COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Reference: Regulation of the timeshare industry

FRIDAY, 15 APRIL 2005

SYDNEY

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JOINT COMMITTEE ON

CORPORATIONS AND FINANCIAL SERVICES

Friday, 15 April 2005

Members: Senator Chapman *(Chair)*, Ms Burke *(Deputy Chair)*, Senators Brandis, Lundy, Murray and Wong and Mr Bartlett, Mr Bowen, Miss Jackie Kelly and Mr McArthur

Members in attendance: Senators Chapman and Murray, Ms Burke and Mr Bartlett

Terms of reference for the inquiry:

To inquire into and report on:

The regulation of the time share industry in Australia, with specific reference to:

the effectiveness of the current regulatory arrangements for the time-share industry under the *Corporations Act 2001*, including:

- whether the current regulatory arrangements are confusing to consumers and inhibit the development of industry;
- whether the current regulatory arrangements place an undue compliance cost on industry;
- whether the current regulatory arrangements are effective in protecting consumers of time share products.

advantages and disadvantages of possible models for reform of the regulatory arrangements applying to the time share industry, including:

- self-regulation of the industry on a national basis;
- alternatives to coverage under the *Corporations Act 2001*, either by separate Commonwealth legislation or state and territory legislation.

WITNESSES

Committee met at 12.18 p.m.

WOLTHUIZEN, Ms Catherine Nicole, Senior Policy Officer, Financial Services, Australian Consumers Association

CHAIRMAN—I call the committee to order. Today the committee will hear evidence regarding its inquiry into the regulation of the timeshare industry and relevant and related matters. The committee expresses its gratitude to the contributors to this inquiry, including those who will be appearing before us as witnesses today.

Before we start taking evidence, I reinforce for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to evidence provided. Parliamentary privilege refers to the special rights and immunities attached to the parliament or its members and others necessary for the discharge of parliamentary functions without obstruction or fear of prosecution. Any act by any person that operates to the disadvantage of a witness on account of evidence given by him or her before the parliament or any of its committees is treated as a breach of privilege.

Unless the committee should decide otherwise, this is a public hearing and, as such, all members of the public are welcome to attend. If at any time witnesses wish to give evidence in camera, they may request that of the committee and it will be considered. We have already held one hearing on this reference, on the Gold Coast on Wednesday, and we will hold a further hearing in Canberra on 29 April.

I welcome the representative from the Australian Consumers Association. I now invite you to make an opening statement, to be followed by questions.

Ms Wolthuizen—I will be fairly brief. What I really wanted to come along today and talk about was how and why consumers are purchasing interests in timeshare schemes. I want to reiterate the point that we believe that at a minimum the current regulatory requirements should be kept in place and that maybe there is a case for further strengthening them. From what consumers are telling us, it seems that the spark in interest in timeshare schemes has in part been driven by rising property values and people viewing time share as a cheap way of acquiring a limited proprietary interest for much less than it would take to acquire a property. Security concerns mean that people are interested in holidaying locally and in the various forms of product that enable them to do that. High levels of consumer confidence have meant that people are willing to take on the fairly substantial financial commitments that often accompany entering into arrangements to purchase an interest in a time share.

Caseworkers—and particularly the clients of casework agencies, so financial counsellors and the like—report that they tend to see people who are drawn in by the idea that they can use linked finance to give them access to an interest in a property, whereas they could not otherwise participate in rising property values. Often these are people who really do not understand the nature of the legal obligations they are entering into, the nature of the interest that they are acquiring or the obligations that accompany the financing arrangement they have agreed to. These are the people least able to protect themselves in the absence of any effective regulatory framework. Caseworkers report that there is some evidence that the treatment of time share as a financial product has lessened the vulnerability of these consumers and that, in fact, a lot of the

casework they have seen is really a run-off from the time before the regulation under the Managed Investments Act and the extension of FSR. Particularly, access to independent dispute resolution has been a real advantage in their view.

From our perspective at ACA, we also hear from consumers about timeshare practices. The problematic practices that consumers report are that time share is sold to them as an investment, without them necessarily being aware of the risks or the difficulties in projecting the future value of the asset or understanding how it is going to be maintained or, particularly, how to dispose of it in the future. We have had reports, and I know ASIC has also had reports, of misleading conduct in relation to claims about future value and capacity to dispose of whatever interest is acquired. They complain about pressure tactics and cold calling. It seems that that has become particularly vigorous in this area. They also complain about not having been advised of a cooling-off period and nondisclosure of mutual interest where linked finance arrangements are provided.

In our view, self-regulation of this industry would be ineffective in ensuring consumer protection. There is little evidence that the industry is capable of self-regulating to an adequate degree. Voluntary codes would simply mean that better operators would comply and the rogues would opt out, and consumers would generally be unaware of the difference. We also believe that as time share is often sold as an investment it should be regulated as such. The risks that exist are similar to those of other forms of investment and they require transparency, accountability and access to independent redress to overcome. In our view, without requirements to disclose commissions, refrain from inappropriate hawking activity and provide access to satisfactory dispute resolution, there is little evidence the industry would do it voluntarily.

CHAIRMAN—In their submission the Consumer Credit Legal Service say that much of the litigation and client advice work they undertake in relation to time share has as its origin arrangements that were in place prior to the current regulatory regime. Does that reflect your experience?

Ms Wolthuizen—That is my understanding. Some of the cases that are still being dealt with arose before new protection was put in place. They are particularly anxious to see the current regime continue because it is their view that, should that regulation be lifted, we would see a return to the circumstances in which those problems arose. They do continue to see some problems, but in their view they are not on the same scale as previously. But I have to say that some of the problems we see are different to the ones they see, and they relate more to conduct around some of the pressure sales tactics, the hawking activity and the cold calling, in particular, as well as inviting people on weekends away without telling them what it is for, giving inducements and prizes and then subjecting them to pressure tactics when they go.

CHAIRMAN—In the evidence we had on Wednesday from the operators and from ATHOC, the argument was put that there has been a significant change in the industry since the early eighties when what might be described as the white shoe brigade or the like were promoting time share and possibly promoting it as an investment, whereas today we have what you might call the large hospitality or hotel chains involved in providing facilities and timeshare management. Accor is one, as is the Hyatt and the like. Although I think it would be fair to say that they would acknowledge that what we might call high-pressure sales tactics still apply, they claim that this group does not sell time share as an investment; they sell it as a long-term lifestyle feature. They

acknowledge it is not an investment and therefore it is, in terms of the current regulatory regime, a square peg in a round hole: that it is not really a financial investment but it is being regulated as such; and that, while they accept the need for regulation, the FSR and the Corporations Law are not the appropriate places for it to be regulated.

Ms Wolthuizen—The complaints and the reports we have received relate to several providers—operators against whom ASIC has already taken action within the last couple of years. The reports we receive indicate that certainly that kind of conduct is still going on. It can be difficult to regulate, but representations about the future value of the investment—these operators are selling them as investments—and about how properties are going to be maintained and all sorts of representations are being made. Nondisclosure of commissions and nondisclosure of conflicts of interest continue to be a problem in how those particular operators are conducting their sales activities. While I would acknowledge there are a range of operators in this market, some of whom are not engaging in those sorts of practices, it seems that the complaints are coming from a sector within that particular industry, and it seems to be a fairly consistent sort of complaint.

CHAIRMAN—Do you think an adequate regulatory regime could be established under the Trade Practices Act and the ACCC administration rather than financial services?

Ms Wolthuizen—No. You would then be running into problems. Where people are approaching this as an investment—where they are being told: 'This is a property investment and in the future you will be able to sell on your interest and it will be worth more'—you really need to put in place a more robust regime than simply misleading and deceptive conduct. You need to ensure that people are being told that the sales person who is telling them that is receiving a commission for it. You need to ensure that the risks are appropriately disclosed to them and, again, that should anything go wrong they have access to a good complaints scheme to pursue their complaint.

CHAIRMAN—Should people not be allowed to market it on that basis, given that there is no established secondary resale market for timeshare accommodation? Should they in fact be prevented from saying that this is an investment that is going to appreciate?

Ms Wolthuizen—I gather that was one of the grounds on which ASIC took action against Trendwest, I think it was, back in 2002. Perhaps that is a reason for ASIC to again take more vigorous enforcement action. But that too, as I understand it, is operating under the changes that were made. So we would be very concerned about any change to the regulatory environment that would in any way lessen ASIC's capacity to act or lessen the current standards of consumer protection.

Mr BARTLETT—Isn't that the critical issue, that they are marketed on the basis of misleading information if they are marketing these schemes as an investment? The fact is they are not an investment product; they are a long-term consumer product. So doesn't giving teeth to the way the Trade Practices Act works there, and the ACCC, take care of that issue because they can be prosecuted for having provided misleading information? Simply trying to apply a financial services regulation to the industry really is trying to make something fit that does not really fit.

Ms Wolthuizen—I am not an expert as to whether that sort of enforcement action would be successful to really clamp down on the marketing of time share on that basis. In the cases where it is more the sale of a property interest, rather than being marketed as an investment product, maybe that is an avenue worth exploring. I would have to take that on notice and consider it further.

Ms BURKE—On Wednesday all the providers who were before us, Trendwest included, were at pains to indicate that they are not marketing these things as investment properties. In your experience, are complaints still coming through that people are selling them as an investment?

Ms Wolthuizen—I would have to go back and check with one of the caseworkers who had a call a couple of weeks ago. I will say this and then go back and check the details. My understanding is that that call was from someone who had gone along, purchased an interest, signed a debt finance arrangement, then had trouble meeting the obligations of the arrangement, attempted to sell the interest back and found there was absolutely no market and that he was liable for the debt he had incurred. I will have to check the provider, but I gather that it is still a problem and that people are not being made aware that there is no resale value in it. In that case someone was facing a pretty substantial penalty in terms of having to default because there was no way he could afford to repay the full amount that he had taken on as debt.

