

SERVICE STATION — DRIVE-OFF FUEL THEFT

Grievance

MS A.R. MITCHELL (Kingsley) [9.26 am]: My grievance this morning is to the Minister for Police. I thank the minister for taking this grievance today. This matter has been raised with me on a couple of occasions, but more recently it was raised with me when a service station proprietor from my electorate came to see me. He is greatly concerned about the number of people who are filling up their petrol tanks and driving off without paying. That is nothing new; indeed, it is not something that we have not heard about before. However, it is a growing issue and the dollar amount that is not being paid is continuing to grow.

The people who came to see me have been in their business in the electorate for 25 years. They are well known and are very good businesspeople. That they have raised this issue with me shows the level of their concern. They do not expect this to not occur—they have been in the business for a long time—but they are concerned about the lack of support they receive from police and other authorities. As such they feel as though they have nowhere to go. The incidence of people filling up their tanks and not paying is of particular concern to these people and others who have service station franchises, but it is not necessarily a concern for the big corporately owned service stations. These small business people in my area are looking for support. There is no doubt that the issue is growing. If someone drives off without paying for their petrol, these service station owners are meant to send a fax to a police station in their area. Some do that, but many do not bother because they know nothing will happen. Some service station owners are no longer recording these incidents because they know their faxes will sit in a pile and that nothing will happen. They told me that on average the police receive 100 faxes, but that is minuscule compared with the number of drive-offs in their area. There is no doubt that if nothing is done about this issue, it will continue to grow and cause great concern.

Each drive-off from that particular service station costs between \$60 and \$100; therefore, they are losing about \$20 000 a year, which is not an insignificant amount for a small business operator. They struggle with the fact that the police and others do not provide any support. They told me that a few weeks ago there was an incident at the shopping centre at which the service station is located, which is what triggered their visit to me. The local supermarket discovered someone walking away with a fair bit of food in a trolley. Within moments the police were at the supermarket en masse making sure that the person was stopped right away. However, if the service station were to contact the police after a person had filled their tank and not paid, nothing would happen even though there is no question that it is theft. They are not sure why there is a difference between the theft of groceries and the theft of petrol. It is causing them great concern. I have been informed that the problem relates to the intent of the theft—that is, did the person mean to drive away without paying? Obviously, there are incidents in which people do not mean to drive away and generally they go back. There is no question about that.

This business about the intent of a person is causing them great concern. This issue does not occur with speeding fines. People do not get a chance to say whether they intended to speed; they just get fined. The same applies when people steal from a supermarket. There is no question as to whether people intended to walk out without paying—they just get fined. But if people drive away from a service station without paying for their petrol, it comes under a category that relates to intent and to whether that person meant to drive away. As I said, I am talking about small business operators. They are finding this difficult. It is my understanding that this issue is dealt with under civil law, not criminal law. Because it is under civil law, they have to do something about it themselves. If they go to a police station to get the address and name of the person who drove off—invariably they have the person's numberplate—they cannot get that information and therefore it cannot be dealt with in a civil court. They are very much caught between a rock and a hard place and at this point in time they have thrown their hands up and said, "Please, help us." They have had quite a few suggestions and obviously the idea that comes up is that people should pay for their fuel before they go to put it in the car. I think we are all well aware that service station operators do not make their money from petrol; it is there, but it is not what they make their money from. They make money from people going into the service station store afterwards to pay for the petrol and picking up something else from the store. That is a well-known fact, and I personally find it quite abhorrent to have to get to the point of having to pay for fuel before filling up, and I intend to pay for my fuel.

We need to deal with this issue and we are looking for some support from the minister. The service station business owners have come up with a few ideas. They believe that fines would be the most effective. Although they do not want to waste police time and resources, they believe a fine system could be of merit and they certainly hope that someone has put that idea to the minister. It could even be to the point of giving people 24 hours to pay; so they do not get fined immediately, but if they have not come back to pay within that 24 hours, they could then be fined. If it is a fine, it does not necessarily have to have police following it through. If it is a matter of things being civil or criminal, can some change to regulation or legislation occur so that this intent issue is no longer the one that seems to be causing the problems? These people are looking for the same

protection as other businesses that suffer theft from people within their businesses. I thank the minister for taking this grievance and I look forward to her response.

