, Sydney and Brisbane, price cycles have increased in variability and duration in recent years. In the first half of 2014, the average price cycle lasted over 18 days, whereas in 2009, the average length of a price cycle was seven days.³⁷

The Committee noted that longer price cycles can disadvantage many consumers, who typically purchase petrol on a weekly basis and are likely to time this purchase at or near the trough price.³⁸

When price cycle durations are longer they diminish the ability of consumers to time their fuel purchase for the lowest price. The Committee received evidence that in some capital cities, such as Perth, there are consistently cheap days of the week on which to buy petrol, however, this practice was uncommon in the eastern capital cities.³⁹

The Committee noted that the practice of variable price cycles has contributed to concerns in the community about fuel retailers.⁴⁰ These concerns were evident in 2014 when the ACCC commenced proceedings in the Federal Court of Australia against the company ‘Informed Sources’ and several of the major fuel retailers⁴¹ for contravening section 45 of the *Competition and Consumer Act 2010*.⁴²

In the proceedings the ACCC submitted that:

... the information sharing arrangements between Informed Sources and the petrol retailers, through a service provided by Informed Sources, allows those retailers to communicate with each other about their prices, and that these arrangements had the effect or likely effect of substantially lessening competition in markets for the sale of petrol in Melbourne.

³⁶ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. 84.

³⁷ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. 88.

³⁸ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p.viii.

³⁹ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. 90.

⁴⁰ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, pp. viii, xxviii.

⁴¹ Note: These petrol retailers are BP Australia Pty Ltd, Caltex Australia Petroleum Pty Ltd and Eureka Operations Pty Ltd (trading as Coles Express, Woolworths Ltd and 7-Eleven Stores Pty Ltd).

⁴² Note: Section 45 prohibits contracts and arrangements that have the effect or likely effect of reducing competition. See *Competition and Consumer Act 2010* (Cth).

The ACCC alleges that the arrangements were likely to increase retail petrol price coordination and cooperation, and were likely to decrease competitive rivalry.⁴³

Price cycles may be less prevalent in regional areas.⁴⁴ Regional fuel prices are influenced by a number of factors that result in higher fuel prices than those prevailing in the major capital cities.⁴⁵

The ACCC noted that these factors include:

- lower levels of competition, particularly in small rural towns, may result in fewer incentives for fuel retailers to lower their prices;
- lower volumes of petrol sold due to fewer customers can result in prices remaining high, generally because the costs of running a retail site remain unchanged. Similarly, fewer convenience store sales may result in retailers increasing petrol prices to cover running costs;
- greater costs to transport fuel from fuel terminals to regional locations, including costs associated with storing fuel in regional cities prior to it being supplied to retail sites; and
- slower lags in price movements in regional areas compared to the capital cities due to lower volumes of petrol sales in these areas and therefore a slower replenishment of fuel stocks by wholesalers and retailers. Consequently, regional fuel prices take longer to reflect changes in international prices compared to prices in the five largest capital cities. It is also often the case that some regional locations are less responsive to changes in international prices.⁴⁶

2.3 Fuel prices

The annual average retail price of petrol in the major state capitals in the period 2013-14 was 150.6 cpl (cents per litre). This constituted the third highest annual average retail price on record. The highest recorded average retail price was 157.3 cpl in 2007-08.⁴⁷ In its 2014 report, the ACCC reported that while the average retail price of fuel during 2014 was 149 cpl, fuel prices had fallen considerably by the end of that period.⁴⁸ Based on data from the Australian Institute of Petroleum, retail prices have continued to fall throughout 2015. For the week ending 20 September 2015, the national average retail petrol price of fuel was 129.7 cpl. In Victoria the retail price was slightly lower at 127.0 cpl.⁴⁹

⁴³ Australian Competition & Consumer Commission, 'ACCC takes action against Informed Sources and petrol retailers for price information sharing', viewed 24 September 2014, <www.accc.gov.au>.

⁴⁴ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. xxxix; Australian Institute of Petroleum Ltd, 'Facts about the Australian Retail Fuels Market & Prices', viewed 10 July 2015, <www.aip.com.au>.

⁴⁵ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. xxxviii.

⁴⁶ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, pp. xi, 74.

⁴⁷ Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. 50.

⁴⁸ Australasian Association of Convenience Stores (AACS), *State of the Industry Report 2014*, Melbourne, 2014, p. 23.

⁴⁹ Australian Institute of Petroleum Ltd, 'Weekly Petrol Prices Report', viewed 28 September 2015, <www.aip.com.au>.

The Committee observes that despite community perceptions that fuel prices are high, international comparisons suggest that Australian fuel prices are lower than in comparable developed economies, particularly those in Europe. This is largely due to relatively low taxation on fuel. In Australia, government taxes accounted for 34 per cent of the retail fuel price (June 2014 quarter). By comparison the average taxation component in the Organisation for Economic Co-operation and Development (OECD) was over 50 per cent.⁵⁰ Based on the June quarter 2015, Australia's retail petrol prices and taxes were the fourth lowest among the OECD countries.⁵¹

2.3.1 Profits of fuel retailers

Retail profits are highly volatile due to the nature of the fuel market, and retail profits only account for a small proportion of the retail price. The ACCC reported that in 2013-14, the real unit net profit on fuel was 1.63 cpl, down from 1.85 cpl in 2012-13. However, this is higher than the average net profit over the past nine years of 1.3 cpl. Non-fuel and convenience store sales were reported to make up less than 20 per cent of overall revenue but accounted for more than 40 per cent of retail profits.⁵²

Some industry commentators have contended that due to the volatile, challenging and changing nature of fuel retailing, the industry's reliance on convenience stores and car-maintenance services for ongoing profitability is now a key feature of fuel retailers.⁵³ According to the Australian Retailers Association, fuel retailers often experience the market trend of a negative correlation between fuel prices and the amount spent on non-fuel goods. Consequently, when the price of fuel increases, the purchase of non-fuel goods typically decreases.⁵⁴

The Australian Institute of Petroleum suggests that the fuel retail industry as a whole earned a net profit at an annual average rate of 2.1 cpl of fuel over the past nine years, making it the least profitable industry in the Australian retail market.⁵⁵

50 Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. xxvi.

51 Australian Institute of Petroleum Ltd, 'Weekly Petrol Prices Report', viewed 28 September 2015, <www.aip.com.au>.

52 Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. 150.

53 Andrew Sadauskas, 'Diversified offerings in store for fuel retailers', viewed 25 September 2015, <www.smartcompany.com.au>; Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 3; Australian Institute of Petroleum Ltd, 'Facts about the Australian Retail Fuels Market & Prices', viewed 10 July 2015, <www.aip.com.au>.

54 Australian Retailers Association, *State of the Independent Retail Sector 2010*, Deloitte Touche Tohmatsu, Melbourne, 2010, p. 19.

55 Australian Institute of Petroleum Ltd, 'Facts about the Australian Retail Fuels Market & Prices', viewed 10 July 2015, <www.aip.com.au>.

2.4 Competition and other business pressures

2.4.1 Shopper docket fuel discounts

A notable development in the fuel retail industry has been the reduction in fuel retail sites, falling from around 20,000 in 1970 to just over 6,060 in 2014.⁵⁶ This reduction has corresponded with a transition to higher volume outlets and an increase in major supermarket owned and operated outlets. By share of volume, Coles and Woolworths are the largest fuel retailers in Australia. Independent fuel retailers regard this development as a major challenge, with 81 per cent of independent retailers surveyed in 2010 suggesting that competition from major groups is either the most significant or a major challenge to their business.⁵⁷ Of particular concern amongst independents is the capacity of supermarket owned fuel retail sites to use their integrated network of businesses to cross-subsidise fuel.⁵⁸

An example of cross-subsidisation is the use of shopper docket fuel discount offers. The practice enables Coles and Woolworths to charge fuel at prices below marginal cost. This business model increases in-store profitability in the short-term and builds brand loyalty in the long-term. Shopper dockets are commonly identified as detrimental to the competitiveness of the fuel industry, particularly among smaller fuel retailers that are not associated with the large fuel chains.⁵⁹

In his article, *Fuelling Australia: Structural Changes and New Policy Challenges in the Petrol Industry*, Mr David Byrne noted that:

The... long run implications of supermarkets' use of shopper dockets likely would result in collateral damage among firms who only run petrol stations and do not have large supermarket chains to promote and support their petrol sales. In the long run these companies are likely unable to set near or below cost after-docket retail prices and stay in business; they simply do not have a supermarket to make-up for the losses at the pump. Thus a shopper docket price war would appear to have the same impact as predatory pricing by Coles and Woolworths where smaller competitors are forced out of business.⁶⁰

The Committee noted that in early 2012 the ACCC commenced an inquiry into the competition implications of shopper docket fuel discounts practice. In December 2013 it completed its inquiry and consequently accepted a

⁵⁶ Australian Institute of Petroleum Ltd, 'Facts about the Australian Retail Fuels Market & Prices', viewed 10 July 2015, <www.aip.com.au>; Australasian Association of Convenience Stores (AACS), *State of the Industry Report 2014*, Melbourne, 2014, pp. 3, 7.

⁵⁷ Australian Retailers Association, *State of the Independent Retail Sector 2010*, Deloitte Touche Tohmatsu, Melbourne, 2010, p. 20.

⁵⁸ Australian Retailers Association, *State of the Independent Retail Sector 2010*, Deloitte Touche Tohmatsu, Melbourne, 2010, p. 20.

⁵⁹ David Byrne, 'Fuelling Australia: Structural Changes and New Policy Challenges in the Petrol Industry', *Australian Economic Review*, vol. 47, no. 4, 2014, p. 11.

⁶⁰ David Byrne, 'Fuelling Australia: Structural Changes and New Policy Challenges in the Petrol Industry', *Australian Economic Review*, vol. 47, no. 4, 2014, p. 11.

voluntary, court-enforceable undertaking from Coles and Woolworths to cease offering fuel discounts that are wholly or partially funded by any part of their business other than their fuel retailing business.⁶¹

The ACCC observed that from 1 January 2014, Coles and Woolworths undertook to limit fuel discounts linked to supermarket purchases to a maximum of four cpl. However, notwithstanding these undertakings, Woolworths continued to offer bundled fuel discounts of eight cpl and in early February 2014, Coles offered bundled fuel savings of 14 cpl.⁶²

In response, the ACCC commenced proceedings against Coles and Woolworths on the basis that these offers breached the earlier voluntary undertaking. In April 2014, the Federal Court determined that Woolworths' earlier bundled discount of eight cpl was in breach 'because the discount was only available to a customer who had made a qualifying supermarket purchase'.⁶³ However, the Court dismissed the other allegation against Coles because 'only 4 cents of the total bundled discount of 14 cpl was contingent on a qualifying supermarket purchase'.⁶⁴

The ongoing practice of major retailers offering shopper docket fuel discounts is of continuing concern for smaller fuel retailers who are unable to cross-subsidise fuel from some other division of their business.

The Committee notes that the Victorian Government intends to introduce regulations later this year prohibiting the advertising of the discounted fuel price at retail fuel stations. The regulations will require fuel retailers to show the current, un-discounted price of fuels on their advertising boards. The regulations do not abolish the shopper docket system. A fuel retailer may be fined up to \$3,000 for a contravention of the prohibition. The new regulations are intended to come into operation as of 1 December 2016.⁶⁵ The Committee understands that similar prohibitions are already in place in New South Wales, Queensland and South Australia.

2.5 Concluding remarks

Fuel retail business models are characterised by high volume sales and low profit margins. Consequently the effect of fuel theft is highly concerning to the industry and in particular to smaller and medium sized businesses.

61 Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, pp. 3, 4.

62 Australian Competition & Consumer Commission, 'Court finds Woolworths breached fuel shopper docket undertaking but later offers by Coles and Woolworths did not', viewed 21 August 2015, <www.accc.gov.au>.

63 Australian Competition and Consumer Commission (ACCC), *Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*, Canberra, 2014, p. xix.

64 Australian Competition & Consumer Commission, 'ACCC takes action against Informed Sources and petrol retailers for price information sharing', viewed 24 September 2014, <www.accc.gov.au>.

65 The Hon Jane Garrett MP, *Labor Government to ban confusing petrol discount display boards* media release, Minister for Emergency Services, Minister for Consumer Affairs, Gaming & Liquor Regulation 21 February 2016.

The Committee is aware that larger sized businesses, including the major supermarkets, treat stolen fuel as an expected business cost, and while this may also apply more generally to the industry as a whole, smaller retailers are less able to absorb such costs.

The major fuel retailer groups are also more likely to use their integrated network of businesses to cross-subsidise fuel, whereas smaller retailers treat fuel as a loss leader as it does not generate the highest gross margin but it does attract other profitable sales.⁶⁶ Many of these retailers have become heavily reliant on additional business components, such as convenience store items, to remain profitable and ultimately survive as a business. The Committee notes that this also influences the approach fuel retailers take to address the issue of fuel drive-offs. As discussed in Chapter five, the Committee received strong evidence from the industry indicating a clear reluctance to employ preventative measures to reduce the occurrence of fuel drive-offs that might also negatively affect the fuel retailer's capacity for instore sales. While the Committee understands the competitive pressures faced by industry, it also believes that the industry is best placed to lead in seeking to minimise the effect of fuel drive-offs.

⁶⁶ Australian Retailers Association, *State of the Independent Retail Sector 2010*, Deloitte Touche Tohmatsu, Melbourne, 2010, p. 19.

3

The nature and extent of fuel drive-offs

3.1 Introduction

This Chapter examines the nature and extent of fuel drive-offs in Victoria and in other jurisdictions. It draws on police and industry data to understand the extent of fuel drive-offs, who commits these and why, as well as their cost and links to crime more generally.

3.2 The incidence and prevalence of fuel drive-offs in Victoria

This section is based on data provided to the Committee by the Victorian Crime Statistics Agency which in turn extracts data from Victoria Police's Law Enforcement Assistance Program (LEAP) database. This database draws on information from criminal complaints from the public, in this case from fuel retailers, and includes information about the investigation and enforcement action taken by Victoria Police in relation to these complaints.

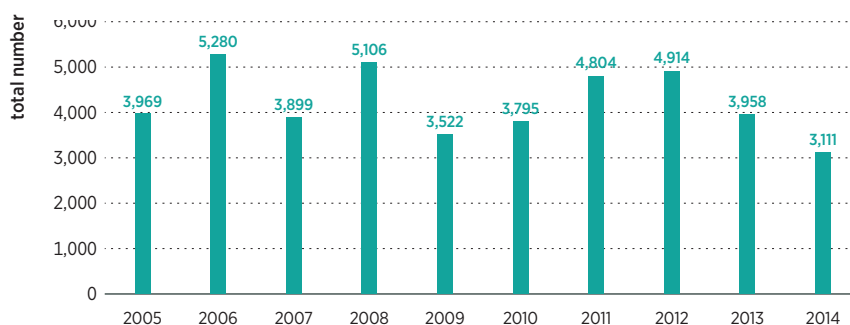
The data provided to the Committee from the LEAP database is subject to a number of limitations. The LEAP data only relates to complaints made to Victoria Police, and the available enforcement data refers to arrests and police enforcement action rather than prosecution outcomes, which is not held in the LEAP, and would apply only to proven cases of fuel theft.

A further limitation of the data is that the LEAP database relies on a person making a police complaint. On that basis, it is not possible to confirm whether the complaints in the LEAP database accurately reflect the total number of fuel drive-offs, nor how many of these incidents were criminal in nature.

3.2.1 Victorian crime statistics

Incidence of fuel drive-offs

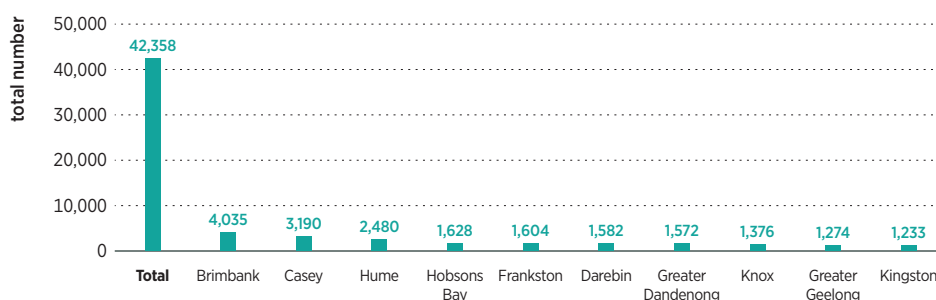
The reported incidence of fuel drive-offs in Victoria has not, at least statistically, been linear or consistent in terms of an easily identifiable trend. Figure 3.1 shows that there have been significant fluctuations in the number of fuel drive-off incidents from year to year, with 2006 and 2008 recording the largest number. In 2014 the fewest fuel drive-offs were recorded since 2005, which may have been influenced following a change to the approach to fuel drive-offs by Victoria Police, a point that is discussed later in this section.

Figure 3.1 Fuel drive-off incidents: 2005-2014Source: Victorian Crime Statistics Data⁶⁷

Separate analysis of the trend in fuel drive-offs was provided to the Committee by Victoria Police. Fuel drive-offs recorded under the theft category in the Victoria Police Crime Statistics Official Release 2013/14 accounted for 10 per cent of all theft offences recorded each year.⁶⁸ According to this statistical release, the rate of petrol theft decreased between the periods of 2005/06 and 2010/11, and again in the last two financial years. In 2013/14, the number of petrol drive-off offences recorded was 4,017, the lowest year in the last decade, and 7.1 per cent lower than the previous lowest total recorded in 2009/10 (4,324).⁶⁹

Location of fuel drive-offs

While fuel drive-offs occur throughout Victoria, some Local Government Areas (LGA) account for a disproportionate number of complaints. Of the 78 LGA covered by the LEAP database, the top ten are predominantly based in metropolitan Melbourne, with the top three, Brimbank, Casey and Hume, accounting for almost half of all recorded fuel drive-offs. The prevalence of fuel drive-offs in these three LGA is compelling.

Figure 3.2 Petrol drive-offs by top 10 Local Government Areas over the last 10 yearsSource: Victorian Crime Statistics Data⁷⁰

⁶⁷ Crime Statistics Agency, *Correspondence: Victorian Crime Statistics Data Request*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 3 July 2015.

⁶⁸ Victoria Police, *Victoria Police Crime Statistics Official Release 2013/2014*, Victoria, Australia, 2014, p. 45.

⁶⁹ Victoria Police, *Victoria Police Crime Statistics Official Release 2013/2014*, Victoria, Australia, 2014, p. 45.

⁷⁰ Crime Statistics Agency, *Correspondence: Victorian Crime Statistics Data Request*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 3 July 2015.

A number of Victorian LGAs also recorded an extremely low number of complaints. Over the 2005 to 2014 period, Yarriambiack, Swan Hill and the Northern Grampians recorded five incidents, Buloke (near Swan Hill) recorded four, Towong and Ararat recorded three, the West Wimmera recorded two, while Golden Plains recorded none.⁷¹

During the public hearings the Committee also received information on the effect that physical characteristics of fuel retail sites can have on the prevalence or likelihood of a fuel drive-off occurring in an LGA. Mr Jeff Rogut, Chief Executive Officer (CEO) of the Australasian Association of Convenience Stores (AACS), made the following observations on this point:

... generally even the police statistics bear out that there are certain parts of Melbourne that are certainly more prevalent to petrol theft than others. Sites that have easy access in and out on a freeway, where they are not encumbered in terms of getting out, also have a slightly higher incidence. Petrol station design is also designed to try to not make it easy for them just to get in and out. There are certain parts of Melbourne particularly that are more prevalent. In country areas it is not as prevalent as in the metro area. Just to summarise, it is metro predominantly. Certain areas within metro are worse than others, and access or egress from the site can also be a factor.⁷²

Mr Mark McKenzie, CEO of the Australasian Convenience and Petroleum Marketers Association (ACAPMA) concurred with this view noting that:

... there is real disparity in terms of the frequency of incidents in some metropolitan areas versus those in outlying and regional areas. It would be wrong, though, to assume that we have a very strong demarcation between metro sites that have high frequency and regional centre sites like Shepparton, Bendigo or Ballarat, where there is not theft occurring, because at some of those sites the frequency across the forecourts exceeds what you are getting at some metropolitan sites.⁷³

He went on to add that:

It would also be wrong to assume that this is an outer metropolitan problem, because places like Albert Park and Port Melbourne are experiencing fairly significant levels of theft that would suggest that this is not something that can be readily tracked to the socio-economic status of the community in which we are serving. That may well be because you have people who are passing through those areas; that may say it is not residents.⁷⁴

⁷¹ Crime Statistics Agency, *Correspondence: Victorian Crime Statistics Data Request*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 3 July 2015.

⁷² Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 6.

⁷³ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 15.

⁷⁴ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 15.

Time, day and month of incidents

According to the LEAP data, fuel drive-offs occur throughout the day, but are most heavily concentrated in the 10am to 12am time period.⁷⁵ This may reflect the opening times of petrol stations (for example, there may be fewer fuel retailers open in the early hours of the morning). Interestingly, over this time period there appears to be no single day, or days, on which fuel drive-offs consistently occur more often than others.⁷⁶ While there is at least one exception to this observation (for example, in 2006 Saturday was the day on which most fuel drive-offs occurred), generally incidents occurred throughout all the days of the week.⁷⁷

Similarly, there appears to be little distinction between the months in which the incidents occur. Although some variation exists between the years covered by the dataset, no single month or season over the 2005 to 2014 period was more likely to have experienced an increase or decrease in the number of fuel drive-offs.

Age and gender of those who commit fuel drive-offs

The vast majority of those who commit fuel drive-offs are men aged between 15 and 34. While women comprise a much smaller cohort of offenders, those that commit fuel drive-offs are most often aged between 20 and 29.⁷⁸ Of the 2,266 recoded incidents in the period 2012-2014 (earlier data was not available), men comprised 81 per cent of the total.⁷⁹

Police Enforcement

The 2005 to 2014 police enforcement data compiled in Figure 3.3 below clearly indicates that the vast majority of fuel drive-offs, 34,153 incidents, remain unsolved.⁸⁰ During this period Victoria Police issued one infringement notice, but regularly withdrew complaints. The Committee notes that there is no distinct pattern in the enforcement action taken from year-to-year, which may reflect varying policing approaches and practices, as well as inconsistent reporting of incidents and the limited availability of evidence to proceed with enforcement action (usually prosecutions).

⁷⁵ Crime Statistics Agency, *Correspondence: Victorian Crime Statistics Data Request*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 3 July 2015.

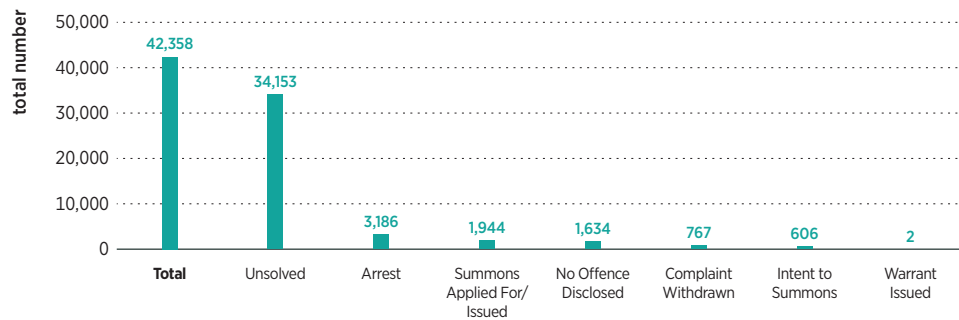
⁷⁶ Crime Statistics Agency, *Correspondence: Victorian Crime Statistics Data Request*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 3 July 2015.

⁷⁷ Crime Statistics Agency, *Correspondence: Victorian Crime Statistics Data Request*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 3 July 2015.

⁷⁸ Crime Statistics Agency, *Correspondence: Victorian Crime Statistics Data Request*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 3 July 2015.

⁷⁹ Crime Statistics Agency, *Correspondence: Victorian Crime Statistics Data Request*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 3 July 2015.

⁸⁰ Crime Statistics Agency, *Correspondence: Victorian Crime Statistics Data Request*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 3 July 2015.

Figure 3.3 Victoria Police enforcement investigation status: 2005-2014⁸¹

Source: Victorian Crime Statistics Data⁸²

During a public hearing Victoria Police provided additional information to the Committee about its enforcement performance in the context of fuel drive-offs. Referring to the 2011/12 year, Mr Stephen Fontana, Assistant Commissioner, Crime Command at Victoria Police, noted that police investigated:

... 5932 reported fuel thefts, which represented a 15.2 per cent increase in thefts on the previous year. Annually these investigations cost Victoria Police 17,796 staff hours, or 2224 shifts per year — in excess of \$3.3 million.⁸³

Interestingly, according to Assistant Commissioner Fontana, during the period following the introduction of the Victoria Police Instruction which dealt with how police are to treat fuel drive-offs (further discussed in Chapter four), there was:

... a reduction in the number of offences officially reported; probably dropping from 4900 down to 3111 offences in the 12-month period to December 2014. That is still 3111 offences that we have investigated.⁸⁴

Of the 3,111 offences investigated, Victoria Police increased its resolution rate by about five per cent, which was regarded as 'quite significant'.⁸⁵ Specifically, Assistant Commissioner Fontana stated that:

From my point of view, a 5 per cent increase in arrests is quite significant in terms of achievements, which means the policy is working in that regard in terms of us getting better quality data and information from the victims in these cases, or the station providers.⁸⁶

⁸¹ Note: The enforcement categories that are not included in the graph are: Cautions (23 cases); other (22 cases); offender processed (19 cases); notice to appear (1 case); and penalty infringement notice (1 case). These account for 66 cases in total. Crime Statistics Agency, *Correspondence: Victorian Crime Statistics Data Request*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 3 July 2015.

⁸² Crime Statistics Agency, *Correspondence: Victorian Crime Statistics Data Request*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 3 July 2015.

⁸³ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 71.

⁸⁴ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 72.

⁸⁵ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 72.

⁸⁶ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 74.

Fuel drive-offs and criminality

In both submissions and at public hearings, the Committee received evidence that fuel drive-offs were linked to other crimes, most often the theft and use of numberplates. There was also concern among participants that people undertaking fuel drive-offs did, or could, pose a risk due to risky driving behaviour aimed at avoiding detection or capture.

Numberplate theft

The issue of numberplate theft in relation to fuel drive-offs was addressed by a number of Inquiry participants. Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police explained that:

... we have a large number of thefts of numberplates. There is a correlation between thefts of numberplates and petrol drive-offs and a range of other offences, including tollway offences, theft of vehicles and a whole range of activity that takes place.⁸⁷

The Victoria Police submission noted that a 10 year trend analysis identified a correlation between fuel prices, fuel drive-offs and numberplate thefts.⁸⁸ Mr Brian Negus, General Manager, Public Policy at the Royal Automobile Club of Victoria (RACV), noted that there was:

... a 40 per cent jump in Banyule and Nillumbik during the past year in numberplate theft, so it gave a pretty good indication that it is on the increase year on year, and indeed a further statistic showed that 41 numberplates were stolen during May of this year, which is 12 more than for the same period last year. One maybe thinks a 12 in 41 increase is not a big number⁸⁹... I guess anecdotal comments we have had from Victoria Police, it does indicate the importance of the issue... Our concern is that that sort of evidence, if you add it together — not just the 41 on its own, because I agree it is a relatively small number, as I mentioned when I talked about that before — that sort of series and combination of things we have heard about and evidence we have seen does say this is a matter that is not going to go away.⁹⁰

However, Mr Negus also cautioned:

That is the data we actually have not seen, and that makes it difficult, therefore, to make a direct judgement on which way the police really should jump on this.⁹¹

APCO Service Stations suggested that the links to other crimes, and specifically, numberplates had increased threefold due to the change in the Victoria Police fuel drive-off instruction.⁹²

⁸⁷ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 71.

⁸⁸ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁸⁹ Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 46.

⁹⁰ Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 48.

⁹¹ Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 46.

⁹² APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 2.

The Committee sought further information from industry stakeholders about the links between fuel drive-offs and numberplate theft. Unfortunately, while fuel retailers do provide information to Victoria Police when they suspect a vehicle has used stolen numberplates, they do not appear to have access to information or statistics that link such crimes with fuel drive-offs.⁹³ Mr Jeff Rogut CEO of the AACS, further explained the experiences of AACS members:

We do know that some of our retailers have provided information to Victoria Police on the understanding that these have been stolen plates or potentially. Victoria Police have come back clearing it, but yet the vehicle and the plates have been stolen. Again, we do not collect that information.⁹⁴

A further issue associated with the use of stolen numberplates is said to be the large number of unaccounted for numberplates that exist in Victoria and the lack of a stolen numberplate registry. This in itself may pose issues in quantifying such a link, and is further discussed in Chapters four and five.

A definitive link between the use of stolen numberplates and fuel theft has been identified in New South Wales (NSW). According to a study of fuel drive-offs in NSW by the NSW Bureau of Crime Statistics and Research (BOCSAR), 20 per cent of fuel drive-offs involved a 'form of vehicle registration misrepresentation' which BOCSAR suggested was a 'well known tactic to avoid identification when stealing fuel'.⁹⁵ A small cohort of fuel drive-offs studied by BOCSAR involved stolen vehicles (four vehicles out of a total of 396).⁹⁶ However, as with Victoria, NSW Police experienced difficulty in gathering information about these types of offences, due in part to faulty Closed-Circuit Television (CCTV) systems, or where information about the alleged offender, vehicle and other identifying information could not be identified by fuel retail attendants.⁹⁷ On that basis, BOCSAR concluded that the 'frequency of vehicle and registration misrepresentation [in NSW] is likely to be higher than the recorded 20 per cent'.⁹⁸

Due to the limitations in available police data, and the absence of other data such as that collected by industry, it is difficult for the Committee to statistically quantify the extent of the link between numberplate theft and its involvement in fuel drive-offs. Nevertheless, Victoria Police, the RACV and APCO Service Stations suggested to the Committee that there was a link. Given the views of these Inquiry participants, and the research undertaken in NSW, it seems probable that there is a link between fuel drive-offs and stolen numberplates.

⁹³ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 7.

⁹⁴ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 7.

⁹⁵ Wayne Macdonald and Jacqueline Fitzgerald, 'Understanding fraud: The nature of fraud offences recorded by NSW Police', *Contemporary Issues in Crime and Justice*, 2014, p. 9.

⁹⁶ Wayne Macdonald and Jacqueline Fitzgerald, 'Understanding fraud: The nature of fraud offences recorded by NSW Police', *Contemporary Issues in Crime and Justice*, 2014, p. 5.

