THE NEW SOUTH WALES PRICES COMMISSION AND THE USE OF PRICE CONTROL AS A REGULATORY DEVICE

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This article examines the recent legal history of the N.S.W. Prices Commission in the context of the regulatory/non-regulatory debate. It also deals generally with the powers and activities of the Prices Commission as evidenced by its Reports. The use of price control as a regulatory mechanism is analysed, and the author concludes by making recommendations of changes to the powers of the Prices Commission that may prove more successful in achieving its aims of price control.

I. INTRODUCTION

The recent history of price control in New South Wales commences with the enactment of the Prices Regulation Act 1948 (N.S.W.). Extensive price control had been applied in Australia during World War II by the Commonwealth Government, but the continuation of price control at the end of the war commensurate with an extensive rationing programme quickly became a dangerous political and legal issue for the Commonwealth. Agreement was reached for the States to enact similar price control statutes to that which had operated during wartime. Legislation such as the Profiteering Prevention Act 1948 (Qld.), the Prices Act 1948 (S.A.) and the Prices Regulation Act 1948 (N.S.W.) emerged. The Prices Regulation Act 1948 (N.S.W.) operated in its original form, apart from two minor amendments, until 1976 when the Prices Regulation (Amendment) Act 1976 (N.S.W.) was passed. This Act replaced the office of Prices Commissioner with a three person Commission comprising a full-time and two part-time commissioners. The amendment to the Act was significant insofar as it illustrated that the new Labor Government in New South Wales was quite prepared to use its legislative powers to intervene in the market place. Nevertheless intervention has been minimal, and currently only petrol and bread prices are directly regulated under the Act. Milk is indirectly regulated.

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Significantly, there are a large number of goods and services "declared" under the Act and it is a relatively simple procedure to fix maximum prices for these goods and services.

In essence, the New South Wales Government currently has legislation enabling it to introduce comprehensive direct price control if it has the inclination and funds to do so. Comprehensive control is not likely, although particular industry control is a distinct possibility. The threat of industry price control is a still more likely possibility where consumer interests are threatened. This paper examines the recent legal history of the Prices Commission in the context of the regulatory/non-regulatory debate and makes some suggestions for reform of the Commission's activities.

II. THE OPERATION OF THE PRICES REGULATION ACT 1948 (N.S.W.)

1. The Declaration Powers in the Prices Commission and the Minister

The objectives of the Act are stated in Section 58 which provides:

This Act shall be administered with a view to —

(a) the prevention of undue increases in prices and rated for goods and services; and

(b) the regulation so far as is necessary of prices and rates for goods and services which are essential to the life of the community.

To achieve these objects the Act further provides for:

(i) a declaration mechanism in the Minister to determine which goods and services should be subject to price control;[1]

(ii) a further declaration power in the Commission to fix maximum prices for goods and services.[2]

Section 19 generally gives power to the Minister to declare any good or service to be a declared good or service. Such a declaration may be made generally or in respect of any part of the state or any proclaimed area or in respect of any person or body or association of persons.[3] The section 19 power is supplemented by section 8A. This section empowers the Minister to direct the Chairman of the Prices Commission to either furnish a report to him, or hold an inquiry and furnish a report to him "for the purpose of determining whether he should exercise any power conferred on him under s.19". The power is discretionary, there being no obligation on the Minister to request such a report, direct an inquiry or follow the Chairman's recommendations. The Minister has directed a number of section 8A inquiries. These have included inquiries into the pest control, motor vehicle replacement parts and funeral industries.

1 S.19.
2 S.20.
3 S.19(3).

The section 19 declaration power is very extensive giving complete discretion to the Minister to declare simply by notice in the Gazette whether goods or services are to be "declared" goods or services. This extensive executive power is limited by the price fixing power granted to the Commission in section 20. Section 20(1) gives the Commission power to fix and declare the maximum price at which goods may be sold by order published in the Gazette. Section 20(1A) requires the Commission to serve a copy of any proposed order under section 20(1) on the Minister who is then given a right of veto in relation to the order. He may "in the public interest" direct the Commission not to publish the order. The Commission is not permitted to publish a section 20(1) pricing order until the Minister has informed the Commission that he does not propose to give it a direction under section 20(1A) paragraph (b).

Section 20(5) gives the Commission power to fix and declare the maximum rate at which any declared service may be supplied. Section 20(5) however vests more power in the Commission than does section 20(1) for goods. The subsection gives power to the Commission "in its absolute discretion". These words are not found in section 20(1). Furthermore the 1976 amending Act which introduced the section 20(1A) veto power for goods did not do the same for services. In relation to services therefore there is no obligation on the Commission to notify the Minister and await his consent or veto order before publication of the maximum rate for the service.[4]

The powers contained in section 20 must be read in conjunction with sections 8B and 8C. Section 8B requires the Commission to hold an inquiry "for the purpose of determining whether it should exercise any power conferred on it under s.20 . . . unless it obtains the consent of the Minister to dispense with the holding of an inquiry". Section 8C provides a mechanism whereby sellers of goods and suppliers of services "to which an order under s.20 relates may make application to the Commission . . . for an order under that section". Section 8C(2) provides that on receipt of an application the Commission may decide to refuse the application or to hold an inquiry. Section 8C, read in conjunction with section 20, attempts to provide the mechanism by which applications for price increases in relation to declared goods and services are made.

The section 8C attempt to provide a mechanism for granting price increases to firms subject to price control, has its defects. Any reasonable price controlling statute should have a quick and inexpensive procedure for dealing with applications for price increases that are obviously justifiable. The New South Wales statute produces the odd result that firms may delay applications for price increases because if they apply under section 8C the application will be refused or an inquiry

4 This curious distinction may produce odd results: Price control over goods relates to a sale of goods, not a supply of goods. Hire-purchase agreements may therefore escape price control under s.20(1), which specifically relates to the price at which "*goods* may be *sold*". However hire-purchase agreements appear to be within the definition of "services" provided in s.3 of the Act: '"Service" means' — (c) any rights under an agreement for the hiring of goods'. If price control was introduced for commodities commonly "sold" by hire-purchase as well as cash, a different procedure would need to be followed by the Commission after it had reached its decision to fix and declare a maximum price. Furthermore the same price arrived at, on the one hand, for a sale, and on the other, for a supply of service, could in one instance be vetoed and in the other not. Similar arguments can also be made in relation to the distinction between a sale of goods and a contract of work, labour and supply of materials (defined as a "service" in s.3(3)).

instituted. Inquiries can be slow and lengthy processes with time required for notice,[5] the possibility that anyone with a "substantial interest" can be made a party to the inquiry[6] and the requirement that inquiries shall be held in public.[7] Potential applicants may be better advised to "inform" the Commission of a need for an increase and trust that this will not be treated as an "application" under section 8C. They would then be at the mercy of the Commission, trusting that it would request Minsterial dispensation under section 8B for the need to hold an inquiry under that section. Hope and Glass JJ. in their joint judgment in *Evans* v. *Bread Manufacturers Association of NSW*[8] seem to have adopted a different interpretation. They suggest that the existence of applications under section 8C

> does not preclude the Commission from acting of its own motion and exercising a power under s.20, either after a public inquiry pursuant to s.8B, or without such an inquiry because of Ministerial dispensation. [9]

With respect to those judges, such an interpretation leaves little room for the operation of section 8C(2). The High Court did not consider this issue in any depth in the subsequent appeal. In the interests of equity to firms and clarity of the law, section 8C(2) clearly requires amendment giving the Commission the power to seek ministerial dispensation for the need to hold an inquiry under section 8C.