Ms BURKE—Would the other complaints be about the marketing practices?

Ms Wolthuizen—Yes, the marketing practices seem to have been ramped up since we first looked into this area a couple of years ago when it was in city locations that people were being induced to come along. They would enter a lottery for a car outside a supermarket and then be contacted and offered a DVD, a weekend away or whatever. They were expressly not told what it was for. They would go along and end up signing themselves into $15,000 worth of debt. Now it seems that people are being induced to go up to the Central Coast of New South Wales for a weekend. The people who have contacted us have said that they felt under inordinate pressure to purchase and to sign on before they left. If they were told about cooling-off periods it was in a very disparaging way. They were told that if they wanted to take advantage of discount rates they had to signed then and there. All those sorts of tactics were used. So people who had no knowledge of what they were going along to, let alone any intention of buying a timeshare interest, came away with a fairly substantial debt commitment.

Ms BURKE—The industry are actually arguing that they are overregulated—that there is too much onus on them with the ‘know your client rule’, that the cooling-off period is too onerous and that they are not selling investment but a holiday lifestyle type product. Would you share any view that there needs to be less regulation of this industry than there currently is?

Ms Wolthuizen—From the reports that we receive from quite aggrieved consumers about the treatment they received and from the reports of caseworkers dealing with cases in this area I do not think anyone would advocate that regulation should be lessened in this area. The reality is that it does seem that these operators are making a pretty tidy profit under those regulatory arrangements. Just as anybody else operating in selling investments incurs costs so, too, do they.

Mr BARTLETT—Is it your view that the real problem is with the marketing rather than with the product itself? Have you had many complaints from people once they have signed up about the actual product and what they are getting?

Ms Wolthuizen—The problems that have been reported relate to the upkeep of property—and that again is coming through from caseworkers—where there are different expectations about how the property will be maintained. I would have to go back and check with the caseworkers about the particulars of the different cases and the complaints that they have received, but problems have arisen where people have an expectation that a property will be maintained to a certain standard and it is not. There seem to be problems with lines of accountability as to who is responsible for that.

Mr BARTLETT—So there is dissatisfaction with the standard rather than the fact that there was an annual fee to contribute towards that?

Ms Wolthuizen—My understanding is that people are shown slides or pictures of the property they are purchasing and given certain assurances about the standard of property that they will access, and then that is not always their experience.

Mr BARTLETT—Could you give us some feedback about the level of complaint regarding the product itself, as distinct from the aggressive marketing, and the specifics of those complaints—as you say, whether they relate to the upkeep of the property? Did you say in your introductory comments that people were complaining that they were not adequately advised of the cooling-off period?

Ms Wolthuizen—Yes.

Mr BARTLETT—The response of the operators whom we met on Wednesday was that that is too onerous. Trendwest not only note the cooling-off period in the product disclosure statement itself but they have a separate sheet that states very clearly the cooling-off arrangements. So I am interested that you would say that that was a complaint.

CHAIRMAN—There is a WorldMark South Pacific Club cooling-off statement.

Ms Wolthuizen—Is it required to be signed?

CHAIRMAN—Yes. It mentions the cooling-off period, it has sections titled 'Your right to change your mind' and 'How can I exercise my right?' and it has a section for people to sign to acknowledge that they have read it. They were saying this is, in a sense, too prominent.

Mr BARTLETT—They said it was too prominent and was in fact scaring people off.

Ms Wolthuizen—Good.

CHAIRMAN—But from our perspective it does seem to be there.

Ms Wolthuizen—Awareness of a cooling-off period is not telling someone: 'Don't make the purchase.' In fact, there is an argument that cooling-off periods actually encourage people to

enter into these sorts of transactions, because they have a sense that there is a guarantee that they can always renege on it further down the track.

Mr BARTLETT—Could you get some further information for us as to whether people generally feel that they are aware of their cooling-off rights?

Ms Wolthuizen—Yes.

Mr BARTLETT—The Law Institute of Victoria argues that there should be a prohibition on the sale of new time share until there is a clearly established secondary market. Do you agree with that? Do you think that the lack of an adequate secondary market is a problem?

Ms Wolthuizen—Certainly where it is not sufficiently disclosed to people that they are really buying something that they do not have any prospect of being able to sell in the future it is a real problem. I have to have a further think about whether that should lead to a prohibition on the sale of these at all. There may be cases where people would be well aware of that but be at a stage in their life and have a level of satisfaction with what is on offer that they are prepared to take it on, not expecting to sell it in the future. I do not know whether those people exist, but it is probably worth factoring into that consideration.

Mr BARTLETT—Is it your view that purchasers are adequately aware of the difficulties that they may face in terms of resale? Do you think that is made clear enough at the presentations?

Ms Wolthuizen—Just judging from the complaints that are made, and particularly that more recent one, it seems that people are not aware of that. In that case, if that person had been more aware that he would not be able to divest himself of the interest to repay the debt should he get in trouble, that would perhaps have been an important consideration in whether he went ahead with the transaction.

CHAIRMAN—Thank you for appearing before the committee in this inquiry.

Proceedings suspended from 12.38 p.m. to 1.21 p.m.

DURIE, Mrs Anne Therese, Member, Legislative Review Task Force, Commercial Law Association of Australia Ltd

GILLARD, Mr Brian James, Member, Legislation Reform Task Force, Commercial Law Association of Australia Ltd

KEOGH, Dr John, President, Commercial Law Association of Australia Ltd, and Chair, Legislative Review Task Force, Commercial Law Association of Australia Ltd

CHAIRMAN—Welcome. The committee prefers that all evidence be given in public, as this is a public hearing, but, if at any stage you wish to give evidence in camera, you may request that of the committee and we will consider such a request. I invite you to make an opening statement, at the conclusion of which I am sure committee members will have some questions.

Dr Keogh—We have had a briefer look than normal at this area, given the time we had for a short submission on it. The Legislative Review Task Force of the association were concentrating on what they saw as a need for a secondary market. They thought a secondary market would provide a less costly exit for buyers and provide a reference for valuation. We also had a look at the whole scheme of marketing, and we were of the opinion that the marketers themselves should establish that secondary market and be vitally involved in that. We also identified the important aspect of a guaranteed buyback, which we thought could work and would strengthen and encourage a secondary market in this area. As you know, time sharing is a managed investment. There is a need for licence. We have had a look at 160.3 of ASIC's policy statement on this area. We would agree that there should be some let-off of those managed investment provisions and the need for a licence in this area.

Apart from those four areas, we also thought it would be good for the committee to have a look at the possibility of introducing some form of code of conduct for those who are marketing these schemes. Our view on this was that one could look at the franchising code of conduct, but one could also maybe even look at a closer parallel in the retirement villages legislation in New South Wales, which actually provides an exit situation for those wishing to sell their interest in a retirement village. That is quite well developed in New South Wales. Mr Gillard is going to talk more about our submissions at length. Mrs Durie has done some research into time sharing and the nature of people's complaints about it, mostly through looking at Internet sites where people have posted their complaints. We have had quite a discussion about that side. Mr Gillard is also quite familiar with the schemes.

Mr Gillard—The task force concentrated on the idea of secondary markets primarily to assist market forces to help control this. The problem we have identified is that an unsophisticated investor might associate this right with the underlying asset, which is property. In fact, it is a derivative right; it is a right of occupation. Perhaps it might be most easily explained to be associated with something like a strata right, where you have a right of occupation. From the research which Anne will deal with, it is not unusual for people to use these rights for a period and then cease to use them. We do not know whether or not that has occurred often—we have not been able to identify it except anecdotally—but these rights exist which the provider is obliged to protect and to be able to provide from time to time. They are not being used, and that

is not an efficient market. They should continue to be used. If, for instance, you have a 30-unit complex and it is only being half used, that is a waste for everybody. We also believe that the rights that are being dealt with are valuable. It is a bit like insurance, where you share the costs. They are obviously attractive because they are sold to consumers—they are consumed. The evidence that has been provided to you in the papers shows that there is a fairly robust market—for instance, in the US—and so there is a desire for these products.

We thought that the most important thing we could achieve was to address this idea of a secondary market, for the reasons that John mentioned—the idea of an exit, the idea of evaluation. It also allows people to more closely ascertain the real value of what they are buying. As I said, if they are consumers and they are associating it with property—bricks and mortar, something that is safe and will maintain its value—they are not really associating it with the asset that is being transferred, and we think there is a large risk that an unsophisticated purchaser will suffer.

There are problems with secondary markets. In effect, this is a financial instrument. The regulation that is in place at the moment is well established. It would be anachronistic, we believe, to create a special exemption and treat these things in a different fashion. In order to deal with financial instruments, you need to be licensed or you need to get exemptions—you need to be qualified. The party who buys this asset cannot resell it. It would be improper for you to sell it to your next-door neighbour, because you would not make the proper representations. We would end up with a secondary market which could be full of all sorts of problems.

Most of these schemes provide for a resale by the provider, but, if you are going to sell something for half the price to somebody else, you are not going to make a big effort. If you do not widely market it and if you have no obligation to publish the prices—it is being sold as a second-hand asset—then it will not be sold. It is a practicality. In this sort of thing seminars are run, marketing companies are paid moneys—a commission or whatever it takes to sell as many as they can. They are not going to sell to the secondary market; no-one is going to be interested.

The proposal, then, is that there should perhaps be an industry body which assists the providers to create a secondary market. The reason why each individual provider is not well placed to sell their own assets is that they will have different assets in each of the schemes. For instance, in the American market you may have rights to swap with rights to occupy in foreign countries, or international or interstate travel, so you cannot compare one asset with another. If that be the case, the industry body is best placed to publish and market those assets. They cannot be compared straightaway—there is a risk that consumers will be confused—so the industry body is the best placed.