⁹⁷ Wayne Macdonald and Jacqueline Fitzgerald, 'Understanding fraud: The nature of fraud offences recorded by NSW Police', *Contemporary Issues in Crime and Justice*, 2014, p. 9.

⁹⁸ Wayne Macdonald and Jacqueline Fitzgerald, 'Understanding fraud: The nature of fraud offences recorded by NSW Police', *Contemporary Issues in Crime and Justice*, 2014, p. 9.

FINDING 1: Anecdotal evidence suggests that there may be a connection between fuel thefts and stolen numberplates, but there is insufficient, reliable, data available to assess the extent of that connection.

Links to other crimes

The Committee was unable to assess the link between fuel drive-offs and crimes other than numberplate theft because police data does not link all the offences a defendant is charged or prosecuted with, making it difficult to search for such cases. However, anecdotal evidence was received by the Committee in relation to threats to safety. Mr Jeff Rogut of the AACS shared with the Committee fuel retailer experiences in Queensland and overseas, where attempts to prevent a fuel drive-off had led to injury and, in Canada, the death of fuel retail employees.⁹⁹ Mr Rogut felt that such incidents were happening regularly,¹⁰⁰ a claim that the Committee was not able to ascertain or assess statistically in Victoria. Mr Rogut also suggested there was a link between fuel drive-offs and robberies, noting that:

... it is only anecdotal and some of our members are saying that, and as they have seen petrol theft go up, they have seen robberies rise as well.¹⁰¹

Mr Rogut noted, however, that he did not:

... have empirical evidence that it is linked, only anecdotal evidence that as petrol theft has risen, so have some of the other robberies.¹⁰²

The Canadian experience with fuel drive-offs was also brought to the Committee's attention by Crime Stoppers Victoria (CSV). It noted that in 2015 a Centex fuel station employee in Calgary, Canada died after she was run over at the station while trying to stop the driver of a stolen truck who had stolen fuel.¹⁰³ The Committee identified a number of tragic deaths in Canada where attempts to prevent fuel drive-offs had led to the deaths of console operators.¹⁰⁴

Inquiry participants also raised safety concerns surrounding fuel drive-offs and the potential risks posed by vehicles driven at high speed to avoid capture.¹⁰⁵ Mr Jeff Rogut of the AACS highlighted these risk in his evidence at the public hearings:

⁹⁹ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 6.

¹⁰⁰ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 6.

¹⁰¹ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 4.

¹⁰² Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 4.

¹⁰³ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 8.

¹⁰⁴ Annalise Klingbeil, 'Calls for pre-pay gas renewed after woman dies from gas-and-dash injuries', *Calgary Herald*, 9 June 2015, viewed 24 September 2015, <calgaryherald.com>; Petti Fong, 'Attendant dragged to death thwarting \$12 gas theft', *The Globe and Mail*, 9 March 2005, viewed 27 August 2015, <www.theglobeandmail.com>; CBS news, 'Gas-and-dash theft reward of \$25,000 offered', viewed 19 August 2015, <www.cbc.ca>.

¹⁰⁵ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 7; APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 2; Mr Fury Bortolotto, *Submission*, no. 23, 22 July 2015, p. 1.

Aside obviously from the financial losses, there are also safety issues. People that tend to steal petrol drive off recklessly, have no care for staff, for pedestrians or for anybody else on the forecourt at all.¹⁰⁶

Such behaviour is doubly problematic given the hazardous environment of a fuel retail site which has combustible fuels, including Liquefied Petroleum Gas (LPG) bottles, a point made by Ms Cheryl Collier, a Safety and Return-to-Work specialist from Woolworths.¹⁰⁷ Again however, the Committee did not receive nor was it able to find Victorian data that indicated whether such incidents occurred and if so, to what extent.

While there may be a link between fuel drive-offs and other crimes, and there are potential risks to the community associated with such incidents, it is not possible for the Committee to quantify such a link in Victoria.

Limitations of Victorian Police statistics and data

During the Inquiry, the Committee identified two key limitations in available police data. The first limitation is underreporting in the police statistics as a result of the change to the police instruction in 2013 (discussed in Chapter four),¹⁰⁸ and the second is the lack of linked or linkable data, so that it is not possible to identify defendants charged with multiple fuel thefts or cases where the fuel drive-off has also involved other offences (e.g. numberplate theft) in the LEAP data and prosecution outcomes data. Of these, stakeholders were most critical of a claimed underreporting of fuel drive-offs in police crime data.

Claims of underreporting

Throughout the Inquiry process, a recurring theme, and trenchant criticism in the evidence of industry participants was that Victoria Police statistics do not reflect the actual prevalence of fuel drive-offs. The reason cited for the disparity between reported and actual fuel drive-offs was the change in the reporting of these incidents with the introduction of the 2013 Victoria Police instruction (further discussed in Chapter four). That point was strongly made by Mr Jeff Rogut of the AACS, who noted that:

... the numbers of complaints to police have declined because of the perceived inaction by police. Whilst the statistics look good and suggest that numbers may be coming backwards, largely that is driven by a lot of operators basically giving up. There is a lot of time taken up. It is not being correctly recorded. It is not being followed through. Hence we are not going to report it.¹⁰⁹

¹⁰⁶ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 2.

¹⁰⁷ Ms Cheryl Collier, Safety and Return-to-Work Specialist, Woolworths Ltd, *Transcript of evidence*, 5 October 2015, p. 113.

¹⁰⁸ Victoria Police, *Submission*, no. 26, 10 August 2015.

¹⁰⁹ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 4.

The variation between what police reported, which was outlined earlier in this Chapter, and the industry collected statistics (discussed in the next section) is significant. One example of this variation was provided to the Committee by Mr Mark McKenzie, the CEO of the ACAPMA. He noted the following:

You see a stark difference between the number of offences we report, in terms of 192 000, and the police reporting, a bit over 3000 offences. The industry has been working under the impression for the last two years that this is not a police matter — that unless the vehicle has a stolen numberplate or is a vehicle that is of interest in terms of being stolen, that it should be reported to the police. In all other instances they recognise that they are having to do it themselves, which is why you potentially will see the police recording a slight drop-off in the numbers, because the industry is now no longer reporting them.¹¹⁰

In explaining the disparity between fuel drive-offs and police and industry recorded statistics, Mr McKenzie noted that the change in the way police investigate fuel drive-offs has led to a decline in the reporting of fuel drive-offs from industry.¹¹¹ Mr Tony Franza and Mr Aslam Kazi, Victorian Automobile Chamber of Commerce (VACC) fuel retailer members, reiterated that point. In noting that there had been a definite increase in the number of fuel drive-offs,¹¹² Mr Franza provided an explanation of why police data may not reflect what fuel retailers are experiencing:

The sad part about this is we do not ring the police up anymore...¹¹³

Mr Aslam Kazi, added that:

No report. There is no crime reported. You know what I mean? We used to get a crime report [from police]; you put it like you get a house burglary. You get a crime report, you give it to the insurance, there is a number written there. If that is not given to us, that means there is no follow-up. We want the crime report with the number.¹¹⁴

Ms Cheryl Collier from Woolworths shared a similar experience with the Committee:

Prior to 2013 we were reporting that every time we got a numberplate and every time we got a description, but the guys are just getting a lot of pushback now from the police, so they have really given up on doing it, to be honest.¹¹⁵

¹¹⁰ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 17.

¹¹¹ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 17.

¹¹² Mr Tony Franza, Member and Proprietor of Caltex Star Mart, Albert Park, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 92.

¹¹³ Mr Tony Franza, Member and Proprietor of Caltex Star Mart, Albert Park, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 92.

¹¹⁴ Mr Aslam Kazi, Member and Proprietor of BP Clayton South, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 92.

¹¹⁵ Ms Cheryl Collier, Safety and Return-to-Work Specialist, Woolworths Ltd, *Transcript of evidence*, 5 October 2015, p. 117.

Mr Geoff Gwilym, an Executive Director of the VACC similarly observed that:

The lack of data really is because there is a lack of policing. If there was better policing, you would have better data.¹¹⁶

During his presentation to the Committee at the public hearing, Mr Gwilym provided the VACC's estimation of the level of underreporting of fuel drive-offs in Victoria. Drawn from a survey of its members, the VACC found that 43 per cent of respondents reported every fuel drive-off incident, with the remaining 57 per cent reporting fuel drive-offs to varying degrees.¹¹⁷ The key reason provided by respondents (with a 36 per cent response rate) as to why they did not report the drive-off was that police would be unable to investigate if the numberplate was stolen.¹¹⁸ The VACC estimated that about 31.8 per cent of all fuel drive-offs were not reported to police.¹¹⁹

The Committee notes the claims of underreporting made by industry participants that are further discussed in the next section.

3.2.2 Fuel retail industry data

In addition to the fuel drive-off data reported to, and collected by Victoria Police, industry representative groups also provided the Committee with their own data. This data was comprised both of the aggregate number of fuel drive-offs in Victoria and the costs borne by fuel retailers as a result of them. The industry representative groups concluded from that evidence that fuel drive-offs are increasing in Victoria,¹²⁰ in contrast to the data provided by Victoria Police. This conclusion was underpinned by a reliance on anecdotal and survey data compiled by industry stakeholder groups. This section outlines and discusses this data, including weaknesses associated with it.

Prevalence

According to the VACC, 'fuel theft is extensive and affects almost all fuel retailers in the metropolitan area and many fuel retailers across regional Victoria'.¹²¹ Further, the VACC believes that in spite of attempts to deal with fuel theft over the last 15 years, incidents have continued to rise.¹²² This view was also supported by other Inquiry participants. The AACS advised that the rate of fuel drive-offs had

¹¹⁶ Mr Geoff Gwilym, Executive Director, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 97.

¹¹⁷ Victorian Automobile Chamber of Commerce (VACC), *Supplementary evidence*, 8 September 2015.

¹¹⁸ Victorian Automobile Chamber of Commerce (VACC), *Supplementary evidence*, 8 September 2015.

¹¹⁹ Victorian Automobile Chamber of Commerce (VACC), *Supplementary evidence*, 8 September 2015.

¹²⁰ Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 46.

¹²¹ Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 6.

¹²² Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 6.

increased, with its *State of the Industry Report 2015* citing an increase of almost seven per cent (6.8 per cent) nationally for the 2014 calendar year,¹²³ figures also cited by other stakeholders that provided evidence to the Inquiry.¹²⁴

In terms of quantifying the increase in Victoria, the Committee received an estimate for Victorian fuel drive-offs from the ACAPMA, which put the total number at 192,000 for 2015.¹²⁵ This figure is clearly much larger than the figures cited in the LEAP derived data discussed earlier in section 3.2.1.

Other participants also provided estimates of the number of fuel drive-offs by referring to the experiences of individual retailers. Mr Geoff Gwilym, an Executive Director of the VACC noted that:

The most recent data that we have generated... was a survey that we put out to 264 of our fuel retail members, and we had a response rate of 80 individuals that responded to that. This new data shows that in Victoria 75 per cent of fuel retailers surveyed experienced drive-offs. So 75 per cent of organisations that sell fuel experience drive-offs, and 59 per cent of these has between one and four drive offs a month. I think it is important to note that fuel drive-offs are not always just sedans. It is not always somebody putting \$50 in a car. There are experiences of heavy vehicles and commercial vehicles being involved in this as well, and that has a significant and damaging effect on the proprietor of the business. The actual value of lost fuel reported in our recent work is between \$100 and \$200 a month, but in some cases fuel theft goes right up to \$900 month.¹²⁶

Of the 52 respondents to the VACC survey almost 60 per cent experienced fuel drive-offs one to four times a month.¹²⁷ However, the Committee notes that the anecdotal nature of this data does not provide a credible alternative source of information on fuel drive-offs to that provided by Victoria Police for policy-development purposes.

Other participants provided the Committee with anecdotal evidence of fuel drive-off incidents, based on newspaper articles. Crime Stoppers Victoria noted several examples of newspaper articles describing the incidence of fuel thefts, citing a Herald Sun article which asserted that Cranbourne to be the worst suburb for fuel drive-offs in Victoria, with 122 incidents during 2014.¹²⁸

¹²³ Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 4.

¹²⁴ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 7; Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 8.

¹²⁵ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 16; Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 4.

¹²⁶ Mr Geoff Gwilym, Executive Director, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 85.

¹²⁷ Victorian Automobile Chamber of Commerce (VACC), *Supplementary evidence*, 8 September 2015.

¹²⁸ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 7.

The cost of fuel drive-offs to the fuel retail industry in Victoria

The cost of fuel drive-offs to fuel retailers was described to the Committee as ‘a cost of doing business’.¹²⁹ Several cost estimates compiled by industry participants were provided to the Committee during the course of the Inquiry.

A key cost estimate quoted by a number of witnesses and submitters was compiled by the AACS in its *State of the Industry Report 2014*. Using an averaging approach, the AACS estimated the loss to fuel retailers in 2014 at \$220 per week, with an overall cost to the Australian convenience industry of \$66 million.¹³⁰ Based on an estimate of the number of fuel retailers in Victoria, the cost to Victorian retailers was estimated at between \$17 and \$20 million annually.¹³¹ The 2014 figures compiled by the AACS represented an increase from the previous year.¹³² Mr Jeff Rogut, the CEO of the AACS noted that in 2011 the average cost of fuel drive-offs to fuel retailers was around \$116 per site, per week, and that by 2014 the cost had risen to \$220 per site, per week.¹³³ While these were averaged losses, Mr Rogut also provided an example of the types of fuel losses sustained by individual members of his association:

I was talking to a number of our members, as I often do, and recently I had a report from one of them that has 52 outlets just in Victoria. For the last 12 months they have lost 150 000 litres of petrol, which has a dollar value of about \$195 000, a substantial amount of money.¹³⁴

The figure produced by the AACS was widely cited by other Inquiry participants, including the RACV, which suggested that while ‘relatively small’ was not a ‘trifling amount’, and ‘add[ed] to the pressure in terms of doing something in this situation’.¹³⁵

Other stakeholder groups also provided the Committee with estimates of the cost of Victorian fuel drive-offs. However, these estimates were lower than those provided by the AACS. According to the Australasian Convenience and Petroleum Marketers Association (ACAPMA), fuel drive-offs were estimated to cost the petroleum convenience industry in Victoria an estimated \$10.4 million

¹²⁹ Ms Cheryl Collier, Safety and Return-to-Work Specialist, Woolworths Ltd, *Transcript of evidence*, 5 October 2015, p. 118.

¹³⁰ Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 4; Fuel Equipment Specialists, ‘Fuel Theft: A victimless crime that is crippling small business’, viewed 10 June 2015, <www.fuelequipmentspecialists.com.au>.

¹³¹ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 2; Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 4; Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 7; Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 6.

¹³² Sophie Langley, ‘Australia’s Convenience stores showing resilience, latest figures’, *Australian Food Network*, 13 October 2014, viewed 10 June 2015, <ausfoodnews.com.au>.

¹³³ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 2.

¹³⁴ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 2.

¹³⁵ Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 46.

in 2015.¹³⁶ That increase represented a threefold increase on the average cost of a fuel drive-off in Victoria over the previous two years, from \$220 to more than \$600 per month, per site, for a total of \$7,200 per year.¹³⁷

The VACC similarly provided the Committee with its own figures on fuel drive-offs derived from a survey compiled by its members. The survey was circulated to 275 fuel retailers, of whom 80 responded. While the VACC acknowledged a 'lack of information on the real cost of and incidence of fuel theft', on the basis of the survey responses, extrapolated to Victorian fuel retailers,¹³⁸ the VACC provided an estimate of between \$2.5 and \$4.2 million dollars, although it cautioned that the small sample size made this estimate 'experimental'.¹³⁹ Interestingly, of those who responded to one of the survey questions, 'does your business experience fuel theft', almost 30 per cent of the 79 respondents had not experienced a 'fuel theft'.¹⁴⁰ According to the survey respondents, the cost of fuel drive-offs on an individual retailer basis was between \$100 and \$299 a month.¹⁴¹

In addition to peak stakeholder groups, individual fuel retailers and other companies also provided costs estimates. In its submission, 7-Eleven Stores noted that for the 2014/15 financial year, the aggregate losses to its 150 stores, was \$1.04 million (GST exclusive).¹⁴² In terms of the prevalence of fuel drive-offs, 7-Eleven Stores in Victoria averaged 10 fuel drive-offs per month at a cost of \$581 per store per month (exclusive of GST).¹⁴³ An independent fuel operator, Mr Fury Bortolotto, who operates a fuel retail shop in Diamond Creek, also provided the Committee with anecdotal evidence. He estimated that his business experienced one theft a week, at an average cost of \$80, with a total loss of \$4,160 per annum.¹⁴⁴ Another independent operator, APCO Service Stations, noted at the public hearings that fuel drive-offs varied from week to week, costing between \$50 and \$300 weekly,¹⁴⁵ but could be as high as \$1,000 a month or more, across their stores.¹⁴⁶ The Committee understands that some retail losses may be higher still.

¹³⁶ Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015; Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 14.

¹³⁷ Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 4.

¹³⁸ Note: The VACC, in contrast to other estimates, places the number of fuel retailers in Victoria at 960 businesses. This is based on the number of Australian Business Number actively trading and submitting Business Activity Statements to the Australian Taxation Office, and which list fuel retailing as the predominant activity/source of income. This is contrast to other estimates which put the number of fuel retailers at more than 1,450. The Committee notes that while the approach taken by the Victorian Automobile Chamber of Commerce (VACC) appears robust, it may be explained by one business owning more than one retail site. Refer to the Victorian Automobile Chamber of Commerce (VACC), *Supplementary evidence*, 8 September 2015.

¹³⁹ Victorian Automobile Chamber of Commerce (VACC), *Supplementary evidence*, 8 September 2015.

¹⁴⁰ Victorian Automobile Chamber of Commerce (VACC), *Supplementary evidence*, 8 September 2015.

¹⁴¹ Victorian Automobile Chamber of Commerce (VACC), *Supplementary evidence*, 8 September 2015.

¹⁴² 7-Eleven Stores, *Submission*, no. 12, 17 July 2015, p. 2.

¹⁴³ 7-Eleven Stores, *Submission*, no. 12, 17 July 2015, p. 2.

¹⁴⁴ Mr Fury Bortolotto, *Submission*, no. 23, 22 July 2015, p. 1.

¹⁴⁵ Mr Robert Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 42.

¹⁴⁶ Mr Robert Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 43.

In addition to these estimates, the impact of such costs on smaller businesses was also canvassed during the Inquiry. The VACC noted that the losses suffered by the retailer could have a flow on effect if retailers became unviable or where local retailers left, presumably diminishing competition and requiring longer travel by consumers to access fuel.¹⁴⁷ The ACAPMA also noted that increased rates of fuel drive-offs, and the subsequent reduction in retail profitability would ‘place upward pressure on fuel prices for Victorian motorists’.¹⁴⁸ The possibility of higher fuel prices for consumers was a repeated theme in several submissions.¹⁴⁹ However, the Committee did not receive evidence that quantified these costs, how and when they might be passed on to motorists (or if they already were), and how sensitive fuel retailers were to such disruptions such that they would leave the industry.

Limitations with industry data

In assessing the industry data, the Committee noted that much of the evidence presented to the Committee by industry stakeholder groups and by fuel retailers relied on anecdotal evidence or the individual experiences of fuel retailers. While data compiled from such sources has some value, its probative value is quite limited.

The limitations in the available industry data are due to a number of factors. The first of these was outlined by the ACAPMA. During the public hearings, the ACAPMA noted that it had difficulty quantifying the extent of fuel theft for several years, in part because of the fragmented nature of the industry.¹⁵⁰ Mr Mark McKenzie, the CEO of the ACAPMA, also noted that there is a ‘complete lack of absolute data on this issue’.¹⁵¹ In addition to the fragmented nature of the industry, which makes the collection of data from fuel retailers difficult, the competitive nature of the industry means information about fuel drive-off losses is a business sensitive matter, again limiting access to more reliable information.

Another limitation in the industry data relates to how it is derived. The Committee noted that the surveys on which the AACS, the ACAPMA and the VACC figures are based are problematic. For example, in its survey methodology, the VACC noted that in order to provide statistically accurate estimates it would need responses from 275 fuel retailers, which in turn would be a representative sample of the 960 fuel retailing businesses the VACC identified as comprising the Victorian sector of the industry. However, it only received 80 responses, and of those, not all survey questions were answered.¹⁵² Thus, in the Committee’s view, it appears that the small sample size of the VACC survey restricted the

¹⁴⁷ Mr Geoff Gwilym, Executive Director, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 86.

¹⁴⁸ Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 5.

¹⁴⁹ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 7; Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 5.

¹⁵⁰ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 16.

¹⁵¹ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 16.

¹⁵² Victorian Automobile Chamber of Commerce (VACC), *Supplementary evidence*, 8 September 2015.

accurateness and reliability of those cost estimates. A further issue with the VACC's statistics was that once fuel loss values were ascertained, they were multiplied by the number of fuel retailers in Victoria, which the VACC estimated at 960. That estimate is significantly lower than the figure relied on and used by the ACAPMA (1,455 fuel retail stores). Clearly, the number of retail stores is an important factor, which has a substantial role in any formula used to quantify fuel drive-off losses. Similarly, the ACAPMA estimates, also based on a survey, were drawn from only two per cent of ACAPMA members, who responded to a request for data, 18 months after a request for such data was made.¹⁵³ That survey appears to be based on a small sample size which would again affect the reliability of cost estimates.

In some instances, the limitations of industry data and estimates were accepted by Inquiry participants. For example, the VACC noted that:

There is however a lack of information on the real cost of and incidence of fuel theft across Victoria. Information provided by industry peak bodies and associations shows significant variations and an overall lack of consistency.¹⁵⁴

Mr Mark McKenzie of the ACAPMA reached a similar conclusion, noting that:

[There] appears to be a large variation in estimates of the quantum of the problem as evidence by the submission made to the inquiry... Much of this variation appears to be due to the representative nature of the sample sets used to estimate the value of fuel.¹⁵⁵

The extrapolation of fuel drive-off costs in particular, drew commentary during the Committee's public hearings. Mr Jeff Rogut of the AACS outlined the way in which his organisation compiled fuel theft costs:

Every year we put up what we call our annual state of the industry report... It covers merchandise sales, it covers trends, and a number of other things in the industry. That is derived out of getting our members to give us all the data — for example, on petrol theft, all of the retailers give us what their petrol theft statistics have been. We then aggregate that and put that all together...¹⁵⁶

That approach, which sees a nationally-derived fuel drive-off amount, is then multiplied by the number of fuel retailers that the AACS estimates operate in Victoria. Such an approach therefore appears limited by the AACS's reliance on the national value, which may not reflect the market conditions or levels of fuel drive-offs in Victoria. That may explain the substantial difference between the estimate of fuel drive-offs in Victoria produced by the AACS and other participants. The issue of how figures are derived was discussed by Mr Mark McKenzie of the ACAPMA, who provided his view on the issues with industry estimates and how his organisation's figures were derived:

¹⁵³ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 16.

¹⁵⁴ Victorian Automobile Chamber of Commerce (VACC), *Supplementary evidence*, 8 September 2015.

¹⁵⁵ Australasian Convenience and Petroleum Marketers Association, *Supplementary evidence*, 7 September 2015.

¹⁵⁶ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, pp. 5-6.

Our reading of the submissions is that there is a large variation in the estimates ranging from \$20 million down to the police estimate that suggests that it is about a twentieth of the number of offences that we had identified in our estimate. Much of this variation appears to be due to the representative nature of the sample sets that are actually used. I will put on the table here that we are the peak petroleum industry association in the country, and in assembling our submission, we spoke to the majors. We are talking about the bigger companies...

You can get very different answers depending upon the sample you actually use. If you go and select a sample that is predominantly metro, then our figure would be closer to \$16 million. When you start to look state wide, what you start to see are pockets that are actually quite low. So when you are trying to extrapolate across the 1455 sites and develop an average, we are very confident in the average that we have actually put up in front of you. Having said that, though, there is a complete lack of absolute data on this issue. We had spent a two-year period trying to promote within our industry the opportunity to report repeat offenders. We spent about 18 months, we publicised it through our network, and after 18 months we got a 2 per cent response rate.¹⁵⁷

In contrast to the AACS, and notwithstanding the small size of the sample, the ACAPMA's estimates were derived using fuel drive-off values provided from 35 per cent of Victoria fuel retail sites who were asked for such data, and then multiplied by the total number of stores.¹⁵⁸ While such an approach may be preferable, it is difficult to assess how accurate such estimates are given the sample size of the survey and other factors such as the demographic characteristics of those sampled (that is, estimates may be artificially high if more retailers with higher rates of fuel drive-offs responded to the survey). Further, the figure of 192,000 fuel drive-offs compiled by the ACAPMA and used in its formula for estimating the losses also appears problematic. This figure is a forecast on the number of fuel drive-offs for 2015. The ACAPMA cost estimate was derived using the 192,000 fuel drive-off figure, the average cost of a fuel purchase, and the frequency of fuel drive-offs (11 per month, per outlet), and multiplying this with the 1455 Victorian fuel retailers.¹⁵⁹ Given the number of assumptions being made, this approach may have led to an inaccurate cost estimate.

The range in estimates of fuel drive-offs from \$20 million (the AACS), \$10.4 million (the ACAPMA) and \$2.5 to \$4.2 million (the VACC), reflects the limitations of the surveys relied on by industry as well as the willingness of fuel retailers to provide accurate information. The lack of accurate, statistically robust, costs data was accepted by some participants. Mr Geoff Griffiths noting the lack of statistical information compiled by service stations,¹⁶⁰ considered that if such data were not gathered, one would be guessing about the size and extent of the fuel drive-off problem.¹⁶¹ The RACV also made reference to the estimates made by industry, with Mr Brian Negus explaining that:

¹⁵⁷ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 16.

¹⁵⁸ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 22.

¹⁵⁹ Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 4.

¹⁶⁰ Mr Geoff Griffiths, *Submission*, no. 7, 15 July 2015.

¹⁶¹ Mr Geoff Griffiths, *Submission*, no. 7, 15 July 2015.

Their calculation of a \$20 million loss in revenue is but that, as I understand it — is a calculation. Maybe the industry could be encouraged to provide more information about the number and quantum dollars-wise of fuel drive-offs. That would give you the other piece of information.¹⁶²

One other factor that the Committee considered as part of its investigation into the costs of fuel drive-offs was the nature of the loss itself. The Committee understands that revenue losses as a result of fuel drive-offs are a taxable deduction, claimable by fuel retailers. The capacity to claim such losses against taxable income is important, because the economic effect on a business is, to an extent, diminished. The Committee sought comment from participants as to the extent to which such losses can be claimed. Mr Jeff Rogut of the AACS explained that fuel drive-offs are treated as shrinkage¹⁶³ while Mr Peter and Mr Roger Anderson of APCO Service Stations indicated that fuel drive-off losses were a tax loss and one that their business used.¹⁶⁴

3.3 Fuel drive-offs in other jurisdictions

During its investigations the Committee wrote or made contact with police agencies seeking data on the prevalence of fuel drive-offs in other Australian jurisdictions. Unfortunately, with two exceptions, the Committee did not receive responses to its request and was unable to fully assess the prevalence of fuel drive-offs in those jurisdictions. The Australian Capital Territory (ACT) provided data to the Committee as part of its submission, and New South Wales (NSW) data is published by the NSW Bureau of Crime Statistics and Research (BOCSAR).

The lack of available data on the extent of fuel drive-offs in other jurisdictions may be due to a number of factors. Arguably the primary factor is that reports of fuel drive-offs are compiled by police within a broader theft or fraud category, which does not allow for the disaggregation of the data. Two examples of that approach appear to be Western Australia (WA), and national crime statistics which incorporate fuel theft within the category of 'other theft'. This approach makes it difficult to quantify the extent of fuel theft in other jurisdictions, and to compare them to Victoria. The following section outlines the situation in the ACT and NSW with respect to fuel drive-offs, and provides a brief overview of other jurisdictions for which there is some publically available data.

3.3.1 The Australian Capital Territory

Data provided by the Australian Federal Police (AFP) in relation to the ACT, indicates that the number of fuel drive-offs over the 2010/11 and 2014/15 financial years have fluctuated. This also accords with the Victorian experience.

¹⁶² Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 49.

¹⁶³ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, pp. 10-11.

¹⁶⁴ Mr Peter Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 42; Mr Robert Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 42.

Specifically, in its submission, the AFP provided data indicating a low of 895 incidents to a high of 1,418 incidents.¹⁶⁵ Paradoxically, the 2014/15 year has seen a marked decrease falling by over two hundred incidents as compared to the previous year. This is in spite of a targeted attempt by the AFP to deal with fuel drive-offs (discussed in Chapter four). In the view of the AFP, these fluctuations are ‘indicative of the unpredictable nature of this crime’.¹⁶⁶

Other data provided by the AFP indicated that the average cost of a fuel theft, which has fallen from \$69 per incident in 2013/14, to \$65 in 2014/15.¹⁶⁷ The data also indicates that fuel drive-offs are most likely to occur between 9pm and 9am.¹⁶⁸ This is a narrower time period compared to Victoria (based on the LEAP data). This may reflect an opportunistic approach to fuel drive-offs, and in turn criminal behaviour, given that console operators may be less able to identify fuel drive-offs occurring between these hours.

3.3.2 New South Wales

In NSW, fuel drive-offs are treated as a fraud for the purposes of police investigation, prosecution and data compilation. In contrast to other jurisdictions, and unlike other types of fraud in NSW, fuel drive-offs are given their own offence code (referred to as a ‘fail to pay’).¹⁶⁹ In its December 2014 report, *Understanding fraud: the nature of fraud offences recorded by NSW Police*, the BOCSAR reviewed 1,000 narrative descriptions of fraud incidents reported to, or detected by, NSW Police to determine which offences had contributed to an increase in fraud levels.¹⁷⁰ The study reviewed a random sample of 100 fraud events over two time periods, 2008/09 and 2012/13.

According to BOCSAR, one of the two fraud incidents that dominated NSW police data was theft from petrol stations which accounted for 30 per cent of fraud incidents.¹⁷¹ The number of fraud incidents in 2008/09 and 2012/13 were similar, with 186 and 210 incidents for each year respectively.¹⁷² An extrapolation of the costs of incidents by BOCSAR estimated the total yearly cost for fuel drive-offs in 2013 at \$928,340 in NSW.¹⁷³

¹⁶⁵ Australian Federal Police (AFP), *Submission*, no. 22, 21 July 2015, p. 4.

¹⁶⁶ Australian Federal Police (AFP), *Submission*, no. 22, 21 July 2015, p. 4.

¹⁶⁷ Australian Federal Police (AFP), *Submission*, no. 22, 21 July 2015, p. 4.

¹⁶⁸ Australian Federal Police (AFP), *Submission*, no. 22, 21 July 2015, p. 4.