2. *The Section 58 Power*

A discussion of the powers contained in sections 19 and 20 of the Prices Regulation Act 1948 (N.S.W.) is not complete without a further analysis of section 58 of the Act. This section is central to the operation of the Act and has recently received judicial consideration in two cases, *Guyot* v. *Evans*[10] and the *Bread Manufacturers* case.[11] *Guyot's* case arose out of a section 8B inquiry into medical fees. It was submitted in this case that, inter alia, the Commission had exceeded the powers given to it in section 58. In giving his decision, Lee J. adopted a relatively narrow interpretation of section 58. In his view the Prices Regulation Act 1948 (N.S.W.) was an Act the sole concern of which was the control of prices of goods and rates for services for the purposes expressed in section 58. To his mind the purposes expressed in section 58 were to be limited entirely to economic factors. He further noted that section 58 was concerned with the amount of prices and rates and nothing else.[12]

Lee J. was prepared to extend the power of section 58 to control the administration of prices and the difficulties associated with this. He stressed, however, that economic and commercial considerations were the only ones to be considered, and social and moral considerations would play no part at all.

5 S.8D.
6 S.8E.
7 S.8F.
8 Unreported, N.S.W. Court of Appeal, 26 September 1980.
9 *Id.*, 20 *per* Hope and Glass JJ.
10 [1980] 1 N.S.W.L.R. 636.
11 *Bread Manufacturers of N.S.W.* v. *Evans* (1981) 38 A.L.R. 93.
12 Note 10 *supra*, 649.

Consequently his Honour rejected considerations as to whether persons of limited means would, from the point of view of health care, be better off and better served by a salaried medical service. This he held was a matter which was wholly unrelated to price fixing under the Prices Regulation Act 1948 (N.S.W.). He therefore went on to hold that the inquiry into doctors was not one into the social desirability, or otherwise, of having a medical profession operating essentially as salaried personnel, but was an inquiry into the reasonableness, or otherwise, of actual fees being charged by medical practitioners. Similarly, inquiries into whether the National Health Insurance Scheme was really effective in achieving proper medical care for people were not relevant. He stated:

> It is not for the Commission to concern itself with social or moral matters involved in the provision of health services to the community. It is not for the Commission to base any decision as to whether it will fix or not fix fees upon the possible effect that fixing may have on the operation of the national health scheme. The Commission is constituted to fix prices and rates and that is its sole function, and it has no mandate under the Act to consider the general social desirability or otherwise of tying fees for medical services to the fees fixed by the *Health Insurance Act* (Cth) for health insurance purposes. It is only to the extent that it may find that the fees being charged by medical practitioners, *by reason of their quantum*, require to be controlled and that the fees set out in the schedule to the *Health Insurance Act* (Cth) are in fact proper maximum fees to charge, that the commission will be entitled to fix fees for medical services at these levels.[13]

In the judgment at first instance in the *Bread Manufacturers* case.[14] Woodward J. adopted the views of Lee J. in relation to section 58 of the Act. He stressed that the Act was a price-fixing Act, its purpose being to prevent undue increases; it was not the purpose of the Act or the object of the Commission to prevent an increase in the price of bread. His views appear particularly narrow, and would not have allowed the Commission to examine differences in the prices of bread in New South Wales as compared with other States of the Commonwealth or Canberra, nor to examine discounting of bread, date-stamping of bread, the wheat and flour pricing situation, nor whether the control of the pricing of flour in this State was desirable and should be investigated.[15]

In the appeal from the decision by Woodward J., Hope and Glass JJ. agreed with the interpretation of Lee J. in *Guyot's* case only insofar as he stated that section 58 was concerned with the economic and commercial significance in the community of rates and prices. However, they noted that this should not be interpreted too narrowly and stressed that in determining what matters were relevant when considering economic and commercial considerations, one should not be limited to matters of pure cost. They stated:

> it must be borne in mind that matters of economic or commercial significance may be matters of political or other significance as well; economic or commercial significance may be inextricably entwined with other kinds of significance.[16]

13 *Id.*, 651.
14 *Bread Manufacturers Association of N.S.W.* v. *Evans*, Unreported, N.S.W. Supreme Court, August 1980.
15 *Id.*, 40.
16 Note 8 *supra*, 22 *per* Hope and Glass JJ.

In delivering his judgment in the Court of Appeal, Hutley J. was reluctant to specify what particular considerations the Commission was entitled to take into account under section 58. He did state that it was not only economic factors that could be taken into consideration; it was possible for the Commisson to consider matters beyond just a question of dollars and cents. However, considerations of purely political factors such as the possible electoral disadvantage to the Government of a proposed price increase were clearly outside the ambit of section 58.[17]

The High Court appeal has not completely clarified the extent and nature of the section 58 power though it would seem that the interpretation adopted by Lee J. in *Guyot's* case, and supported by Woodward J., is too narrow. Gibbs, C.J. briefly reviewed section 58 in the context of reviewing the discretion exercised under section 20(1). This sub-section gives the Commissioner a discretion to fix and declare the maximum price at which declared goods may be sold. He suggested that such discretion was very wide:

> The exercise of its discretion does not depend upon the formation of an opinion as to any particular fact or circumstance. It is no doubt required, by s.58, to consider such general matters as to whether an increase in price would be "undue" and to what extent the regulation of the price of bread (an essential commodity) is "necessary", but its discretion is virtually unfettered.[18]

The description of section 58 as containing only "general matters" suggests that the section may not deserve the importance attached to it by the Supreme Court judges.