At the moment, ATHOC are attempting to become an industry body. We have not had a chance to identify why ASIC has not accepted them fully as an industry body. Perhaps that needs to be addressed. ASIC's paper was in fact not a position paper but an information paper. Perhaps there needs to be further investigation. It has said that there is an ADT appeal on at the moment. That may sort itself out in due course without further investigation. But we think that a body in the centre, which would serve the purpose of the industry of creating a secondary market, is the best way to go. They can be licensed; they can comply; they have a reputation; they have a position in the market; complaints can be made. They are the appropriate party.

The other way of providing people with an exit and an evaluation is to force a provider to have a guaranteed buyback. In effect, you are saying, 'If I have to buy this back, I will buy it back at this price.' As an example, say you sold something for $10,000 but would buy it back for $5,000. There is no reason this derivative asset should change value. If it was five, 10 or 15 years later then maybe the property would have depreciated; maybe it has not been kept well. But there is nothing in the proposals that we see, from our research, that suggests that these assets devalue significantly. So it will force the providers to face up to what these assets are really worth. If they are obliged to disclose this to the purchaser, it will make it obvious to the purchaser that there is a devaluing of this asset once purchased.

But it also provides the feedback mechanism. As I said earlier, there are many people who cease using these rights. The market is inefficient in that a proportion of the rights are not being used. They should be put back into the market. They should be resold. The people in the best position to do that are the providers themselves. They are managing these assets. They are looking after the properties.

The other suggestion we have is that there should be disclosures. At the moment, for instance, the Retail Leases Act is primarily aimed at shopping centres dealing with small ma-and-pa shops. It is trying to redress the bargaining power between them and give people full disclosure. We think that is an appropriate way of addressing it. The other example is franchises, where a franchisor is required to disclose certain information. That information includes any court cases they have been involved in and other matters which it is worth consumers having.

The old regime that was in place required a prospectus. It required that documents be provided—for instance, trust deeds. We believe that there is no way that a consumer who is spending, say, $10,000 can go to a lawyer and get those documents looked at. They cannot afford to do that. They are given a five-day cooling-off period under ASIC guidelines. They are not going to do it within five days. The chances of an unsophisticated consumer taking up those rights do not exist, in our opinion.

A code of conduct would summarise some of that information and would be required to disclose certain information. We have not come to an opinion of what should go in that disclosure but we think that is an appropriate model. We have not had a close look at the retirement village conduct issues but it seems to us that that is a derivative property right and it must have real parallels with what is going on in terms of time shares. Certainly the investment is much greater, typically—the retirement village investment is much larger and a much bigger question. People are going to live there; people are going to perhaps die there. Certainly there must be parallels in those circumstances which are appropriate to the question of time share. I will hand on to Anne Durie, who will make some comments on some of the practical research that we have dealt with.

Mrs Durie—It appears from my research that the majority of these timeshare schemes are actually sold on a presentation basis. Generally, the consumers' comments are that they felt very pressured on the evening of the presentation, because generally they are required to sign up on that evening—even to the point where there were couples at separate tables and there was a person called a counsellor, who was with them, whispering throughout the presentation, 'Isn't that fantastic? Isn't that terrific?' Of course, the presentations are brilliant and very attractive. For unsophisticated investors, the presentations are very much an inducement for them to enter

into that contract on the evening. The pressure used and the lack of information and knowledge of those people appears to be something that leaves a very bad taste in many people's mouths. When many of them go home and, in the cold light of day, look at the figures they can see that, in fact, it takes about 10 years or so before they break even on this holiday scheme.

Taking into consideration management costs, travel costs, air fares et cetera, which many had not considered on the evening, many of them decided that they really would rather not be a part of the scheme. The cooling-off period is, of course, necessary, but some indications were that the cooling-off period was not indicated to the consumer. We see that as being a very important and very serious defect in the process. Whilst many people do indicate they are very happy with the product, we still feel a secondary market would largely overcome the problem with regard to consumers who purchase the product and then find they really cannot afford to maintain it or it does not suit them. But we also perceive that having a secondary market will assist the industry itself because that will give it a credibility that perhaps it has lacked in the past. So really there should be a dual benefit there, for both sides.

CHAIRMAN—The perspective we gained from our hearing on Wednesday at the Gold Coast really gels with what you have told us today—that is, one of the real shortcomings of the sector is the lack of an effective secondary market. One of the things we would like to consider is how, from the legislative and regulatory side, we might go about establishing the capability for that. I think your analogy with the retirement village situation is quite a good one. I know that in South Australia with retirement villages the occupier of the unit—if they stay there until they are deceased or until they move on to a nursing home, or whatever stage it is at which they are going to relinquish their right to use that unit—has the option of either selling it themselves directly to another person and taking whatever they can get or selling it back to the retirement village at a predetermined percentage of the purchase price, depending on the length of occupancy. So it is not one or the other; they can use whichever method they can do best out of. Do you envisage that there would be both options not one or the other?

Mr Gillard—The product involved with the retirement village is that everyone knows, although they may not face up to it per se, that they will die and the asset will be disposed of. Our anecdotal research is that people do not contemplate not needing the product. Therefore, no-one thinks about secondary markets. We have had a careful look at the question of secondary markets. It is a very difficult question to resolve. You cannot sell these products to your next-door neighbour; you have to have the disclosures that are required. We cannot have it both ways: we cannot say that there are disclosures but you can sell it freely in a secondary market.

CHAIRMAN—I understand that currently you can actually buy them on the internet and through eBay and that sort of thing.

Mr Gillard—What we have looked at is the need to have a qualification to sell it as a financial product. We think that it should be covered as a financial product.

CHAIRMAN—I was going to get to that issue later.

Mr Gillard—Our argument is that these are sophisticated products. They are derivatives, like a derivative of a share. They are futures. They appear to be the product itself but in fact they are derivatives of those products. It appears to us from anecdotal evidence that people do not

appreciate that. They associate them with the underlying products. They need to be confident that the bricks and mortar will be maintained over the life of their asset. Their asset goes on forever. How could it possibly be that the bricks and mortar will survive for two, three or four centuries? There is no upper limit put on these products. These rights do not exist for only 99 years; these rights exist forever.

Nobody is looking at questions of maintaining the underlying asset. You pay your levies, but there is a manager there and, if they do not manage it very well and it is not kept up, there is another problem—you have a devaluing asset. Those things will be reflected in a secondary market. If you sell an asset 20 years after purchasing it and it has depreciated, you will get much less money because the market will dictate it is worth less, but only if the information in the market is good. If people do not appreciate that the property is run down, they will not appreciate that the price should be lower.

That is why an industry body should handle it—an industry body has a stake in the industry and can be dealt with by ASIC, by members who do not feel that they are coming up to scratch or by consumers. I anticipate that ATHOC might have problems because its membership includes several different stakeholders in the industry. Perhaps another industry body should be formed to represent the providers and perhaps this obligation should be put on that industry body. We have not come to a conclusion about that.

Coming back to the issue that you raised, we believe that, if you sell a product to a member of the public, there is a risk that they will want to get rid of the rotten thing and they will say whatever they need to say to get rid of it. In any case, you will not be improving the situation by putting that product out on the open market. We anticipate two ways to best deal with this. One is to force the provider to repurchase. That may merely mean that they have to make an offer in the disclosure statement at the time they sell that for, say, a period of two years they will be willing to buy the product back for a stated price. That price can be any price they choose—it can be half the value. It is a disclosure.

They must either do that or get the industry body to sell it on the open market and disclose what that asset is selling for at the time. We understand that in the industry there are two types of promotion. One is to say: 'This is brand-new. We are selling it all in one line.' The other one is to say: 'We have been in this industry for many years. We are selling off rights to various places.' It usually has to do with what size the provider is. I think one of the providers has up to 20,000 locations. What the single holiday is does not matter as much as the facts that they are solid and there are no insolvency risks and those sorts of things. We think that it can be either/or and we certainly have not taken a specific position on that.

Dr Keogh—We had another view that the establishment of the secondary market would also have a benefit to the marketers of the schemes because, we think, there will be some upside in being able to charge more for the schemes knowing that there is a secondary market. I think it could be financed on that basis.

CHAIRMAN—Evidence was put to us on Wednesday by providers Accor, Trendwest and Classic. I think Classic has been a longer term player and an Australian based small business that has grown. The other two are major resort providers. They contrasted what they saw as the origins of the industry back in the eighties in Australia, which they characterised as the white

shoe brigade, with the more recent situation where you have the big hotel chains like Accor, Hyatt, Disney and so on involved in it. Their claim was—and I would be interested in your response; I think there is some validity in it—that this is not a financial investment and that they are not marketing it as an investment; it is, if you like, a long-term consumer item or a lifestyle item and should be marketed as such. Therefore, although they acknowledge there is need for regulation, they claim that the financial services bucket is not the appropriate field for it to be regulated.

Mr Gillard—I think the financial services scheme creates a cost of misbehaviour in the industry. For instance, if you hold a licence and you are possibly going to lose that licence, you lose your livelihood and you are unable to trade and that is the end of it, so you need to behave. There are certain things like reporting and dealing with complaints and those sorts of issues. There is an argument to say that an entity like Accor has a reputation that they need to protect and there is an argument that they already have a big enough stake. But I still think there needs to be complaint handling. The real driver of this inquiry is the number of complaints you get. I think also that the anecdotal evidence that we have seen is that people are associating with the property right irrespective of what you say. They are saying, 'I am getting into a trust deed or I am getting into this or that.' There may be room to say that a provider like Accor has not got a trust deed, that it is not dealing with those things and that it is providing guaranteed holidays.