¹⁶⁹ Wayne Macdonald and Jacqueline Fitzgerald, ‘Understanding fraud: The nature of fraud offences recorded by NSW Police’, *Contemporary Issues in Crime and Justice*, 2014, p. 9.

¹⁷⁰ Wayne Macdonald and Jacqueline Fitzgerald, ‘Understanding fraud: The nature of fraud offences recorded by NSW Police’, *Contemporary Issues in Crime and Justice*, 2014, p. 1.

¹⁷¹ Wayne Macdonald and Jacqueline Fitzgerald, ‘Understanding fraud: The nature of fraud offences recorded by NSW Police’, *Contemporary Issues in Crime and Justice*, 2014, p. 4.

¹⁷² Wayne Macdonald and Jacqueline Fitzgerald, ‘Understanding fraud: The nature of fraud offences recorded by NSW Police’, *Contemporary Issues in Crime and Justice*, 2014, p. 5.

¹⁷³ Wayne Macdonald and Jacqueline Fitzgerald, ‘Understanding fraud: The nature of fraud offences recorded by NSW Police’, *Contemporary Issues in Crime and Justice*, 2014, p. 5.

A key finding of the BOCSAR study was that fuel drive-offs are a relatively common, low value, form of fraud. The study found a typical range of \$40 to \$70 for fuel drive-off incidents, with an average cost of \$62.10 per incident.¹⁷⁴ Where the value of a fuel drive-off was greater than \$150 the vehicle involved was generally a commercial vehicle, such as a heavy vehicle.¹⁷⁵ Thirteen per cent of offenders paid restitution for the fuel taken.¹⁷⁶ As with other jurisdictions, including Victoria, BOCSAR noted that in ‘many cases there was insufficient evidence to determine that the driver had deliberately neglected to pay for their petrol to lay charges’.¹⁷⁷

3.3.3 Other Australian jurisdictions

As noted earlier, the Committee sought data about both the prevalence and cost of fuel drive-offs in other jurisdictions. Unfortunately, such data was either not available due to the way fuel drive-offs are treated by police or was not made available to the Committee by some State and Territory police. However, based on publically available information, the Committee was able to estimate the extent of the problem in other jurisdictions. Nationally, the AACS notes that fuel thefts increased in 2014 by 6.8 per cent as compared to the previous year.¹⁷⁸ According to the Royal Automobile Club of Queensland (RACQ), citing Queensland Police statistics, the rate of fuel drive-offs (referred to as fuel theft) tripled, from 4,469 cases to 14,620 cases between 1 July 2009 and 30 June 2014.¹⁷⁹

Media articles reviewed by the Committee suggest that other jurisdictions have also experienced increases in fuel drive-offs. In South Australia, police statistics cited by the *Courier Mail* indicated an increase of five per cent in 2011/12 as compared to the previous year, and a four per cent rise on 2009/10 levels. However, the *Courier Mail* also asserted, citing South Australian Police, that drive-offs, as a proportion of all theft, had nearly doubled since 2007/08.¹⁸⁰

Given the absence of police data from all Australian jurisdictions, it was not possible for the Committee to make determinative findings on the extent of fuel drive-offs and their cost, in other jurisdictions. Nevertheless, the available information suggests that fuel drive-offs are a problem in all jurisdictions.

¹⁷⁴ Wayne Macdonald and Jacqueline Fitzgerald, ‘Understanding fraud: The nature of fraud offences recorded by NSW Police’, *Contemporary Issues in Crime and Justice*, 2014, p. 9.

¹⁷⁵ Wayne Macdonald and Jacqueline Fitzgerald, ‘Understanding fraud: The nature of fraud offences recorded by NSW Police’, *Contemporary Issues in Crime and Justice*, 2014, p. 9.

¹⁷⁶ Wayne Macdonald and Jacqueline Fitzgerald, ‘Understanding fraud: The nature of fraud offences recorded by NSW Police’, *Contemporary Issues in Crime and Justice*, 2014, p. 9.

¹⁷⁷ Wayne Macdonald and Jacqueline Fitzgerald, ‘Understanding fraud: The nature of fraud offences recorded by NSW Police’, *Contemporary Issues in Crime and Justice*, 2014, p. 9.

¹⁷⁸ Australasian Association of Convenience Stores (AACS), *State of the Industry Report 2014*, Melbourne, 2014, p. 20.

¹⁷⁹ ABC News, ‘Vehicle and number plate theft blamed for rising fuel drive-offs in Queensland’, viewed 23 September, <www.abc.net.au>.

¹⁸⁰ John Rolfe, ‘Petrol theft surges 150 per cent in two years to record highs as casual crims fill up and flee’, *The Courier Mail*, 15 June 2013, viewed 23 July 2015, <www.couriermail.com.au>.

3.3.4 International Jurisdictions

As part of its investigations, the Committee identified estimates of the cost of fuel drive-offs in the United Kingdom (UK) and the United States of America (US). According to estimates from the British Oil Security Syndicate Ltd (BOSS), an independent trade organisation formed by the UK oil industry, the cost of fuel drive-offs in 2014 was £21.7 million representing an average loss of £3,600 pounds per retail outlet.¹⁸¹ This represented an increase of 6.8 per cent in the cost of fuel drive-offs as compared to 2012.¹⁸² These figures are based on a survey of BOSS members, who in turn represent a little less than a quarter of all fuel retailers in the UK.¹⁸³ In terms of prevalence, the BOSS estimates the number of incidents at 900,000 per year (comprising both fuel drive-offs and motorists who are unable to pay).¹⁸⁴

In the US, various estimates have put the cost of fuel drive-offs in the tens of millions of dollars. The Center for Problem-Oriented Policing put the cost of fuel drive-offs (referred to as gasoline drive-offs) in the US at \$89 million, a reduction from \$300 million in 2005.¹⁸⁵ That reduction was achieved by the use of improved video equipment and the introduction of prepayment at many convenience stores.¹⁸⁶ A more recent estimate made by the US Association for Convenience and Fuel Retailing (the Association) put the average loss per store in 2010 at \$1,440, an increase from \$761 per store in 2009. However, the Association also noted that it was 'difficult to calculate an industry-wide number'.¹⁸⁷

3.4 Understanding the causes of fuel drive-offs

A key area of investigation for the Committee was to understand why motorists drive-off without paying for fuel. A review of submissions and the available literature highlighted a number of reasons centred primarily on consumer sensitivity to the cost of fuel, and the change to the Victoria Police instruction dealing with fuel drive-offs. In addition to these, motorists may also commit fuel drive-offs inadvertently, by forgetting to pay for their fuel, or alternatively, they may not have sufficient funds to pay for fuel.

As noted in this Chapter, available data does not provide a robust means to determine the link between the cost of fuel and fuel drive-offs. However, Inquiry participants asserted that there was a link between cost of fuel and fuel

¹⁸¹ British Oil Security Syndicate (BOSS), *Annual Review 2014-15*, England & Wales, 2015, p. 2.

¹⁸² British Oil Security Syndicate (BOSS), *Annual Review 2014-15*, England & Wales, 2015, p. 7.

¹⁸³ British Oil Security Syndicate (BOSS), *Annual Review 2014-15*, England & Wales, 2015, p. 3.

¹⁸⁴ British Oil Security Syndicate (BOSS), *Annual Review 2014-15*, England & Wales, 2015, p. 3.

¹⁸⁵ Bruno Menini and Robert Clarke, 'The Problem of Gasoline Drive-Offs', *Center for Problem-Oriented Policing*, viewed 24 September 2015, <www.popcenter.org>; The Association for Convenience & Fuel Retailing, 'Gasoline Theft at Convenience Stores', viewed 22 October 2015, <www.nacsonline.com>.

¹⁸⁶ Bruno Menini and Robert Clarke, 'The Problem of Gasoline Drive-Offs', *Center for Problem-Oriented Policing*, viewed 24 September 2015, <www.popcenter.org>.

¹⁸⁷ The Association for Convenience & Fuel Retailing, 'Gasoline Theft at Convenience Stores', viewed 22 October 2015, <www.nacsonline.com>.

drive-offs.¹⁸⁸ For example, the VACC noted that there had been a disproportionate rise in fuel thefts when fuel prices passed the one dollar a litre.¹⁸⁹ The Committee also notes that the link between increased fuel drive-offs and the price of fuel is not limited to Victoria, as this issue has been debated in Canada¹⁹⁰ and the United States.¹⁹¹

A research paper undertaken by BOCSAR in September 2006 explored the relationship between petrol theft and petrol prices in NSW.¹⁹² The paper assessed incidents of fuel retailer fraud from April 1998 to June 2006 and found a 'strong correlation between higher petrol prices and increases in fuel theft' in NSW.¹⁹³ The study found that a component of petrol thefts is discretionary and is committed in response to external factors such as costs.¹⁹⁴ That is, high petrol prices 'present an increased incentive to steal which some members of the community succumb to'.¹⁹⁵

A predictive model used by the BOCSAR to model fuel thefts and price rises identified that for every 10 cpl rise in the average monthly petrol price, there would be an extra 120 fuel drive-offs.¹⁹⁶ As discussed in section 3.2.1 ('Links to other crimes'), the BOCSAR paper also identified a link between increased fuel drive-offs and increased numberplate thefts.¹⁹⁷ Increasing fuel prices may also help explain changes in the rates of fuel drive-offs in Victoria over time.

Other than people of certain gender and ages discussed in section 3.2.1, Inquiry respondents noted that there was no demographic group that was overrepresented in fuel drive-offs. Mr Mark McKenzie, the CEO of the ACAPMA observed that:

The trends suggest that this is an issue that cannot be readily portrayed as a poor man's crime or poor woman's crime. We are seeing a real cross-section of people who are driving off with fuel.¹⁹⁸

¹⁸⁸ Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 4.

¹⁸⁹ Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 6.

¹⁹⁰ CTV News Toronto, 'Rising cost of fuel leads to spike in gas thefts: police', *The Canadian Press*, 8 April 2014 viewed 12 October 2015, <toronto.ctvnews.ca>.

¹⁹¹ Bruno Menini and Robert Clarke, 'The Problem of Gasoline Drive-Offs', *Center for Problem-Oriented Policing*, viewed 24 September 2015, <www.popcenter.org>; Calgary Herald, 'U.S. gasoline theft on rise', viewed 20 October 2015, <www.canada.com>.

¹⁹² Steve Moffatt and Jacqueline Fitzgerald, 'Contemporary Issues in Crime and Justice: The relationship between petrol theft and petrol prices', 2006.

¹⁹³ Steve Moffatt and Jacqueline Fitzgerald, 'Contemporary Issues in Crime and Justice: The relationship between petrol theft and petrol prices', 2006, p. 1.

¹⁹⁴ Steve Moffatt and Jacqueline Fitzgerald, 'Contemporary Issues in Crime and Justice: The relationship between petrol theft and petrol prices', 2006, p. 3.

¹⁹⁵ Steve Moffatt and Jacqueline Fitzgerald, 'Contemporary Issues in Crime and Justice: The relationship between petrol theft and petrol prices', 2006, p. 3.

¹⁹⁶ Steve Moffatt and Jacqueline Fitzgerald, 'Contemporary Issues in Crime and Justice: The relationship between petrol theft and petrol prices', 2006, p. 2.

¹⁹⁷ Steve Moffatt and Jacqueline Fitzgerald, 'Contemporary Issues in Crime and Justice: The relationship between petrol theft and petrol prices', 2006, p. 3.

¹⁹⁸ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 15.

The Committee received evidence from Mr Stephen Fontana, Assistant Commissioner, Crime Command at Victorian Police that some fuel theft is also committed by fuel retail staff.¹⁹⁹

Another issue raised with the Committee was the effect of the introduction of Victoria Police's 2013 instruction on fuel drive-offs. Several Inquiry participants argued that the change in Victoria Police's approach to fuel drive-offs had led to a substantial increase in the number of fuel drive-offs. The VACC, AA Holdings, APCO Service Stations and the ACAPMA all gave evidence that the introduction of the police instruction in 2013 had led to increases in the number of fuel drive-offs.²⁰⁰

Mr Mark McKenzie, CEO of ACAPMA gave evidence concerning the link between purported increases in fuel drive-offs and the implementation of the Victoria Police instruction:

I suppose the key issue that we have identified here is that in the last two years it has grown markedly as a result of publicity that has been given to Victoria Police and the government position in relation to the enforcement of fuel theft. I am not for a moment going to say that that means that people have decided they will increase in frequency, but clearly the issue is that people do not believe they are going to get caught...²⁰¹

Mr Jeff Rogut of the AACS went on to state that:

When Victoria Police announced their policy that they would not be actively pursuing petrol thieves and treating it as a civil matter, petrol theft spiked, and it has not gone backwards. It has continued to grow. Recently we have seen robberies increase, of things like tobacco and cash, across the network... but it really is no surprise to us that if criminals see police going soft on issues such as petrol theft, they will target other issues within our industry and other retailers.²⁰²

Mr Geoff Gwilym of the VACC added that:

On face value it appears that the more the police are involved, the less problematic the issue becomes.²⁰³

While petrol price increases may explain some petrol theft, some fuel drive-offs will be the result of inadvertent action by motorists, or where motorists are unable to pay for the fuel.²⁰⁴ While the extent to which that occurs is difficult

¹⁹⁹ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 72.

²⁰⁰ Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 4; APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 2; Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 6; AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 2.

²⁰¹ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 15.

²⁰² Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 2.

²⁰³ Mr Geoff Gwilym, Executive Director, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 86.

²⁰⁴ Mr Nicholas Wallis, *Submission*, no. 1, 19 June 2015.

to ascertain, the evidence assessed by the Committee supports the proposition that this does occur. Sensor Dynamics suggested that many fail-to-pay incidents involve a driver that has simply forgotten to pay rather than intentionally stolen fuel.²⁰⁵

The withdrawal of police complaints by fuel retailers likely indicates the return of a motorist to pay for fuel after leaving inadvertently. In the ACT for example, 17 per cent of complaints were withdrawn after the retailer made contact with the motorist.²⁰⁶ Victoria Police data indicates that of the 42,292 reported fuel drive-offs between 2005 and 2014 (see section 3.2.1), 767 complaints were withdrawn. It is likely that these complaints were withdrawn because the person involved returned to pay for the fuel or where an error was made by the complainant. A further 1634 investigated complaints were found not to have involved an offence, although the extent to which these involved inadvertent behaviour is unclear. There are likely to be more reported complaints and cases which, while unsolved by police, may involve inadvertent fuel drive-offs, although it is again not possible to quantify the extent to which this occurs.

Industry participants did not believe that inadvertent action can explain the majority of fuel drive-offs. In its submission, 7-Eleven Stores suggested that 'in the vast majority of cases, there is an immediate or clearly inferred intent on the part of the customer to leave without making payment'.²⁰⁷

FINDING 2: It is not possible to ascertain the extent to which changes in Victoria Police's practices have led to an increase or otherwise in fuel thefts.

3.5 Concluding remarks

The extent to which fuel drive-offs occur is an important aspect of this Inquiry. According to data provided from the LEAP, fuel drive-offs in Victoria have fluctuated over time, but appear to have fallen since 2012 with 2014 recording the lowest rate of fuel drive-offs over the past ten years. Generally, fuel drive-offs occur throughout Victoria, but are centralised in metropolitan Melbourne, occurring throughout the day. Fuel drive-offs are also most likely to be committed by young men. The Committee notes that most police recorded fuel drive-offs remain unsolved.

FINDING 3: Without accurate data it is not possible for the Committee to make substantive findings about the true nature and extent of fuel drive-offs.

In contrast to the Victoria Police statistics, industry participants strongly argued that the official statistics did not reflect what is occurring in Victoria. Indeed, there is a gulf between what industry view the number of fuel drive-offs to be (192,000 incidents in 2015) as compared to Victoria Police.

²⁰⁵ Sensor Dynamics, *Submission*, no. 21, 19 July 2015, p. 9.

²⁰⁶ Australian Federal Police (AFP), *Submission*, no. 22, 21 July 2015, p. 5.

²⁰⁷ 7-Eleven Stores, *Submission*, no. 12, 17 July 2015, p. 1.

However, the absence of reliable, complete and accurate data from industry, and the reliance on anecdotal evidence and estimates did not allow the Committee to form a view as to the actual rate of fuel drive-offs, and the extent of underreporting occurring in Victoria. Some underreporting may occur due to the 2013 Victoria Police instruction, and reticence from fuel retailers to either report these incidences to police (because police will not accept them) or to provide them to industry associations due to industry dynamics may also contribute to underreporting. The Committee believes that improving the reporting of fuel drive-offs may be improved with online reporting. On that basis, it makes the following recommendation:

RECOMMENDATION 1: That Victoria Police develops an online fuel drive-off incident report form and a withdrawal of complaint form.

In terms of the cost to the fuel retailer industry, the Committee received a number of estimates that varied significantly. In the absence of more robust data, it appears that the cost of fuel drive-offs is between \$2.5 million and \$20 million dollars annually. The allocation of resources by Victoria Police to investigate fuel drive-offs cost is estimated to be about \$3.3 million.

The cause of fuel drive-offs is multi-faceted, and is composed of sensitivity to fuel prices, criminality and motorists simply forgetting to pay. The lack of available data makes it difficult to ascertain whether fuel drive-offs are more likely to be criminal or civil in nature. That view also extends to the statistical analysis of the link between drive-offs and other crimes. The Committee noted the view of many participants that there is a link between fuel drive-offs and the theft of numberplates, however quantifying that is not currently possible.

The role of data in policy making is of critical importance. Central to any investigation of the prevalence of a given policy issue, is the role that such data plays in helping decision makers determine whether they should respond to an issue, and if so, how. Given the comments and observations made throughout this Chapter, the Committee believes that better data is needed to understand the nature and prevalence of fuel drive-offs.

4 The legislative and regulatory environment

4.1 Introduction

In this Chapter the Committee considers current criminal and civil remedies to address fuel drive-offs in Victoria and in other Australian and overseas jurisdictions. A key concern raised by participants about the introduction in 2013 of a Victoria Police Instruction relating to fuel drive-offs is considered by the Committee. Key recommendations from industry to deal with fuel drive-offs, including the use of infringements, accessing personal data held by government agencies, and the establishment of an industry body capable of recouping losses on behalf of fuel retailers among others, are also considered. As part of its approach to these issues, the Committee considered broader public policy elements relating to privacy and proportionality.

4.2 The law and fuel drive-offs

A recurring theme during the Inquiry was the question of whether a fuel drive-off is a criminal offence. The distinction between the criminal and civil law is generally clear, but in the context of fuel drive-offs it is less clear which applies. Criminal law is defined as the law relating to crime or criminal acts where there is ordinarily a mental element involved in the act. Where it appears a person has committed an offence or wrongdoing, police can take action against that person (the accused). If the person is found guilty of the crime, a sanction or punishment is applicable. In contrast, the civil law is concerned with enforcing a person's rights, for example in the context of a breach of contract, property dispute or the commission of an act constituting a tort. The focus in civil law is to regulate the behaviour between one person and another, and provide remedies or compensation where a person's rights have been infringed or breached.²⁰⁸ As mentioned earlier, distinguishing between the two types of law is usually clear enough, however in some circumstances, such as fuel drive-offs, a civil dispute may be regulated as a criminal matter and vice versa.

4.2.1 The law of theft and fuel drive-offs in Victoria

Theft is a type of property offence that is enforced through the criminal law. The construction of criminal offences is complex and underpinned by important legal concepts which are replicated in all Australian jurisdictions, albeit with some differences. Among the concepts underpinning the criminal law, are the

208 Law Institute of Victoria, 'Victorian Legal System', viewed 21 July 2015, <www.liv.asn.au>.

actus reus and *mens rea*. Ordinarily, both of these elements must be present for a person to be convicted of a crime. The *actus reus* represents the physical act itself, while the fault element or mental element is referred to as the *mens rea*. Put simply, the physical act is the doing of the crime itself, whereas the fault element refers to the person's intent to commit the crime.

All States and Territories as well as the Commonwealth have criminal offences that regulate the theft of fuel. Theft is a serious category of offence in all jurisdictions. The offence is indictable, and can result in large monetary penalties and/or a term of imprisonment. Three jurisdictions — the Australian Capital Territory (ACT), the Commonwealth and Queensland (QLD) — provide a less serious offence for shop lifting, attracting smaller monetary fines and prison sentences.

The construction of the offence of theft is generally similar among jurisdictions, as the offence arises from common law larceny, although some States refer to stealing or fraud rather than theft in their legislation. Importantly, the construction of theft or stealing offences in all Australian jurisdictions requires the presence of an intention to deprive an owner of their property either dishonestly or fraudulently. It is the mental intent, coupled with the permanent deprivation of property, which is necessary to prove theft beyond a reasonable doubt. It should also be noted that the concept of 'property' is defined in legislation and fuel is a type of property capable of being stolen in all jurisdictions.

The legal construction of the theft offence in Victoria

In Victoria, a person is guilty of theft if they dishonestly appropriate property belonging to another, with the intention of permanently depriving the other of it. Section 72 of the *Crimes Act 1958* (Vic) defines theft while s. 74 sets out the offence, which carries a 10 year maximum imprisonment term.²⁰⁹

The key question in the construction of the theft offence is whether the accused believed that they had a legal right to appropriate the property.²¹⁰ Clearly, where active attempts at deception are involved in a fuel drive-off, or where a person takes fuel several times, the limb of dishonesty may arguably be met. But inadvertently taking the fuel without paying may not meet this requirement.

In addition to the theft offence, Victoria had previously legislated for what could be characterised as a minor theft offence. Now repealed, section 74A of the *Crimes Act 1958* (Vic) provided that shop thefts could be dealt with through an infringement notice rather than a prosecution for theft, at the discretion of a police officer. Shop thefts were defined as thefts from retail premises where the goods stolen were valued at less than \$600. The definition of a retail premises in s. 74A(5) could extend to include fuel retail sites. The Committee understands

²⁰⁹ Note: Refer to s. 72 *Crimes Act 1958* (Vic); Thomson Reuters, 'Criminal Law Investigation and Procedure Victoria Volume 1-5', para [1.6.430], 2012.

²¹⁰ Note: Refer to *R v Salvo* [1980] VR 401; s. 73(2) *Crimes Act 1958* (Vic); Thomson Reuters, 'Criminal Law Investigation and Procedure Victoria Volume 1-5', para [1.6.430], 2012.

that this section was trialled as a pilot offence and has since been repealed.²¹¹ The basis for the repeal was explained by Mr Kevin Sheridan, Superintendent, Victoria Police:

I think part of the reason why the authority to issue an infringement for theft or shop steal was withdrawn was the penalty was either \$500 or \$600, which is not the penalty you would normally get in a Magistrates Court for a first offence, perhaps an inadvertent offence or a theft of a low value. It is all those sorts of balances, if you have an infringement.²¹²

The trial of infringements for shop theft

In 2008, Victoria initiated an infringements trial.²¹³ Among the offences that were included in the trial was the shop theft not exceeding \$600 as set out in s. 74A *Crimes Act 1958* (Vic).²¹⁴ The infringements would apply to fuel drive-offs which were to be treated as a type of shop theft.²¹⁵ By 2011, the three year trial period for some of the offences was made ongoing,²¹⁶ however the offences of shop theft and damage to property were still subject to an additional one-year trial period. These provisions were due to sunset on 1 July 2012. The trial period for these two offences was extended under the *Courts and Sentencing Legislation Amendment Act 2012* (Vic), with the provisions expiring on 1 July 2014.²¹⁷

The Committee received evidence that the use of on-the-spot fines for fuel drive-offs was trialled in Dandenong.²¹⁸ According to Mr Terence Conroy, the trial did not result in a single fine being issued for a fuel drive-off.²¹⁹ The operation and success of the trial in terms of fuel drive-offs was raised with Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, at the Department of Justice and Regulation. Ms De Cicco gave the following evidence about the effectiveness of the trial:

The infringement process is a more efficient way of dealing with these lower level criminal offences — that is, if in the main individuals pay on the infringement offence as opposed to taking it to court and it becoming a summary prosecution.

211 Mr Tony Franza, Member and Proprietor of Caltex Star Mart, Albert Park, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 74.

212 Mr Kevin Sheridan, Superintendent, Road Policing, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 76.

213 Bernadette Saunders, et al., *An Examination of the Impact of Upaid Infringement Notices on Disadvantaged Groups and the Criminal Justice System-Towards a Best Practice Model*, Monash University: Criminal Justice Research Consortium, Melbourne, 2013, p. 20.

214 Note: Other offences included: Offensive behaviour - s. 17(1)(d) *Summary Offences Act 1966* (Vic); indecent language - s. 17(1)(c) *Summary Offences Act 1966* (Vic); failure to leave licensed premises when asked to do so - s. 114(2) *Liquor Control Reform Act 1998* (Vic); and, wilful damage of property valued at less than \$500 - s. 9(1)(c) *Summary Offences Act 1966* (Vic). Refer to: Bernadette Saunders, et al., *An Examination of the Impact of Upaid Infringement Notices on Disadvantaged Groups and the Criminal Justice System-Towards a Best Practice Model*, Monash University: Criminal Justice Research Consortium, Melbourne, 2013, p. 20.

215 Mr Terrence Philip Conroy, *Submission*, no. 11, 17 July 2015, p. 2.

216 Note: This occurred as a result of the *Justice Legislation Amendment (Infringement Offences) Act 2011* (Vic).

217 Note: Refer to *Courts and Sentencing Legislation Amendment Act 2012* (Vic); Austlii, 'Courts and Sentencing Legislation Amendment Bill 2012-Explanatory Memorandum', viewed 29 September 2015, <www.austlii.edu.au>. *Groups and the Criminal Justice System-Towards a Best Practice Model*, Monash University: Criminal Justice Research Consortium, Melbourne, 2013, p. 20.

218 Mr Terrence Philip Conroy, *Submission*, no. 11, 17 July 2015, p. 2.

219 Mr Terrence Philip Conroy, *Submission*, no. 11, 17 July 2015, p. 2.

If in the case of most infringements, they are taken to court anyway and contested, then it really eliminates the efficiency and the efficacy of an infringements-based system, because you are in court contesting the matter as you would have done if you had proceeded with the summary prosecution.

That was the key issue [with the trial of shop theft]: that the benefit of infringements to enforcement agencies and hence the basis of the, if you like, discount that is offered to the individual having committed the offence is the fact that there is efficiency in process for the enforcement agency. The individual does not have the criminal conviction that would arise from a matter contested in court and pays a lesser amount than would otherwise be the case, because the infringement penalty is generally speaking a small proportion of the total quantum of what the fine might be otherwise. It would be a fair thing to say that the theft under \$600 never worked because most of them were not dealt with on the infringement — they were contested — or pursued by summary prosecution so it removed any of the efficiency of the process.²²⁰

Ms De Cicco also highlighted the issue of using infringements for offences where proving intent is essential for a successful prosecution:

Shop theft is a very good example of some of the challenges that are engaged with when you are looking at offences that have to have intent. One of the problems with the shop theft offence was that, in the context of trying to issue an infringement for a shop theft offence wherein police were called to a particular place and issued an infringement, if it were contested, the individual could easily say, 'I didn't mean to actually steal it. I had it in my bag or I had it in the trolley or I had it in my hand and I was going to pay but then I forgot and absentmindedly walked out of the shop'. So it was not proving an effective and conclusive means by which infringements are normally used. They are normally used as a more efficient means by which less serious offences can be progressed. The trial did start. It was extended again in 2011, I think it was, for a further year and then after that it was abandoned and allowed to lapse because of stakeholders view that it was not as effective a means of dealing with that sort of lower level offending.²²¹

The question of using infringements for more serious offences where intent needs to be proven is also subject to requirements set out in Attorney-General guidelines in respect to the *Infringements Act 2006* (Vic) (further discussed in section 4.2.5).

The 2013 Victoria Police Commissioner's instruction

On 1 July 2013, Victoria Police changed the way it approached fuel drive-offs in Victoria. The change set out in a Police Commissioner's Instruction (the '2013 Instruction'), meant that a fuel drive-off might only be investigated if there was sufficient information to indicate criminality.²²² Examples of criminality would include the use of stolen numberplates or where the vehicle

220 Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 109.

221 Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 108.

222 Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 3.

itself was stolen.²²³ It should be noted that even where such cases proceeded to trial, police were unable to recover the lost income for fuel retailers.²²⁴ According to Victoria Police, the instruction also set out that:

- ‘Fuel drive-offs [are] considered to be civil in nature;
- There is no formal reporting required to police;
- Victoria Police would not attend a site unless there were specific safety concerns or a crime scene (other than CCTV footage); and
- Victoria Police would only investigate a reported incident where reliable and credible evidence exists that establishes a *prima facie* criminal offence’.²²⁵

Prior to the introduction of the 2013 Instruction, Victoria Police in 2002 and 2003 also initiated several trials of prepayment (discussed in Chapter five) to provide a crime prevention tool to fuel retailers.

The Committee notes that the approach and views of Victoria Police in relation to fuel drive-offs are mirrored in Devon and Cornwall in the United Kingdom. In 2011, these two police forces made a similar change to their fuel drive-off policy, treating fuel drive-offs as a civil matter unless clear criminality was involved.²²⁶

The submission by Victoria Police indicated that the basis for the change in 2013 was the view that fuel drive-offs were preventable and could be eliminated or reduced through recognised crime prevention measures such as prepayment.²²⁷

The question of how best to utilise and prioritise police resources also appears to have been an important element in the changed approach.²²⁸ In Chapter three, Victoria Police provided an annual cost of \$3.3 million spent investigating fuel drive-offs. The Commissioner for Privacy and Data Protection suggested that these investigations accounted for 18,000 police hours annually.²²⁹ Considering how best to utilise police resources was a point raised by Mr Stephen Fontana, Assistant Commissioner, Victoria Police during the public hearings:

We had a lot of other demands for service dealing with family violence incidents, road policing incidents and also dealing with other crime in the community — crimes of violence, issues with drug-related offences — and petrol was consuming a lot

²²³ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 3.

²²⁴ Mr Kevin Sheridan, Superintendent, Road Policing, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 73.

²²⁵ Victoria Police, *Submission*, no. 26, 10 August 2015; Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 3.

²²⁶ Mail on Sunday Reporter, ‘Petrol theft? It’s not a crime, say police: Officers in Devon and Cornwall said they will not investigate incidents unless there was proof of criminal intent’, *Daily Mail*, 31 May 2015, viewed 14 September 2015, <www.dailymail.co.uk>.

²²⁷ Victoria Police, *Submission*, no. 26, 10 August 2015.

²²⁸ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 3.