MRS L.M. HARVEY (Scarborough — Minister for Police) [9.31 pm]: I thank the member for Kingsley for this grievance and appreciate that there is a significant depth of feeling about this issue. As a small business owner myself, I know that one of the biggest costs to small business these days can actually be stock theft, and on the face of it, that is how the fuel station owners view the act of fuel theft. To be really clear, the police position is that when corroborating evidence is available that the theft has occurred and a reasonable prospect of conviction exists, drive-off fuel theft will be investigated and charges will be laid. The difficulty that arises for police is primarily in the legal area that the member referred to in her presentation. Obviously, when a thing is taken with intent to permanently deprive the owner of it, it is an offence under section 371 of the Criminal Code and it is stealing. At the beginning of this year police received advice from the State Solicitor's Office specifically regarding this issue. The difficulty that arises and the reason the vast majority of fuel drive-offs are not being prosecuted and do not result in charges is that it is really difficult to show an intent to steal fuel. Quite often when police chase these people up, they feign that they were forgetful and that they did not mean to do it, that they got distracted and all of these other excuses. In effect, if those people then go back and pay for the fuel, no offence has occurred. Therefore, the police feel a bit like they are chasing their tails on this issue when they try to chase up people.

The member referred to moving towards a strict liability offence—that is, an offence for which there is no necessity for police to establish an element of intent. The examples the member used were the offences of speeding and drink-driving, because intent in those circumstances is presumed. The difficulty we face with that is when a person does not pay for fuel through no fault of their own. Indeed member, I have done it myself when I was hormonally challenged with two small children. I drove off from the fuel station and forgot to pay. I received a phone call from my local police and immediately went back and paid. There are many people who face those sorts of situations in which they get distracted and forget to pay for fuel through no fault of their own. If we move to a strict liability offence, those people will immediately be presumed to have an intention to commit the offence and we will capture people who had no intention of stealing in the first place. Also, in the past strict liability offences have been justified by governments when there is an important public interest in ensuring that people take special care to follow the law. That is why strict liability offences have usually been confined to drink-driving and offences of that nature for which there is a social impact and the impact of the actions of people can have a significant effect on others around them. Parliament could give consideration to the prospect of a strict liability offence for fuel drive-offs, and I do not rule that out in the future, but I think we need to be very, very careful if we go down that path.

Obviously, one of the ways this matter could be resolved would be to have service stations move to requiring prepayment for fuel. I appreciate that that is not a palatable option because it has an economic disbenefit to the fuel station owners, as fuel station owners make their money from those add-on sales when people come in to pay for fuel. That is an issue that retailers do not necessarily face, because there are usually barriers to the entry and exit of a store and people usually purchase the goods by going through a checkout on their way out of the store, so when they leave the store without paying, there is a deliberate intention to leave without paying for the goods. If people prepay for their fuel, there is no opportunity further down the track for them to claim that they inadvertently forgot to purchase, but of course there is an economic disbenefit to the owners of the fuel stations with that particular course of action.

To advise the member and update the house, I consider this to be an important issue and I have met with the Motor Trade Association to discuss it, and I have raised it a number of times with the Commissioner of Police. We are looking at several avenues that might be of assistance in tackling this problem. I have also written to the Motor Trade Association on this matter and requested that it, via its members, start to help us collect a database on some of the numberplates of cars that they say are involved in fuel drive-offs. If those plate numbers and CCTV footage can be provided to WA Police, then we are looking at potential multiple prosecutions for particular perpetrators, and I think we will have a higher chance of conviction. We are looking at identifying the worst recidivists in this case and trying to make a case against them. If there are also some high-profile prosecutions and convictions in these matters and if we do prosecute the recidivist offenders, we will no doubt get some publicity around this, which may have a deterrent effect in the wider community.

In the long term, we are developing IT systems to implement the Criminal Code Amendment (Infringement Notices) Act 2011. This is quite a complicated piece of IT work and it will be a lengthy process. I have requested that the police do some work to see whether infringement notices can appropriately be used for fuel drive-offs in certain circumstances and to see whether we can amend the act to that effect.

Finally, I come to the member's comment that presently police do not release driver information to service station owners who wish to pursue civil action. This is a matter that comes out of police privacy policies and I

have already discussed this same issue with the Commissioner of Police in another matter. I will raise it again with the commissioner and seek his view on whether a case can be made in certain circumstances for the release of the information, but we are up against the Privacy Act if we go down that path. I thank the member for bringing this matter to the house and I will pursue these issues.