As an example, it is quite often the case with something like Accor that you can shift your days around and you get a Friday-to-Friday occupation. Many people cannot travel on Friday; they have to travel on Saturday. They want to leave on Saturday and there is no flexibility and they do not discover that until they make their first booking. Accor, on the other hand, has enough flexibility to probably provide for that. So there may be an argument to say that there is a two-tier industry, but the problem is that the consumer knows nothing about that. We are really dealing with giving the consumer the information that they need to participate in the market.

Dr Keogh—Just adding to that: the exit strategies that are now place in New South Wales retirement villages were largely driven by the swathe of litigation that went on. The weight of it through the nineties was enormous, a lot of it pointing at not only budgetary constraints et cetera and controls in retirement villages but at the problems with the exit figures and people trying to resell and having to deal with the operator of the village and having to sell their interest back to the operator of the village. Because of the volume of litigation that was cast in that area, the department of fair trading was able to rewrite how that was being done through a code of conduct. Basically their focus on that very area was very successful.

I have got to say that, for about five years, I sat on a tribunal that was adjudicating in that area. It was successful because of the litigation that was focusing people's minds on correcting this area of practice and that had to be attended to. While the sums involved here are of course a lot less—they are investments of $10,000 or so, or maybe $20,000—you do not also have a family involved. With those who are in retirement villages, their immediate family is also looking at the investment into the future. You do not have the same concern, as you say. Some of the operating groups see this as a lifestyle and you could look upon it as a lifestyle investment of $10,000. For a lot of people investing at those levels—and we are suggesting that those who invest here are probably not the caravan pullers but those in a higher income bracket—they probably see it as a lifestyle choice. It may not warrant it in the end, but if there were some secondary market here I think that would cure a lot of the ills that are associated with it because often the people who

invest in time sharing regard it as an investment in property. They mention it to their friends and family who have invested. Perhaps it is a perception in their own minds.

CHAIRMAN—Given what you have identified as possible conflicts of interest with the industry body acting as the purveyor of the secondary market and also allowing for the buyback arrangement as part of a secondary market, is there in effect a business opportunity here for someone to set up and operate an exchange that becomes the secondary market?

Mr Gillard—Obviously technology has—

CHAIRMAN—Perhaps before you respond I will add this. By that I mean there is obviously not interest in the initial marketers having a secondary market, because that takes potential marketing away from them selling new units. But there may well be a business opportunity for someone to, in effect, operate what you could call an exchange, whereby they would derive a fee from enacting the transaction between the buyer and the seller.

Dr Keogh—Yes, similar to an eBay trade or something else like that.

CHAIRMAN—Yes, it is a specialised area in which they have knowledge of everything that is available and they know the transactions and the legalities that have to be acknowledged.

Mr Gillard—Technology brings down the price of a secondary market. It is expensive to get these things up and running, but you do not have to establish the rights; they are already established. The trick is to compare an apple with an apple. Many of these schemes are unique, different, and it is very hard to create a secondary market when you cannot compare things. There are some problems here. The value that we see is that the new product can be compared to the old product. It may be a week later that somebody decides to sell, so there can be a comparison. What we need to do is get that secondary market up and running so there can be a comparison.

The question then becomes: how do you compare apples and oranges? The unfortunate thing would be if you went off and regulated and said every product must be an apple. That would be a difficult thing, because, as you say, Accor may offer a completely different product from one that somebody is developing on the Gold Coast or wherever it might be. But provided there is a disclosure regime in place, it would be a very simple thing. You would just redisclose what you disclosed when you first sold. The hard part is what those rights will be. If there is a right of resale, then if you buy something on the internet you can resell it. One of the things that will be difficult will be how long this buyback guarantee must last. Will it be for the life of the product or, say, two years? Will it expire or will it be transferable? If somebody buys it on the secondary market can they sell it back? Those sorts of questions are a bit problematic.

The way we see it is that if you can establish the secondary market a number of these problems will solve themselves. An industry body which has a web site on which providers can put their products will obviously allow people much more quickly and much more easily—and a provider much more cheaply—to advertise those things. In terms of a business opportunity, I am not sure that it would be extremely profitable. Frankly, we think that the secondary market will probably come with half the price, in which case there is not a lot of profit. If the profit is $10,000 and 10 per cent of $10,000 is $1,000, the marketer gets $1,000 but in the secondary

market there might be very little. But there does not necessarily have to be a profit, because a person who is selling does not want the profit. If the intermediary uses technology for which the overhead costs are not high, they might add a commission of five or 10 per cent to pay for the technology, and the industry body has an interest in doing it. If the price of the product has to go up by $1,000 to $11,000 to help pay for the secondary market and you can sell it for $6,000, it is a major advantage for the consumer to be able to get out. Rather than arguing and writing letters and going to the department of fair trading and seeing a lawyer and all of those other things, the consumer can have a practical exit strategy, even if the costs have to be built into the original price.

CHAIRMAN—Assuming we can overcome that area of problem and get a secondary market going by one means or another, the other issue that we are aware of as a result of our earlier hearings is marketing techniques. It would seem, although this is still to be gone over, that most of those who buy and stay are reasonably satisfied with the product, but there seems to be an element of dissatisfaction and concern about what we might describe as high-pressure selling techniques. Dr Keogh, given you have acknowledged my point as to the income level of the people who purchase and that they see this purchase as more of a lifestyle item than an investment, I come back to the question of whether the Corporations Law and financial services regulation is the appropriate area. Would it be better perhaps under the hat of trade practices legislation, with the ACCC to regulate?

Dr Keogh—I think it is too difficult under the managed investments regime; I honestly do. I think there is a problem with it and I think it should be moved out of that and into the ACCC's jurisdiction. That would make it a lot easier.

CHAIRMAN—Would that still give adequate protection to consumers?

Dr Keogh—Yes.

CHAIRMAN—Depending on the way the legislation was drafted, obviously.

Dr Keogh—Yes.

Mr Gillard—We have looked at the franchising code of conduct, which provides a high level of protection, and at the retirement village code, which again provides a good level of protection. It really is a consumer product. I do not think the previous parties who have spoken to you—such as Accor et cetera—are saying anything but that it is a consumer product. The ACCC is more geared towards protecting consumer interests. ASIC is more geared towards protecting the procedures that investors should follow. It may be better that it is located with the ACCC. The Trade Practices Act has good consumer protection provisions.

CHAIRMAN—I detect a bit of difference between Dr Keogh's position and your position, which is a position I probably share. Mr Gillard was saying earlier that this really is a financial derivative. Can we get a definition of whether it is lifestyle or—

Mr Gillard—The problem is that, in practice, it is a derivative product, but we believe that the consumer sees it as bricks and mortar and does not see it as it truly is. That does not mean that it is a pure financial instrument; what it means is that the danger is that if we go under ASIC

then we have to go in as a managed investment. Then, although you have a cost of compliance, which is hard for the industry, the product is a cheaper product. That does not say that you do not buy shares for $5,000. What you will end up with is consumers making complaints about things which are not well thought through. ASIC has some problems in dealing with those things. It is a consumer product. The disclosure statement hopefully will refocus consumers and help them understand that the product is of a derivative nature but still a consumer product.

Ms BURKE—One of the problems we are having is answering the question: what does the consumer think they are buying and what have they been marketed? We went and visited one of these developments and they kept talking about 'the owners'. If I am the owner of a building, I do not think that it is depreciating in this current market. If I am sitting on a downtown apartment on the Gold Coast then I think my investment has just gone through the roof and that when I actually on-sell I am going to make a profit not a loss. So doesn't it get down to (a) what the consumer thinks they are buying and (b) how they have been sold that product? If it is a derivative, fine; you understand that. But even a run down tower block at Coolangatta is increasing in value at the moment not decreasing. In the original schemes they were given title.

Mr Gillard—That is right—trust deeds. The trust owns the property.

Dr Keogh—The move is away from that at the present time and towards a broader scheme. I was on the Gold Coast in January and stayed for a week. I was amazed—I had not been up there for a while to stay—at a scheme being marketed while I was there. I thought, 'This is very simple the way they are putting this together.' This was not a time-sharing scheme; it was a scheme by which you paid a deposit. It was being run by some sort of webpage where you came in through that and were able to secure a holiday any time over the next 12 months for two years at a variety of outlets to stay at—you could take your pick. This is really buying time into the future. There is little difference when you think about how it would operate in practice and yet they had that down to a fine way of doing it electronically without all of the add-on derivatives and other products that you have. I am sure that all those who were buying into that scheme thought, 'We are buying a holiday in 12 months time and getting it organised.' I think we need perhaps to bring time sharing down to a similar level and take it out of this huge web that we are talking about.

Mr Gillard—I think you are right in terms of what the consumer expects. The reason we use 'derivative' is to make it clear that we think, while the consumer thinks it is bricks and mortar, in fact when you think about it as a sophisticated person you realise that it has no relationship. It does not matter how many times the marketer says, 'This is not bricks and mortar,' people are still going to have that expectation that it should not go down. That is why, if you have a secondary market, people can see that once they buy the product it is worth half the price. They will not have the same expectation that it is always going to go up.

You cannot force a marketer every time to say, 'Listen, this is not bricks and mortar.' Even if they do that, they do a Henry Kaye and put it in some elaborate fashion, whereby it does not really say what it is supposed to say. You can put any eight-point size disclosure on the bottom of any piece of paper you want and consumers jump over that and still expect bricks and mortar. That is why we think a secondary market is important and we need that fact to be disclosed. The model that is in place—a franchise code of conduct, that sort of thing—actually came from the ACCC, suggesting that that is a more appropriate place for it to be.

On the managed investment side of things, people who buy shares and other products of a financial nature are, generally speaking, more sophisticated than just general consumers. We do not think you are dealing with sophisticated investors; you are dealing with general consumers. ACCC is more geared to listen to them, to deal with the issues and to address the problems.