²²⁹ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 3.

of our time unnecessarily, particularly when we were of the view that it is clearly preventable and there is a lot more that the industry could do to put in tougher practices to prevent it.²³⁰

A further reason for the change in approach was the construction of the theft offence itself. A crucial element in proving the offence of theft is that an appropriation must be dishonest. In cases where a person left their details with a fuel attendant but did not return to pay, or where there was no clear intent that the person filling their tank sought to steal the fuel, police considered that those scenarios ought to be treated as amounting to a civil debt. Therefore, the absence of criminality in a fuel drive-off was more properly characterised as civil rather than criminal in nature.²³¹ Further, where there is no evidence of criminality, Victoria Police will not lodge a police report of the incident.²³²

Nevertheless, Victoria Police accepted that the law regulating fuel drive-offs involved a ‘great deal of complexity’, specifically in determining whether the matter was criminal or civil.²³³ According to Victoria Police, this complexity was partly based on judicial decisions that found that the intent to take the fuel, and to do so dishonestly, needed to occur at the point of taking the fuel and not after, when a person left the site.²³⁴ The complexity associated with the theft offence in the context of prosecution was explained by Superintendent Sheridan of Victoria Police:

... stat[istics] show a low success rate of conviction, that is typical of the challenges we face to convict people because of the evidence required to prove an offence of theft. This is one of probably the sticking points between law enforcement generally — not just Victoria Police — and the industry; it is for them to understand the complexity of the law to prove a charge of theft, equally as it applies to theft of petrol, and that is proving the intent of the offender or suspect to permanently deprive the owner of the property at the time they took possession of it. That is probably why we do not have a high court success rate.²³⁵

Nevertheless, Victoria Police believes the 2013 Instruction is efficacious citing an improvement in the resolution rate of complaints. Assistant Commissioner Fontana stated that:

... from my point of view, a 5 per cent increase in arrests is quite significant in terms of achievements, which means the policy is working in that regard in terms of us getting better quality data and information from the victims in these cases, or the station providers. We are getting good statements, we are getting good CCTV evidence, and I think that was key to that part of the policy to say, ‘Look, to form a view that an

²³⁰ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 71.

²³¹ Victoria Police, *Submission*, no. 26, 10 August 2015.

²³² Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 72.

²³³ Victoria Police, *Submission*, no. 26, 10 August 2015.

²³⁴ Victoria Police, *Submission*, no. 26, 10 August 2015.

²³⁵ Mr Kevin Sheridan, Superintendent, Road Policing, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 74.

offence has been committed we need the industry to do certain things', and that indicates that that is working.²³⁶

However, Assistant Commissioner Fontana also accepted that improvements needed to be made:

... [Victoria Police are] not walking away from investigating offences when they are there, but we want clear evidence that an offence has occurred, and we have pushed that accountability back on the industry.²³⁷

I am not going to present before you today and say that we have got it right across the board. We are inconsistent in our practice, and I would say that on some occasions the industry has been experiencing problems in reporting. That is something we need to look at as an organisation. I have spoken with my peers who run the regions, and I know that they have been looking at the issue of compliance at some of their tasking coordination meetings in terms of over the last 12 months looking at petrol drive-offs and theft of numberplates in particular, and our level of compliance. We have not got it right, and that is something we will need to engage with.²³⁸

The extent to which the fuel retail industry were displeased with the change following the 2013 Instruction was clearly evident in the evidence provided to the Committee.²³⁹ The AACS and the VACC expressed their concerns about the criminal/civil distinction. A regular refrain in submissions was that 'a criminal act is a criminal act' and that fuel theft was no different to other types of shop theft.²⁴⁰ Mr Brian Negus of the RACV was one witness who highlighted that point:

I guess fundamentally that proposition concerns us, that the police regard it as a civil matter. It is theft. If someone walks into the servo and steals a bottle of water or something more substantial, then it is clearly theft, and in that sense there is no difference in relation to fuel. We think that is a really serious matter...²⁴¹

Other participants argued that treating fuel drive-offs as a civil matter 'defied logic',²⁴² that the change had 'astounded the industry',²⁴³ and that the lack of a police response has resulted in safety issues.²⁴⁴ The 7-Eleven Stores submission stated that fuel drive-offs were 'clearly unlawful and a crime', and should warrant the same attention and investigation by police as other property theft.²⁴⁵ The VACC submission similarly argued that Victoria Police should view fuel drive-offs as theft and not a civil matter. The VACC released a media statement on

²³⁶ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 74.

²³⁷ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 72.

²³⁸ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 72.

²³⁹ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 8.

²⁴⁰ Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 9; Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 12.

²⁴¹ Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 46.

²⁴² Mr Fury Bortolotto, *Submission*, no. 23, 22 July 2015, p. 1.

²⁴³ Mr Terrence Philip Conroy, *Submission*, no. 11, 17 July 2015, p. 3.

²⁴⁴ APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 4.

²⁴⁵ 7-Eleven Stores, *Submission*, no. 12, 17 July 2015, p. 2.

26 June 2015, drawing the distinction that police officers would attend and treat the theft of groceries as a criminal matter, but would be unlikely to treat a fuel drive-off in the same way.²⁴⁶

Participants also cited other issues that arose as a result of the 2013 Instruction. APCO Service Stations, among others, believed that treating fuel drive-offs as a civil matter had been responsible for increases in the number of fuel drive-offs;²⁴⁷ RP Petroleum asserted that police had shown a total lack of interest in administering the law;²⁴⁸ and the ACAPMA asserted that the current approach of Victoria Police was not effective²⁴⁹ and had ‘inadvertently result[ed] in a threefold increase in the incidence of fuel drive-offs in Victoria since early 2013’.²⁵⁰ In his evidence, Mr Mark McKenzie, CEO of the ACAPMA stated:

... the key issue that we have identified here is that in the last two years it has grown markedly as a result of publicity that has been given to Victoria Police and the government position in relation to the enforcement of fuel theft... clearly the issue is that people do not believe they are going to get caught, so from our perspective it is a case of saying, ‘We need something in place that is more credible in terms of being a deterrent to theft in the first place’.²⁵¹

Other participants cited different concerns with the 2013 Instruction. Mr Fury Bortolotto, suggested that it was subject to diverse interpretation among police officers, served to improve police crime statistics, created unreasonable and additional Occupational Health and Safety (OH&S) issues for retailers, and encouraged fuel theft.²⁵² Other participants suggested the policy was intended to save Victoria Police resources while improving their statistics.²⁵³

Another criticism made to the Committee was that the industry had been informed by Victoria Police of the new approach but not consulted.²⁵⁴ In their evidence, APCO Service Stations stated:

We think that it is a bit unreasonable for them to be still claiming that there was engagement during the process. There was no engagement. We were called into a forum and at the end of several hours they read out a statement of what they were going to do. So to claim that there was engagement, from our point of view that is not what we experienced.²⁵⁵

²⁴⁶ Victorian Automobile Chamber of Commerce (VACC), *Fuel theft impasse is a crime*, media release, Melbourne, 26 June 2015; Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 8.

²⁴⁷ Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 8; APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 8.

²⁴⁸ RP Petroleum Pty Ltd, *Submission*, no. 16, 17 July 2015, p. 2.

²⁴⁹ Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 7.

²⁵⁰ Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 8.

²⁵¹ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 15.

²⁵² Mr Fury Bortolotto, *Submission*, no. 23, 22 July 2015, p. 3.

²⁵³ Mr Fury Bortolotto, *Submission*, no. 23, 22 July 2015, p. 1; APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 4.

²⁵⁴ APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 2.

²⁵⁵ Mr Robert Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 33.

APCO Service Stations surmised that the introduction of this approach was ‘an unfair and unreasonable tactic used by police hierarchy to force hundreds of small business retailers into a bad business practice of prepaid fuel’.²⁵⁶ According to legal advice sought by APCO Service Stations the 2013 Instruction ‘had some major flaws’.²⁵⁷

During the public hearings, Victoria Police informed the Committee that the 2013 Instruction has not yet been adopted as a formal, permanent policy.²⁵⁸ While Victoria Police considered the introduction of the instruction to have been efficient, they did offer to have further discussions with industry.²⁵⁹ Further, they also accepted that compliance with the instruction needed improvement.

Compliance with the instruction was the subject of comment from APCO Service Stations. According to APCO Service Stations, Victoria Police undertook to continue investigating those fuel drive-offs where there was evidence of criminal intent.²⁶⁰ Central to the new approach was the continuation of incident reporting (even in fuel drive-off cases seen to be civil matters), so that a person involved in more than one fuel drive-off would be identified triggering a police response.²⁶¹ However, some participants were concerned that this was not occurring, allowing repeat offenders to remain undetected,²⁶² with police members not following up cases where APCO alleged criminality.²⁶³ Mr Robert Anderson, a Director of APCO Service Stations, highlighted that concern in his evidence:

And yet the police’s judgement on this, under this policy, the immediate assumption is, ‘Oh, it was your mistake. It was your error. Your business model is wrong. It’s your problem. It’s a civil matter’... There is an immediate assumption that it is your problem, and it is a civil matter.²⁶⁴

Mr Peter Anderson, also a Director of APCO, added:

‘Oh, I forgot to pay’. How do the police make that decision when they do not even view the evidence?²⁶⁵

APCO Service Stations also suggested that as a result of the 2013 instruction there was no police system for dealing with repeat offenders:

²⁵⁶ APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 1.

²⁵⁷ APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 7.

²⁵⁸ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 77.

²⁵⁹ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 77.

²⁶⁰ APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 3.

²⁶¹ APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 3.

²⁶² APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 3.

²⁶³ APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 9.

²⁶⁴ Mr Robert Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 35.

²⁶⁵ Mr Peter Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 35.

There was no plan, there was no system at all for the police to follow up drive-off incidents at any stage. They did not have the system to do that... there was no plan for a database to catch the repeat offenders, these people who are coming back time and time again.²⁶⁶

Further, compounding the lack of police enforcement was a lack of information about drive-offs from police to fuel retailers, a situation noted by Mr Robert Anderson of APCO:

... we are not getting an immediate response as to that was stolen or not... We follow up in many instances, and they say, 'Yes, sorry. That was stolen' or, 'No, that's a matching plate. It's your problem'. It is days and sometimes weeks later before we get any information on the incident.²⁶⁷

Another criticism of the 2013 Instruction was that it ignored the basis for the majority of fuel drive-offs, which was seen to be opportunistic theft.²⁶⁸ AA Holdings and APCO Service Stations noted in their submission that prior to the 2013 instruction, that where a vehicle could be identified, retailers would contact police who would in turn contact the driver, and in most cases they would return and make payment.²⁶⁹ However, they noted that since 2013, the number of this type of fuel drive-off (where the vehicle is not using stolen numberplates) increased.²⁷⁰ The issue of opportunistic offending as raised by APCO and AA Holdings was also seen as posing a problem for any public education campaigns aimed at reducing fuel drive-offs. They argued that in the absence of police enforcement, public education campaigns, such as those conducted by Crime Stoppers, would be of limited value.²⁷¹ Indeed, on the question of Crime Stoppers running public campaigns on fuel drive-offs, Ms Sam Hunter, the CEO of Crime Stoppers Victoria stated that:

In terms of stimulating calls regarding fuel drive-offs if they were not going to be investigated, Crime Stoppers would see it as fruitless to collect intelligence that was not going to be utilised.²⁷²

Discussion

The introduction of the 2013 Instruction was seen by many Inquiry participants as contentious and problematic. The instruction itself appears to have been a response to a number of factors, including the way in which fuel drive-offs could be treated as civil or criminal matters and police resource allocation. The question of characterisation has caused much concern within the fuel retailing industry. While fuel retailers are able to access the civil justice system to deal with drive-offs (discussed in the next section), this is seen as less advantageous as having them dealt with by police as a criminal matter,

²⁶⁶ Mr Robert Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 33.

²⁶⁷ Mr Robert Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 34.

²⁶⁸ APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 3.

²⁶⁹ AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 1.

²⁷⁰ AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, pp. 1, 2.

²⁷¹ Ms Sam Hunter, Chief Executive Officer, Crime Stoppers Victoria, *Transcript of evidence*, 7 September 2015, p. 27.

²⁷² Ms Sam Hunter, Chief Executive Officer, Crime Stoppers Victoria, *Transcript of evidence*, 7 September 2015, p. 27.

particularly in cases involving repeat offenders. At present, it appears that the 2013 instruction is subject to inconsistent interpretation and compliance by some police officers. The Committee is concerned that cases involving drivers who use stolen vehicles or numberplates, who attempt to conceal their identity or who commit multiple fuel drive-offs are being ignored by Victoria Police and not subjected to criminal investigation. Based on a number of examples provided to the Committee by fuel retailers, and the acceptance of Victoria Police that more needed to be done where criminality is involved or suspected, fuel drive-offs must be subject to consistent police reporting, and investigation. This is particularly true of drivers who commit multiple fuel drive-offs. On that basis the Committee has made the following recommendation:

RECOMMENDATION 2: That Victoria Police works with its officers to enhance compliance with the 2013 Instruction to investigate fuel drive-offs where there is clear evidence of criminality. This would include reporting mechanisms for drive-offs and the adoption of a clear, consistent response by police to such reports, in particular to repeat fuel drive-offs committed by the same person.

4.2.2 Fuel drive-offs as a civil matter

In Victoria, fuel drive-offs that do not involve criminality may be dealt with as a civil matter. Fuel retailers can seek civil remedies in the Magistrates Court, with the fuel taken treated as a civil debt.²⁷³ The capacity to seek civil remedies for the debt and court costs is however, seen to be problematic, inefficient and costly for fuel retailers. A key issue raised during the Inquiry is the need to identify the driver in order to commence civil proceedings. In those cases where the driver has concealed their identity or that of their vehicle, there is clearly little redress through civil proceedings. Where a driver can be identified, a fuel retailer may apply for a preliminary discovery order. These orders are necessary for VicRoads to lawfully release personal information such as the identity and address of a vehicle's registered owner. This information in turn allows the retailer to issue a letter of demand and to correctly identify a party for proceedings to commence. In the absence of a court order, VicRoads is prohibited from providing this data.²⁷⁴ The cost of obtaining a Court order often exceeds the amount being sought from a driver. An example of the cost and time involved in seeking a civil remedy and the civil litigation process that fuel retailers will need to go through was raised with the Committee by several participants²⁷⁵ including the fuel retailer, APCO Service Stations.

Following a spate of fuel drive-offs, APCO Service Stations initiated court action to recoup money owed to it and its franchisees. In October 2013, the Geelong Magistrates Court provided APCO with the lawful authority to request identifying driver information from VicRoads as part of seeking civil debt recovery.²⁷⁶

²⁷³ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 4.

²⁷⁴ Note: Section 92(1) *Road Safety Act 1986* (Vic) requires that a delegate of VicRoads not divulge information such as registration records. However, a delegate of the Authority (VicRoads) may provide that information if it arises in the context of a legal proceeding.

²⁷⁵ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 4.

²⁷⁶ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 4.

The court action involved 25 fuel drive-offs. During the public hearings, the Committee sought additional information from APCO concerning its legal action and its outcomes. Mr Peter Anderson, a Director of APCO Service Stations, provided the following overview of their 2013 legal action:

It cost us \$408, I think, per numberplate. The information came back and 12 of them were people who matched. We sent letters including the court costs to those people, and three of them paid including the court costs. The others just ignored us. A couple of the letters came back 'return to sender'. What do you do at this stage over a \$50 drive-off? What about the other 400? What do you do? What level do you take it to?²⁷⁷

When asked by the Committee about their experience of the civil justice system, Mr Robert Anderson, a Director of APCO Service Stations, explained that:

We understand the process in court. It is cumbersome, it is expensive, it is not working.²⁷⁸

Mr Anderson's view was shared by other participants. The ACAPMA submission noted that the current approach where retailers seek to access the civil justice system to obtain information about drivers to recover their losses was undesirable. This was due to practical and privacy issues with securing access to registration data. A further limitation are lean management structures which mean that fuel retailers have neither the time nor resources to pursue recovery of civil debts through the courts.²⁷⁹ AA Holdings noted that recovering debts through the civil courts was costly and not a viable option.²⁸⁰ Mr Geoff Gwilym of the VACC stated that:

In the absence of a criminal approach to this matter, fuel retailers are left to battle civil proceedings at their own cost and often with little or no chance of recovering the cost of premeditated fuel theft by drive-off. More so, the costs and time associated with accessing the information are also significant. That whole process has led to a huge under-reporting of fuel theft.²⁸¹

Proposal to access VicRoads registration data without a court order

The cost and time needed to recover civil debts through civil proceedings led to proposals from several submitters to allow easy access to registration information by retailers. The VACC and APCO Service Stations suggested that such assistance would make it easier to recover costs in a 'timely and affordable manner'.²⁸²

²⁷⁷ Mr Peter Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 42.

²⁷⁸ Mr Robert Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 36.

²⁷⁹ Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 5.

²⁸⁰ AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 2.

²⁸¹ Mr Geoff Gwilym, Executive Director, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 87.

²⁸² Mr Geoff Gwilym, Executive Director, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 87; Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 8.

They cited parking and road toll operators' access to registration information as possible models for Victoria to follow.²⁸³ Essentially, fuel retailers would be able to access information directly from VicRoads without the need for a court order.

The access to VicRoads' licensing and registration data is however, seen as highly problematic by a number of government entities including Victoria Police, the Department of Justice and Regulation and the Commissioner for Privacy and Data Protection. The VicRoads databases that fuel retailers would seek access to 'hold the records of over 5 million registered vehicle operators and over 3.8 million licensed drivers'.²⁸⁴ According to Mr David Shelton, the Executive Director of Registration and Licensing at VicRoads, these databases which hold sensitive data are covered by overlapping protections (found in both the *Road Safety Act 1986* (Vic) and the *Privacy and Data Protection Act 2014* (Vic)), which are:

... really intended to reflect the community's expectations around the protection of personal information and safeguarding it from uses other than for which it was collected.²⁸⁵

While access to this data by fuel retailers without requiring a court order would provide a more efficient and cost-effective avenue for fuel retailers to pursue fuel drive-off debts, current legislative restrictions do not allow access to be granted.²⁸⁶ As discussed earlier, in the Magistrates' Court proceedings initiated by APCO Service Stations in 2013, VicRoads opposed the application to access registration data. Mr David Shelton of VicRoads explained:

We opposed it for two reasons. Firstly, we collect our data for a specific purpose and the information privacy principles in fact hold us to account that it is not used for other purposes. This was another purpose and it was our obligation to protect the data. Secondly, our reading of the public concern in this area was that there was a quantity of data that was being released through court orders to private car park operators. There was considerable public concern about the release of that data, so again we were reading the public's acceptance of the use of our data in opposing that.

In fact we have opposed many... Importantly, once the court gives access to this data and we make it available, it is no longer subject to the privacy controls and auditing that it would be if it was retained by VicRoads or through some other partner that we had legally provided the information to.²⁸⁷

²⁸³ Mr Geoff Gwilym, Executive Director, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 87; Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 8.

²⁸⁴ Ms Tracee Piper, Principal Policy Advisor, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 62; Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 62.

²⁸⁵ Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 62.

²⁸⁶ Note: A court order will meet the requirements set out in s. 90I(i) of the *Road Safety Act 1986* (Vic) thus allowing a fuel retailer to access VicRoads data. Refer to Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 62; Ms Tracee Piper, Principal Policy Advisor, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 62; and the *Road Safety Act 1986* (Vic).

²⁸⁷ Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 66.

The concerns of VicRoads were echoed by other government entities. When asked about the issues that direct access to VicRoads' data by private citizens and corporations might pose, Ms Marissa De Cicco from the Department of Justice and Regulation stated she had concerns about:

Privacy and safety. We all know that in our VicRoads information we have private residential addresses. Now ultimately VicRoads themselves has a range of conditions under the Road Safety Act. It collects it for the purposes of registration and driver licensing and so from that perspective it can only be used for certain other purposes.

There would be a range of concerns we would have about access to that information by persons whose intentions, probity and otherwise — and this is no reflection on anyone in the industry, but ultimately who would be receiving that information? To whom would it be sent? You never understand or know what the implications of that are and therefore what harm one might be putting that individual to, and this would be our concern. I imagine, certainly from a privacy perspective, there would be issues with it under the privacy legislation. As I say, the information is collected by VicRoads for particular purposes under the Road Safety Act, and the Road Safety Act itself regulates who can have access to that information and on what basis.²⁸⁸

The issues in allowing fuel retailers to access private information to recoup monies owed to them, possibly through the use of debt collecting agencies, has previously attracted parliamentary scrutiny in respect of private car park operators. In 2015, the Victorian Parliament enacted the *Road Safety Amendment (Private Car Parks) Act 2015*. The Act abrogated any entitlement to a preliminary discovery order by car park operators for the purpose of the recovery of private car park fees.²⁸⁹ The rationale for removing the common law right of discovery was a direct result of the practice of private car park operators issuing unenforceable payment notices. The practice of seeking multiple discovery orders was seen as an abuse of process and a waste of public funds.²⁹⁰ The Committee notes that the Commissioner for Privacy and Data Protection's submission suggested that allowing fuel retailers to obtain data directly from VicRoads would be contrary to the recent legislative change to the rights of private car park operators.²⁹¹ That is, allowing access to VicRoads registration information to fuel retailers may lead to similar issues as those created by private car park operators.

The proposal for fuel retailers to have direct access to registration information also raises privacy concerns. The key policy consideration underpinning restricted access to data collected and held by government entities is that the data can only be used for a particular or specified purpose. This consideration is intended to protect private information and to ensure trust among the community in the collection, storage and use of personal data by government. Access to such data raised numerous concerns which were outlined to the Committee by the Commissioner for Privacy and Data Protection. A key

²⁸⁸ Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 108.

²⁸⁹ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 5.

²⁹⁰ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 5. citing Minister for Consumer Affairs Gaming and Liquor Regulation, 'Crackdown on Private Carpark Operators', viewed 10 June 2015, <www.premier.vic.gov.au>.

²⁹¹ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 5.

question for the Commissioner was how access to registration data could be achieved and operate in a way that respected an individual's privacy.²⁹² The Commissioner indicated that the existing *Road Safety Act 1986* (Vic) (RSA) provisions, specifically s. 90K did not allow such a release of data. Further, the legislation did not provide a disclosure power enabling such data to be disclosed. The Commissioner's submission provided that such a release of data would be contrary to the purpose of the RSA.²⁹³

A further restriction to granting such access is found in the *Privacy and Data Protection Act 2014* (Vic) (PDPA), administered by the Victorian Commissioner for Privacy and Data Protection. This legislation specifically restricts access to data held by agencies such as VicRoads. In particular, Privacy Principle 2.1 of the PDPA restricts VicRoads from providing personal data to private entities. The Commissioner noted that while the PDPA has some flexibility which allows agencies to depart from the PDPA, these would not arise in the context of VicRoads because of the operation of s. 90K of the *Road Safety Act 1986* (Vic).²⁹⁴

The Commissioner observed that even if VicRoads were given powers to provide registration information to fuel retailers, the regulatory system that deals with privacy and data in Victoria would not be able to protect such data once it was released. This is because the PDPA does not apply once the data is released to private individuals.²⁹⁵ Further, while Federal privacy legislation can regulate data held by private or non-government agencies, it does not apply to small businesses (defined as those with a turnover of less than three million dollars).²⁹⁶ The Commissioner noted that about 90 per cent of the private sector is not covered by the Commonwealth legislation, and suggested that many fuel retailers would be considered small businesses for the purposes of the Commonwealth *Privacy Act 1988*.²⁹⁷ While a mechanism exists in the Commonwealth *Privacy Act 1988* for a small business to 'opt in'²⁹⁸ this can easily be revoked, a concern shared by VicRoads.²⁹⁹ These concerns also extend to any legislative amendments intended to overcome the current prohibitions, with the Commissioner stating that:

If legislation were enacted to provide for the registration data to be given to private individuals or bodies, the very considerable privacy and data protecting implications would need to be considered.³⁰⁰

²⁹² Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 5.

²⁹³ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 5.

²⁹⁴ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 5.

²⁹⁵ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 6.

²⁹⁶ Note: Section 6C of the *Privacy Act 1988* (Cth) excludes small business operators (a wide definition but one that includes a business that has an annual turnover of less than three million dollars. Refer to the *Privacy Act 1988* (Cth).

²⁹⁷ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 6.

²⁹⁸ S. 6EA *Privacy Act 1988* (Cth).

²⁹⁹ Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 66.

³⁰⁰ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 6.

Proposal for access to VicRoads data by a private entity

An alternative to direct access to VicRoads registration information was a proposal to allow an independent third party entity to access VicRoads registration data and provide it to fuel retailers on a case by case basis. Participants suggested that this body could be either a government entity or operated by an industry or private group. Such an approach would be collaborative in nature, and represents a co-regulatory approach to dealing with fuel drive-offs.³⁰¹ For example, Mr Nicholas Wallis' submission suggested creating a not-for-profit, government agency operating under its own legislation to overcome privacy issues from tracking and storing numberplate data, while allowing businesses to access that data.³⁰² The role of such an agency would be multifaceted, and include tracking numberplates, blocking certain registered drivers from purchasing petrol, providing a debt-collection service, as well as being able to impose civil penalties directly.

In terms of a private or industry led entity, Inquiry participants provided as an example the British Oil Security Syndicate (BOSS), a private, not-for-profit body,³⁰³ as a possible model for Victoria. The BOSS was formed in 1991 by the British oil industry, and is an example of an Integrated Partnership Response (IPR). An IPR is an integrated and highly effective partnership between retailers, regulators, police and the community that pursues offenders via civil and criminal channels. The BOSS is partnered with the Home Office Crime Reduction Centre, and the Association of the Chief Police Officers, and has relationships with other organisations including Crime Stoppers United Kingdom (UK).³⁰⁴ There are said to be over a 1,000 retail members of the BOSS.³⁰⁵

The aim of the BOSS is to reduce crime at fuel retail sites. Under the scheme, fuel retailers can become members of the BOSS for an annual fee and are able to recover losses incurred when a person is unable to pay but leaves their details and fails to return (referred to as a 'no means of payment'). In these cases, the BOSS follows up these customers and seeks to return the money owed to the retailer. The system known as 'Payment Watch', is a debt recovery scheme, which the BOSS claims recoups about 80 per cent of outstanding monies.³⁰⁶ The BOSS also operates two other systems, the Electronic Reporting System (ERS), which allows online reporting of fuel drive-offs, including Closed-Circuit Television (CCTV), and the BOSS Forecourt Watch. The Forecourt Watch, of which there are 130 operating in the UK,³⁰⁷ is a crime prevention partnership, in which the

³⁰¹ Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, pp. 11, 12.

³⁰² Mr Nicholas Wallis, *Submission*, no. 1, 19 June 2015, p. 2.

³⁰³ British Oil Security Syndicate (BOSS), *Annual Review 2014-15*, England & Wales, 2015.

³⁰⁴ British Oil Security Syndicate (BOSS), *Annual Review 2014-15*, England & Wales, 2015, p. 2; Victoria Police, *Submission*, no. 26, 10 August 2015, p. 8.

³⁰⁵ Victoria Police, *Submission*, no. 26, 10 August 2015.

³⁰⁶ British Oil Security Syndicate (BOSS), *Payment Watch: No means of Payment Scheme from BOSS*, Warwickshire, 2015; British Oil Security Syndicate (BOSS), 'What is Payment Watch?', viewed 30 September, <www.bossuk.org>; Victoria Police, *Submission*, no. 26, 10 August 2015, p. 8.

³⁰⁷ Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 7.

BOSS works with police to help reduce crime while reducing demands on police. It targets offender and aims to minimise retail losses. According to the BOSS, it can reduce fuel drive-off associated crime by more than 50 per cent.³⁰⁸

The BOSS model is interesting in that it may access UK registration information held by the state motor vehicle registration body. A notice of civil debt is then sent by the BOSS to the registered owner requesting the debt and an additional fine/administration fee be paid to avoid police action. A fuel drive-off is referred to police for investigation if they involve stolen numberplates or if during civil proceedings it is determined that it was a criminal act.³⁰⁹

There are also other schemes that can deal with fuel drive-offs. The Committee received evidence of a similar scheme to the BOSS operating in Sweden. Mr Jeff Rogut, the CEO of AACS provided the following overview of the Drive-off scheme:

I can also talk broadly on one that we have been investigating with a Swedish company called Drive-off, where it is basically a third party. If you provide the details of somebody who has driven off without paying for petrol, they will do the investigation, provided they have access to who the driver is. Obviously they would need the authority to go through VicRoads. They would then start sending them a bill for the amount of money that is owed to that service station. It is almost an insurance policy for service station operators. The key there is being able to get access to who the owner of that vehicle is, and that would then make a difference from that point of view.³¹⁰

While different models exist in Europe, according to Victoria Police the BOSS is a best practice example of an IPR model,³¹¹ a view also supported by the VACC. The VACC gave evidence that:

Such a method of tackling fuel theft found in the UK supports VACC's contention that a strategy that entails stronger coordination between industry and police is required in order to limit fuel drive offs. [the BOSS is an] effective collaboration between industry and police have resulted in a significant reduction in crime associated with fuel theft.³¹²

The concept of a Victorian IPR, based on the BOSS model, was raised during public hearings. Ms Marissa De Cicco of the Department of Justice and Regulation noted that such an arrangement could work in Victoria:

... if a third-party agency could be introduced that could be statutorily underpinned, that had appropriate probity and those sorts of protections around it as being an agent, a bit like a sort of tolling agent, that particular entity could receive reports of stolen petrol, petrol drive-offs, and they could then seek information like registration plate details et cetera from VicRoads. In the context then of pursuing that either by

³⁰⁸ British Oil Security Syndicate (BOSS), *Annual Review 2014-15*, England & Wales, 2015, p. 9.

³⁰⁹ Victoria Police, *Submission*, no. 26, 10 August 2015.

³¹⁰ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 11.

³¹¹ Victoria Police, *Submission*, no. 26, 10 August 2015.