Mason and Wilson JJ., supported generally by Murphy and Aickin JJ., considered section 58 in slightly more detail. In relation to the word "undue" in section 58(a) they suggested that,

> [i]t must be read as referring to what is appropriate or warranted having regard to the interests, not only of manufacturers and traders, but of consumers and the community generally.[19]

Consequently, they concluded that the Commission could deny manufacturers full cost recovery if it considered present profits were too high or if manufacturers were inefficient even if "the increase sought is so large that it will reduce public demand".[20]

These judges went on to stress the unfettered nature of the discretion in section 58(b), and saw support in this part of the section for the wide reading adopted in section 58(a). Mason and Wilson JJ. expressly declined to be specific in relation to section 58. Along with the Chief Justice, these judges suggest that the Commission does have a wide discretion. Does this imply, therefore, that the section is so general as to be virtually meaningless? Parliament cannot be presumed to have intended such a result.

Initially the lack of clarity in the section may not have mattered: the Act was originally introduced as a means of winding down wartime price controls. Before its amendment in 1976, section 58 contained a Part (c) which had provided for the progressive removal of the control of prices and rates at the earliest possible date consistent with the welfare of the community. However, the 1976 amendments to

17 *Id.*, 5 *per* Hutley J.
18 Note 11 *supra*, 103.
19 *Id.*, 113.
20 *Ibid.*

the Act and to section 58 have given the Act a new lease of life. It is not safe to assume that section 58 will not play an important role in the future of price control in New South Wales. In the *Bread Manufacturers* case, when it was in the Court of Appeal,[21] Hutley J. had commented in relation to this section:

> It is a statutory direction as to the objectives of the Act and as to how those charged with the administration of the Act are to frame their policies. It limits the considerations which the Minister and the Commission may entertain in their deliberations and, therefore, amounts to a statutory direction as to what is the public interest.[22]

Nothing in the decision in the High Court would suggest that this is wrong, though the description of the discretions given in section 58 as being unfettered may make challenge difficult.

Section 58 may continue to have importance in two main ways:

(i) it would seem at least possible to challenge the exercise of the discretion by showing that the goods or services sought to be price controlled are not goods or services "essential to the life of the community" in the terms of section 58(b);

(ii) the section deals fundamentally with price control, so that if the Prices Commission was exercising the wide discretion it undoubtedly has, in a demonstrably non-price control context, it would appear to be acting ultra vires this section. Neither of these issues arose in relation to the *Bread Manufacturers* case[23] where there was no doubt that bread was an item essential for the life of the community nor that the objective of the Commission was to continue price control over it.

Difficulties in relation to the two issues suggested above are more likely to arise when the Prices Commission is considering whether to introduce price control by virtue of section 8A inquiries. It is accordingly of some interest to consider how the Prices Commission has perceived its function in holding section 8A inquiries. Sub-section (1) of this section states:

> the Minister, for the purpose of determining whether he should exercise any power conferred on him under section 19, may direct (a) the Chairman to furnish a report to him; or (b) the Commission to hold an inquiry and furnish a report to him, with respect to such goods or services or goods and services as specified in the direction.

The section 19 power relates to the power to declare goods and services as liable to price control under section 20. In November 1978 the Minister gave the Commission a direction under section 8A to hold an inquiry and report on services supplied by pest controllers in New South Wales.[24] In relation to this inquiry one could at least ask the question whether pest control is an item "essential to the life of the community". It does not appear to be at the same level as bread, petroleum products, or medical services, items which are quite obviously essential. Nevertheless, it would be a foolish litigant who would seek to challenge an inquiry on this

21 Note 8 *supra*.
22 Note 8 *supra*, 5 *per* Hutley J.
23 Note 11 *supra*.
24 N.S.W. Prices Commission, *Report on Pest Control in Domestic Premises* (22 March 1978).

ground alone. Even if he could convince the Court that there exists a meaningful distinction between essential and non essential goods and services, he faces the possibility that the Court would determine that this is a matter of "unfettered discretion" in the Prices Commission or the Minister.

The second suggestion above was that section 58 colours the activities of the Commission with the price control brush. It is not a Commission, for example, charged with broad consumer protection objectives, though as stated by the High Court, the interests of consumers may be taken into account when making pricing orders. The inquiry into pest control, it can be argued, did not possess the necessary nexus between consumer and other interests and price control. No recommendation is made in the pest control inquiry either for or against price control. This is not to say that the investigation did not have value. Clearly it raised important consumer and environmental issues, however these are essentially of a non-price nature: the need for licensing, standardisation of invoices, contracts and warranties, professional indemnity, independent inspection services, etc.

An implication that can be drawn, therefore, at least from the *Report on Pest Control* is that the Prices Commission may have misinterpreted its function. It is submitted that the Government, if it intends to persist in using the Act in this manner should give some thought to widening the power of the Prices Commission by appropriate amendments to sections 19 and 58. Such widening of power might remove some of the doubt surrounding the very broad approach adopted in another report. In the section 8A inquiry in relation to the funeral industry, once again doubts were raised as to the relevance of some of the issues canvassed by a section 8A inquiry. One recommendation made in the *Funeral Industry Report*[25] was the creation of a funeral industry regulatory body which would, *inter alia*, licence funeral directors and monitor prices in the industry. There must exist some doubt as to whether the Prices Regulation Act 1948 (N.S.W.) allows the making of such recommendations, irrespective of their worth.

3. *The Relationship Between the Minister and the Prices Commission: Section 8A and Section 8B Inquires*

The inquiry into the funeral industry highlights some difficulties that have confronted the Commission. The terms of reference of the inquiry were:

> The Minister for Consumer Affairs and Minister for Co-operative Societies, pursuant to Section 8A of the Prices Regulation Act, 1948, by letter dated the 28th March, 1977 directed the Prices Commission to hold an inquiry and report on the funeral industry in New South Wales and to have special regard to the following matters:—
>
> Charges for funerals and cremations. Associated charges for such. Funeral funds and pre-paid funerals. Whether any such services should be declared under the Prices Regulation Act for the purpose of pricing.[26]

25 N.S.W. Prices Commission, *Report on the Funeral Industry of New South Wales* (23 November 1977).

26 *Id.*, (i).

Subsequently in its *Report*, the Commission recommended that "the funeral service should be a declared service under the Prices Regulation Act for the purpose of pricing a basic funeral".[27] In holding the section 8A inquiry however, both the Minister and the Commission appear to have ignored the fact that "Funeral Services" were already declared under the Act.[28] It would seem, therefore, that the inquiry should have been an inquiry under section 8B into whether a pricing order under section 20 was required. There is, however, no power in the Minister to order a section 8B inquiry.