Senator MURRAY—I am interested in what you said earlier about complaints. Is a good proportion of the complaints from foreign timeshare owners?

Mr Gillard—Anne did the research on the web, when looking into that, and she went to a number of web sites which were set up to take complaints.

Mrs Durie—It was mainly a personal web site, set up by a person who was dissatisfied. I cannot specify whether it was an Australian or an international web site.

Senator MURRAY—Why I ask is that my impression of the timeshare industry is that there is a great deal of interaction between consumers from different countries. Consumers add to their experience in Australia whatever their experiences as consumers are in other countries. If you take an exchange such as a share market—the way in which you buy shares and sell shares—the process is almost completely similar, wherever you are. I wonder whether complaints about our system are generated because people have better or different experiences in other countries and whether that should inform us in this particular inquiry. For instance, are other people doing it better? Do secondary markets exist in other countries? How are they constructed? Is marketing regulated in a different fashion? Is the nature of the product described differently?

Mr Gillard—I will address that issue. There is some anecdotal evidence to show that some of those complaints occurred because a product was sold to a consumer that was different from the product that they talked to another consumer about.

Senator MURRAY—Are you saying it was described differently?

Mr Gillard—It is a different product. For instance, 'Last year I invested $10,000 in a Gold Coast scheme. I've been up there a couple of times and I had a great time.' 'I should go out and buy one.' So they buy another product—say, an Accor product, where you can go anywhere in the world. Maybe there are not so many in Australia, so you have to pay an international airline ticket to get to the product. No-one tells you about that, so you end up with a complaint that there are other costs involved. Maybe you have a Friday-to-Friday occupation and somebody else has a Saturday-to-Saturday occupation, and you do not understand why your time always had to be Friday to Friday. That is perhaps because they are in a bigger scheme than you are or there is more flexibility. With some of these schemes, half a resort is bought out by the provider and is a time share, and the other half is open. That resort can push you across to the open vacancies. The vacancy rate may be 70 per cent. People can be pushed across, if they want to be Saturday to Saturday, instead of having their actual rights of Friday to Friday. There is anecdotal evidence that, because you cannot compare one scheme with another, consumers do not know what they are buying in the small print, and you get some complaints where people have expected something else.

Senator MURRAY—Given your profession, you would be well acquainted with the fact that, around the world, there is a drive for commonality and uniformity in different markets and

rights. Take what we as legislators have to attend to, which is the drive for intellectual property rights world wide to be common, transferable and well understood. Take similarly the desire for securities and exchanges around the world to be common and uniform because of people's greater flexibility and movement, which we as legislators have had to deal with. It would seem to me that we would be unwise to consider this issue without picking up the best of international practice or international experience of the way products must be described, disclosure must be made, complaints should be handled, disputes should be handled, secondary markets should operate, rights should be accorded and those sorts of things. I have no experience in this area.

Mr Gillard—One of the things I would observe about our proposal is that, if we have a disclosure statement, we will have a standard set of matters that must be disclosed and that will bring some uniformity. Even if at the bottom of the disclosure statement it says 'any special matter you should mention' or 'other category', it will bring some standardisation to the industry. That would make it more transparent and easier for people, say, from overseas to appreciate what they are buying here and vice versa. I think that would promote standardisation. However, you need to be careful not to force the product to be the same, because different consumers buy different things.

Senator MURRAY—I am not looking for products to be the same, because we want diversity for the consumer; I am looking at the framework in which products are offered being similar internationally. I raise this because, if you are advocating that a body such as the ACCC would pick it up, the legislative design would need to be so flexible that the ACCC could develop some interaction and experience with its coregulators world wide to ensure that it has the flexibility to keep finetuning this thing to take into account the need for uniformity. It is an international market that we are referring to, particularly with a place like the Gold Coast. There are timeshare sites in Australia that I would guess are entirely Australian, but the Gold Coast is certainly an international environment.

Mr Gillard—The codes of practice fall nicely into that area. They provide a lot of flexibility with negotiation between the ACCC and the industry. We think that model is an appropriate one.

Dr Keogh—One of the reasons why we would also advocate being placed under the ACCC is that they seem to be much better prepared to put together class or other legal actions, if they need to, to take on test cases, similar to what they have done in the landlord shopping centre arena et cetera. They have taken on the larger owners of shopping centres, and they have done it extremely well in a lot of areas. Money has been allocated to pursue matters on principle—unconscionable conduct and those sorts of things—and they are geared up to do that. The trouble is that, unfortunately, people who are looking at a $10,000 investment just do not have the funds to spend on going to a lawyer; at that level, it is just not worth it. Unless there is a simple, easy and readily available mediation process where they can work it out in a short period of time, they are not going to bother. They will complain all you like about it, but they will not be running litigation at that level.

Senator MURRAY—Correct me if I am wrong, but my understanding of the timeshare market is that the exchange or trading market is very well developed. If you want to swap your two weeks on the Gold Coast for two weeks in Alaska, you can do it very easily. However, the sale market is very poorly developed and there are great barriers to exit. It seems to me that, if you were going to make the sale market commercially viable, it would be easiest if it were

somehow to tie in to the way in which trade and exchange occurs, because then the whole lot would be in one area. I have no idea whatsoever how to do that, but it would seem odd to me to set up separate markets for what is essentially either an exchange of rights or the disposal of rights.

Mr Gillard—I think it would be very hard to set up the equivalent of a stock exchange or set standards world wide.

Senator MURRAY—Even electronically?

Mr Gillard—In the specific area you might, for instance, have three developments which are all sponsored by one developer—one in Victoria on the Mornington Peninsula, one in Batemans Bay and that sort of thing—and you might have rights to occupy any one of those. People might buy that and say, 'It is convenient, because I am in Melbourne and the Mornington Peninsula is good for me, but if I ever want to go to New South Wales then I will always have that opportunity.' That is the size of some of these providers. The other ones you get are like Accor, which has thousands of locations and it is a holiday thing.

What the chairman quite rightly brought up is that there are two tiers to this market. One tier might appeal to one set of consumers and the other tier to another. I do not think, at this stage, that it is easy to split those tiers up. It is a graduated thing. You need to put flexibility into the product, because consumers want different products, yet you want to have a comparison between these products. Our feeling about the disclosure statement idea, where you pick out a series of things that consumers should be aware of, is that they can give out any other material they want, but if the disclosure statement is given then at least the consumer is informed. You have a more efficient market when people have the information they need to value the product.

Senator MURRAY—Which surely leads you to the opportunity to make a profit because, providing you are disclosing it well, I do not see that the sale disposal would always be at a lower value than you bought it for.

Mr Gillard—The idea is that these products would be sold pretty close to the same value every time.

Senator MURRAY—Say, being a Sydney consumer, you wanted to sell your two weeks on the Gold Coast to an Alaskan consumer. Because of the value of their dollar versus ours you might make a profit, and they might consider it a bargain. I would really fight against legislative or regulatory inclination that you have to automatically take a loss. You should be able to sell it for what you can sell it for, providing disclosure is adequate.

Mr Gillard—The problem then comes if the American couple come to Australia and find it is some flea-bitten thing three blocks back from the beach. In my opinion, it is very hard to regulate those things. It becomes very difficult to truly compare the Alaskan holiday with the Australian holiday.

Senator MURRAY—But that is already a problem when you exchange.

Mr Gillard—I suppose we are addressing permanent sale as opposed to trading a right. Say, for instance, you buy a one-week time share in a product which offers you three different locations and you do not like it anymore and want to sell it. If there is no secondary market then you cannot sell it and you take the full, say, $10,000 loss.

Senator MURRAY—I accept that. All I am suggesting is that throughout your discussion you have indicated you would expect that to be at a lower value than you purchased it for. I do not see why that should be the outcome.

Mr Gillard—What we would expect, if this was a solid product and the property—the bricks and mortar—was being maintained for many years over the life of the building, is that it would stay at the same price. What we would like to see, if it is not the same price, is that the consumer should know immediately that it will not be resold at the same price—it may not be a good product.

Senator MURRAY—To me, a market means profit or loss; it does not mean only one direction.

CHAIRMAN—I accept what you are saying about the possibility of confusion. If you look at the three groups of providers that gave us evidence on Wednesday—Trendwest, Accor and Classic Holidays—it seems to me that the actual exchange that operates is separate from those providers. RCI and another two organisations actually do the exchange. I think Accor were affiliated with one exchange and Trendwest with another, but Classic Holidays were affiliated with both, which gave you a broader scope. What opportunities you have, in terms of locations for exchange and so on, depend on which scheme you buy into. I think that it is possible, through disclosure, to make people aware of what their exchange opportunities are.

Mrs Durie—In the EU there is currently a push towards a code of practice as a result of an EU directive on the timeshare industry. Although there are currently about four separate documents regarding code of ethics et cetera, all of the major industry bodies are becoming involved in this discussion to establish a code of practice for the entire EU market. Perhaps that is something that we could look at when attempting something similar to the franchising code of conduct. We could look at that EU code and decide whether or how that could apply within Australia.

CHAIRMAN—The other issue you have raised is whether properties are properly maintained or not. Every member of a scheme has to pay their annual fee as well as their original capital sum. Should there perhaps be some regulatory provision that the members of a scheme have the right to sack the manager and appoint another manager to the resorts to ensure that they are maintained?

Dr Keogh—Yes. We have just had an overhaul in New South Wales of the strata management scheme involving large strata plans with over 100 units. There has been a huge overhaul in New South Wales under new regulations announced recently.

CHAIRMAN—This would give an incentive to the original purveyors of the scheme to keep the resorts up to scratch. Otherwise they are going to lose their reason for being, in a sense—if

the members get together and say: 'You're not maintaining this property properly. We're going to appoint someone else.'