³¹² Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, pp. 6, 7.

way of letter in the first instance — a bit like some of the EastLink tolling does, where some of the tolling infringements are now pursued first instance through a letter seeking and then just advising the individual that they were detected driving without an appropriate toll reader, then they have an opportunity to pay the toll itself before an infringement is issued. Something like that could work in this sort of area. Again, it would still need to have the detection capable of recording with sufficient accuracy and clarity the reg[istration] plate number at the actual petrol station. That would be a means if one wanted to pursue an infringement.³¹³

Ms De Cicco added:

... there have been examples of third-party entities established by industry. I think the UK had some examples of that. Third-party entities whose probity you could rely upon on, established to then receive all the information about stolen plates from Victoria Police and then could be used as a checking mechanism. That has certainly been done and shown to have worked quite effectively from what I gather from the UK experience.³¹⁴

Similarly, VicRoads gave evidence to the Committee that such an approach might be acceptable if certain conditions were met:

There has been a suggestion that there are some other models that might involve a regulator of some sort that might act on behalf of petrol station operators. My sense is if we can assure ourselves that the data is being appropriately used and that the public are in fact happy that it is being appropriately used, then a regulator approach may be a reasonable solution to it. But providing the data to all operators makes it almost impossible to keep track of how it is actually being used.³¹⁵

Victoria Police also cited the BOSS model as a potential way of dealing with industry concerns about the costs and time involved in pursuing civil claims. Mr Stephen Fontana, Assistant Commissioner, Victoria Police explained that:

I think the process of going to court to get those details is convoluted, it is costly. If the industry had access to that data or if there was a genuine case, it would probably be far more efficient. I know in the UK they have got the BOSS system, where they have got a debt-collecting body that has been set up on behalf of the industry, but it needs to be tightly controlled. But certainly if they had access to that information, it would probably allay a lot of concerns that they may have.³¹⁶

The potential to use an existing industry association to undertake a role similar to the BOSS was explored by the Committee during the public hearings. Ms Tracee Piper, Principal Policy Adviser, Registration and Licensing, VicRoads made the following observations on the potential of an industry association to undertake this role in Victoria:

³¹³ Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 109.

³¹⁴ Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 107.

³¹⁵ Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, pp. 66, 67.

³¹⁶ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 76.

We have looked at the submissions and it seems there is ACAPMA that represents about 3400 members and they seem to fit into a regulator model but there are another 3000 or so who are more convenience-style individuals who do not actually fall under that. But ACAPMA may have formed an industry regulator role where, if you adopted that BOSS logic, if a person did a drive-off — like, say I did it — they could apply to the regulator, they can have an agreement with VicRoads and, under that agreement, we would provide the name and address of the regulator and the petrol station operator could then pursue me for a debt.³¹⁷

The Committee sought information from the ACAPMA about its experiences trying to create a process which replicated the incident reporting undertaken by the BOSS. Mr Mark McKenzie shared the ACAPMA's experiences trying to organise such a process, and the difficulties faced in implementing a basic, data-gathering scheme:

I suppose we looked at two design considerations around the solution. The first is, as we have said, that in earlier times we have tried to collect the data that we are talking about — so you are trying to get cooperation between the industry. After two years of trying to do so, it has not been something we have been able to do as an industry association, working in partnership with others such as the VACC and AACS. There is a real challenge here about how we create a body that is credible enough to be trusted by the industry to collect that data. Trying to do that as a private organisation creates some challenges, particularly in terms of the commercial reality of it.³¹⁸

Discussion

The proposals raised in submissions and at the public hearings can be categorised in two ways: those that advocated full access to VicRoads registration data, including the garage address and personal information of the registering person; and access to this data by a third party. Access to such data would allow retailers to prevent fuel drive-offs, and where they occur, to recover the debt and avoid the need for judicial interventions.

The introduction in 2013 of the Police Commissioner's Instruction has meant that fuel retailers seeking to recover their losses need to access the civil justice system. That process is seen as costly and cumbersome. The two proposals raised by participants were aimed at providing easier access to this data, with time and cost savings. However, the Committee has a number of concerns with the proposals. Notwithstanding the broader issue of insufficient information about the size and cost of the fuel drive-off problem in Victoria (discussed in Chapter three), allowing fuel retailers to access personal information directly through VicRoads, or alternatively through an industry led body, raises substantial legal and policy issues.

³¹⁷ Ms Tracee Piper, Principal Policy Advisor, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 67.

³¹⁸ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, pp. 22, 23.

The restriction on providing personal data directly to private entities under the RSA is underpinned by a policy consideration that data collected by government agencies and bodies can only be used for a particular or specified purpose. This policy constraint is intended to protect private information and to ensure community confidence in the collection, storage and use of personal data by government. The legislative and policy base adopted in Victoria is that privacy considerations are paramount when public sector agencies collect, store and handle private data. In addition to the data access restrictions in the RSA, the *Privacy and Data Protection Act 2014* (Vic) (PDPA) administered by the Victorian Commissioner for Privacy and Data Protection, specifically restricts access of data held by such agencies.

In particular, Privacy Principle 2.1 of the PDPA would restrict VicRoads from providing personal data to private entities.

Creating an exemption to allow access requires solid public policy justifications. While mechanisms exist to allow the release of such data, which would otherwise breach the PDPA, it is unlikely that these would apply to fuel retailers. The Assistant Commissioner for Privacy and Data Protection advised that there is capacity to allow the release of personal data using the prescribed public interest test but it is unlikely that the release of personal data for private debt recovery would meet it.³¹⁹ Only once a Court has assessed the appropriateness of the plaintiff's claim, could a government agency provide such data to a private entity. The reason that courts exercise such powers is to limit the misuse of court processes when dealing with private information held by government entities. On occasions, for example with car park operators, the misuse of court processes recently resulted in legislative intervention to ensure that private information is not being misused.

The Committee does not consider that allowing individual fuel retailers the right to request and receive personal information from government agencies is appropriate. Firstly, policy interventions that seek to remove legislative restraints protecting privacy need to be justified by reference to the problem they are seeking to address. In the case of fuel drive-offs, given the paucity of reliable, available data, the size and extent of the problem appears to be relatively small. This is said in the context of the low monetary value of fuel drive-offs, albeit occurring on frequent occasions for varied reasons. The Committee considers that they do not justify the removal of legislative protections to enable direct access to registration information. Secondly, as in the case of private car park operators, there are legitimate concerns that such a power could be misused, with individual members of the community subjected to intrusive and unnecessary debt collection and court processes. The Committee does not believe that such access meets community expectations concerning the use of sensitive, personal information held by government agencies. Finally, once this data is provided to fuel retailers, there is no capacity for government to continue regulating how it

³¹⁹ Mr Tony Nippard, Assistant Commissioner for Privacy and Data Protection, Office of the Commissioner for Privacy and Data Protection, *Transcript of evidence*, 8 September 2015, p. 6.

is used, stored, amended, released or destroyed. The release of such information poses significant risks to the community given the nature of the data held by VicRoads (for example, dates of birth, addresses, medical conditions etc.).

FINDING 4: Personal information held by public sector agencies is subject to a number of overlapping legislative protections. These are intended to deal with the significant risks of that data being made available to third parties, matters of equity and more broadly the importance placed on the appropriate use of personal data. Based on these limitations and the potential risks posed by aggressive debt collection agencies pursuing civil debts, it would be difficult to justify the provision of this information to private entities, except by an order of a court. The Committee considers that it is inappropriate to amend Victorian privacy law and VicRoads' enabling legislation in order to allow fuel retailers to access registration information.

4

The concerns with access to personal data also apply to the proposal for a Victorian industry body acting on behalf of fuel retailers. While the BOSS model appears workable, the Committee notes that it predominantly deals with failures to pay where the driver has provided their details to the retailer, primarily as a result of an inability to pay. In such cases, fuel retailers would already be in a position to begin civil legal action. While there was support for the development of such a body by Inquiry participants, the experience of the ACAPMA indicates that the fragmented nature of the industry makes the creation of such a body difficult. The Committee notes that such bodies are usually the product of organic, market-led attempts to deal with an industry problem. That was certainly evident in the UK with the BOSS. The Committee therefore considers that the creation of such a body needs to be driven by the industry, rather than government. Further, the Committee is supportive of an industry-led development of a BOSS-like body in Victoria.

RECOMMENDATION 3: That the Victorian fuel retail industry, through its representative groups and associations, develop options for an entity based on the British Oil Security Syndicate model. These options should be developed in conjunction with the Victorian Government, Crime Stoppers Victoria and agencies including Victoria Police and VicRoads.

4.2.3 Fuel drive-offs and the law in other Australian jurisdictions

This section sets out the legislative provisions in each jurisdiction which may apply to fuel drive-offs.

The Australian Capital Territory

In its submission, the Australian Federal Police (AFP) stated that due to the nature of fuel purchases (a customer is given authorisation by the retailer for the fuel to flow into a vehicle), the appropriation of the fuel by the customer is deemed to be lawful and therefore not a theft. Theft in the Australian Capital Territory (ACT) is set out in s. 308 *Criminal Code 2002* (ACT) which provides that a person commits a theft if they dishonestly appropriate property belonging to another with the intention of permanently depriving that person of the property.

In its submission, the AFP noted that because of the way the appropriation of fuel occurs, the theft offence does not apply, given the requirement to prove a 'dishonest appropriation'.³²⁰ The AFP accepted that this has led to a problematic situation in that a fuel drive-off could be considered to be a breach of contract, a criminal offence or both. Instead of relying on proving the theft offence, the AFP is able to charge a driver with the 'making off without payment – minor offence'.³²¹ This offence deals with people who make off without making payment for goods or services. A person commits an offence if they know they are required to make an immediate payment for goods or services supplied by someone else, and dishonestly makes off without paying and with the intention of not paying. The fault requirement for this offence is dishonesty, and the intent is to avoid payment.³²² The offence applies to the value of goods or service up to \$2,000. The penalty for the offence is 50 penalty units (one penalty unit is valued at \$150)³²³ or six months imprisonment, or both. As an alternative to prosecution, an investigating officer is able to issue a caution.³²⁴

The ACT uses a specific reporting form for fuel drive-off complaints. Based on the information contained in the form, police make contact with the registered owner of the vehicle, with about 17 per cent of drivers returning to pay for their fuel. According to the AFP the time and resources used to attend and investigate fuel drive-offs typically exceeds the average cost of stolen fuel which is \$65. The AFP submission further noted that it is currently reviewing its own policy, and has indicated that it needs to identify alternative solutions to fuel drive-offs while meeting the expectations of the community, industry and business owners.³²⁵

Additionally, the AFP in its submission noted that it was investigating proposals for government to amend the current 'making off without payment – minor offence' so that it attracts strict liability (for goods or services worth less than \$500) and may therefore be included within the infringements system.³²⁶

The Commonwealth

The Commonwealth's *Criminal Code Act 1995* (Cth) follows the same approach as that of the ACT in relation to theft offences.³²⁷ This is so both in the construction of the theft offence and in having a specific lower level offence for making off without paying for goods or services. A key point of difference is that the theft offences in the Commonwealth jurisdiction must relate to property owned by a 'Commonwealth entity' in order to be prosecutable under the *Criminal Code Act 1995* (Cth).³²⁸ A maximum ten year imprisonment period applies.³²⁹ In that

³²⁰ Australian Federal Police (AFP), *Submission*, no. 22, 21 July 2015, p. 3.

³²¹ Refer to s. 323 of the *Criminal Code 2002* (ACT).

³²² Australian Federal Police (AFP), *Submission*, no. 22, 21 July 2015, p. 3.

³²³ S. 133(2) *Legislation Act 2001* (ACT).

³²⁴ Australian Federal Police (AFP), *Submission*, no. 22, 21 July 2015, p. 3.

³²⁵ Australian Federal Police (AFP), *Submission*, no. 22, 21 July 2015, pp. 5, 6.

³²⁶ Australian Federal Police (AFP), *Submission*, no. 22, 21 July 2015, p. 3.

³²⁷ Refer to Division 131 *Criminal Code Act 1995* (Cth).

³²⁸ C. 131.1(1)(b) *Criminal Code Act 1995* (Cth).

³²⁹ C. 131.1 *Criminal Code Act 1995* (Cth).

context, it seems more likely that a fuel drive-off would be prosecuted under c. 132.6 which deals with situations where a person has made off without making payment. The term of imprisonment is two years.³³⁰

New South Wales

In New South Wales (NSW), fuel drive-offs are considered to be a fraud, and dealt with under s. 192E of the *Crimes Act 1900* (NSW). According to NSW Police, 'while there are similarities with larceny, the taking of fuel without paying for it is treated as a fraud because of the deception involved'.³³¹

In dealing with fuel drive-offs, NSW Police introduced a new, standardised reporting form. The form which was introduced in September 2013, was intended to help fuel retailers submit the necessary information for police to identify, investigate and prosecute fuel drive-offs. These forms can be submitted online or by facsimile transmission.³³²

The Northern Territory

The Northern Territory's *Criminal Code Act* (the Act) defines stealing as the unlawful appropriation of another person's property with the intention of permanently depriving that person of it, irrespective of whether the person appropriating it was willing to pay for the property. Section 209 of the Act defines the appropriation of property as assuming property rights. The sanction for stealing is a maximum seven year term of imprisonment.³³³

Queensland

As with other jurisdictions, stealing in Queensland is a multifaceted offence. Section 390 of the *Criminal Code Act 1899* (Qld) provides that a thing capable of being stolen is stolen when a person fraudulently takes or converts it. The person doing so must have the intent of permanently depriving the owner of the property.

In addition to the offence discussed above, fuel drive-offs may be dealt with under the *Regulatory Offences Act 1985* (Qld) (ROA). Section 5 of the ROA provides that where a person through their own oversight fails to pay for an item when leaving a retail site, they may be guilty of an offence.³³⁴ Section 5 specifically deals with 'unauthorised dealings with shop goods' that are valued at \$150 or less. The penalty in Queensland is a fine of six penalty units (one penalty unit is valued at \$117.80).³³⁵

³³⁰ C. 132.6 *Criminal Code Act 1995* (Cth).

³³¹ NSW Police Force, *Why the new system for police reporting was introduced: petrol theft data useless after procedure change, says crime research body*, media release, Melbourne, 1 October 2014.

³³² NSW Police Force, 'Drive Off or Fail to Pay Events Prevention Tips for Console Operators', viewed 30 September 2015, <www.police.nsw.gov.au>.

³³³ S. 210 *Criminal Code Act 1983* (NT).

³³⁴ Legal Aid Queensland, *Criminal Law Duty Lawyer Handbook: A guide for practitioners appearing as duty lawyers in magistrates and childrens courts in Queensland*, 1-268, 6th edition 2012, p. 53.

³³⁵ Queensland Government, 'Sentencing fines and penalties for offences', viewed 16 November 2015, <www.qld.gov.au>.

Queensland also has a dedicated online 'Fuel Drive-off Offence Report' and a withdrawal of complaint form which may be electronically lodged by retailers to Queensland Police.

South Australia

In South Australia (SA), s. 134(1) of the *Criminal Law Consolidation Act 1935* (SA) (the Act) provides that a person is guilty of theft if they deal with property dishonestly, without the owner's consent and with the intention to permanently deprive the owner of the property. The maximum penalty for a theft in SA is imprisonment for 10 years.³³⁶

The definition of what is 'dishonest' is crucial in the construction of the theft offence. Section 131 of the Act defines dishonesty as something that would be viewed as such by the standards of an ordinary person.³³⁷ Importantly, in the context of fuel drive-offs, a person who acts in a particular way is not dishonest if the person honestly but mistakenly believes they have a legal or equitable right to the property.

In relation to fuel drive-offs, South Australian Police have implemented a specific process, supported by infrastructure and a dedicated SA Police resource, to respond to these incidents. Drive-offs are reported to SA Police, and if done in a timely manner, a notification is sent out to all police units in the area with registration details of the vehicle, to see if the offender's vehicle can be identified.³³⁸

Tasmania

Fuel drive-offs in Tasmania may fall within section 234 of the *Criminal Code Act 1924* (Tas) (the Act) which makes stealing an offence. Stealing as defined in s. 226 of the Act, occurs when a person, without the consent of the owner dishonestly takes or obtains possession of property, with the intent to permanently deprive the owner of the property. The penalty for stealing under the Act is significant, with a maximum imprisonment term of 21 years or a fine, or both. However, if the crime is dealt with summarily, a lesser sanction of 12 months imprisonment for a first offence or five years for a second or subsequent offence is available.

The Committee understands that the Tasmanian Police rely on a 'making off without payment' offence, a summary offence, rather than relying on the stealing offence set out in the Act. Under s. 38A of the *Police Offences Act 1935* (Tas), a person who knows that payment on the spot is required for goods or services and dishonestly makes off without paying can be penalised with a fine (not exceeding 10 penalty units (one penalty unit is valued at \$154)³³⁹ or a 12 month prison term.

³³⁶ S. 134(1) *Criminal Law Consolidation Act 1935* (SA).

³³⁷ S. 131(1) *Criminal Law Consolidation Act 1935* (SA).

³³⁸ 7-Eleven Stores, *Submission*, no. 12, 17 July 2015, pp. 3, 4.

³³⁹ Department of Justice: Tasmanian Government, 'Value of Indexed Amounts in Legislation', viewed 9 November 2015, <www.justice.tas.gov.au>.

Western Australia

The *Criminal Code Act Compilation Act 1913* (WA) (the Act) sets out the offence of stealing. Section 371 of the Act states that where a person fraudulently takes something capable of being stolen, with the intent of permanently depriving the owner of it, the person is guilty of stealing. The penalty is imprisonment for up to seven years.³⁴⁰

Observations

In relation to fuel drive-offs, the distinction between the criminal offence and a civil breach is the mental intention to acquire property dishonestly or fraudulently.

Within the criminal law there are a number of partial defences, key among them being a reasonable mistake of fact. While this report has not explored these defences, the operation of the reasonable mistake of fact and other related defences will be important in understanding how alleged theft is viewed by the police and courts. Nevertheless, these defences may apply in the context of a fuel drive-off, as well as other less common defences such as mental impairment or automatism among others.

Finally, where there are aggravating circumstances in the context of a fuel drive-off, for example where there are stolen numberplates or there is an attempt to conceal a person's identity, these factors will make it difficult for a defendant to contend that they did not have the intent to commit fuel theft. The Committee also notes that while Australian jurisdictions have approached fuel drive-offs differently, it is unclear how effective the different approaches are in dealing with fuel drive-offs.

4.2.4 Proposals for reducing fuel drive-offs

A number of new penalties were proposed by industry participants to address and reduce the incidence of fuel drive-offs. This section deals with the major proposals raised with the Committee during the Inquiry. These proposals fit within the broader industry theme that characterised fuel drive-offs as a strictly criminal rather than civil matter. One participant, the AACS, highlighted this policy approach, suggesting it was 'not appropriate for people and authorities whose expertise lies elsewhere than the retail environment to dictate retail solutions'³⁴¹ in terms of introducing prepayment (further discussed in Chapter five). Rather they contended that 'toughened police action, deterrents and penalties against criminals were required'.³⁴²

³⁴⁰ S. 378 *Criminal Code Act Compilation Act 1913* (WA).

³⁴¹ Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 13.

³⁴² Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 13.

The basis cited for the introduction of new penalties for fuel drive-offs, was that existing criminal remedies needed urgent review,³⁴³ and that new criminal penalties would deal with what the AAC referred to as the criminal nature of fuel theft, with offenders punished accordingly.³⁴⁴ Importantly, the ACCS strongly held the view that characterising fuel drive-offs as a ‘civil matter’ was just an excuse to not investigate these incidents.³⁴⁵ The AAC also believed that ‘ideally, police will have the resources and direction to pursue petrol thieves to the full extent of the law, and the courts will have the power to enforce severe penalties that reflect the serious criminal nature of petrol theft’.³⁴⁶ There was also a suggestion that ‘the penalties for petrol theft were inconsistent and inadequate’, and ‘in the vast majority of cases, the thieves simply get away with it scot-free’.³⁴⁷

A fuel drive-off infringement

Lower level regulatory offences may be dealt by an expiation notice, also known as an infringement penalty notice. Essentially, an expiation notice allows a person to pay the penalty without any further legal consequence or court process being initiated. Importantly, no conviction is recorded.³⁴⁸ The Attorney-General’s *Guidelines to the Infringements Act 2006* provides that infringements are:

... used to address the effects of minor law breaking with minimal recourse to the formal criminal justice system and... often without the stigma associated with criminal judicial processes, including that of having a criminal conviction.³⁴⁹

Examples of infringement notices offences include driving above the speed limit, exceeding parking time limits and littering. There are clear advantages to law enforcement agencies and persons in lower level regulatory offences being handled through the infringement penalty notice system. These include administrative efficiency, lower regulatory costs, reducing court workloads, and lower fines than those likely to be imposed by formal court processes.

Industry proposal

A recurring proposal from industry in submissions and at the public hearing was to make fuel drive-offs an infringeable offence. The ACAPMA gave evidence that for fuel drive-offs to be infringeable, a new ‘traffic offence’ would need to be introduced,³⁵⁰ with an on-the-spot fine for fuel drive-offs similar to those applicable to running a red light.³⁵¹ The proposal

³⁴³ Australasian Association of Convenience Stores (AAC), *Submission*, no. 5, 7 July 2015, p. 11.

³⁴⁴ Australasian Association of Convenience Stores (AAC), *Submission*, no. 5, 7 July 2015, p. 11.

³⁴⁵ Australasian Association of Convenience Stores (AAC), *Submission*, no. 5, 7 July 2015, p. 11.

³⁴⁶ Australasian Association of Convenience Stores (AAC), *Submission*, no. 5, 7 July 2015, p. 11.

³⁴⁷ Australasian Association of Convenience Stores (AAC), *Submission*, no. 5, 7 July 2015, p. 11.

³⁴⁸ Department of Justice, ‘Attorney- General’s Guidelines to the Infringements Act 2006’, viewed 24 July 2015, <online.fines.vic.gov.au>, pp. 1,2.

³⁴⁹ Department of Justice, ‘Attorney- General’s Guidelines to the Infringements Act 2006’, viewed 24 July 2015, <online.fines.vic.gov.au>; Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 105.

³⁵⁰ Australasian Convenience and Petroleum Marketers Association, *Supplementary evidence*, 7 September 2015.

³⁵¹ Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 7.

for an infringeable offence was supported by the AACS, AA Holdings and APCO Service Stations.³⁵² APCO Service Stations gave evidence that using these notices would save time and reduce court resources, and also act as a practical deterrent.³⁵³

While some Inquiry participants considered that a infringement penalty of between \$400³⁵⁴ and \$500³⁵⁵ would be adequate, the ACAPMA took the view that the value of penalty would need to be more substantial than the cost of the fuel taken to be a sufficient deterrent.³⁵⁶ The advantages of using infringements to deal with fuel drive-offs were outlined by Mr Mark McKenzie, CEO of ACAPMA:

There are a couple of key advantages of this as a proposal. Firstly, what you basically have is an offence that does not go onto a criminal record, so the issue where there is some confusion about whether this was just an accident where somebody had driven off without paying or whether this was a deliberate action, the review processes that operate within the speed camera and the red light offences, where you can actually provide a mechanism for review, already exist. Our issue is that rather than set those up as a simultaneous arrangement we could actually utilise the infrastructure that is already in place.³⁵⁷

Mr McKenzie, also gave evidence that the infringement system had the ability to also deal with inadvertent fuel drive-offs:

... prosecut[ion of] fines on the basis of utilising the traffic infringement enforcement system that operates now, which actually provides the ability to discern between someone who has made an innocent mistake in terms of driving off and those who have actually deliberately stolen fuel.³⁵⁸

The introduction of a new infringement for fuel drive-offs was also linked to a proposal by the ACAPMA for the Victoria Government to fund the installation of Automatic Number Plate Recognition (ANPR)³⁵⁹ cameras across all fuel retail sites in Victoria.³⁶⁰ These cameras (discussed in Chapter five), would allow numberplate recognition to occur directly, thus providing the necessary evidence for police to issue fines and where necessary to prosecute drivers. The central premise of funding an ANPR system was raised by Mr McKenzie, CEO of the ACAPMA who explained that alternative industry-government models could be explored to fund the new ANPR cameras:

³⁵² APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 10; Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 11; AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 6.

³⁵³ Mr Robert Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 36.

³⁵⁴ RP Petroleum Pty Ltd, *Submission*, no. 16, 17 July 2015, p. 2.

³⁵⁵ Mr Peter Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 35; Mr Fury Bortolotto, *Submission*, no. 23, 22 July 2015, p. 37.

³⁵⁶ Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 8.

³⁵⁷ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 15.

³⁵⁸ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 18.

³⁵⁹ Note: The Automatic Number Plate Recognition (ANPR) system identifies motorists committing specific road safety breaches by utilising custom built cameras and software that identifies registration numberplates and checks these plates against relevant databases. Refer to Victoria Police, *Submission*, no. 26, 10 August 2015.

³⁶⁰ Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 8.

The second point is that I suppose it boils down to whether there is an opportunity for government part-funding this model or having a cooperative arrangement. As I said earlier, our principal problem here is that the payback period on the investment is seven to eight years, which just does not commercially work within the confines of a normal franchise. If there was a joint funding agreement where there was the opportunity for both parties to refund or access the return on that capital by means of recovery, then clearly there are models that could be explored in terms of joint funding. That would have the benefit also of being a partnership between government and industry that would have some credibility.³⁶¹

During his evidence to the Committee Mr McKenzie stated that the installation of ANPR cameras across 1455 Victorian retail sites could be funded from the fines collected from fuel drive-off offences.³⁶² He also referred to modelling undertaken by the ACAPMA that indicated that the government would recover the cost of installing ANPR cameras (estimated at \$22 million dollars)³⁶³ after the first year of issuing infringements³⁶⁴ on the following basis:

... those costs of implementation could be funded by the government for the first year, with a view to actually paying that back in terms of a 75 per cent capture of the current number of offences that are operating.³⁶⁵

The Committee however notes that this figure is dependent on whether the vehicle involved uses stolen numberplates or has them obscured.

While there was support for the introduction of infringements for fuel drive-offs, Mr Brian Negus, General Manager, Public Policy of the RACV, gave evidence that a cautious approach to the introduction of a new infringement was required:

... our response to imposing fines up-front is usually: let us try and deal with the issue sensibly first, before we just take a way out and put a fine on, which is going to discourage the issue. I am not too sure whether that still deals with the issue, because you have still got to catch the person, and the evidence would be that in terms of the fuel drive-offs they are not catching people. You need to find some way to catch them, and hence the automatic numberplate recognition system is a way of detecting people. Imposing a fine does not necessarily deal with the issue in a more proactive way.³⁶⁶

³⁶¹ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 23.

³⁶² Australasian Convenience and Petroleum Marketers Association, *Supplementary evidence*, 7 September 2015.

³⁶³ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 20.

³⁶⁴ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 20.

³⁶⁵ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 19.

³⁶⁶ Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 49.

The Victorian Attorney-General's guidelines on infringements

As referred to in section 4.2.1, the strategic use and appropriateness of infringements is a matter dealt with by the Department of Justice and Regulation. The *Attorney-General's Guidelines to the Infringements Act 2006* (the Guidelines) regulates the use of infringements in Victoria and outlines when an offence is suitable for infringeable status. It is only when an agency can satisfy the Attorney-General that an offence should be infringeable that it will be 'prescribed under the *Infringements (General) Regulations 2006* as a lodgeable infringement offence'.³⁶⁷

The Guidelines outline a number of criteria that must be met for a minor offence to be prescribed as an infringeable offence. Foremost among these is that infringement offences are an inappropriate mechanism to deal with serious or complex offences. This is the case as serious offences involve more formal processes incorporating procedural fairness for defendants such as full and timely discovery of the case against them, and the application of an impartial judicial process, that is, courts exercising judicial power.

Some of the assessments outlined in the Guidelines include the following:

- What is the nature of the disorder or behaviour to be addressed and is appropriate to be regulated through an infringement offence rather than by court hearing?
- The consequence of that behaviour continuing unregulated or maintaining the regulation in its current form;
- The deterrent effect – would adoption as an infringement offence undermine the perceived seriousness of the offence?
- Alternative measures – is the adoption of an infringement offence preferable to other options within the criminal justice system?
- Will the proposal for infringeable offence adversely affect fairness and rights within the community, particularly in relation to vulnerable members of the community?
- Is there a strategy for ensuring community awareness of the new offence, and of rights, in relation to the offence?³⁶⁸

As mentioned at section 4.2.1, the use of infringements to deal with theft related offences was trialled in Victoria. The trial which took place over several years sought to establish the effectiveness of using an infringement penalty offence for minor shop-lifting incidents, dealt with as summary offences rather than as more serious indictable offences.³⁶⁹ The trial attempted to test whether these offences could be dealt with effectively and fairly through the infringements system. Ultimately, the trial of a low level theft infringement offence was found to be inappropriate and the relevant provisions were repealed.

³⁶⁷ Department of Justice, 'Attorney- General's Guidelines to the Infringements Act 2006', viewed 24 July 2015, <online.fines.vic.gov.au>, p. 10.

³⁶⁸ Department of Justice, 'Attorney- General's Guidelines to the Infringements Act 2006', viewed 24 July 2015, <online.fines.vic.gov.au>, p. 11.

³⁶⁹ Department of Justice, 'Attorney- General's Guidelines to the Infringements Act 2006', viewed 24 July 2015, <online.fines.vic.gov.au>, p. 12.

Considerations

As noted earlier, not all offences can be treated as infringeable, particularly more serious, indicatable offences.³⁷⁰ The challenges of employing infringements for fuel drive-offs involving criminality, was highlighted in the evidence of Ms Marissa De Cicco, Deputy Secretary, Department of Justice and Regulation:

Just in terms of some of the policy considerations that might be engaged with the petrol drive-offs, the first key one is the strict liability enforcement, and Victoria Police's submission goes to this issue as well. The offence of theft includes a mental element in the context of actually committing, so it needs the dishonest intent. Offences which require proof of a mental element are generally not suitable for law enforcement by way of infringement. In law most of the mental elements or fault elements generally refer to a requirement to prove that a particular person had either a particular intention or a stated recklessness as to the consequences of their actions, and in so doing then that forms the basis of the mental element. One of the difficulties with the petrol drive-offs is obtaining that prima facie evidence of a dishonest intent with respect to having driven off intentionally without wanting to pay the actual petrol cost imposed.³⁷¹

The Committee understands that in the case of an infringement for fuel drive-offs, the absence of clear, provable, criminality would make it difficult to issue infringements for inadvertent drive-offs. The Committee considers that the problems of proof involved in the creation of such an infringement penalty would make prosecutions of contested infringement notices highly problematic.

A further important consideration in determining whether an offence should be infringeable is the deterrence value of the penalty. Currently, theft in Victoria has a penalty of up to 10 years imprisonment and a substantial fine. Making fuel drive-offs an infringeable offence would diminish the deterrence value of these penalties. Further a successful prosecution for theft under the *Crimes Act 1958* (Vic) may result in a conviction being recorded. On the other hand, a conviction is not recorded due to the expiation effect of an infringement notice.

Weighing up the two ways of dealing with the offending, either formally or by infringement notice is the related consideration of whether such an approach, creates an incentive to 'game the law'. This may occur where offenders take calculated risks in the knowledge that if caught, they would have to pay a smaller monetary penalty than that imposed by a court, with the added bonus that they avoid conviction or a possible custodial sentence. This could lead to the perverse outcome of increasing fuel drive-off incidents as recidivist offenders 'game the system'.