The order gazetted in 1953 declared a long list of items as "declared" goods and services. Should the Minister wish the Commission to inquire into whether these previously declared goods are to be price controlled the Act currently does not appear to provide a procedure enabling him to direct the Commission to so inquire. Presumably at best he could informally "request" the Commission to inquire. Ordering a section 8A inquiry appears to be redundant because it only extends "for the purpose of determining whether he (the Minister) should exercise any power conferred on him under section 19". As discussed above, section 19 only relates to the declaration power and strictly at law an inquiry into any of the items on the list should be an inquiry under section 8B. This strict legal approach does not appear to have found favour with either the Commission or the Minister. A further example of this is found in the Prices Commission's first *Report of Findings on the Pricing of Bread* which commences with the words:

> The Minister for Consumer Affairs . . . has directed the New South Wales Prices Commission to hold an inquiry into the pricing of bread in the State of New South Wales.[30]

At the time of this report, however, bread was already a declared item. This inquiry could therefore have only been a section 8B inquiry and, as noted, the Act does not give the Minister any such power to order that form of inquiry. The Bread (Prices Determination) Act 1980 (N.S.W.)[31] which was introduced to control bread prices after the challenge mounted by the bread manufacturers did give the Minister the power to order an inquiry but this Act was not in force at that time, and has recently been repealed.

The formal procedures regulating the inter-relationship between the Prices Commission and the Minister can at best be described as defective. The above examples suggest that the application of the procedures has also been defective in the past. These past problems also raise important issues relating to the independence of the Prices Commission.

27 *Id.*, 18.
28 N.S.W. Government, *Gazette* No. 194, (29 October 1953).
29 N.S.W. Prices Commission, *Report of Findings on the Pricing of Bread* (30 March 1977).
30 *Id.*, 1.
31 S.16.

III. THE INDEPENDENCE OF THE PRICES COMMISSION

The independence of the Commission became a major issue in the *Bread Manufacturers* cases. In the Supreme Court, Woodward J. was severely critical of the conduct of the Chairman of the Prices Commission. He described the actions of the Chairman as "deceitful"[32] (referring to the preventing of publication to the manufacturers of a report from the Sydney Stock Exchange). He further held that the Chairman "has deliberately disobeyed an order of [the] court"[33] in failing to produce a copy of a report and later, that he had deliberately defied the provisions of the Act[34] and, further, that he was "concerned only with giving advice which he thinks would be acceptable to the Minister".[35] Woodward J. was also critical, but less so, of the Commission as a whole:

> The Commission sees itself as a tribunal charged with the duty of stemming the inflationary tide and so keeping down the price of bread.[36]

He suggested that the Commission had failed to deal diligently with applications, was concerned with matters not part of its function and had been unduly influenced in its decisions.[37]

The Appeal Court was prepared to come to the aid of the Chairman. Hope and Glass JJ. noted that counsel for the manufacturers did not press for an endorsement of the findings of Woodward J. in describing the Chairman as "deceitful" since non-disclosure of the Stock Exchange study was quite consistent with the analysis of Lee J. in *Guyot's* case[38] that the Commission was not bound to disclose to applicants the private sources of information. Consequently their Honours held that the description could not be justified.[39] Hutley J. adopted a similar stance regarding the Chairman's integrity but went on to say:

> The fact that he does not appear to have appreciated the duty to maintain the independence of the Commission and appears to have been unduly affected by ministerial views does not reflect upon his integrity.[40]

The Chairman of the Prices Commission therefore emerged from the Appeal Court with his reputation largely restored. However the Minister was not so fortunate. Hutley J. held that the Minister had improperly dictated an order to the Commission and that its operations were affected by undue influence, or by duress on the part of the Minister.[41] Hope and Glass JJ. stated in relation to one pricing order for bread:

32 Note 14 *supra*, 14.
33 *Id.*, 16.
34 *Id.*, 30.
35 *Id.*, 32.
36 *Id.*, 43.
37 *Id.*, 53.
38 Note 10 *supra*.
39 Note 8 *supra*, 13 *per* Hope and Glass JJ.
40 *Id.*, 13 *per* Hutley J.
41 *Id.*, 9 *per* Hutley J.

> In all the circumstances the inference should be drawn that the Commission did not come to its own independent decision that it should recommend an increase of three cents, but that it came to that conclusion because the Minister, in a way not permitted by the Act, had constrained them to do so, either by telling them what he wanted, or by indicating that he would veto a four cent increase. It cannot be emphasised too much that the Act does not permit the Commission to arrive at its conclusion in either of these ways.[42]

For these reasons their Honours held that the pricing order was voidable.

The High Court did not agree with the Court of Appeal's assessment of undue influence or duress on the part of the Minister, nor with the finding of Woodward J. that the Commission had misconceived its responsibility under the Act. Mason and Wilson JJ. made some very important comments regarding the role of the Minister. Their Honours stated,

> our view of the Act is that it is improper for the Commission to accept any direction from the Minister as to the price which should be fixed, but it is not improper for it to seek or to receive an expression of his views. There is no sufficient basis in the evidence for inferring that the Minister had intruded improperly or that any member of the Commission had forsaken his or her independence.[43]

The Chief Justice and Murphy J. were of a similar view.[44] Aickin J., while generally agreeing with the views of Mason and Wilson JJ., thought the evidence fell "just short of warranting the inference that there was improper pressure".
He further stated that he did not

> regard it as proper for the Commission, or any of its members, to "sound out" the Minister with a view to ascertaining how far they would have to adjust their views to avoid the exercise of his veto power.[45]

It can be seen therefore, that the Minister can exercise a role in a pricing determination. He must however, be extremely careful to ensure that nothing he does can be characterised as directive pressure which may detract from the independence of the Commission.

With respect to the High Court this approach adopted seems reasonable, but it is not without its dangers to the Commissioner's independence. It is obviously incorrect to allow the Minister to avoid the somewhat unpalatable power of veto by placing pressure on the Commission to arrive at a draft order which will be acceptable to him. Any other conclusion really suggests that the purportedly independent Prices Commission has no role apart from a purely administrative or investigative one, a role which is no greater than the role of a Minister's closest advisers. In a sense therefore the Parliament has created its own monster. It cannot, and should not, be allowed to escape the political aspects of price control by blaming a supposedly independent Commission for politically unacceptable price movements, unless it is prepared to maintain at all levels the complete independence of the Commission. If the Minister chooses to intervene he should do so in accordance with section 20(1A) and not before.

42 *Id.*, 36-37 *per* Hope and Glass JJ.
43 Note 11 *supra*, 123.
44 *Id.*, 105-106, 125-126.
45 *Id.*, 128.