Mr Gillard—You may be aware of the recent collapse of a large strata plan in Sydney city.

CHAIRMAN—No, I am not.

Mr Gillard—It went bankrupt and had to be put into receivership. The people who are running strata schemes may not have the sophistication, but it is a major investment to buy a piece of property. The ameliorating factor is that we are only talking about figures like $10,000 or so. If it is not well maintained over the life period, these people cannot afford to investigate. People will not bother to look at the books. Annual reports and all of those sorts of things will not give them any information as consumers. There may have to be certain warranties and there may have to be certain levels of maintenance, but if somebody is maintaining a scheme the commercial imperative should be that they are going to make a profit over the life of the building. There should not be a short-term profit motive for the manager. I would have thought the economic market initiatives would take care of that. I do not see that the consumer is really placed to make a judgment about that sort of thing. That to us would seem to be unlikely.

CHAIRMAN—The annual fee is quite substantial: $350 to $500 per apartment. That is $17,000 to $25,000 a year. That is a big fee, compared with a normal apartment.

Mr Gillard—It should be disclosed. It should be part of the disclosure statement. Things such as the expected life of the building might have to go in to inform consumers.

Dr Keogh—Revealing the sinking funds and things like that.

CHAIRMAN—That fee seems to be excessive when you relate it to what it costs to maintain an individual apartment. Have you any thoughts on that?

Mr Gillard—I do not think we have formed a view on the actual mechanics of it, but we believe that those sorts of issues should come up. It may be that the disclosure statement should include things like the likely costs to travel to different places. People do not think of that. It might cost $1,000 to fly to America. It may be that, with an investment of $10,000, people are not thinking of that. The occupation rate might have to be disclosed. If you cannot get in an extra week or two, you might have a single week's holiday. You might get four weeks a year and it may be you want two weeks. The likely occupation rate might be something that needs to go in. We believe that disclosure statements should be designed around complaints. Things that people complain about are important to them; it is most likely that they should go in the disclosure statements. The complaints should then be minimised and that should help regulate the industry.

Mr BARTLETT—Isn't the annual maintenance fee normally disclosed?

Mr Gillard—Yes, it should be. But if a disclosure statement is a new regime then that should continue to be disclosed.

Mr BARTLETT—I am not sure that I agree, though, about going so far as to indicate travel costs and those sorts of things. I would suggest there is a degree to which the purchaser needs to

be responsible for their own decisions, but I do take the point that more explicit disclosure is beneficial. I note that the Consumer Credit Legal Service suggests that one of the major problems with timeshare sales is the linked credit schemes. How widespread a problem is that?

Mr Gillard—Our committee has not had the opportunity to take surveys or to deal with the issues. We have looked at anecdotal evidence.

Mr BARTLETT—Anecdotally, is that a major problem?

Mrs Durie—One particular complaint that I considered was from a person who believed that the loan scheme was linked to the management, and the management claimed that in fact it was not. I could not look any further behind that to determine which party was correct, but the consumer, over time, after he had become increasingly disgruntled and very dissatisfied, was very much of the opinion that the loans provider was in fact linked. So I really do not know. That is my only experience with regard to that.

Mr Gillard—Again, the comment is that, because a lot of their sales take place in the seminar venue, if the credit is offered at the same time, in the mind of the consumer it is linked.

Mr BARTLETT—Would there be any case, for instance, for preventing a linked credit scheme? Do you think that would provide greater protection for the purchaser?

Mr Gillard—I think we are of the view that, irrespective of whether it is linked, it is a good product. There are a number of satisfied people, and we would assume that there are as many satisfied people who have borrowed the money for the scheme as have spent their own money. In fact, linked schemes are to a degree easier, because if you go down to your local bank and say, 'I'm going to buy a product,' you need to tell them all about it, whereas in a linked scheme you are there and you can get the finance straightaway. It is vendor financed in effect, or vendor sponsored finance, and it is a good product. The person who is providing the finance intimately understands the asset.

I think that, rather than prevent these things, they should be declared. Our principle is to give the consumer the information. If the complaints reveal that being linked or unlinked is an issue that consumers complain about then it should go on the disclosure statement saying, 'Any finance provided is not linked,' or 'Any finance provided is linked.'

Mr BARTLETT—Finally, regarding the cooling-off period, is it your view that generally cooling-off periods are adequately disclosed and, secondly, that the length of the cooling-off period is adequate?

Mr Gillard—The anecdotal evidence is that it is disclosed. It is required to be disclosed, I understand. On the period of five days, cooling-off periods are about changing your mind once you walk out of the seminar, and I think that five days really is adequate for that. We see the problem as the valuation of the asset. How do you know it is worth $10,000? The consumer is not placed to make a judgment on what it is worth, and they will not be placed to do so five days later.

Mr BARTLETT—How does a consumer of any product really know that? It is subjective, isn't it? The value depends on the extent to which it meets the consumer's needs. If I go and buy a second-hand car or, indeed, a new car, how do I know I am getting value for money or the extent to which it meets my needs? I only know that over time, don't I?

Mr Gillard—But what is required of the consumer in this case? There are two answers to that. One is that you shop around. Having investigated this a little more, we were shocked to see the maintenance of price. It is all $10,000. When I initially came in I said, 'It would be $10,000 or $15,000.' It is all $10,000. A lot of these things are being sold at $10,000, and it was surprising to us that there is a maintenance of price. That indicates to us that it is a false price, and that is why we are talking about secondary markets. If you shop around, you are likely to get the same price. You have no judgment.

The second part of the answer to that question is that this is a sophisticated product. The marketer goes in and says, 'This is how we justify this price. You will be using this for 20 years,' and they say that on the Gold Coast the cost of a hotel room is now X amount and that you will be spending this money and that money. In fact it is quite obvious now that there are lot of hotel groups selling off bulk vacant rooms on special deals. You need only watch television at two o'clock in the morning to see that, if you ring right now, for $60 you can stay on the Gold Coast.

Ms BURKE—I am bit worried about you watching television at two o'clock in the morning to discover this.

CHAIRMAN—Lastminute.com.

Ms BURKE—Or Wotif.

Mr Gillard—That is right. The figures given are completely in control of the seminar provider, and they are obviously put together in a sophisticated fashion to be persuasive. The question is: can the consumer go away and usefully have a look around and see what it is? We see a disclosure statement as helping them to do that. We are not saying what should necessarily go in that disclosure statement, but if they had the top price and the bottom price of getting a hotel room next door to their resort then we would have extra information for the consumer to be able to make a decision.

Senator MURRAY—But it is only true at that time, and that is the point: you are buying something over a long period in which the prices fluctuate.

Mr Gillard—Again, we are not saying what should go in the disclosure statement. That was an example, and it is very hypothetical at this stage. We have not done surveys and we do not know what the complaints are. This is anecdotal. But we suggest that the disclosure statement is a place to start to give the consumer more power in the negotiating process.

CHAIRMAN—As there are no further questions, thank you for your appearance before the committee. I think the extent of the questions indicates that your contribution to our inquiry has been very worth while.

Mr Gillard—We have mentioned a couple of examples of documentation—for instance, the retail lessor's disclosure statement and those sorts of things. Would it assist the committee if we forwarded that sort of material to you?

CHAIRMAN—Yes.

[2.27 p.m.]

SANGSTER, Ms Jodie, Director, Legal and Regulatory Affairs, Australian Direct Marketing Association

CHAIRMAN—Welcome. The committee prefers that all evidence be given in public, but if at any stage you wish to give evidence in camera you may request that and the committee will consider such a request. I invite you to make a brief opening statement, at the conclusion of which we will have questions.

Ms Sangster—Thank you. I thought I would give you a bit of background to some of the issues we are interested in with regard to this inquiry but, first of all, I will give you some background about our association. The Australian Direct Marketing Association represents about 500 member companies, and we represent both vendors and clients of direct marketing—that is, companies that provide direct marketing services but also companies that use direct marketing. The other thing that it is important to understand about us is that it is not just about outbound marketing, unsolicited marketing; it is about marketing at any touch point with the consumer. In saying that, we do not represent mail that has no address on it, for example, and we do not represent door to door or sales such as the sale forum with time share and that sort of thing. It is really around direct mail, telephone marketing, email marketing, SMS marketing and so on.

CHAIRMAN—What about surveys and competitions?

Ms Sangster—No, not market research.

CHAIRMAN—I mean surveys where you fill out a form and then you get a phone call saying that you have won a prize?

Ms Sangster—Possibly. Some of our member companies do lifestyle surveys and that sort of thing. I want to talk today strictly about the telemarketing aspect of things. We are not experts in the field of time share. Our interest in this inquiry is really on the antihawking provisions and that part of the legislation. Obviously we do have member companies in this field, such as Accor Premier Vacation Club and Trendwest. Our members abide by a code of practice, which has telemarketing provisions that relate to how companies should telemarket responsibly.

That includes things like the information that needs to be provided to the consumer during the telemarketing call, acceptable calling conduct, permitted calling times, disconnection times and that sort of thing. Our code of practice is enforced by the Direct Marketing Code Authority, which is an independent body of five members, made up of both consumer and industry representatives. They enforce the code with respect to members to make sure that they maintain those standards. I should let you know that our code of practice is subject to review at the moment; it is currently sitting with the ACCC. They endorse our code of practice, and we are just waiting for the new version to come out.

There are a couple of comments that I want to make to the inquiry today. The first thing is that, in the context of time share, not an awful lot of time share is actually sold over the

telephone. I am sure that there have been people telling you in this inquiry that, generally, the telephone call is made to set up an appointment or to invite someone to a sales briefing; generally they are not sold over the telephone. Taking that into account—what I am about to say is in that context—there are two main areas that I want to cover. The first is that there are a couple of issues with the current legislation which make things difficult for the industry. In the second area, and in relation to that, we have an issue around consistency of legislation, both in terms of federal legislation that already exists and in terms of how the antihawking provisions relate to that. There is also legislation between federal and state authorities.