A key element of an effective infringement system is efficient, successful detection. One issue with using infringements for fuel drive-offs involving criminality is that it would not capture or deal with those drivers using stolen

³⁷⁰ Department of Justice, 'Attorney- General's Guidelines to the Infringements Act 2006', viewed 24 July 2015, <online.fines.vic.gov.au>, p. 13.

³⁷¹ Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 106.

or concealed numberplates in fuel drive-offs.³⁷² More limited detection carries with it a reduction in the deterrence value of infringements. While it can be argued that limits with detectability apply to other infringeable offences such as speeding, fuel drive-offs involving criminality are unique because detection would need to occur at the retail site. Thus, drivers could decrease the possibility of being detected by using stolen or concealed numberplates only in the immediate vicinity of the fuel retail site but not outside of it, thus reducing the risk of being caught by police enforcement. A related issue raised with the Committee was that detecting fuel drive-off offenders might be problematic even with an ANPR system. In her evidence, Ms Marissa De Cicco, Deputy Secretary of the Department of Justice and Regulation, raised the following considerations with the Committee on the matter of detectability:

... the actual detection capability — so the CCTV or whatever else was used to detect the rego plate of the vehicle alleged to have driven off without paying for the petrol — must be sufficiently robust, must be maintained in an appropriate way, all of the hallmarks that we currently have for all of our auto-detection mechanisms now, whether that be speed camera or tolling cameras. I mean, the other option is potentially just using the sort of pay on the bowser itself, as has been done in the US in some cases. I am aware also in Europe where you just pay with a PayWay.³⁷³

Ms De Cicco also noted that in addition to detection, a proposed fuel drive-off infringement may face evidentiary challenges:

The general principle for enforcement agencies is that they should be confident before issuing an infringement notice that the offence would be proven in court beyond a reasonable doubt because it is a criminal offence, so it does have to meet that criminal understanding of proof. In the case of drive-offs, the offence would not generally be witnessed by someone other than, say, the station attendant or a staff member operating the petrol station, or, as the case may be, IGA or whatever the particular 7-Eleven Stores et cetera. As such, it would actually need to be issued by the enforcement agency after assessing the evidence of the offence having been committed.³⁷⁴

The evidentiary challenges then really related to the creation of an infringement offence for petrol drive-offs are going to be that availability of sufficient proof and proof for the enforcement of the offence. It is in the context where there has got to be enough evidence that the individual has actually stopped at the bowser, filled up and then intended to drive off without paying. That would be particularly the case, given that, as I said earlier, all of these infringement offences could be progressed to the court. In the court an individual could say that, 'I did not intend to actually drive off; it was a mistake' — a distraction, other considerations of the day — and they drove off without paying.³⁷⁵

³⁷² Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 108.

³⁷³ Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 109.

³⁷⁴ Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 106.

³⁷⁵ Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 106.

In the context of fuel drive-offs, satisfying the criminal burden of proof would rely on CCTV or ANPR cameras footage.³⁷⁶ In contrast, the speeding offence relies on enforcement devices that are strictly certified. The use of CCTV or ANPR footage may be problematic for fuel drive-offs, a point explored by Ms De Cicco:

Even if, say, CCTV were placed at or in a position where one could observe the bowser, there would be a range of issues to consider. The quality of the CCTV — it would have to be of a sufficient standard to actually ensure that we get clear vision in all conditions of light, night and day. The CCTV footage would have to capture the registration numbers, as I said, with sufficient clarity, and it would have to be able to capture a broad enough sweep to ensure that there was no doubt that the individual filled up the car, got in the car and then drove off, so that there was not any doubt that someone else might have gone in and paid.

The issue then is the context of ensuring that the CCTV image was reliable. If we did a comparison with the speeding infringements, these speed cameras are regularly tested. As I said, they are certified. We have all of the records available for all of those speed cameras. If a speed camera matter is actually contested at court, then we normally send in an expert to again vouchsafe the accuracy and reliability of the camera. We have all of the certificates that we can actually adduce in evidence to support the reading.³⁷⁷

The other issue with the CCTV footage would be the need to capture and establish not only the registration number of the actual vehicle itself but also that the motorist filled their vehicle with petrol, failed to pay, and there would need to be some sort of record with respect to that transaction that no-one else did pay. There would be need to be some sort of clear connection between the CCTV image and the fact that the individual had not paid at the bowser. That would need to be aligned so that there was no uncertainty that someone else may have paid or that someone came in and paid later, or any of those sorts of subsequent reasons.³⁷⁸

The Committee notes that there are additional evidentiary problems in proving a fuel drive-off. Evidence would be required from witnesses who could help prove that an individual did drive-off and did not return to make payment. Ms De Cicco of the Department of Justice and Regulation also raised other issues including the tampering of CCTV vision and how such systems are maintained. Ms De Cicco added that:

All of that together paints a picture of some of the challenges that would be faced with that. The other challenge for this particular type of industry would be that if a matter were to proceed to an infringement or there would be a court case — let us say it is contested — that could occur several months after the event. So all of that information and the witness statements et cetera and indeed the individuals who

³⁷⁶ Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, pp. 106, 107.

³⁷⁷ Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 106.

³⁷⁸ Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 107.

may have been in attendance at the time of the alleged petrol drive-off would then have to return to court to give evidence of that. Again very difficult, being aware of the nature of the industry, so again it could pose some issues from that perspective.³⁷⁹

One other factor when considering the suitability of an infringements penalty regime to cover fuel drive-offs concerns the subject of repeat offenders. The Committee noted that infringement offence data is not recorded in the same way as data for non-infringeable criminal offences. An offender may receive multiple fuel drive-off infringement penalty notices but not be recorded or recognised by the system as a repeat offender. The hallmark of the infringement penalty regime is that the payment expiates the offences, that is, there is no formal admission of guilt. The Committee further notes that a person's previous paid infringement penalties are not admissible in any criminal case as evidence of a pattern of behaviour (similar fact evidence). By way of contrast, a plea of guilty or a finding of guilt in a criminal process is recorded and that fact may be used by sentencing courts in dealing with further offending, or indeed, when considering related offending involving dishonesty.

It is the Committee's view that previous conduct involving dishonesty, is a significant factor, for example in respect to future employment. Relevant past criminal conduct is ordinarily available to prospective employers. Adopting an infringements penalty offence for fuel drive-offs would effectively quarantine the offence from the criminal records system.

The Committee also notes that an infringement notice for fuel drive-offs would not result in fuel retailers recouping their fuel drive-off losses. In the ordinary course, monies raised by such penalty notices would be applied to consolidated revenue. Recovery of fuel drive-off losses by fuel retailers would still require formal court processes.

The Committee observes that there are also broader criminal justice issues that need to be considered when introducing new infringements for existing offences.³⁸⁰ These include net-widening, in that more people come into contact with the criminal justice system, a situation created when police officers issue infringements in instances where they may previously only have given a warning, reminded drivers that they had failed to pay for their fuel leading to a subsequent payment or taken no action at all.³⁸¹ Researchers from Monash University have also identified additional disadvantages including 'a lack of scrutiny by the courts, the possibility that innocent people will pay the fine to avoid the expenses associated with contesting, and the potential for vulnerable members of society to be subjected to selective enforcement'.³⁸²

³⁷⁹ Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 107.

³⁸⁰ Bernadette Saunders, et al., *An Examination of the Impact of Upaid Infringement Notices on Disadvantaged Groups and the Criminal Justice System-Towards a Best Practice Model*, Monash University: Criminal Justice Research Consortium, Melbourne, 2013, p. 16.

³⁸¹ Bernadette Saunders, et al., *An Examination of the Impact of Upaid Infringement Notices on Disadvantaged Groups and the Criminal Justice System-Towards a Best Practice Model*, Monash University: Criminal Justice Research Consortium, Melbourne, 2013, p. 7.

³⁸² Bernadette Saunders, et al., *An Examination of the Impact of Upaid Infringement Notices on Disadvantaged Groups and the Criminal Justice System-Towards a Best Practice Model*, Monash University: Criminal Justice Research Consortium, Melbourne, 2013, p. 16.

There are also questions about whether infringement notices improve compliance with the law.³⁸³ The Committee sought information from the Department of Justice and Regulation as to whether infringements are proven to improve compliance for the offending covered by infringement notices. Ms Marissa De Cicco explained that their use for low-end crime:

... would be a hard one to model. If we look at speeding offences, we would almost be modelling the reverse: we would be modelling what the cost would be of progressing most of the speeding infringements we currently issue now as being summary prosecutions. You would almost be modelling it in that fashion. The only other means by which we determine compliance — and I do not have the figures with me — is we do an annual report to the Attorney-General. We do model how many infringements are paid first instance, how many are paid within a certain period of time, so we do have those figures.³⁸⁴

Other proposals

Other than the road safety and fuel drive-off infringement proposals, the Committee also received proposals including:

- The seizure of vehicles using stolen numberplates with those vehicles to be sold at public auctions;³⁸⁵
- The destruction of vehicles that had been involved in fuel drive-offs;³⁸⁶
- That drivers involved in a fuel drive-off have demerit points attached to their licences, have their vehicles impounded or sold by the State Government;³⁸⁷
- The use of dedicated police officers to deal with fuel drive-offs;³⁸⁸
- The use of Protective Services Officers (PSOs) to deal with fuel drive-offs;³⁸⁹
- A ‘centralised, proactive police resource for managing drive-offs’, which would be self-funding from the fines imposed on errant drivers;³⁹⁰
- The creation of an administrative position within the police force to make contact with offenders to recoup payment that could be cost-neutral;³⁹¹

³⁸³ Bernadette Saunders, et al., *An Examination of the Impact of Upaid Infringement Notices on Disadvantaged Groups and the Criminal Justice System-Towards a Best Practice Model*, Monash University: Criminal Justice Research Consortium, Melbourne, 2013, p. 70.

³⁸⁴ Ms Marisa De Cicco, Deputy Secretary, Criminal Justice, Department of Justice and Regulation, *Transcript of evidence*, 5 October 2015, p. 110.

³⁸⁵ Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 11.

³⁸⁶ Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 11.

³⁸⁷ Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 12; AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 6; Mr Fury Bortolotto, *Submission*, no. 23, 22 July 2015, p. 3; RP Petroleum Pty Ltd, *Submission*, no. 16, 17 July 2015, p. 1.

³⁸⁸ Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 11; AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 6; Mr Terrence Philip Conroy, *Submission*, no. 11, 17 July 2015, pp. 2,3.

³⁸⁹ Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 12.

³⁹⁰ 7-Eleven Stores, *Submission*, no. 12, 17 July 2015, p. 4.

³⁹¹ RP Petroleum Pty Ltd, *Submission*, no. 16, 17 July 2015, p. 1.

- The use of garnishee orders to ensure that fines are paid for when issued by courts for fuel drive-offs;³⁹² and
- The creation of a ‘making-off offence’.³⁹³

4.3 Concluding remarks

The proposals submitted to the Committee to deal with fuel drive-offs revolve around a characterisation of the problem as being criminal in nature. However, in Victoria a fuel drive-off may be a civil matter. The lack of evidence as to the extent and cost of the problem, coupled with a number of preventative interventions discussed in Chapter five are in the Committee’s view the best way to deal with fuel drive-offs, rather than new criminal sanctions.

In terms of road safety penalties, the Committee is of the view that these are inappropriate for dealing with fuel drive-offs because they do not represent a road safety concern, and would penalise drivers for what might amount to a civil debt. Further, the impact of demerit points is considerable, with potential licence sanctions and can only be justified where there is a clear road safety risk. Similarly, the impounding or destruction of vehicles is a serious matter that is unjustified as a policy response to what may be inadvertent or low-value offending. Insofar as the creation of dedicated police or PSOs to deal with fuel drive-offs, again the lack of evidence does not justify such a proposal. Further, the Committee is of the view that the application of enforcement resources is set in response to crime, and that in itself requires a level of flexibility. This flexibility would be removed if police or PSOs were assigned to deal with fuel drive-offs.

In terms of making fuel drive-offs infringeable, the Committee is of the view that such a solution would be inappropriate, would reduce the deterrence value of the criminal law and is unlikely to reduce the incidence of fuel drive-offs. The Committee notes that the existing Victorian approach appears to balance the needs of the community, in terms of protecting the private information held by government agencies. While fuel retailers are clearly unhappy with the 2013 Instruction, it reflects the difficulties associated with determining whether a fuel drive-off is criminal or civil in nature. The Committee is of the view that where a fuel drive-off involves criminality, Victoria Police must investigate and prosecute these cases. While co-regulatory approaches such as the BOSS model in the UK could lead to improvements in Victoria, such approaches require industry associations to work collaboratively with each other, their members and in turn, with government.

³⁹² Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 12; AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 5.

³⁹³ Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 12; AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 5.

While this Chapter has largely dealt with reactive interventions, that is, interventions that address fuel drive-offs once they occur, the next Chapter discusses a number of preventative measures. In the Committee's view, preventative measures have the potential to deal with many of the frustrations of fuel retailers and reduce fuel drive-offs in Victoria.

5

Preventative measures to address fuel drive-offs

5.1 Introduction

While previous Chapters dealt with the extent and nature of fuel drive-offs, and how they are treated once they occur, this Chapter addresses how they might be prevented or reduced. It does so using crime prevention principles, and examines the most effective measures for the fuel retail industry to use or adopt. This Chapter begins by outlining different types of crime prevention measures and analysing existing crime prevention measures in Victoria, as well as ‘best practice measures’ employed by fuel retailers in other jurisdictions. It then assesses proposals made to the Committee by Inquiry participants, including co-regulatory approaches and makes findings and recommendations in relation to these.

5.2 Principles and types of crime prevention measures

As with many policy issues, the approach to fuel drive-offs requires an integrated approach from the fuel retail industry, government agencies and bodies, and the community. In its submission, Crime Stoppers Victoria (CSV) suggested that ‘real change’ required a ‘comprehensive response [comprised of] crime prevention and deterrence, crime reporting and detection, intervention, enforcement, policy and civil and criminal remedies’.³⁹⁴ In addition to these, the Committee heard that there is also a need to use preventative measures to reduce fuel drive-offs. These measures may be industry-led, or involve co-regulation or government action.

The Committee understands that internationally there is increasing evidence that fuel drive-offs can be prevented if fuel retailers are prepared to employ more effective crime prevention measures. Stephen Fontana, Assistant Commissioner, Crime Command at Victoria Police, advised the Committee that:

Industry have got a responsibility here. They are driven by profit. This is an issue and it is a preventable offence. They should be investing in crime prevention techniques and technology. It is done overseas by other industries. They have got industry groups that have been set up. I do not think we are responsible for capturing all the costs to help them reduce their losses.³⁹⁵

³⁹⁴ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 10.

³⁹⁵ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 78.

In the United States of America (the US), a report by the Center for Problem-Oriented Policing (CPOP) into Gasoline Drive offs indicated that the incidence of drive-offs across the nation had been significantly reduced as a consequence of industry led interventions consisting of improved video surveillance and the introduction of prepayment at many service stations.³⁹⁶ The CPOP also argued that law enforcement responses alone have limited effectiveness in reducing or preventing the problem.³⁹⁷ According to the CPOP, an effective prevention strategy requires adoption of several different responses appropriate to the nature of the site. These responses can include:

1. Reducing the risks of fuel drive offs by improving surveillance, such as:
 - a. Increasing staff levels at peak times;
 - b. Using an intercom to greet customers;
 - c. Providing employees with professional training;
 - d. Ensuring the pump area is well-lit;
 - e. Making it easier for clerks [staff] to see the pumps;
 - f. Employing qualified security personnel;
 - g. Using Closed-Circuit Television (CCTV) cameras;
 - h. Deploying interactive video monitoring; and
 - i. Using scan-data analysis.³⁹⁸
2. Increasing the difficulties of fuel drive offs through use of technology and other means, such as:
 - a. Introducing a post-pay system;
 - b. Imposing mandatory pre-pay;
 - c. Installing pay-at-the-pump equipment;
 - d. Controlling access to fuel dispensers; and
 - e. Reducing escape points from the site.³⁹⁹

Victoria Police refers to some interventions as consumer restrictive approaches (prepayment and crime prevention methods) and uses the term 'traditional crime prevention' for those that involve posters, procedures, offence specific forms and targeted operations. Enhanced crime prevention, an additional type of intervention, is a partnership approach between police and retailers, in which tools such as Automatic Number Plate Recognition (ANPR) can be used to reduce fuel drive-offs. Used collectively, these approaches form an integrated response to prevent fuel drive-offs.

³⁹⁶ Bruno Menini and Robert Clarke, *Gasoline Drive-Offs*, Center for Problem-Oriented Policing: U.S. Department of Justice, 2012, p. 9.

³⁹⁷ Bruno Menini and Robert Clarke, *Gasoline Drive-Offs*, Center for Problem-Oriented Policing: U.S. Department of Justice, 2012, p. 19.

³⁹⁸ Bruno Menini and Robert Clarke, 'The Problem of Gasoline Drive-Offs', *Center for Problem-Oriented Policing*, viewed 24 September 2015, <www.popcenter.org>, pp. 21-24.

³⁹⁹ Bruno Menini and Robert Clarke, *Gasoline Drive-Offs*, Center for Problem-Oriented Policing: U.S. Department of Justice, 2012, pp. 24-26.

The Committee agrees that a multi-pronged approach, based on the tools and interventions such as those identified by the CPOP, would form an appropriate response to reduce fuel drive-offs. Targeted responses from industry and government can also address the different reasons fuel drive-offs occur. Co-regulatory approaches such as those discussed in this Chapter, and in Chapter four with respect to the British Oil Security Syndicate (BOSS) model, form an important part of an integrated approach. Dealing with the issue proactively rather than relying on the imposition of penalties, as suggested by the Royal Automobile Club of Victoria (RACV),⁴⁰⁰ is also likely to require fewer resources from police and fuel retailers, given the expenses involved in investigating and prosecuting fuel drive-offs or recouping civil debts. It is also critical that measures applied to reduce fuel drive-offs are cost effective.

5.3 Existing crime prevention measures to address fuel theft

The Committee notes that preventative measures are currently being used by Victorian fuel retailers. The Victorian Automobile Chamber of Commerce (VACC) in its submission to the Committee explained that proactive fuel retailers have implemented the following loss prevention interventions:

- Revision of store layout for a clear view of the forecourt;
- Closure of pumps not visible or close to the roadway at relevant times;
- Implementation of pre-pay trials at sites with a high volume of drive-off incidents;
- Installation of CCTV security systems and number plate recognition security cameras; and
- Implementation of the VicRoads identification website.⁴⁰¹

Three key measures — the physical design of sites, CCTV and ANPR technology — are discussed below.

5.3.1 Physical design of sites

The design of fuel retail sites is an important factor for reducing fuel drive-offs. According to Victoria Police, investment in crime prevention technology, including video surveillance, and ANPR are important in reducing risk.⁴⁰² A key element of the design features of fuel retail sites is to ensure that vehicles and people cannot get into and out of the site easily.⁴⁰³ Visibility at many sites

⁴⁰⁰ Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 50.

⁴⁰¹ Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 7.

⁴⁰² Victoria Police, *Submission*, no. 26, 10 August 2015.

⁴⁰³ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 8.

has improved with the installation of CCTV and better lighting,⁴⁰⁴ improved fields of vision for forecourts,⁴⁰⁵ and investment in numberplate recognition technologies.⁴⁰⁶ Almost all fuel retail sites operate intercoms to communicate with motorists.⁴⁰⁷ Intercoms provide a low cost solution for reducing fuel drive-offs, as the interaction between a retail assistant and a consumer is seen to remove the perception of anonymity, thus reducing the risk that a driver might leave without paying.⁴⁰⁸ These approaches provide an appropriate starting point for fuel retailers in preventing fuel drive-offs.

Closed-Circuit Television Cameras

CCTV is an ubiquitous technology, used almost universally by Victorian fuel retailers,⁴⁰⁹ and at a level considered to be of 'good quality'.⁴¹⁰ All of the Victorian 7-Eleven Stores (150 in total) use CCTV.⁴¹¹ Generally, CCTV assists the fuel retailer to manage a fuel drive-off once it has occurred, allowing for a driver or vehicle to be identified along with footage of the drive-off.⁴¹² It may therefore act as a deterrent to criminal behaviour by potential offenders⁴¹³ and CCTV footage is provided to police by fuel retailers after a fuel drive-off.⁴¹⁴ Research undertaken in the 1990s in the US suggested that if a store that uses CCTV also installs a sign that explains that they have CCTV, they can potentially reduce drive-offs and other crimes. However, stores that already have a CCTV sign will not reap the same benefits by posting an additional sign.⁴¹⁵ When coupled with an automatic door lock button, the US research found significant reductions in drive-offs.⁴¹⁶

Automatic Number Plate Recognition

Automatic Number Plate Recognition systems use optical character recognition software to read numbers and letters used on vehicle numberplates captured by a camera.⁴¹⁷ In turn, once a numberplate has been identified, it can be cross-referenced against a database to determine whether that numberplate is

404 British Oil Security Syndicate (BOSS), *Crime Reduction Toolkit for Service Stations*, England & Wales, 2015, pp. 17-19.

405 Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, pp. 3, 6.

406 Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 3.

407 Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 6.

408 Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 10.

409 Mr Peter Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 37; Ms Cheryl Collier, Safety and Return-to-Work Specialist, Woolworths Ltd, *Transcript of evidence*, 5 October 2015, p. 10.

410 Ms Sam Hunter, Chief Executive Officer, Crime Stoppers Victoria, *Transcript of evidence*, 7 September 2015, p. 29.

411 7-Eleven Stores, *Submission*, no. 12, 17 July 2015, p. 3.

412 AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 3.

413 7-Eleven Stores, *Submission*, no. 12, 17 July 2015, p. 3.

414 AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 3.

415 Nancy La Vigne, 'Gasoline Drive-Offs: Designing a Less Convenient Environment', *The State University of New Jersey: School of Criminal Justice*, 1991, p. 102.

416 Nancy La Vigne, 'Gasoline Drive-Offs: Designing a Less Convenient Environment', *The State University of New Jersey: School of Criminal Justice*, 1991, p. 103.

417 Queensland Parliament, *Report on the Inquiry into Automatic Number Plate Recognition Technology*, 2008, p. 4.

linked to crimes.⁴¹⁸ The Committee understands that access to crime databases are at present restricted to police officers. According to evidence received by the Committee some high volume retailers use ANPR technology.⁴¹⁹ However, these systems can cost between \$30,000⁴²⁰ and up to \$100,000,⁴²¹ and also have ongoing maintenance costs.⁴²² Sensor Dynamics, a provider of ANPR systems, informed the Committee that it currently has 18 installations across Greater Melbourne.⁴²³ According to Sensor Dynamics, installing an ANPR system becomes viable when a retailer is experiencing more than three drive-offs per week.

The primary benefit of ANPR systems in a fuel drive-off context is that it allows retailers to have a more sophisticated record of the drive-off, which they can then use as a record in a linked database. This database can either alert retailers when that same vehicle enters a site⁴²⁴ or the numberplate could potentially be checked against the description of the vehicle from VicRoads data (see section 5.4.5). Some ANPR systems may also act as a deterrent by displaying the numberplates of vehicle in the forecourt at or near the Point of Sale (POS) area.⁴²⁵

5.4 Potential measures to reduce or prevent fuel drive-offs

This section outlines a number of measures identified by Inquiry participants and the Committee that collectively represent an integrated approach to deal with fuel drive-offs.

5.4.1 A technology based solution: Automatic Number Plate Recognition systems

While CCTV is widely used by fuel retailers, the potential of ANPR systems to act as both a preventative measure (by identifying vehicles previously involved in a drive-off before they get access to fuel), or by a linkage to VicRoads' vehicle registration descriptions (discussed in section 5.4.5), and as a deterrent was a consistent theme during the Inquiry. Indeed, Victoria Police identified ANPR as an example where industry could be more proactive:

There are a lot of other groups that are putting in ANPR. This is part of where we say there are opportunities within the industry as well to be smarter with the technology they have got. They have got to make those risk-versus-loss decisions as well.⁴²⁶

⁴¹⁸ Queensland Parliament, *Report on the Inquiry into Automatic Number Plate Recognition Technology*, 2008, p. 4.

⁴¹⁹ AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 3.

⁴²⁰ Sensor Dynamics, *Submission*, no. 21, 19 July 2015, p. 9.

⁴²¹ AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 3.

⁴²² Sensor Dynamics, *Submission*, no. 21, 19 July 2015, p. 9.

⁴²³ Sensor Dynamics, *Supplementary evidence*, Tuesday 15 September, p. 2.

⁴²⁴ AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 3.

⁴²⁵ Sensor Dynamics, *Submission*, no. 21, 19 July 2015, p. 8.

⁴²⁶ Mr Kevin Sheridan, Superintendent, Road Policing, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 77.

The capabilities of ANPR as compared to CCTV were outlined to the Committee by Mr Mark McKenzie, the Chief Executive Officer (CEO) of the Australasian Convenience and Petroleum Marketers Association (ACAPMA):

The majority of CCTV that is introduced in our forecourts is there to deal with the more general issues of theft. They predominantly focus on the store and they focus on the safety of the employees in those areas, and they are set up in that means. They do have some vision of the bays, which are the areas between the pumps, but it is relatively limited and in a lot of cases you will find that the numberplate will be obscured. For some of the footage you may have seen in recent TV exposés that have dealt with the fuel theft problem, most of the people who are involved in that are wearing hoodies and other things that sort of camouflage who they are, so it is very difficult to use other attributes around the incident to be able to trace who is actually involved. From our perspective, this really relies on the use of numberplate recognition technology, which has not just the opportunity of making sure that you have identified the vehicle that is actually involved, but it creates ease of search because you have a data file that is coded for the numberplate itself.⁴²⁷

Having the capability to identify vehicle numberplates and then check them against a database or have an alert issued automatically has important implications for fuel retailing. ANPR systems are seen as having significant potential as a loss prevention initiative.⁴²⁸ For example, in New Zealand (NZ), following a successful response following the use of ANPR technology by police dealing with fuel drive-offs, some NZ fuel retailers developed their own database of repeat offenders which may be accessed by other retailers.⁴²⁹ Sharing of repeat offender data between users is also employed by Licence Plate Recognition cameras and accompanying technology used by ANPR providers. Vehicle numberplate details from a fuel drive-off are recorded, and securely distributed to other service stations on the same shared network. An alert is displayed to an operator when a recorded vehicle enters a service station and the operator can respond appropriately.⁴³⁰ Another ANPR product used in Australia, the Scancam Smart Fuel Security system, notifies attendants of previous offenders and provides automatic reporting.⁴³¹

While there is some use of ANPR technology, it is arguably a nascent technology in the fuel retailing context. The extent to which ANPR technology is used among Victoria fuel retailers is unclear. One estimate from the ACAPMA, based on a survey result, was that just 24 per cent of fuel retailers use this technology.⁴³² Of the 150 Victorian 7-Eleven Stores, only four utilise numberplate recognition technology. By contrast, all 7-Eleven Stores use CCTV cameras.⁴³³ Mr Jeff Rogut, the CEO of the Australasian Association of Convenience Stores (AACS),

⁴²⁷ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 15.

⁴²⁸ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁴²⁹ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁴³⁰ Sensor Dynamics, *Submission*, no. 21, 19 July 2015, pp. 7-8.

⁴³¹ Scancam Smart Fuel Security, 'Stop fuel theft scancam technology prevents drive offs and protects profits', viewed 12 November 2015.

⁴³² Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 15.

⁴³³ 7-Eleven Stores, *Submission*, no. 12, 17 July 2015, p. 3.

suggested that while this technology was being implemented by some retailers, it was also seen to be cumbersome.⁴³⁴ Mr Franza, a VACC member, explained to the Committee that while he had fitted ANPR technology at considerable cost, it needed to be linked to databases with information such as whether the numberplate was stolen so as to prevent the fuel drive-off before it occurred.⁴³⁵ The cost of ANPR systems may also have contributed to the limited use of this technology.⁴³⁶

Sensor Dynamics suggested that licence numberplate recognition technology from certain providers was about 95 per cent accurate in reading numberplates. However, Sensor Dynamics also noted that it was difficult to determine the effectiveness of ANPR systems, although repeat offenders had been minimised at sites using its technology. It suggested that the technology needed to be assessed to identify its benefits across localised service stations.⁴³⁷ When accessing the VicRoads database, 63 per cent of all numberplates were matched. Of those that were not, two per cent of numberplates were stolen, 58 per cent were unregistered or suspended, and 40 per cent were 'other'.⁴³⁸

In spite of its potential, a number of broader issues may arise with the implementation of ANPR systems. While the Committee notes claims that some ANPR products used by fuel retailers are said to be compliant with privacy principles,⁴³⁹ or incorporate privacy protections such as limiting access to watch list data,⁴⁴⁰ privacy issues may need to be assessed by privacy and other regulators as the use of ANPR technology becomes more prevalent.

ANPR systems that are not linked to VicRoads vehicle description data will have limited usefulness against drivers who repeatedly take fuel using different numberplates⁴⁴¹ (noting that this may constitute a criminal offence), one-off incidents,⁴⁴² where vehicles involved in a drive-off or identified as being stolen are not included in the database, or where a vehicle uses a cloned numberplate.⁴⁴³ The deterrent value of ANPR systems may be limited to those using fake or stolen numberplates,⁴⁴⁴ rather than dealing with the causes of all fuel drive-offs. ANPR systems also need to be designed to deal with fail-to-pay scenarios when a person returns to pay for the fuel, and ensure that drivers do not remain on the drive-off or watch list.⁴⁴⁵

⁴³⁴ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 3.

⁴³⁵ Mr Tony Franza, Member and Proprietor of Caltex Star Mart, Albert Park, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, pp. 21, 23.

⁴³⁶ Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 4.

⁴³⁷ Sensor Dynamics, *Submission*, no. 21, 19 July 2015, p. 10.

⁴³⁸ Sensor Dynamics, *Supplementary evidence*, Tuesday 15 September, p. 4.

⁴³⁹ Scancam Smart Fuel Security, 'Stop fuel theft scancam technology prevents drive offs and protects profits', viewed 12 November 2015.

⁴⁴⁰ Sensor Dynamics, *Submission*, no. 21, 19 July 2015, p. 11.

⁴⁴¹ Mr Robert Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 39.

⁴⁴² Mr Peter Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 37.

⁴⁴³ Discoveries Advanced, *Submission*, no. 29, 23 October 2015, p. 9.

⁴⁴⁴ Mr Peter Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 37.