IV. THE USE OF THE PRICES REGULATION ACT 1948 (N.S.W.) IN A CONSUMER PROTECTION ROLE

A major reason for the use of price control by governments is a belief in the anti-inflationary value attributed to control. There may be other reasons including the use of controls to redistribute wealth or as a trade-off for an incomes policy. In the New South Wales context however, legislation controlling prices has been used directly as a means of consumer protection. In a sense all attempts at price control have a consumer protection role, the holding down of prices to levels at which the consumer is not rapidly losing his spending power. To the extent that this is a form of consumer protection then, the Prices Regulation Act 1948 (N.S.W.) has an admirable consumer objective. However, the reports of the Prices Commission appear to go rather further than simply investigating the inflationary aspects of industries or firms. This matter has already been raised in the prior discussion of the extent of the section 58 power, and whether the Prices Commission has any right to look beyond matters directly related to price. Be this as it may, the reports abound in discussion of matters of a non-price nature.

The most obvious inquiry fitting this category is that into pest control. The Commission's *Report on Pest Control in Domestic Premises*,[46] is a comprehensive study into various aspects of the industry. The wide variety of matters canvassed in this report have been raised above. The following extracts provide further insight into the Commission's perception of its role. Speaking of a particular type of housing construction: "we recommend that soil treatments be mandatory with this type of construction".[47] Discussing labelling on pesticides: "we would request that the Registrar of Pesticides give consideration to reviewing the existing labels on all registered pesticides".[48] The report discusses many other diverse topics such as the health of pest control operators;[49] the need for an advisory service relating to pest control inquiries;[50] various consumer complaints concerning sales techniques;[51] standard contracts and invoicing procedure;[52] professional indemnity for pest control operators.[53] The one notable matter which does not receive detailed discussion is price control.

The section 8A inquiry and report into the funeral industry[54] was much more directed towards the price control issues. Nevertheless this inquiry went somewhat further and investigated the role played by social welfare and health personnel in assisting persons bereaved. A recommendation was made that a booklet be issued by

46 Note 24 *supra*.
47 *Id.*, 42.
48 *Id.*, 37.
49 *Id.*, 29.
50 *Id.*, 16.
51 *Id.*, 4.
52 *Id.*, 74, 82.
53 *Id.*, 84.
54 Note 25 *supra*.

the Department of Consumer Affairs to assist the public.[55] It also examined the adequacy of social security in meeting funeral expenses[56] and mortuary facilities at private hospitals. Both of the above inquiries were broad ranging inquiries into the industries generally. The inquiry into the funeral industry in particular has brought about regulation in that industry, though essentially of a non-price kind. The *Report* recommended that a regulatory body be established under the direct control of the Registrar of Co-operative Societies to control funeral funds.

The issues raised in both reports are obviously important and illustrate that government inquiries have an important role to play. However, the strong consumer interest approach adopted reflects the fact that the directing Minister was the Minister for Consumer Affairs and the Prices Commission itself is attached, administratively, to the Department of Consumer Affairs. But is this the correct placement of a body whose stated essential task is to control prices?

The threat of price control appears to be a useful weapon to use against industries where doubtful consumer practices are in operation, and there is no doubt that the Minister and the Prices Commission realise this. In the section 8A inquiry into spare parts[57] the Commission in its recommendations showed it understood the use of this ploy. Having recommended that the industry be declared for the purposes of pricing it further suggested:

(2) that the industry be examined in twelve months in order to assess any changes in the level of competition and the benefits consumers have gained from these changes.
(3) if the Commission is, afther this further examination, satisfied that the level of price competition has not increased sufficiently to warrant further delay in the imposition of price control, that the Commission then exercise its powers to set maximum prices.[58]

It is difficult to gauge the real effect of such threats. Industry is quite aware of the cost and complexity from the Prices Commission's point of view of price control in a complicated area such as spare parts for motor vehicles. Indeed the Commission itself raised this issue.[59] Nevertheless if threats such as this do in fact convince industry that price control is on the way, unless price competition increases or anti-consumer activity ceases, then there is a useful role for the Commission to play. However, the risk in placing the Commission in a consumer protection environment is that the short-term interests of consumers may be allowed to dominate the debate and perhaps act as a substitute for painstaking economic research into the likely benefits and disadvantages of the introduction of price control in a particular industry. It is submitted that in only the spare parts report has the Commission really attempted the sophisticated analysis required to determine and assess the price control, as opposed to the consumer protection, issues. The report is instructive in the insights it provides into criteria the Commission will take into account before recommending that price control be introduced.

55 *Id.*, 62.
56 *Id.*, 66.
57 N.S.W. Prices Commission, *Report on Motor Vehicle Replacement Parts* (22 February 1979).
58 *Id.*, 181.
59 *Id.*, 182.
60 *Id.*, 108.

The Commission heard much evidence concerning the distribution chain within the spare parts industry and recommended that the industry give immediate consideration to a reduction in the number of levels of distribution. The Commission also expressed concern at the "near universal use of recommended list prices in the industry", highlighting that "manufacturers and distributors of replacement parts must be activated to compete more on the fundamentals of price".[61] The Commission concluded that mark-ups on spare parts were excessive. They noted "consumer accountability" calls for an immediate review of these margins, particularly where they bear little or no resemblance to the usual commercial yardsticks of:—

(a) return on investment
(b) responsibility for obsolescent stock
(c) efficient utilisation of resources
(d) cost controls on overhead expenses.[62]

In this context the Commission suggested "that regulation is needed".[63] Particular emphasis was placed on the "consumer disadvantage" faced by consumers in "being more influenced by the need for replacement parts than by the price of them".[64] Price control was thought to help remedy this "consumer disadvantage".

Nevertheless the Commission did not recommend the immediate introduction of price control. The reasons why are very significant in the context of price control by a state regulatory authority. The Commission recognised the

> enormous administrative burden placed on the government if any attempt was made to carry out any pricing exercise on individual replacement parts.[65]

The Commission recommended the introduction of a small number of categories to overcome this problem. Clearly, however, this would not remove the many administrative matters raised by control. One such matter was the fact that manufacturers' prices were largely outside the control of the Prices Commission, the majority of parts being either imported from other states or from overseas. At an earlier stage in the report the Commission had suggested that:

> setting maximum margins in New South Wales would affect any national product mix, a reduction in prices in New South Wales might lead to a downward price review on a national level.[67]

Another administrative matter considered by the Commission was the difficulty of enforcement. They noted the problems raised by New Zealand price controls over spare parts where there was "considerable difficulty in applying the regulations, and thus the regulations were frequently ignored".[68] The New South Wales Prices Commission certainly did not greet with overwhelming enthusiasm the suggestion of price control for spare parts as a means of bringing about the "consumer

61 *Id.*, 129.
62 *Id.*, 169.
63 *Ibid.*
64 *Id.*, 180.
65 *Id.*, 182.
66 *Id.*, 183.
67 *Id.*, 169.
68 *Id.*, 183.

accountability" it called for. Despite its conclusions that the consumer was being overcharged for a product, the Commission did not recommend immediate introduction of control. It is now over three years since the *Report* was finalised and controls have not been introduced.