With regard to the antihawking provisions as they are at the moment, there are a couple of issues that make it difficult for the industry. The first is that, in the context of my observation that time share is not actually sold on the telephone, the purpose of the telephone call is really to set up a sales briefing or to invite somebody to attend a sales briefing. It is quite unclear at the moment as to whether the antihawking provisions apply to that telephone call. Obviously, if they are selling on the telephone then the antihawking provisions automatically apply—that is clear. But if the telephone call is to set up one of these briefings, it is not clear whether the antihawking provisions apply to that, and that is mainly due to the term 'because of' in the legislation.

In the guide to the antihawking provisions which has been provided by ASIC it says that a breach of the antihawking provisions occurs where the offer of a financial product is made to the consumer during a telephone call or because of a telephone call. It is this term 'because of' that is causing a bit of difficulty in the industry because they are not sure, if somebody attends a briefing as a result of a telephone call, whether that sale is 'because of' that call. It is important that they know whether or not the legislation applies because, obviously, if it does apply, then there are a number of criteria that they need to meet to make sure that they do not breach the antihawking provisions.

Moving on, if the provisions do apply, I do not see that the provisions that are in place at the moment—the criteria that you have to meet during a telephone call—are onerous. I think industry has coped well with complying with the provisions that are there. If the antihawking provisions do apply you are making an unsolicited call and the sale is made 'because of' the unsolicited call. The requirements for the company during the telephone call are, first of all, to make sure that they only call during prescribed hours, which are prescribed by the legislation. Those hours I do not see as being a problem. We have amended our code of practice in line with the antihawking provisions so that the hours of calling are the same across the board; it does not really matter if you are in financial services or any other industry—the calling hours are the same.

The second requirement is that the consumer is not listed on the in-house suppression file, or the do-not-call register. Companies keep a register of people that do not want to be called, and that is fine. The third requirement is that the consumer be provided with an opportunity to be listed on the do-not-call-or-contact register and be able to select the time and frequency of future contacts. That is a bit of an issue. The first point about giving them the opportunity to appear on a do-not-call register is that it slightly conflicts with the privacy legislation, which says that you have to do it either during the call or as soon as possible after the call. So it could be at the follow-up briefing, if they attend it; they could then be given the opportunity to say, 'I don't want to be contacted again.'

With regard to selecting the time and frequency of future contacts, again, a lot of the bigger organisations have the ability to do that but the smaller organisations do not have the databases or the back-end mechanisms to plug in when somebody wants to be called and make sure that they are called at that time. The only other issue with regard to the clients is the consumer being given the option of having the product disclosure statement read out on the telephone to them. This comes back to the issue of 'because of', because there is not a sales pitch going on during the telephone call for the timeshare product, so it would seem a bit odd that a company would, if asked, then have to read out the product disclosure statement during the call. There are some inconsistencies there that could be better handled.

The other issue that I want to cover with you is the issue of consistency. This is a real, increasing problem that we are having generally in the direct marketing industry and, I guess, in relation to this too. As we have said before, it has two aspects: first of all, consistency between two pieces of federal legislation; and, second, consistency between federal and state legislation. With regard to federal legislation, I think a good example of this is the Privacy Act, which I am sure you know very well. The Privacy Act is probably the single most important piece of legislation for the direct marketing industry because it is all about the use of data, how data can be used, what you have to tell the consumer and that sort of thing. Obviously, direct marketing is all about using some of this data to make sure that you target them properly with promotions, telemarketing or whatever the case may be.

Recent introductions to the law have tried to stay in line with the Privacy Act. We have had the spam legislation introduced. They have tried to keep the same concepts running through the legislation so that businesses who are subject to the Privacy Act, which is kind of an overarching piece of legislation, and who are also subject to the something like the Spam Act, which is a very channel-specific piece of legislation, face the same sort of flow that goes through both pieces of legislation. This has not really worked with the antihawking provisions. The antihawking provisions have taken quite a separate direction from something like the Privacy Act. That means that companies will be subject to both the Privacy Act and the antihawking provisions, and there are contradictions and difficulties between the two.

To give you a quick example of that, the antihawking provisions apply if you are making an unsolicited call. Under the Privacy Act, an unsolicited call is a call where you do not have either expressed consent or inferred consent of the person receiving the call. Once consent has been given and that individual has said, 'It's fine for you to phone me,' that applies to the organisation, so the organisation can phone that individual. It does not matter what product line they are trying to sell to them; the organisation has that right to call. However, under the antihawking provisions, it is quite different because a call is seen as unsolicited unless there is positive, clear and informed consent on behalf of the person receiving the call. There is no room there for inferred consent at all. Consent relates to the specific product that you are selling them, and it does not recognise existing relationships, as the Privacy Act does.

When companies are trying to deal with this, they have one set of laws that apply to every other form of direct marketing they are doing and then suddenly, when they are doing telemarketing in the timeshare or financial services spheres, they have a whole different set of rules applying to them. It is causing problems. It is causing confusion for businesses because, as I have said, there are different sets of rules. They need to understand terms like 'unsolicited' to

know if the law applies to them. It is important because, if you get this wrong and you think the law does not apply to you but it actually does, obviously there are penalties in place.

The other area of concern is the inconsistencies that are starting to arise between federal and state laws—and we have seen this particularly in the telemarketing area. We have had new legislation introduced in New South Wales and Victoria which relates to telemarketing. Both of those laws are different from each other. What it basically means is that, if a company is telemarketing in more than one state, they have different laws if they are calling into Victoria, into New South Wales or into the other states. The laws are all different and it makes it incredibly difficult for national companies to comply. I am not saying that this issue is a problem at the moment in the timeshare area; what I am saying is that, if you do move on and you decide that you want a new regulatory regime, this really does need to be taken into account to make sure that these kinds of contradictions do not happen again.

To summarise, I am not really pre-empting the outcome of this inquiry. I am not in a position to say whether time share should be subject to a new regulatory regime or whether the current regime is sufficient. I am commenting on a very narrow aspect of it. All I am saying is that I think it would be useful both to take into account the current federal legislation—particularly the Privacy Act, which is currently undergoing review—and to make sure that any scheme that you do come up with takes into account that we should really try to stop any state legislation that may make it extremely difficult for companies to operate on a national basis.

CHAIRMAN—Thanks very much, Ms Sangster. Do you advise the timeshare industry as to how they should operate so they do not, for instance, breach the Privacy Act provisions in their marketing?

Ms Sangster—ADMA is not in a position to actually offer legal advice on that. Our members do come to us and ask us for guidance as to how to comply, but we do not offer legal advice.

CHAIRMAN—I take it from what you have said that the problems that you have raised are problems that relate not to just time share but to any telemarketing or direct marketing where the actual sale of a product does not take place at that time and the contact is a prequalification call in effect or a call to try to get someone to attend a subsequent marketing presentation.

Ms Sangster—In the financial services area, yes, because it falls under the Corporations Law and it is not clear whether the call is actually going to lead to the sale of a product or service or function or whatever it may be because there is no clarity as to whether the law actually applies to the telephone call. That is what is causing the problem with the current legislation.

CHAIRMAN—Whereas it directly applies in the case of, for example, someone ringing up, as I have had happen to me, to sell some term life insurance over the phone?

Ms Sangster—That is exactly right. As the previous people were saying, obviously protection is needed there. Again, I am not in a position to say whether the FSRA or the Corporations Law is effective as to that means, but protection is needed.

Ms BURKE—Do you know the sort of process that would be used in a telemarketing sense for timeshare sales? Do you have any inside experience of how they actually go about the process?

Ms Sangster—In terms of?

Ms BURKE—What they do and what they say and how they say it.

Ms Sangster—Obviously every company is different. Not only are companies different; they are always changing marketing techniques. As you know, if they find something that actually works they will evolve through that, so it is difficult to give examples of what they would say. The only thing is that the telephone call is very much about being invited to the seminar. It is not about the product itself.

Ms BURKE—So would it be very different from other telemarketing? Would time share be the only group where you are being canvassed to turn up to something as opposed to buying something?

Ms Sangster—I think it is the only group for which it has become standard practice to do that. Whereas the others may do it in the odd instance and invite you to come along to something, in the timeshare industry it has become standard practice to actually invite people along to a sales briefing or forum, because they can get the right information across there.

Ms BURKE—Do you know how they would select and therefore phone these people? Do you know what means they are using to capture the market that they want to get?

Ms Sangster—There are a number of ways that they can do it. I read in one of the submissions that was put forward that they use publicly available data. That is a possibility but it is more likely that they are going to rent a list of people who have indicated in some way that they are interested, because obviously the better your list or the better the target the more response rate you are going to get.

Ms BURKE—How is that regulated in respect of the privacy provisions and the antihawking provisions that you mentioned before?

Ms Sangster—The collection of data is actually regulated by the Privacy Act. Especially with publicly available data, there are rules as to what public data you are allowed to use and which data you are not allowed to use. With regard to getting data from any third-party source, the first time that you contact that individual, the first time you market to them—or as soon as possible afterwards—you have to offer them an opportunity to opt out of any further marketing communications from that company.

Ms BURKE—I am not being rude, but telemarketers do not exactly have the greatest reputation, and most of us hate you calling—let us be brutally honest. In the industry, are there some groups who are more unhappy about how other telemarketers are selling? Are some telemarketers groups unhappy with the timeshare approach and being dragged in? In this inquiry we have heard about the fairly unscrupulous marketing practices of time share, that it is a fairly heavy sales pitch and fairly in your face—'Sign up now.' Have any of your other industry bodies

who are outside time share had any cause to complain about the marketing techniques? Have you had any complaints brought to your attention as an association?