⁴⁴⁵ Sensor Dynamics, *Submission*, no. 21, 19 July 2015, p. 9.

Another linked issue is that the effectiveness of ANPR is limited when it is used by a small number of stores or sites, as only a small number of drive-offs would be captured in the datasets.⁴⁴⁶ This issue is further complicated by the reluctance of fuel retailers to share information through databases due to fear of competitive disadvantage, a point highlighted by Mr Kevin Sheridan, Superintendent, Victoria Police:

Where the industry could benefit a lot more from automatic numberplate recognition is they capture a lot of data but they do not do a lot with it. Because of the competitive nature of their business, there seems to be some reluctance to share information.⁴⁴⁷

The Committee received evidence that these issues could be overcome in future as more retailers purchase the technology making it cheaper over time.⁴⁴⁸ A more collaborative approach to data sharing for example would in turn improve the data available on these systems.

The Committee also heard that while sites using this technology would be less likely to experience fuel drive-offs, offenders would instead move to another site or use stolen numberplates or vehicles.⁴⁴⁹ Therefore, the installation of ANPR on one site may have the effect of shifting fuel drive-offs to another. The Committee heard that fuel drive-offs should be addressed across the industry, rather than focusing on sites where there appeared to be an acute problem, due to the risk of merely relocating the problem.⁴⁵⁰ Licensys, a provider of registration and vehicle identification products, further suggested that the 'widespread adoption of better recognition and ANPR systems by retailers would invariably lead to an increased incidence of the use of stolen or migrated plates'.⁴⁵¹

Discussion

ANPR systems could be an effective crime prevention tool and general deterrent for fuel drive-offs. There is significant potential for ANPR to be harnessed by fuel retailers as part of a general prevention strategy. The Committee notes that some technology providers believe that the deterrent value of ANPR alone is likely to reduce incidents.⁴⁵² However, greater integration with publically available information provided by VicRoads (discussed in section 5.4.5) and the active development of infrastructure, databases and information sharing by industry may also provide an effective deterrent to fuel drive-offs. Partial implementation of ANPR technologies by the fuel retailer industry may have the effect of displacing fuel drive-offs towards those retailers who do not use or cannot afford such systems.⁴⁵³

⁴⁴⁶ Sensor Dynamics, *Submission*, no. 21, 19 July 2015, p. 9.

⁴⁴⁷ Mr Kevin Sheridan, Superintendent, Road Policing, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 77.

⁴⁴⁸ Sensor Dynamics, *Submission*, no. 21, 19 July 2015, p. 9.

⁴⁴⁹ AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 4.

⁴⁵⁰ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 21.

⁴⁵¹ Licensys Pty Ltd, *Submission*, no. 17, 17 July 2015, p. 5.

⁴⁵² Sensor Dynamics, *Supplementary evidence*, Tuesday 15 September, p. 5.

⁴⁵³ Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 21.

5.4.2 Raising community and industry awareness

Education campaigns

Community education or publicity campaigns were cited by some participants as a means to highlight the issue of fuel drive-offs within the community and help reduce these incidents. According to the CEO of CSV, Ms Samantha Hunter, there is very little communication with the public about fuel drive-offs,⁴⁵⁴ and a significant gap exists in the community knowledge about the nature and seriousness of fuel drive-offs.⁴⁵⁵ CSV believes that such communication ‘has a real role to play in addressing’ the issue.⁴⁵⁶ The potential role of such a campaign was raised during the public hearings by Ms Hunter, who explained that:

A well-designed, well-targeted and well-timed community education campaign designed and rolled out in conjunction with a full suite of systematic changes and prevention and detection measures, we believe could help educate members of the community about fuel drive offs as a broader issue and deter potential offenders from committing a drive off offence. Such a campaign could also have a flow-on effect for retailers and law enforcement agencies, with a presence of crime education material at fuel stations increasing general awareness about other fuel station and vehicle-related crime, such as numberplate theft, cigarette kiosk robberies and convenience store and fuel station armed robberies, which we at Crime Stoppers know are very real and weekly occurrences. This will potentially decrease the number of such crimes recorded and the overall financial loss recorded by each store.⁴⁵⁷

In Canada, Crime Stoppers Toronto in conjunction with the Toronto Police implemented a large scale gas theft publicity awareness, deterrence and reporting campaign in 2012, using the slogan ‘gas theft is a crime’.⁴⁵⁸ According to CSV, the campaign brought significant community attention to the issue.⁴⁵⁹ According to the AACS, another Canadian fuel retailer, Mac’s, reported a reduction in drive-offs after the launch of a targeted Crime Stoppers fuel drive-off campaign.⁴⁶⁰ According to Mr Jeff Rogut, CEO of the AACS, Canada generally undertakes significant public education campaigns through close cooperation between retailers and Crime Stoppers Canada.⁴⁶¹ Other campaigns identified by the Committee include those undertaken by the Georgia Association of Convenience Stores and the Georgia Oilmen’s Association in the U.S. (who implemented a publicity campaign featuring stickers placed directly on fuel dispensers to warn customers about the impact of fuel theft and possible legal ramifications),⁴⁶² and one undertaken by Lancashire Police in the United Kingdom (UK) who

⁴⁵⁴ Ms Sam Hunter, Chief Executive Officer, Crime Stoppers Victoria, *Transcript of evidence*, 7 September 2015, p. 26.

⁴⁵⁵ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 10.

⁴⁵⁶ Ms Sam Hunter, Chief Executive Officer, Crime Stoppers Victoria, *Transcript of evidence*, 7 September 2015, p. 26.

⁴⁵⁷ Ms Sam Hunter, Chief Executive Officer, Crime Stoppers Victoria, *Transcript of evidence*, 7 September 2015, p. 26.

⁴⁵⁸ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, pp. 11-12.

⁴⁵⁹ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 12.

⁴⁶⁰ Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 5.

⁴⁶¹ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 3.

⁴⁶² Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 12.

implemented a 'Fuel Drive off Crackdown' campaign in 2014.⁴⁶³ Another type of campaign used in 2007 in West Yorkshire, UK, however, was identified as not being efficacious. According to the CPOP, the West Yorkshire '*Name, Shame and Claim*' campaign whose aim was to encourage the public to report fuel thefts was not effective as people were reluctant to engage with police. The CPOP concluded that 'extensive research has shown that publicity campaigns of this kind are of limited effectiveness'.⁴⁶⁴

Discussion

According to CSV, campaigns on fuel drive-offs 'could help communicate and consolidate the implementation, delivery and community consumption of other systems, policy and action-based changes developed to address the issue from other angles'.⁴⁶⁵ Ms Sam Hunter the CEO of CSV noted that publicity campaigns and signage had 'a clear role to play in education and deterrence' for this issue.⁴⁶⁶ A fuel drive-off campaign would utilise 'clear, strong messaging, and be delivered through community service announcements, posters and stickers', as well as being translated into key languages specific to the community in which the retailer operates, and at trouble spots.⁴⁶⁷

Given its experience, CSV suggested that it was well-placed to develop and deliver a fuel drive-off campaign in conjunction with other stakeholders.⁴⁶⁸ The campaign would be centred on convenience stores and petrol stations to promote a crime prevention message about fuel drive-offs.⁴⁶⁹ If Victoria were to develop such a campaign, CSV recommended that it be undertaken in conjunction with the AACS and Victoria Police as well as others.⁴⁷⁰ The Committee heard that the AACS is also interested in exploring options for this kind of campaign.⁴⁷¹

The Committee agrees that a community education campaign about fuel drive-offs forms part of an integrated approach to reducing them. The campaign should involve CSV and key industry and government stakeholders.

RECOMMENDATION 4: That the Victorian Government facilitates the implementation of a state-wide fuel drive-offs education campaign developed in partnership by Victoria Police, Crime Stoppers Victoria and the fuel retail industry.

⁴⁶³ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 12.

⁴⁶⁴ Bruno Menini and Robert Clarke, 'The Problem of Gasoline Drive-Offs', *Center for Problem-Oriented Policing*, viewed 24 September 2015, <www.popcenter.org>, p. 27.

⁴⁶⁵ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 11.

⁴⁶⁶ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 11.

⁴⁶⁷ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 12.

⁴⁶⁸ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 13; Ms Sam Hunter, Chief Executive Officer, Crime Stoppers Victoria, *Transcript of evidence*, 7 September 2015, p. 26.

⁴⁶⁹ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 12.

⁴⁷⁰ Crime Stoppers Victoria, *Submission*, no. 8, 16 July 2015, p. 12.

⁴⁷¹ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 3.

As well as a community education campaign, the Committee believes it would be beneficial for Victoria Police and industry stakeholders to maintain a dialogue to better understand issues surrounding fuel drive-offs, given its impact both on state government resources and the industry.

RECOMMENDATION 5: That Victoria Police conducts six monthly forums with the fuel retail industry to discuss the issue of fuel drive-offs. Potential areas of discussion include:

- The need for improved reporting of such incidents to Victoria Police;
- Victoria Police working with industry to explain the complexity of the theft offence;
- The operation of Victoria Police's 2013 Instruction;
- Industry examples of crime prevention measures;
- Community education campaigns; and
- Other issues relating to forecourt safety.

The Committee also believes there is a need for Victoria Police to develop and provide educational material for the fuel retail industry on theft prevention. Allied with a community education campaigns, material contained in a guide would promote best practice fuel drive-off prevention techniques and better explain the options available to fuel retailers.

RECOMMENDATION 6: That Victoria Police develops a guide for industry on fuel drive-off prevention, with reference to the value of reporting incidents and sharing intelligence when drive-off incidents occur.

5.4.3 Physical safeguards

While most Victorian fuel retail sites have design elements that facilitate crime prevention techniques, the Committee heard a number of proposals to further reduce the likelihood of fuel drive-offs occurring. These proposals included:

- The use of one-way spikes and boom gates to restrict the exit of vehicles;⁴⁷²
- Air cylinders that activate bollards which block vehicle entry and exit points;⁴⁷³
- Boom gates that immobilise vehicles that failed to pay for fuel;⁴⁷⁴ and
- Nozloc (a type of fuel bowser nozzle that cannot be removed unless released by a retail assistant following payment).⁴⁷⁵

⁴⁷² Mr Chris Maher, *Submission*, no. 2, 22 June 2015.

⁴⁷³ Mr Stan and Mrs Dorothy Roberts, *Submission*, no. 4, 29 June 2015.

⁴⁷⁴ Mr Euan Vance, *Submission*, no. 3, 29 June 2015.

⁴⁷⁵ Mr Louis Ryles, *Submission*, no. 24, 24 July 2015.

Many of these changes would require the redesign of fuel stations.⁴⁷⁶ The Committee was also heard evidence critical of these proposals. In particular, the installation of physical barriers to restrain vehicles within the forecourt drew much comment. The ACAPMA noted that there were substantial costs associated with the installation of these types of physical barriers. The ACAPMA also noted that barriers ‘pose[d] significant challenges for the safe operation of the forecourt and/or smooth traffic flow’,⁴⁷⁷ and could have an impact on the capacity of a site to be evacuated in the event of an emergency. Barriers could also reduce the capacity of drivers to easily enter and exit the retail site, thus reducing public safety.⁴⁷⁸ Similarly, the Royal Automobile Club of Victoria (RACV) argued that such systems have ‘fundamental flaws, concerning safety, practicality, cost, acceptance and legality’ and were not feasible.⁴⁷⁹

The Committee agrees with concerns raised by the ACAPMA and the RACV in relation to these proposals. Community safety would potentially be at risk if such barriers were installed. Furthermore, public risk may be escalated if offenders tried to escape from an area with barriers and combustible fuels. For these reasons, the Committee does not believe these proposals are appropriate.

5.4.4 Staff training

The Committee received evidence that staff training was an important element in identifying potential risks before a person was given access to a bowser.⁴⁸⁰ Staff training is undertaken by individual fuel retailers, and the Committee was told that it was extensive training,⁴⁸¹ with a focus on training staff to recognise suspicious activity,⁴⁸² so as to prevent or reduce the risk of fuel drive-offs. This training can include assessments of vehicles and driver behaviour, for example whether a vehicle does not have a numberplate.⁴⁸³ Training and ongoing engagement with staff in relation to fuel drive-offs also focussed on risks to staff being involved directly.⁴⁸⁴

While staff training has an important role to play, and appears to be undertaken by most if not all fuel retailers, some Inquiry participants noted that the lack of attendants has a role in fuel drive-offs. According to Victoria Police, staffing levels at petrol retailers have the ‘appearance of a minimalist model’.⁴⁸⁵ In turn, a lack of retail attendants may restrict the capacity of a fuel retailer to prevent a fuel drive-off. Mr Rogut observed that:

⁴⁷⁶ Mr Euan Vance, *Submission*, no. 3, 29 June 2015.

⁴⁷⁷ Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 6.

⁴⁷⁸ Australasian Convenience and Petroleum Marketers Association, *Supplementary evidence*, 7 September 2015.

⁴⁷⁹ Royal Automobile Club of Victoria (RACV), *Submission*, no. 6, 14 July 2015.

⁴⁸⁰ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 8.

⁴⁸¹ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 10.

⁴⁸² 7-Eleven Stores, *Submission*, no. 12, 17 July 2015, p. 3.

⁴⁸³ Ms Cheryl Collier, Safety and Return-to-Work Specialist, Woolworths Ltd, *Transcript of evidence*, 5 October 2015, p. 13.

⁴⁸⁴ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁴⁸⁵ Victoria Police, *Submission*, no. 26, 10 August 2015.

It is very difficult for one attendant to monitor all of those, but generally they are trained to observe behaviours in terms of making sure that the rego plate is not covered up or indistinct — we have seen that happen — to make sure that the attendant is keeping an eye on them constantly. But if they are observing the attendant more than the attendant is observing them, they should be suspicious and if in doubt, just stop the pump. Some of our operators do that. But, as I say, it can get pretty ugly if it is a genuine customer or it is an aggressive person intent on stealing petrol.⁴⁸⁶

Staff training is an important factor in detecting risks and where necessary mitigating them by refusing to allow fuel to be pumped. The link between the number of retail attendants and the risk of fuel drive-offs occurring has also been identified in US research.⁴⁸⁷ In terms of loss prevention strategies related to the physical site, research suggests the location of the sales assistant and their number is strongly correlated to the number of drive-offs.⁴⁸⁸ A trial in Gainesville, USA, found that where the physical environment consisted of clear visibility and good lighting, and where two sales assistants were working, there were no fuel thefts at all.⁴⁸⁹ The effectiveness of that approach led to a change in policy, with municipal authorities requiring two sales assistants to be on duty between certain hours (8pm to 4am). As a result of the change in policy, fuel thefts were reduced by 65 per cent.⁴⁹⁰

The Committee notes that the way in which modern fuel retail sites are operated is a matter for individual companies to decide. However, the available evidence suggests that targeted training with a focus on risk minimisation, and an appropriate number of fuel retail employees have an important role in reducing if not preventing fuel drive-offs.

5.4.5 Numberplates

As discussed in Chapters three and four, some Inquiry participants suggested that there is a correlation between fuel theft and numberplate theft.⁴⁹¹ Preventing theft of numberplates through the use of special numberplate screws, providing access to information about numberplates and vehicles, including through the interface of ANPR technology with VicRoads data, and dealing with how numberplates are regulated were identified as measures that could help reduce fuel drive-offs. The Committee notes, that these measures generally relate to fuel drive-offs that would be considered criminal in nature, and thus would also be regulated

⁴⁸⁶ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 9.

⁴⁸⁷ Nancy La Vigne, 'Gasoline Drive-Offs: Designing a Less Convenient Environment', *The State University of New Jersey: School of Criminal Justice*, 1991, p. 95.

⁴⁸⁸ Nancy La Vigne, 'Gasoline Drive-Offs: Designing a Less Convenient Environment', *The State University of New Jersey: School of Criminal Justice*, 1991, p. 95.

⁴⁸⁹ Nancy La Vigne, 'Gasoline Drive-Offs: Designing a Less Convenient Environment', *The State University of New Jersey: School of Criminal Justice*, 1991, p. 95.

⁴⁹⁰ Nancy La Vigne, 'Gasoline Drive-Offs: Designing a Less Convenient Environment', *The State University of New Jersey: School of Criminal Justice*, 1991, p. 95.

⁴⁹¹ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 71; Steve Moffatt & Jacqueline Fitzgerald, 'The relationship between petrol theft and petrol prices', *NSW Bureau of Crime Statistics and Research*, vol. 101, 2006.

through criminal legislation. While the Committee received some evidence about the creation of new numberplates that may be tamper proof,⁴⁹² these are emergent measures which may have an important role to play in the future but are not discussed in this section.

One-way screws

One-way screws are fitted using a special tool, and make it difficult to remove the numberplate. Affixing numberplates using a one-way screw was proposed by some participants as a prevention strategy that in turn may result in a reduction in fuel drive-offs. Several submitters suggested mandating the use of these screws for all new vehicles (by vehicle dealers) and those undergoing roadworthiness inspections.⁴⁹³ Neighbourhood Watch and the RACV among others were supportive of this measure. In particular, the RACV stated that these screws were both simple and effective, and that it had partnered with Victoria Police and the VACC to promote them as part of the SAFEPL8 initiative.⁴⁹⁴ In his evidence, Mr Negus, General Manager, Public Policy, RACV, explained that the initiative involved promotion and lobbying manufacturers to use these screws on new cars.⁴⁹⁵ The RACV had been encouraging VACC and RACV outlets to offer them for free as part of a vehicle service.⁴⁹⁶ In terms of cost, the Committee received evidence about the cost of these screws, with Neighbourhood Watch suggesting the cost was about 6c each, while the RACV put the cost at \$3, and the New South Wales BOCSAR suggesting a cost of no more than \$5.⁴⁹⁷

The use of one-way screws extends to other jurisdictions. In the Australian Capital Territory (the ACT), the Australian Federal Police (AFP) have similarly implemented '*Project safe plate*' which offers members of the public tamper proof screws for their numberplates which requires a special tool to remove them. The aim of the project in the ACT was to reduce the incidence of stolen numberplates that are used in crimes, including fuel drive-offs.⁴⁹⁸

In spite of the potential of this measure, the Committee understands that very few Victorian vehicles have adopted them, with some 5000 vehicles fitted each year. Another participant put the number of vehicles fitted with these screws at 20-25,000.⁴⁹⁹ This represents a small number of vehicles compared to the 3.3 million registered vehicles in Victoria.⁵⁰⁰ One reason for the limited use of these screws is their effectiveness. Assistant Commissioner Stephen Fontana, Victoria Police, outlined some of the issues the effectiveness of these screws:

⁴⁹² Discoveries Advanced, *Submission*, no. 29, 23 October 2015, p. 5.

⁴⁹³ Mr Terrence Philip Conroy, *Submission*, no. 11, 17 July 2015; Neighbourhood Watch Victoria, *Submission*, no. 13, 17 July 2015; Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 11.

⁴⁹⁴ Royal Automobile Club of Victoria (RACV), *Submission*, no. 6, 14 July 2015.

⁴⁹⁵ Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 48.

⁴⁹⁶ Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 48.

⁴⁹⁷ Steve Moffatt & Jacqueline Fitzgerald, 'The relationship between petrol theft and petrol prices', *NSW Bureau of Crime Statistics and Research*, vol. 101, 2006, p. 3.

⁴⁹⁸ Australian Federal Police (AFP), *Submission*, no. 22, 21 July 2015, p. 6.

⁴⁹⁹ Mr Terrence Philip Conroy, *Submission*, no. 11, 17 July 2015.

⁵⁰⁰ Neighbourhood Watch Victoria, *Submission*, no. 13, 17 July 2015.

Certainly in terms of one-way screws, they are effective, but the plates do tear, and they can still be pulled off. But they can be a deterrent.⁵⁰¹

However, Assistant Commissioner Fontana added that:

The trouble is that we do have a lot of community groups that do things at Bunnings stores on Saturdays. They put the screws in, and they are great, but it is not broad enough. Where they need to be put on is at car dealers and things like that.⁵⁰²

The Committee sought comment from VicRoads about what it perceived the issues with one-way screws to be. Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, explained that:

My understanding is there are two particular issues relating to that. One of them is actually the potential to do damage to cars, and in the case of new cars people can be surprisingly precious about that. But the other of course is that if people genuinely want to remove the plates, some of these screws can still be removed by a clever hand anyway, so one wonders how much you achieve in the long run with those.⁵⁰³

Another participant, Discoveries Advanced, also identified a number of issues. Specifically, they questioned the value of one-way screws further, noting that the screws could be easily removed using commonly available tools or commercially available propriety tools.⁵⁰⁴ Further, such screws are regularly removed by panel beaters without difficulty as part of their work. Discoveries Advanced also suggested that the value of stolen numberplates as an aid in criminal activity generally was such that the use of special screws would not stop people from removing these plates.⁵⁰⁵

Discussion

One-way screws may provide some benefit in terms of reducing the likelihood of numberplates being stolen and used in fuel drive-offs. The extent to which they may achieve this however, is unclear. The Committee is supportive of the work undertaken by the RACV and the VACC in partnership with Victoria Police to promote wider use of one-way screws.

Accessing publicly available vehicle and numberplate information

As has previously been discussed in Chapter four, access to certain VicRoads registration information requires a court order. However, some VicRoads data is publicly accessible and has been used by retail employees to check vehicles

⁵⁰¹ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 79.

⁵⁰² Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 79.

⁵⁰³ Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 65.

⁵⁰⁴ Discoveries Advanced, *Submission*, no. 29, 23 October 2015, p. 7.

⁵⁰⁵ Discoveries Advanced, *Submission*, no. 29, 23 October 2015, p. 7.

entering their site. The information contained in the database provides a description of the vehicle as registered to a given numberplate.⁵⁰⁶ According to Mr David Shelton, Executive Director, VicRoads:

... by entering the numberplate, the details and a description of the vehicle that that plate is assigned to and can be used as an indicator of whether or not there might be something amiss in relation to a plate and its owner.⁵⁰⁷

This information may allow staff to refuse access to fuel for vehicles with non-matching numberplates, those that are not recorded on the VicRoads database, or which have a suspended, expired or cancelled registration.⁵⁰⁸ According to one participant, AA Holdings, access allows console operators to prevent fuel drive-offs.⁵⁰⁹ A similar experience was raised by 7-Eleven Stores, which noted that some of its franchisees use this technology, although it noted that in some cases this was not practicable.⁵¹⁰

Recently VicRoads implemented encryption changes to database access that have introduced a delay when accessing information, and may have reduced its efficacy for fuel retailers.⁵¹¹ The Committee was told by VicRoads that:

... an application was hitting th[e]database on a high frequency, so we had to put in place a captcha code that slowed it down a little bit.⁵¹²

Some fuel retailers noted that these changes have meant that the system cannot be used preventatively, as it had previously, because of the time needed to access the necessary information.⁵¹³ The Committee sought comment from VicRoads about access to its public registration data. Mr David Shelton of VicRoads, explained to the Committee that currently:

... we are working with the VACC to look at how they might effectively put a piece of software in place that allows them to read in bulk our vehicle registration data, not personal data, similarly to the way that you can at the moment online. You could add stolen information to that data stream.⁵¹⁴

⁵⁰⁶ Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 63.

⁵⁰⁷ Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 63.

⁵⁰⁸ AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 4.

⁵⁰⁹ AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 4.

⁵¹⁰ 7-Eleven Stores, *Submission*, no. 12, 17 July 2015, p. 3.

⁵¹¹ AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 5; Mr Shaun Mitchell, Managing Director, Sensor Dynamics, *Transcript of evidence*, 7 September 2015, p. 54.

⁵¹² Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 64.

⁵¹³ AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 5; Mr Shaun Mitchell, Managing Director, Sensor Dynamics, *Transcript of evidence*, 7 September 2015, p. 54.

⁵¹⁴ Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 66.

Mr Shelton clarified that this was:

... only vehicle data. It will provide service station operators to take certain actions and make certain judgements, but not necessarily follow through with any prosecution if they feel there is an issue that they want to take to a civil action. It will not identify the operator.⁵¹⁵

ANPR systems and accessing VicRoads data

As discussed earlier in this Chapter, the potential of fuel retailers operating ANPR and other similar systems to access public registration data through the VicRoads website, in real time, would be an important preventative tool. In order to do so, it is necessary to link ANPR systems to publically available registration information, through the VicRoads Vehicle Registration Enquiry web portal. The importance of such access appears to have been recognised by VicRoads. The Committee understands that VicRoads in consultation with Victoria Police is developing a repository of VicRoads data that fuel retailers could access to check the registered vehicle description against a numberplate. This could allow ANPR systems capable of reading a vehicle numberplate to automatically cross check these with the data from a repository and provide that information to the staff member immediately.⁵¹⁶ According to Sensor Dynamics, that will allow mismatched numberplates and vehicles to be identified, and allow the staff member to require prepayment.⁵¹⁷

The project to provide access to VicRoads data was also cited by Victoria Police. Superintendent Kevin Sheridan observed that:

VicRoads are very close to having a facility available for members of the public to check if a car is stolen or if a numberplate is stolen. It is not only restricted to this subject. If you have got a car parked in your street and you go, 'That's not normally here', you can just jump on the internet and check it, rather than wait a week before you ring the police. That facility is being developed. From my experience travelling around the retail industry, a lot of the retailers do have laptop computers set up at their consoles and try and check. If there are any suspicious vehicles or a vehicle that is particularly suspicious, they will try and get on the VicRoads database and try and confirm as best they can the identity of the vehicle. We are working with VicRoads to try and improve that access for all of them.⁵¹⁸

The benefits of being able to publically access a VicRoads database that includes stolen numberplates is significant. Indeed, most witnesses supported the proposal for general access to a database that records stolen numberplates.⁵¹⁹ Mr Mark McKenzie, the CEO of the ACAPMA, observed that:

⁵¹⁵ Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 64.

⁵¹⁶ Mr Shaun Mitchell, Managing Director, Sensor Dynamics, *Transcript of evidence*, 7 September 2015, p. 56.

⁵¹⁷ Mr Shaun Mitchell, Managing Director, Sensor Dynamics, *Transcript of evidence*, 7 September 2015, p. 56.

⁵¹⁸ Mr Kevin Sheridan, Superintendent, Road Policing, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 76.

⁵¹⁹ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 8.

... it allows you then to be able to use a centralised system where you can readily search a numberplate, flag it as being one of interest and then that can actually be picked up through the feeds that are provided by the various forecourts.⁵²⁰

The Committee also notes comments by the VACC, stating that the utility of forecourt cameras is limited if they are not linked to critical data, such as a Victorian stolen vehicle register⁵²¹ or NEVDIS⁵²² in a way that allows the drive-off to be prevented. Similarly, Mr Negus, RACV, explained that ANPR in combination with police and a shared database would provide a ‘way of trying to get control over the situation’.⁵²³

Access to this data is also important given that the capacity of industry to gather this data or access it through a private entity is limited (see Chapter four). The limitations of a fragmented fuel retail sector to collect and collate stolen numberplate data were the subject of comments from Mr Mark McKenzie, the CEO of the ACAPMA:

To that end the idea that we can somehow collect this data, make it available and then flag a motorist that comes onto the forecourt who has already stolen — theft — is for our purposes, after two years of trying, something that is actually not that practical in terms of addressing the problem as it has grown.⁵²⁴

The ACAPMA had previously tried to develop a system to identify risky customers, which had failed due to an inability to capture sufficient data.⁵²⁵ For these reasons, Inquiry participants were supportive of the work undertaken by VicRoads, with one participant, the Bhive Group Pty Ltd, suggesting that linked ANPR would lead to greater investment in useful and effective technology.⁵²⁶

Discussion

The Committee notes that access to public VicRoads registration data was used as a preventative measure by some fuel retailers. While some Inquiry participants expressed concerns following changes that have slowed down access to this data, work undertaken by VicRoads in consultation with the VACC should allow better access to this data, once implemented.

520 Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 16.

521 Mr Geoff Gwilym, Executive Director, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 17.

522 Mr Geoff Gwilym, Executive Director, Victorian Automobile Chamber of Commerce, *Transcript of evidence*, 8 September 2015, p. 18.

523 Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 48.

524 Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 16.

525 Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 17.

526 Bhive Group Pty Ltd, *Submission*, no. 9, 16 July 2015, p. Appendix 1.

Access to publically available VicRoads datasets is a promising development that may drive further innovation in ANPR systems, improve their effectiveness, and reduce, if not prevent, certain categories of fuel drive-offs (i.e. those potentially involving criminality). The Committee notes that there are obvious limitations to any database, not least the integrity of the data. For example, VicRoads obtains much of its information from the person providing data to it. Data on stolen numberplates and stolen vehicles is provided to VicRoads by Victoria Police. Nevertheless, access to this data is critical to efforts to reduce or prevent fuel drive-offs, noting that access needs to be shared in a non-commercial way to benefit technology providers and individual fuel retailers.

RECOMMENDATION 7: That VicRoads completes and implements its project for access to its publically available database, including access to numberplate matched vehicle description data, stolen numberplates and stolen vehicles. VicRoads should work with Automatic Number Plate Recognition and other technology providers to ensure that this data can be suitably and appropriately accessed.

5

Regulating numberplates

The current VicRoads registration database holds the records of 5 million registered vehicles and 3.8 million licensed drivers.⁵²⁷ While VicRoads has information on the last person who was registered to the numberplate, some Inquiry participants suggested there was a need to strengthen the regulation of numberplates. In Victoria once a registration numberplate has been issued by VicRoads, it does not need to be returned to that agency unless a person is seeking a refund of their registration or is seeking to cancel it.⁵²⁸ The Committee understands that VicRoads can and sometimes does request that numberplates be returned, but lacks a process to recover them.⁵²⁹ Occasionally, Victoria Police recovers these numberplates, including from 'car yards, second-hand wreckers or metal recyclers'.⁵³⁰ As a result, there are a large number of numberplates held in the community, both by individuals and businesses, a point highlighted by Assistant Commissioner Fontana of Victoria Police:

In terms of unregistered vehicles or vehicles that have been involved in accidents and get written off and end up in scrap yards and things like that, there are thousands and thousands of numberplates that just are not returned. That is a problem in itself as well. There are probably tighter controls that could be put in place around the return of numberplates.⁵³¹

⁵²⁷ Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 62; Ms Tracee Piper, Principal Policy Advisor, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 62.

⁵²⁸ Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 63.

⁵²⁹ Mr Kevin Sheridan, Superintendent, Road Policing, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 79.

⁵³⁰ Mr Kevin Sheridan, Superintendent, Road Policing, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 79.

⁵³¹ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 79.