The Commission's lack of power in other areas is also emphasised in the *Report*. It saw the Trade Practices Commission as having a very important role to fulfil in improving competition within the industry, particularly at the retail level:

> The N.S.W. Prices Commission would ask that the Trade Practices Commission direct its attention to this aspect of the replacement parts industry. Manufacturers and distributors of replacement parts must be activated to compete more on the fundamentals of price.[69]

The request is obviously made sincerely, however, it highlights the lack of formal power of bodies such as the Prices Commission to correct fundamental competitive problems within an industry where the only weapon available is the threat of price control. A similar argument could be made about the Prices Commission's discouraging findings that the recommended list price tended to remove price competition from the industry. The Commission has no power to outlaw such practices. Paradoxically, its only solution is to replace that form of industry-determined price control with a government administered maximum price control. The strong possibility that such programmes may equally remove price competition from the market is not discussed by the Commission.

The Commission rightly highlighted the complexities of the current distribution system for replacement parts. Again however, apart from its threat to introduce price control, the Commission was powerless to offer an immediate solution to the problem. The lack of the Commission's power or ability to solve this issue further highlights the largely ineffective role that bodies charged with price control and nothing more can play. The *Report on Motor Vehicle Replacement Parts* does however reveal some positive features of the Commission. The Commission appears to have the ability to research a particular industry. This inquiry lasted for ten weeks and interviewed 187 witnesses representing 125 separate groups. Whether such inquiries might receive a better response from industry in a non-price control context is an issue requiring further research.

The Commission's tendency to look past the price control issues and examine other consumer and environmental issues serves a useful role. In the spare parts inquiry particular regard was had to safety aspects of parts[70] and matters such as possible avoidance of the Australian Design Rules.[71] Though the emphasis in this inquiry was not as strongly placed on such consumer issues as in earlier Reports, such issues are of importance in the broader context. However, as noted above, the power of the Commission to investigate such areas is questionable. There also exists the danger that the Commission's enthusiasm to inquire and report on such issues will result in too little analysis of the economic issues.

69 *Id.*, 129.
70 *Id.*, 49.
71 *Id.*, 68.

V. THE PRICES COMMISSION, CAPTURE THEORY AND THE PRICE CONTROL RATIONALE

A possible problem in the use of price control is that it may assist to create a cartel where none existed before. This danger is particularly acute where government fails to properly analyse the market before it imposes its price control regime or fails to recognise possible industry domination of its own regulatory agencies. In this context the views of the economist George Stigler require discussion. His "Theory of Economic Regulation" was published in 1971. It has as a central theme the notion of "capture". He states: "as a rule regulation is acquired by the industry and is designed and operated primarily for its benefit".[72] His theory suggests that industry treats government and regulatory authorities as a resource that can be captured and applied ultimately to the benefit of the industry. The state is viewed as "a potential input in the productive process".[73]

Fels highlights the danger of the capture thesis in the price control context:

> As to price-fixing, a publicly operated and enforced cartel is often cheaper and easier to run, and more effective than a private cartel: a private cartel often is not feasible because of the cost of participants agreeing on prices and outputs and of enforcing agreements.[74]

He notes that Stigler's theory

> predicts that regulation tends to convert formerly competitive or oligopolistic industries into cartels (that is, regulation helps previously independent producers to form what is, in effect, an agreement to act together), to increase the effectiveness of an existing cartel, and to maintain an existing monopoly (or cartel) where rival firms would otherwise enter . . . On the basis of this hypothesis, regulation can be expected to increase prices, promote price-discrimination, reduce or prevent the entry of rival firms, prevent price-cutting and increase or preserve industry profits.[75]

In fairness to the regulators it should be stressed that the theory has not been accepted without criticism. Norman highlights the conceptual attack against the narrowness of the theory launched by the Harvard business school, which suggests that capture theory cannot adequately explain why a regulatory process may remain unchanged despite the fact that it no longer benefits an industry and may, in fact, be working against the industry.[76] Both Norman and Fels reject any suggestion that the Australian Prices Justification Tribunal is "captured". Norman's analysis suggests that the theory has far more relevance to industry specific regulation rather than to functional regulation. He sees the Prices Justification Tribunal as an example of the

72 G. S. Stigler, "The Theory of Economic Regulation" (1971) 2 *Bell J. Econ. & Man. Sci.* 1.

73 A. Fels, "Theories of Economic Regulation and Their Application to Australia", in B. A. Twohill (ed.), *Government Regulation of Industry* (Conference held by Institute of Industrial Economics, University of Newcastle) (1981) 73, 79.

74 *Ibid.*

75 *Id.*, 80.

76 N. R. Norman, "Industry Regulation: Causes, Costs and Consequences" in note 73 *supra*, 1, 7.

second type. Fels points to the various lobby groups against the Prices Justification Tribunal[78] as providing evidence that it is not "captured".

The notion of "capture" does not appear to be borne out in the recent experience of the Prices Commission. The Commission has been forced to defend itself in actions brought by both the Bread Manufacturers Association and the New South Wales Branch of the Australian Medical Association (A.M.A.). In both cases allegations of bias and denial of natural justice were made by the respective parties. In the inquiry into doctors' fees the New South Wales Branch of the A.M.A. withdrew claiming that the Commission had prejudged the issues. There were other suggestions by the Medical Secretary of the A.M.A. that the inquiry was a political charade. Lee J. was not prepared to accept these allegations in *Guyot's* case nor were they ultimately successfully maintained in the *Bread Manufacturers* case. The reluctance of the doctors and the bread manufacturers to accept the power and decisions of the Prices Commission *prima facie* reflect an overwhelming desire for deregulation and non-interference, a suggestion which runs counter to capture theory. On the other hand it could be argued that the willingness of these parties to get the Commission into the Supreme Court is simply part of a broader plan to put suitable pressure on the Commission in future proceedings. There is little doubt that after the two cases the Commissioners will be far more aware of the legal and political niceties of their position. The Commission did not emerge unscathed from either case and to this extent has felt the full spectrum of industry pressure, pressure which at times assumed highly personal proportions. The conduct of the Commission in future inquiries will be interesting to observe. Capture theory is certainly not proven in relation to the Prices Commission. Industry itself would probably ridicule any suggestion of capture. Nevertheless, one should not assume that industry is therefore entirely against price control, nor the Commission free of capture.

During the second inquiry into the price of bread,[79] five Lebanese bakers requested price control for Lebanese bread. The Commission readily accepted this request, noting that this would help ensure that they retain reasonable profits safe from the undercutting adopted by some Lebanese bakers who employed only family members and the buying strength of retailers who were forcing some of the bakers to give high levels of discount. In the same report the Commission reported that the Bread Manufacturers Association submitted that buns and rolls should be price controlled.[80] Once again the Commission agreed with this request.[81]

At times one must question the rationale adopted by the Commission for price control. In relation to bread the Commission gives surprisingly little analytical support for the continued operation of controls. It has readily acceded to requests by industry and unions for controls, but does not appear to have addressed itself to the issue as to what would happen if the controls were lifted. One factor in continued control over bread prices recognised by the Commission is the power of

77 *Ibid.*, A. Fels, note 73 *supra*, 88.
78 *Ibid.*
79 N.S.W. Prices Commission, *Second Report of Findings on the Pricing of Bread* (20 January 1978).
80 *Id.*, 23.
81 *Ibid.*

the unions. In response to a submission, by the Retail Traders Association of New South Wales, that the best interests of the public would be served by the free operation of market forces the Commission stated:

> The Commission affirms its view that some maximum discount should be fixed. High discounts diminish the ability of the industry to absorb increased costs. The benefits of high discounts to the retailer have not been passed on to the consumer because unions involved in the baking and delivery of bread have blocked any attempt by retailers to price bread below the maximum price. [82]

In commenting on the fact that the price of bread was not controlled in Victoria the Commission stated:

> The Commission does not feel that the widely varying and fluctuating bread prices in Victoria are in the best interests of the consumer. We feel that consumers are entitled to orderly pricing of staple goods such as bread.[83]

Similar arguments were made in the first inquiry into bread. The Commission stated:

> Submissions to this inquiry have generally favoured the retention of price control in respect of bread. It has been argued that control has helped to stabilise prices. Perhaps the strongest argument for price control is the fact that the industry is already controlled in other spheres.[84]

With respect to the Commission it is not sufficient to use such reasons to sustain the continuance of price controls. Industry submissions requesting control must be viewed with suspicion as they are certainly consistent with capture theory. The suggestion that control is necessary because other aspects of industry are controlled should at least prompt an investigation into the need for those controls rather than the introduction of more controls. The argument that control is necessary because it brings stability is somewhat circular, and at best unproven. It also runs counter to the role the Commission attributes to itself in relation to the petrol industry:

> The primary decisions in bread and petrol have acted as a brake on inflation. The petrol inquiry, particularly, led to an expansion in discounting to the benefit of the Sydney motorist.[85]

On the one hand the Commission is critical of discounting in Victoria regarding bread, arguing for stability, on the other suggesting how it had created petrol discounting in the Sydney area.

VI. EVIDENTIARY MATTERS AND PROFITABILITY ASSESSMENT

A major factor underlying the potential for success of all price control programmes is that of profitability assessment. Very often price controlling authorities will have real difficulties in both obtaining and interpreting the relevant data. The obtaining of such data has been an important issue in the recent litigation involving the Prices Commission.

82 *Id.*, 9.
83 *Ibid.*
84 Note 29 *supra*, 11.
85 N.S.W. Department of Consumer Affairs Brochure, *Prices Commission of New South Wales* 2, 3. See also N.S.W. Prices Commission, *Report of Findings on Petrol Pricing* (10 August 1977).

In *Guyot* v. *Evans*[86] the validity of evidence obtained under a questionnaire sent to all doctors in New South Wales was tested. This questionnaire sought information regarding a large number of matters related to the operation of doctors' practices. The use of such questionnaires had been adopted in other inquiries and was clearly seen as an important means of evincing relevant information. The power to require persons to answer such questionnaires is contained in section 13 of the Prices Regulation Act. Section 13(1) provides:

> For the purposes of an inquiry, the Commission or an authorised officer may require any person —
> (a) to furnish it or him with such information as it or he requires; or
> (b) to answer any question put to him in relation to any goods or services, whether declared or not or to any other matter arising under this Act.

Further subsections in section 13 allow the Commission or authorised officers to administer oaths, require answers in writing or orally, and prevent refusal to answer on the ground of self-incrimination.

In *Guyot's* case challenges were made to the questionnaire on two specific grounds:

(a) that the questionnaire was merely a request; and
(b) that a number of questions were irrelevant to the exercise of the Commission's powers under section 58.

Lee J. concluded that the first ground was not made out noting that "slavish adherence to the word 'require'" was not necessary for a valid requirement under section 13.[87] In relation to the second issue Lee J. held that a number of the questions were in fact irrelevant for the purposes of the inquiry.[88] In this context however the broader approach adopted in relation to section 58 by the High Court in the *Bread Manufacturers* case,[89] discussed earlier, should be highlighted. The Prices Commission nevertheless should now be far more aware of the existence of section 58 and the need to pay closer attention to the words of the Act.

A more important issue arose in *Guyot's* case as to the use which the Commission could make of its questionnaire. The plaintiffs argued that the Commission could not use the answers to the questionnaires as evidence in the inquiry into doctors' fees. The argument was that section 8F(1) requires that evidence be taken in public on oath or affirmation. Section 8F(1) provides:

> An inquiry shall be held in public and, subject to this section —
> (a) evidence in the inquiry shall be taken in public on oath or affirmation; and
> (b) submissions in the inqujiry shall be made in public.

Lee J. rejected this contention holding that the power of the Commission to obtain evidence other than through the holding of an inquiry had been in the Act since its inception in sections 9, 13 and 15. Accordingly he held that the Commission could use evidence at an inquiry obtained under section 13.[90] This particular view however

86 Note 10 *supra*.
87 *Id.*, 654.
88 *Ibid.*
89 Note 11 *supra*.
90 Note 10 *supra*, 656.

did not prevail for very long. In the *Bread Manufacturers* case this interpretation was rejected. The issue arose in that case in relation to a survey commissioned by the Prices Commission into the profitability of twelve public companies in food manufacturing (not bread-making) listed on the Stock Exchange. This study disclosed that an average rate of return on investment of 15.88% had been earned by the twelve companies. The study was not presented in evidence.