The Committee notes that issues surrounding the regulation of numberplates are longstanding. Most recently, in 2009, as part of the remaking of road safety, registration and licensing regulations, VicRoads considered the introduction of an infringement to require that once a numberplate was cancelled it had to be returned to VicRoads. That proposal was not accepted for a number of reasons, with a key reason being the effect on police resources.⁵³² However, during the public hearings, the Committee received evidence from Victoria Police noting that more needed to be done to regulate numberplates. Superintendent Kevin Sheridan, Victoria Police, told the Committee that:

... tightening the administration of numberplates would be a huge advantage, and that is probably something we need. If this group could give some direction on that or some authority on that, that would be beneficial... The will is there, we are working together.⁵³³

Discoveries Advanced recommended the introduction of a system for regulating numberplates, and requiring VicRoads to make changes to its policies to create a system for returning numberplates.⁵³⁴ However, Victoria Police cautioned that doing so would be a significant task:

... once those numberplates have been returned they would have to be recorded, the fact that they are returned and no longer in circulation. It would be a mammoth task, but tightening up from now would certainly help.⁵³⁵

Similarly, VicRoads noted that:

It clearly creates further work for VicRoads, but principally if you want it to be a tight system, eventually you will end up with a requirement that police are chasing up non-compliant people who have not actually provided their plates back to us. That is seen as being, from reports to us, a low-value allocation of police resources. We would need to come up with a smarter process than just building more and more work for police.⁵³⁶

Discussion

During this Inquiry, the regulation of numberplates in Victoria was cited as a way of enabling people to commit fuel drive-offs. In the Committee's view, the issue of stolen, cloned or missing numberplates also has links to more serious criminality but the question of how best to regulate numberplates in Victoria remains. Regulating numberplates as a way of reducing fuel drive-offs is just one of many reasons to do so. However, given the available data on the involvement of stolen numberplates in fuel drive-offs, and the undefined benefits, if any, of regulating

⁵³² Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 63.

⁵³³ Mr Kevin Sheridan, Superintendent, Road Policing, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 80.

⁵³⁴ Discoveries Advanced, *Submission*, no. 29, 23 October 2015, pp. 4-5.

⁵³⁵ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 79.

⁵³⁶ Mr David Shelton, Executive Director, Registration and Licensing, VicRoads, *Transcript of evidence*, 7 September 2015, p. 63.

numberplates in a way that tracks millions of them, the Committee will not make recommendations on this issue for this Inquiry. The Committee does not believe that an integrated system for managing numberplates is necessary given that VicRoads retains the personal information of the person the numberplates were registered to. The Committee believes that Victoria Police and VicRoads are best placed to decide whether further reform in this area is warranted, using appropriate policy development approaches.

5.5 Prepayment

5.5.1 Introduction

According to some Inquiry participants, fuel drive-offs may be wholly preventable if fuel retailers used prepayment for fuel. During the course of the Inquiry the Committee received evidence that prepayment is a key measure for preventing fuel drive-offs, both criminal and inadvertent. As a preventative measure, prepayment has a number of benefits, with the most important being that it has the capacity to prevent all fuel drive-offs. However, prepayment attracted significant criticism predominantly from industry participants. Nevertheless, according to published research prepayment could be a way of reducing the incidence of fuel drive-offs.⁵³⁷

5.5.2 Types of prepayment

There are different types of prepayment that can be used in a fuel retail context, which are outlined below.

Prepayment at the fuel bowser

Prepayment at the pump involves a customer presenting a credit or debit card at a 'pay at the pump' station, typically at the bowser which initiates the pump. Once the card has been authorised any amount of fuel can be pumped. Payment is automatically made once the pump handle has returned to the bowser.⁵³⁸ This form of prepayment is said to be among the most effective ways of preventing fuel drive-offs, and, according to Victoria Police, retailers in a number of countries have mandatory or optional pay-at-the-pump capabilities built into the forecourt consoles, including Caltex and Shell retailers in Australia.⁵³⁹

Prepayment in-store

Prepayment in store requires a customer to estimate the amount of fuel they need, and pay for that fuel in-store, before the pump is activated.⁵⁴⁰

⁵³⁷ Marilyn Chilvers, *What lies behind the growth in fraud?*, NSW Bureau of Crime Statistics and Research, Sydney, July 2002, pp. 6-7.

⁵³⁸ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵³⁹ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵⁴⁰ Victoria Police, *Submission*, no. 26, 10 August 2015.

Other forms of prepayment

In addition to the prepayment at the bowser and in store, which are the most popular prepayment approaches, there also other, less utilised prepayment approaches. These are:

- **Controlled post-pay:** This involves the consumer producing a credit or debit card, or a Radio Frequency Identification (RFID) card to activate the pump console. This is typically wholly or partially self-service;⁵⁴¹
- **Pump start technologies:** These involve RFID cards or toggles that are linked to a person's identification which are necessary to activate the pumps, either automatically at the bowser or in store. The payment for the fuel is made once the fuel has been pumped. Two issues identified with this approach is that toggle or card theft can occur, making it less effective as other prepayment methods and it can be costly to upgrade the facilities to allow for this technology.⁵⁴² Advantages with this model is that they do not affect in-store traffic and therefore sales. These methods are widely used in the US with a number of retailers operating them (PumpStart, Speedpass and Loyalpass among others).⁵⁴³
- **Pump-on-LLC:** This is a US patented technology that is aimed at bridging the gap between no intervention and prepayment. The system applies to people using cash, and they have their licence scanned at the bowser before the fuel is dispensed.⁵⁴⁴

5.5.3 Existing use of prepayment in Victoria

In Victoria prepayment has been implemented during high risk times (usually overnight) at many retail locations.⁵⁴⁵ The Committee heard that the reasons for using prepayment may be due to a lack of staff working at the fuel site between these hours.⁵⁴⁶ Some fuel retailers employ prepayment 24 hours a day (for example, BP Sunshine).⁵⁴⁷

The Victoria Police Trial of prepayment in Melbourne

In 2003, Victoria Police trialled prepayment in Knox, Frankston and Epping. The program involved different retailers using prepayment at different times, and employing prepayment signage and fuel theft warning stickers provided by the VACC.⁵⁴⁸ As part of the trial, fuel retailers provided Victoria Police with data

⁵⁴¹ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵⁴² Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵⁴³ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵⁴⁴ The Association for Convenience & Fuel Retailing, 'Gasoline Theft at Convenience Stores', viewed 17 November 2015.

⁵⁴⁵ AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 4; Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 4.

⁵⁴⁶ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 9.

⁵⁴⁷ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 4.

⁵⁴⁸ Victoria Police, *Submission*, no. 26, 10 August 2015.

on lost revenue which was used to evaluate the trial. In Knox, the trial initially involved 14 sites, while at the end of the six month trial period, 17 sites were using prepayment. Prepayment was implemented between 8 or 10pm between June and November. The average reduction in revenue losses over the time period covered was 57.5 per cent.⁵⁴⁹ In Frankston, 18 sites took part in the trial initially, with 23 using prepayment at the end of the six month period. Average reductions were 43.9 per cent in revenue losses. In both the Knox and Frankston trials, there was a level of customer dissatisfaction in the first month or so of the trial, but this dissipated over time, aided by police media articles which outlined the strategy and benefits of the trial.⁵⁵⁰

The most dramatic results of the Victoria Police trial were those in the Epping area. The trial began in December 2002, and involved 17 sites. At its conclusion, there was no recorded loss of revenue due to drive-offs during the periods in which prepayment was used. According to Victoria Police, there was also a decrease in losses during the time period when prepayment was not used. Some retailers noted that while customers were unsure of the new-prepayment arrangements, they continued to purchase fuel and became accustomed to the new system over time.⁵⁵¹

In evidence received from Victoria's Assistant Police Commissioner Mr Stephen Fontana, the trials were found to have significantly reduced the number of fuel thefts in the area. Assistant Commissioner Fontana noted that:

... initially customers were a little bit unsure about it, but basically if they did introduce it across the board [pre-payment], there was a reduction in offences.⁵⁵²

In assessing the trial, Assistant Commissioner Fontana accepted that there were limitations in using prepayment, although it remained a useful measure:

Certainly the prepay was a solution. It did reduce it all. It will not prevent the fraudulent cards and things like that.⁵⁵³

Nevertheless, according to Victoria Police, the trials in Melbourne were found to have delivered the following benefits:

- Improved customer safety;
- Reduced OH&S risks to employees;
- Reduced employee stress (reductions in staff turnover and absenteeism);
- Inability to pay situations reduced to zero;
- No reduction in the volume of fuel sold;
- No reduction in shop sales;

⁵⁴⁹ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵⁵⁰ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵⁵¹ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵⁵² Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 71.

⁵⁵³ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 77.

- Savings on the recovery of losses;
- Better business re-sale; and
- The reduction in the risk of console operators allowing friends to drive off.⁵⁵⁴

5.5.4 Prepayment in other jurisdictions

While Victorian fuel retailers have used prepayment in certain circumstances (usually overnight), and as part of the Victoria Police trial, the Committee understands that prepayment has been used in many jurisdictions as a way of reducing the effect of drive-offs on police resources.

State jurisdictions in the US in particular, have heavily relied on prepayment as a way to reduce fuel drive-offs.⁵⁵⁵ The impetus for using prepayment in the US has been based, partly, on research that has shown the policy to work. For example, the Committee notes that in Virginia City, police convinced a large fuel supplier to move to prepayment, a policy that was followed by other retailers, which addressed the problem of drive-offs.⁵⁵⁶

The rise in fuel drive-offs in the US led to individual retailers imposing prepayment. An example of the change can be seen in the experience of the fuel retail chain Cumberland Farms. The company reversed its previous position and decided to require prepayment in stores located among competitors who also required prepayment, as Cumberland was seen to be a target without it. WAWA, a Pennsylvania chain, also changed its position requiring all 5490 of its stores to use prepayment. Drivers who pay with cards at the bowser (54 per cent of US drivers according to the New York Times in 2005) are unaffected by these changes. In some states, the legislature went further, passing laws requiring prepayment in some cities, and others such as New Jersey, require an attendant to pump the fuel.⁵⁵⁷

When discussing the use of prepayment in the US, some Inquiry participants noted that mandatory prepayment at the bowser in the US needed to be contextualised. Unlike the US, Victorian fuel retailers tend to have higher traffic volumes accessing their sites, averaging 2600 cars per site, as compared to the US in which the volume is lower at 1300 vehicles per site.⁵⁵⁸ As a result, some of the issues identified in the next section, around congestion at sites, were less of a problem in the US.

The Committee also understands that some European jurisdictions and other Australian jurisdictions also employ prepayment, both in store and at the bowser, although there appears to be no consistent approach in how and when it is used.

⁵⁵⁴ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵⁵⁵ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵⁵⁶ Patrick Harris, 'What's a Crime Prevention Officer Worth?', *Sheriff Magazine*, no. September/ October 2009.

⁵⁵⁷ Jennifer Steinhauer, 'Gasoline Thefts Increasing as Fuel Prices Keep Rising', *The New York Times*, 9 September 2005, viewed 26 November 2015.

⁵⁵⁸ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 5.

5.5.5 Prepayment as a measure to reduce fuel drive-offs

The findings of Victoria Police in terms of the effectiveness of prepayment as a preventative measure have also been replicated in other jurisdictions. US research into the use of prepayment in the early 1990s suggested that prepayment reduced drive-offs by almost 40 per cent.⁵⁵⁹ In the view of the National Crime Prevention Association of the US, ‘pay-before-you-pump is the simplest and most cost-effective way to stop gas drive-off theft from occurring in the first place so that it does not become a police problem’.⁵⁶⁰ Indeed, the efficacy of prepayment as a preventative measure was also cited by industry stakeholders including the AACS and the United Kingdom’s (UK) BOSS.

The efficacy of prepayment to reduce both the cost of fuel drive-offs to industry and to reduce the impact on police resources is clear. Indeed, the role of industry in reducing if not preventing fuel drive-offs by adopting prepayment has been the subject of comment both overseas and in Victoria. In the UK, the Hon. Norman Baker, the then Minister for Crime Prevention, questioned whether police should respond to drive-offs, if retailers were unwilling to stop the practice by demanding prepayment. In the then Minister’s view, retailers were taking a calculated risk, with the aim of having consumers purchase things in store after filling up.⁵⁶¹ Similarly, according to Victoria Police, fuel drive-offs are a ‘clearly preventable offence’.⁵⁶² Assistant Commissioner Stephen Fontana, of Victoria Police explained that:

We are one of the few countries in the world that do not have prepaid, for a start. It does work in other countries. In some countries and in some states of the US they have legislated that it is prepaid because it has been an issue.⁵⁶³

Assistant Commissioner Fontana added that:

But the reality is that there is a lot more that industry can do — not just the petrol or fuel industry but other industries — to prevent crime. Some of their practices are undesirable. It is not just about prepaid, there are other things that can be done at these stations to reduce the number of incidents, so we are encouraging businesses to be far more proactive and start tightening up their practices to prevent some crimes.⁵⁶⁴

In terms of implementing prepayment in Victoria, a number of participants were supportive of using prepayment.⁵⁶⁵ Mr Vance suggested that it was the cheapest solution to deal with fuel drive-offs. However, some participants questioned the

⁵⁵⁹ Nancy La Vigne, ‘Gasoline Drive-Offs: Designing a Less Convenient Environment’, *The State University of New Jersey: School of Criminal Justice*, 1991, p. 104.

⁵⁶⁰ Patrick Harris, ‘What’s a Crime Prevention Officer Worth?’, *Sheriff Magazine*, no. September/October 2009.

⁵⁶¹ Telegraph & Argus, ‘Petrol stations ‘encouraging theft’’, Saturday 2 August 2014, viewed 20 September 2015.

⁵⁶² Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 73.

⁵⁶³ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 73.

⁵⁶⁴ Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 73.

⁵⁶⁵ Mr Euan Vance, *Submission*, no. 3, 29 June 2015; Victoria Police, *Submission*, no. 26, 10 August 2015.

efficacy of prepayment. In correspondence with the Committee, Mr Jeff Rogut of the AACS, noted that some sites which had used limited prepayment between high risk hours and which had stopped using that, had experience no change in the overall number of fuel drive-offs. On that basis, the AACS surmised that prepayment did not work.⁵⁶⁶ APCO Service Stations explained to the Committee that when they used prepayment at night they did not get a drive-off.⁵⁶⁷ The reason for using prepayment at night related to issues of security.⁵⁶⁸

5.5.6 Issues with prepayment

The evidence received by the Committee by a large number of Inquiry participants was that prepayment has a number of costs or perceived costs, would be inconvenient to customers and was discriminatory,⁵⁶⁹ detracting from its use as a preventative measure.

Profitability

Arguably the most important issue for fuel retailers insofar as prepayment is concerned is the potential for lost profitability as a result of customers not coming in to the store to pay for the fuel (prepayment at the bowser). In seeking to explain the retailers position Victoria Police suggested that the 'opposition from fuel retailers to any form of prepayment appears to be linked to franchise arrangements and business models that have an integral focus on sales arising from the convenience store associated with the petrol station'.⁵⁷⁰

Due to the low margins available on fuel sales, retailers rely heavily on in store purchases for their profitability and according to some participants to remain viable.⁵⁷¹ Prepayment at the bowser is seen to be associated with the potential loss of incidental sales and a reduction in impulse sales.⁵⁷² One retailer, APCO Service Stations, cautioned that a move to at-the-bowser prepayment would lead to lost revenue which could necessitate increases in the cost of fuel.⁵⁷³ That possibility was of particular concern for the RACV, which noted that costs on industry from prepayment could lead to increases in the cost of fuel for motorists.⁵⁷⁴

⁵⁶⁶ Jeff Rogut, *Correspondence*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 27 January 2016.

⁵⁶⁷ Mr Peter Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 39.

⁵⁶⁸ Mr Peter Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 39.

⁵⁶⁹ British Oil Security Syndicate (BOSS), *Crime Reduction Toolkit for Service Stations*, England & Wales, 2015; Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 13; Royal Automobile Club of Victoria (RACV), *Submission*, no. 6, 14 July 2015; 7-Eleven Stores, *Submission*, no. 12, 17 July 2015, p. 3; RP Petroleum Pty Ltd, *Submission*, no. 16, 17 July 2015; Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, pp. 5-6; Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 9; AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 4.

⁵⁷⁰ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵⁷¹ RP Petroleum Pty Ltd, *Submission*, no. 16, 17 July 2015; Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 13.

⁵⁷² AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 4; Mr Peter Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 37; APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 5; 7-Eleven Stores, *Submission*, no. 12, 17 July 2015, p. 3; Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 6; Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵⁷³ Mr Peter Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 37;

⁵⁷⁴ Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 47.

An associated fear is that the capacity of larger retailers to absorb the loss of revenue from any prepayment at the bowser could lead to a loss of consumers from smaller retailers to larger retail chains.⁵⁷⁵ The Committee notes that concerns about profitability are not localised. In the US, researchers noted that the convenience store industry was opposed to the measure because customers would be discouraged from making last minute purchases.⁵⁷⁶

Capital investment

An important issue for industry stakeholders is the potential cost of converting their sites to allow for prepayment. Prepayment technology is seen by some retailers as being difficult and unaffordable to implement.⁵⁷⁷ Significant capital costs are thought to be associated with prepayment, although these arise in the context of converting fuel bowsers to allow for prepayment, rather than in store prepayment.⁵⁷⁸ However, there may still be considerable costs associated with reprogramming or buying new POS terminals for in store prepayment.⁵⁷⁹

Some participants provided the Committee with estimates of the costs of upgrading bowsers. For example, APCO estimated that it would cost about \$4 million to implement that technology over its 23 sites, although it noted that these cost were decreasing.⁵⁸⁰ Mr Rogut of the AACS estimated the cost as ranging between \$150,000 and over \$200,000 per site to convert bowsers. In spite of these costs, the Committee understands that some retailers operate bowsers that use this technology. Indeed, Victoria Police suggested that prepayment technology has been in use in fuel retailing for many years. It also suggested that prepayment at the bowser was available at some sites, although it noted that some retailers had disabled this option on their sites.

The Committee also heard that prepayment technology is not affordable or easily available in Australia, and that this may present barriers to implementation of prepayment facilities.⁵⁸¹ APCO Service Stations for example, suggested that not all fuel bowsers could operate using prepayment, and that bowsers for high flow diesel or Liquefied Petroleum Gas (LPG) could not be run at all using prepayment.⁵⁸² The BOSS has identified similar issues in the UK, noting that in the UK the majority of retailers are not equipped for prepayment at the bowser.⁵⁸³ Further, while prepayment technology for bowsers does exist, the Committee received evidence that such technology only works with credit cards, and excludes debit cards.

⁵⁷⁵ APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 5.

⁵⁷⁶ Nancy La Vigne, 'Gasoline Drive-Offs: Designing a Less Convenient Environment', *The State University of New Jersey: School of Criminal Justice*, 1991, p. 106.

⁵⁷⁷ APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 1; Royal Automobile Club of Victoria (RACV), *Submission*, no. 6, 14 July 2015.

⁵⁷⁸ Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 13.

⁵⁷⁹ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵⁸⁰ Mr Peter Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 37.

⁵⁸¹ APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 1.

⁵⁸² APCO Service Stations Pty Ltd, *Submission*, no. 10, 16 July 2015, p. 5.

⁵⁸³ British Oil Security Syndicate (BOSS), *Crime Reduction Toolkit for Service Stations*, England & Wales, 2015, p. 16.

Other issues

In addition to the loss of revenue and the capital investment needed to move towards prepayment, the Committee also received evidence that prepayment could lead to a rise in fraud,⁵⁸⁴ would be discriminatory to those without access to credit or debit cards, would increase business costs (because of merchant transaction fees charged on credit card transactions or on refunds needed as a result of under or overfilling),⁵⁸⁵ would make fuel retail sites congested, would be inconvenient to customers and, unless prepayment was mandatory, could lead to fuel drive-offs being displaced to other retailers.

The question of discrimination is an important factor when assessing the usefulness of prepayment. According to the ACAMPA, 32 per cent of Victorian fuel retail transactions use a credit card.⁵⁸⁶ The remaining transactions involve a debit card or cash, with one in four transactions using cash. The problem according to the ACAPMA with prepayment at the bowser is that prepayment systems are at present credit card enabled. That means that some 7 out of 10 customers in forecourts who do not currently use credit cards would require changes to the available technology.⁵⁸⁷ The AACS estimates that 30-35 per cent use cash, with the remaining EFTPOS transactions split between 40 per cent credit card and 60 per cent debit card.⁵⁸⁸ However, the AACS notes that this split in Electronic Funds Transfer at Point Of Sale (EFTPOS) transactions is changing as tap and go/paypass technology leads to increases in the use of credit cards.⁵⁸⁹ According to the AACS, similar technology is being introduced for debit cards.⁵⁹⁰ The Committee notes, however, that given the prevalence of pay wave technology, and the average cost of a fuel fill up being within the pay wave limit (usually \$100), paying in store would not appear to overcome the risks of credit card fraud if these payment methods (e.g. tap and go) were to be used in store.

The question of convenience in the context of fuel prepayment was also a central issue raised by a number of Inquiry participants.⁵⁹¹ While some of the issues associated with inconvenience at the bowser are dealt with when moving to

584 Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 10; Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 18; Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, pp. 5-6; Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 9; Royal Automobile Club of Victoria (RACV), *Submission*, no. 6, 14 July 2015.

585 Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 10.

586 Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 17.

587 Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 17.

588 Jeff Rogut, *Correspondence*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 27 January 2016.

589 Jeff Rogut, *Correspondence*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 27 January 2016.

590 Jeff Rogut, *Correspondence*, Parliament of Victoria, Law Reform, Road and Community Safety Committee, Melbourne, 27 January 2016.

591 AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 4; Ms Cheryl Collier, Safety and Return-to-Work Specialist, Woolworths Ltd, *Transcript of evidence*, 5 October 2015, p. 10; Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 6; Mr Robert Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 38.

in store prepayment, some participants noted that inconvenience caused by congestion in forecourts would be a major detraction for consumers, particularly at peak periods.⁵⁹² Victoria Police noted that ‘prepayment penalises all consumers despite only a small number actually doing the wrong thing’.⁵⁹³ Further inconvenience would arise where a customer has to return a second time to the store for a secondary transaction because they had under or overestimated the fuel they needed.⁵⁹⁴ Victoria Police similarly noted that because the popular ‘fill it up’ approach cannot be estimated⁵⁹⁵ it could not be used for in-store prepayment, creating a potential source of additional inconvenience.

5.5.7 Discussion

During the course of the Inquiry, the Committee assessed the efficacy of prepayment as a measure to reduce the impact of fuel drive-offs both on retailers and police resources while remaining cognisant of the concerns of retailers. The reasons for fuel retailers opposing prepayment include lost profitability, capital expenditure costs and inconvenience to customers. Generally, opposition to prepayment tended to be more concentrated towards prepayment at the bowser, predominantly due to its impact on secondary or impulse sales and the capital expenditure involved in upgrading the bowsers. Allied to these factors was a view that fuel bowser prepayment had not been successful in preventing fuel drive-offs even when implemented.⁵⁹⁶ The reticence of fuel retailers to adopt prepayment at the bowser is not confined to Victoria. The Committee notes that in the ACT, the AFP found that very few retailers had the capacity to accept prepayment at the bowser, and that some of those that did had deactivated it, with very few retailers requiring prepayment at night time.⁵⁹⁷

While opposition to prepayment at the bowser was more focused, mandatory prepayment of any type was also criticised, with the AACS claiming that ‘it [wa]s not appropriate for people and authorities whose expertise lies elsewhere than the retail environment to dictate retailer solutions.’⁵⁹⁸ Similarly, the RACV noted that compulsory prepayment was associated with significant issues although it appeared attractive and effective. The RACV were thus unsupportive of compulsory prepayment preferring to view it as a preventative

⁵⁹² Mr Mark McKenzie, Chief Executive Officer, Australasian Convenience and Petroleum Marketers Association, *Transcript of evidence*, 7 September 2015, p. 19; Ms Cheryl Collier, Safety and Return-to-Work Specialist, Woolworths Ltd, *Transcript of evidence*, 5 October 2015, p. 10; Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 6; Mr Robert Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 38.

⁵⁹³ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵⁹⁴ AA Holdings Pty Ltd, *Submission*, no. 27, 4 September 2015, p. 4; Ms Cheryl Collier, Safety and Return-to-Work Specialist, Woolworths Ltd, *Transcript of evidence*, 5 October 2015, p. 10; Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 6; Mr Robert Anderson, Director, APCO Service Stations Pty Ltd, *Transcript of evidence*, 7 September 2015, p. 38.

⁵⁹⁵ Victoria Police, *Submission*, no. 26, 10 August 2015.

⁵⁹⁶ Mr Jeff Rogut, Chief Executive Officer, Australasian Association of Convenience Stores, *Transcript of evidence*, 7 September 2015, p. 10.

⁵⁹⁷ Australian Federal Police (AFP), *Submission*, no. 22, 21 July 2015, p. 6.

⁵⁹⁸ Australasian Association of Convenience Stores (AACS), *Submission*, no. 5, 7 July 2015, p. 13.

option.⁵⁹⁹ If however, prepayment was to be implemented in Victoria, both Victoria Police and the VACC suggested that it had to be done consistently, and across the State, albeit for different reasons (for Victoria Police to avoid displacing the problem from one area to another and for the VACC, to avoid disadvantaging independent retailers).⁶⁰⁰ In contrast, the UK's BOSS argues that if prepayment is used, it should be targeted at high risk sites, along with customer orientated signage to inform customers and facilitate the transaction.⁶⁰¹

Evidence received and identified by the Committee clearly suggests that prepayment has the capacity to reduce if not wholly prevent fuel drive-offs, irrespective of their cause. The Victorian trials of prepayment by Victoria Police highlight the efficacy of measures that are already widely used in other jurisdictions and, in some States of the US, mandated. Some participants praised the potential of prepayment. Victoria Police for example noted its efficacy,⁶⁰² while the Commissioner for Privacy and Data Protection noted that prepayment was a form of self-management initiative for fuel retailers.⁶⁰³ Industry groups also accepted its efficacy, while noting challenges and issues with prepayment,⁶⁰⁴ with the ACAPMA noting that it was an elegant solution.⁶⁰⁵ However, the Committee does not believe that mandating prepayment is necessary at present. Given the available data, and the existing issues with prepayment at the bowser, the Committee is supportive of increased use of prepayment in store. Given the cost of fuel thefts on police resources and time, and the effect on fuel retailers the Committee recommends:

RECOMMENDATION 8: That the Victorian Government, in consultation with industry groups and key agencies, considers measures to assist the fuel retail sector to implement prepayment systems to prevent fuel drive-offs.

⁵⁹⁹ Mr Brian Negus, General Manager, Public Policy, Royal Automobile Club of Victoria *Transcript of evidence*, 7 September 2015, p. 47.

⁶⁰⁰ Victoria Police, *Submission*, no. 26, 10 August 2015; Victorian Automobile Chamber of Commerce (VACC), *Submission*, no. 19, 17 July 2015, p. 9.

⁶⁰¹ British Oil Security Syndicate (BOSS), *Crime Reduction Toolkit for Service Stations*, England & Wales, 2015, p. 16.

⁶⁰² Victoria Police, *Submission*, no. 26, 10 August 2015; Mr Stephen Fontana, Assistant Commissioner, Crime Command, Victoria Police, *Transcript of evidence*, 8 September 2015, p. 77.

⁶⁰³ Commissioner for Privacy and Data Protection, *Submission*, no. 20, 17 July 2015, p. 4.

⁶⁰⁴ British Oil Security Syndicate (BOSS), *Crime Reduction Toolkit for Service Stations*, England & Wales, 2015, p. 16.

⁶⁰⁵ Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission*, no. 18, 17 July 2015, p. 5.

Appendices

Appendix 1 List of Submissions

Name of individuals/organisation
AA Holdings Pty Ltd
APCO Service Stations Pty Ltd
Australasian Association of Convenience Stores (AACS)
Australasian Convenience and Petroleum Marketers Association (ACAPMA)
Australian Federal Police
Australian Small Business Commissioner
Bhive Group Pty Ltd
Mr Chis Maher
Commissioner for Privacy and Data Protection
Crime Stoppers Victoria
Discoveries Advanced Pty Ltd
7- Eleven Stores Pty Ltd
Mr Euan Vance
Mr Fury Bortolotto
Mr Geoff Griffiths
Mr Gavin Langburne
LicenSys Pty Ltd
Ms Lisa Brooker
Mr Louis Ryles
Neighbourhood Watch Victoria Inc.
Mr Nicholas Wallis
Royal Automobile Club of Victoria (RACV) Ltd
RP Petroleum Pty Ltd
Sensor Dynamics
Mr Stan and Mrs Dorothy Roberts
Mr Terrence Philip Conroy
Victorian Automobile Chamber of Commerce (VACC)
Victoria Police
Mr Vincent Bailey

Appendix 2 List of witnesses

Date of public hearing	Name	Position	Organisation
7 September 2015	Mr Jeff Rogut	Chief Executive Officer	Australasian Association of Convenience Stores (AACS)
	Mr Mark McKenzie	Chief Executive Officer	Australasian Convenience and Petroleum Marketers Association (ACAPMA)
	Ms Sam Hunter	Chief Executive Officer	Crime Stoppers Victoria
	Mr Robert Anderson	Director	APCO Service Stations Pty Ltd
	Mr Peter Anderson	Director	
	Mr Brian Negus	General Manager Public Policy	Royal Automobile Club of Victoria (RACV)
	Mr Shaun Mitchell	Managing Director	Sensor Dynamics
	Mr David Shelton	Executive Director, Registration and Licensing	VicRoads
	Ms Tracee Piper	Principal Policy Adviser, Registration and Licensing	
8 September 2015	Mr Stephen Fontana	Assistant Commissioner, Crime Command	Victoria Police
	Mr Kevin Sheridan	Superintendent, Road Policing	
	Mr Geoff Gwilym	Executive Director	
	Mr Tony Franza	Member and proprietor of Caltex Star Mart, Albert Park	Victorian Automobile Chamber of Commerce (VACC)
	Mr Aslam Kazi	Member and proprietor of BP Clayton South	
	Mr Tony Nippard	Assistant Commissioner for Privacy and Data Protection	Office of the Commissioner for Privacy and Data Protection
	Ms Ilana Singer	Assistant Legal Officer	
5 October 2015	Ms Marisa De Cicco	Deputy Secretary, Criminal Justice	Department of Justice and Regulation
	Ms Cheryl Collier	Safety and Return-to-Work Specialist	Woolworths Limited

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Law Reform, Road and Community Safety Committee

Parliament House
Spring Street
EAST MELBOURNE, VIC 3002

61 3 8682 2846
lrrcsc@parliament.vic.gov.au
www.parliament.vic.gov.au/lrrcsc