The manufacturers had in the meantime commissioned their own report which was presented in evidence. This report suggested that in fixing the price of bread it was fair and proper to allow a return of 21.5% on funds invested. There was an admission in the pleadings that the Commission had taken the 15.88% study into account in making the findings upon which a particular pricing order was based. The issue which arose in *Guyot's* case arose again for decision, that is, could the Commission inform itself privately of certain matters during the course of an inquiry. In their joint judgment Hope and Glass JJ. made it clear that the Commission when holding an inquiry must "make its decision upon the basis of material publicly adduced and no other matter whatsoever".[91] The powers in sections 13 and 15 were likened to the processes of discovery, inspection and interrogatories, available to litigants in the ordinary courts. Therefore the section 15 power enabling compulsory inspection of documents and the section 13 power to require information to be given to the Commission could ultimately only be used by the Commission if the information obtained and the documents impounded were adduced and tendered before the public inquiry. With the exception of Murphy J., the High Court adopted a similar approach. The Chief Justice commented:

> [t]he holding of a public enquiry would be illusory if the Commission, after solemnly taking evidence in public, could, without notice to the parties, base its decision on material that it had obtained in secret and never disclosed.[92]

This result does not represent a major obstacle to the Commission's use of questionnaires and market surveys. Nevertheless the Commission's attempt to use private information, and its disregard of the evidentiary rules, resulted in the invalidity of the pricing order under discussion. In future the Commission will require much better advice in the manner in which it is to conduct public inquiries, particularly in the admission of evidence and the use of material not formerly adduced in evidence.

In one sense it is possible to feel some sympathy with the Commission in the difficulties it has found in profit measurement. Its attempt to commission a Stock Exchange report was an attempt to obtain external evidence as to reasonable levels of profitability. The bread manufacturers had, in the first inquiry into the pricing of bread, sought a pricing formula based on a return of funds invested.[93] The Commission was reluctant to use the data provided because it depended on figures from a small panel of metropolitan bakeries. The Commission noted that the sample was inadequate to use as a base for industry profitability:

91 Note 8 *supra*, 10 *per* Hope and Glass JJ.
92 Note 11 *supra*, 93.
93 Note 29 *supra*, 11.

> The individual training results of these five manufacturers vary considerably, asset structures are significantly different and production capabilities do not compare. [94]

Accountants for the manufacturers had submitted that profitability should be 20.2% of total assets employed before interest, income tax and leasing charges and after adjusting for depreciation of leased assets. Goodwill was to be included and a replacement valuation method for assets was to be adopted.[95] The Commission rejected this approach as not being an acceptable basis for the pricing of bread.[96] It adopted instead a system based on unit profitability taking into account the total costs of making and selling bread. In the second inquiry into bread prices,[97] the manufacturers again pressed for a switch from this cost method to a return on investment formula. This time the Commission stated: "We are conscious of the fact that allowance for an adequate return on investment must be considered in its pricing decisions".[98] But again the Commission had difficulties in assessing a proper return on investment, caused by "excessive discounting on uncontrolled items, together with excessive advertising and promotional allowances to retailers".[99] The Commission had further difficulties regarding the various asset valuation methods employed by the manufacturers. The commissioning of the special survey of twelve companies on the Stock Exchange, referred to above, appeared to be a genuine attempt to come to grips with the return on investment criteria. However the survey presented particular problems. Though the figures from the survey were below the rate of return of over 20% sought by the manufacturers, they would have nevertheless required a rise in the price of bread of over five cents per loaf. In fact a rise of only two and half cents was granted. This became the first step in the dispute which was ultimately resolved by the High Court.

The profitability and evidentiary issues have been discussed in some length because in many ways this is the most difficult of all issues for a price controlling body. Price controlling authorities cannot avoid the issue of profitability. If prices are pitched too low the authority may contribute to reduction of competition within the market. On the other hand if prices are too high, the pricing authority may simply become the prisoner of industry accountants. Another possibility is that the action of unions or anti-competitive conduct in the controlled industry may ensure that discounting is not practised, ensuring that the maximum price prevails as *the* price.

VII. CONCLUSION

This paper has reviewed some of the legal and economic issues and difficulties facing both the regulators and the regulated in the area of price control. Some economists suggest that price control may assist in reducing inflation, in the short-term, in an industry, however its long-term ability to control inflation is at least questionable. If this conclusion is correct then governments and price

94 *Id.*, 12.
95 *Ibid.*
96 *Id.*, 13.
97 Note 79 *supra.*
98 *Id.*, 6.
99 *Ibid.*

controlling authorities should continually appraise the role of their pricing authorities, particularly in the light of capture theory and the perhaps cynical view that it is unlikely that a price controlling authority will act to decontrol itself out of existence. It was suggested above that the price control legislation has been used in New South Wales in a direct consumer protection role. One cause for concern is that there must still exist some doubt as to the legality of such activity. A greater difficulty is that price control might be introduced to the detriment of competition as a cure for non-price related problems. In practice the Prices Commission has not introduced price control as a solution to such problems, though the threat of control has been a weapon used from time to time.

The use of the Prices Commission to simply control the price of bread and petrol (the latter is also controlled by Commonwealth legislation) appears to be a very expensive exercise and one which is of dubious economic value. As discussed, the Commission has other functions, in particular in the use of the important inquiry powers. It is submitted that such inquiries have served useful social purposes, though from time to time the Commission's powers to inquire may have been in legal doubt. The following suggestions in relation to the Prices Commission are put forward on the assumption that the present government has a commitment towards continued price control:

(i) The power of the Commission should be widened to reduce the present emphasis on price and to replace it with emphasis on matters of competition.
(ii) A specific surveillance power should be given to the Commission. Such power would not be limited to matters only of price or cost, but would include matters of economic and consumer concern.
(iii) The surveillance power suggested in (ii) should be supported by sufficient inquiry powers enabling discharge of the widened functions suggested in (i).
(iv) The role of the Minister requires clarification. The Minister should have the power to order inquiries but not the power to order the suspension of a particular inquiry. Such power should be in addition to the power of the Commission to inquire.
(v) As a specific check on the use of price control the Minister should have a power of veto over the Commission's decision to introduce or continue price control. This would replace the present procedure in section 20(1A) whereby particular orders relating to goods can be vetoed.

A Commission charged with these powers may be not unlike the Prices Justification Tribunal as it existed just prior to its demise, particularly in regard to the surveillance power suggested. Greater emphasis on competition by increasing powers to inquire into particular industry in a broader framework than simply price control may enable the government to use the Commission as an industry troubleshooter which could investigate particular industries as it saw fit. The results of such investigations could include recommendations to government for the implementation of legislation to curb anti-consumer or anti-competitive practices, or the deregulation of industries where particular legislation was not serving any purpose. The retention of a power to control prices has been suggested because this may be a useful tool when industries are dominated by firms making monopoly profits where new entry into the market is unlikely.