Ms Sangster—Particularly about time share?

Ms BURKE—Particularly about time share, yes.

Ms Sangster—Not particularly about time share. I think that the more established players in the market really do have their marketing techniques down to a fine art, and they do take into account all of the codes and standards that they have to comply with. The only thing that could possibly be an issue is where people on the telephone are not actually aware that they are attending a sales briefing. They think they are attending because they have been offered a cheap holiday or something like that, and they go along and it turns into a sales briefing. Obviously our kind of practice would say you definitely cannot do that. It is false and misleading to do that. Similarly, there is other legislation in place that deals with that sort of misleading advertising.

CHAIRMAN—As there are no further questions, I thank you very much for your presentation to our inquiry.

[2.47 p.m.]

CONSTANCE, Mr Clive Edward, Manager, Paradise Timeshare Club Ltd, trading as Port Pacific Resort

WALTON, Mr Anthony (Tony) Gilbert, Chairman of Board of Directors, Paradise Timeshare Club Ltd, trading as Port Pacific Resort

NISSEN, Mr John Andreas, Resort Manager, Kyneton Bushland Resort Ltd

CHAIRMAN—Welcome. Do you have any comments to make on the capacity in which you appear?

Mr Nissen—I am chairman of Sunraysia Resort and Lake Edge Resort, and I am a board director of Nepean Country Club.

CHAIRMAN—The committee prefers that all evidence be given in public, as this is a public hearing, but if at any time you wish to give evidence in camera you may request that of the committee and we would consider such a request. I invite you to make an opening submission or opening submissions, at the conclusion of which we will have some questions.

Mr Constance—On behalf of the chairman of Paradise Timeshare Club Ltd, Mr Tony Walton, and board members, I thank you for inviting us to participate in today's hearing. I have been a participant in the industry for 15 months, whereas Mr Walton has been a co-owner for approximately 20 years and a director for most of that time. In the short time that I have been involved in the industry, I have come to two key conclusions. Firstly, everyone in the industry and governments gain substantial monetary and/or business benefits out of fully subscribed resorts such as Port Pacific Resort—everyone, that is, except for the resort and its co-owners. Indeed, there are very specific examples whereby our operating costs have been driven up sharply because of the policies of second and third parties. Secondly, the cost and complexity of providing services to our mum and dad co-owners in the areas of resales, business management and holidaying is overwhelming for a small to medium sized business. We are not a financial services business, yet we are regarded and regulated as such in certain business activities.

The aims of our submission are reasonably straightforward. Firstly, we hope to influence any review of national and state regulations to achieve more focused and industry-specific legislation. Indeed, we are of the view that this Commonwealth parliamentary inquiry should be mirrored by the states. States need to bring their respective legislation into line with each other. Our owners are scattered in all states of Australia and overseas.

Secondly, within the context of redefined legislation, we hope to achieve a demarcation between fully subscribed or sold-out schemes, such as Port Pacific Resort, and the other business operations of developers, management companies, marketers and multinational corporate groups. Thirdly, we hope to achieve a consequential outcome whereby the costs of compliance are reduced, the simplicity of compliance is enhanced and our co-owners can enjoy their annual holidays without having to worry about escalating costs and industry politics. The vast majority

of co-owners bought their time share to have a holiday. For most it was a lifestyle decision, not an investment decision.

Now I will address some additional specific points. Our shares are linked to titles. That is not the case in all resorts. When a co-owner becomes delinquent in their annual levies the resort can, after a specified period, initiate forfeiture procedures to recover outstanding debts, membership, shares and certificates of title. Whilst the former three issues can be dealt with as a matter of process, it is most difficult to recover title, depending on the parent state of the resort or business and the known last whereabouts of the co-owner. At the end of the day, if title is not recovered quickly, all other members or co-owners are disadvantaged.

The separation of or distinction between co-ownership and membership of a resort is a confusing subject for many. It is fuelled by the complexity and cost of recovering title to bricks and mortar against the relative simplicity of cancelling membership or buying, selling and transferring a share. Next, because of generational change, a change in economic circumstances or a change in industry initiatives, an increasing number of co-owners are looking to sell their co-ownership or their shares. A smaller number want to buy additional shares or weeks of time because of new extended families. Legislation should permit fully subscribed resorts to manage such resales with minimum costs and minimum legislative intrusion. We must be able to introduce our co-owners who want to buy to co-owners who want to sell. We should be permitted to look after our existing and prospective co-owners.

With regard to ATHOC, we agree that there is a need for a regulatory body. However, one must ask: 'What is the balance between the needs of our co-owners and a buyer of time share at a new timeshare development or holiday ownership program?' On a day-to-day operational basis, we get all the operational and industrial support that we need through our membership of the Hotel, Motel and Accommodation Association of Australia. That membership costs us a fraction of the $8,600-odd that we pay at present each year to ATHOC. The only benefits that are derived from membership of ATHOC are: (1) access to formal dispute resolution procedures and (2) reduced cooling-off periods. Such benefits only become tangible if one is actively involved in promoting, selling or buying time share. ATHOC is not able to offer us anywhere near the level of support that we get from the HMAA. We support the line taken by Kyneton Bushland Resort and the Law Institute of Victoria. I will now hand over to Mr John Nissen.

CHAIRMAN—Thank you, Mr Constance.

Mr Nissen—I support everything that Clive has just mentioned. I have been involved in this industry for 15 years. I got involved when the developer fell over in four timeshare resorts and we found ourselves, as a group of owners, in a position where Sunraysia Resort, Lake Edge Resort, Murray Valley Resort and Kyneton Bushland Resort—which all had previous names, by the way—were close to insolvent. The collection of maintenance levies was less than 60 per cent and they were going down the drain pretty quickly. They were not maintained and so forth. The first thing we did was to hop in there. We reorganised the constitutions and introduced new constitutions to each of the companies. We split the share from the title. We are slightly different in Victoria from New South Wales in that we have a one fifty-first interest in each of the apartments in a particular resort rather than an interest in the whole of the property.

We then forfeited all those members who did not pay their maintenance levies for a certain period. They were outstanding for periods of three and five years. In some cases, particularly in the Kyneton Bushland Resort, we would have re-engineered about 60 per cent of the share register over the first three years of taking it over. Having done all of that, I must say now that we are collecting, both at Sunraysia and at Kyneton. Kyneton is a few points behind Sunraysia, but I hold Sunraysia up as being the best structured and managed resort in Australia. We run at an occupancy of about 96 or 97 per cent. We collect 98 per cent of our maintenance fees, and we have a natural attrition of memberships of one to 1½ per cent per annum.

I want to talk about natural attrition. These are defaulting members and they are also members who are getting on in age. They have no use for their memberships any longer and they relinquish them to us. We accept that. We take their transfer of title, put that in the resort's name and sit with a blank transfer on the share certificate. If a buyer comes along, we just fill the buyer's name in and transfer the share over.

Having forfeited all these members, we have got the weak owners out of the organisations. These were owners who were put on linked finance contracts—and we can talk about linked finance contracts, which we still see going on. Having got out those sort of people who should never have been lifestyle investors in the first place, we have the problem of getting the titles. One of the holy grails in our industry, or our resorts, is how to get these titles back into the corporation's name, because these are titles that are subject to a 99-year lease to the management company, which is the share based company that we speak of. Come the expiration of that lease, what will happen? The legal advice is that the programs will continue because the titleholders will never meet. It has to be a unanimous decision to move on into a further lease. They will never get together. We do not know who they are—they are dead and gone—and there are titles all over the place. So we need to get these titles back into the company's name for the benefit of the shareholders.

Other things we have had to put up with on the management side include the selling of time shares at, as I heard before, anything up to an average of $10,000. We can talk about shares being sold in the $20,000 to $25,000 range. When people fall over, come to us and want to sell, they are looking at $3,000, $2,000 or $1,000. You can go onto the internet. We direct our people to reselling groups, because we are not in the reselling business. The resellers offer them at $500 less than what we are selling them for; they slip under our price. If we are selling them for $3,000, they will offer them at $2,500 and give the vendor less than $1,000 for their time shares. So they are literally getting screwed out for less than 10 per cent—perhaps five per cent—of what they paid in the first instance.

Our view on a secondary market is that we would be quite happy if we could sell our own shares at each of the resorts. We have developed our own secondary market, and that is the demand that comes from the guests who come and stay with us and also our shareholder base. The best advertising you can do is to get your membership base to introduce their friends. We do not sell; people buy. In the case of Sunraysia Resort, we would turn over 40 to 50 resales each year. When I talk about resales, these are forfeited shares that we pass on to new participants. At Kyneton Bushland Resort it is around 25 to 30. All these resorts are fully sold-out resorts.

I can say that we at our resorts are very content with where things are. We would like the ability to get the titles back. In the case of Sunraysia, we would like the ability to offer a buyback

facility at a fair and reasonable price to our membership base who have hardship stories or are finished with their use of their time share. We feel obliged to help them out of their problems, so we like the ability to buy back something like two to three per cent on a per annum basis, as that would be our recision level.

I heard before about the position of ATHOC. Our view on ATHOC is that it does very little for the independent sold-out resorts—it is dominated by the big players in the industry. I am sitting here representing close to 15,000 members. With Port Pacific Resort we represent about 30 per cent of the title based resort membership base. So we believe that we have a pretty significant position in the marketplace. We do not see that we get a whole heap of benefit from ATHOC at this point in time. Our resorts are members of VECCI, the Victorian Employers Chamber of Commerce and Industry, which costs about $1,000 a year, and we are paying ATHOC some $7,000 or $8,000 a year for membership. The only thing that we get out of that is the regulatory exemptions that were required by ASIC several years back. I would like to respond to some of the comments that Senator Chapman made before on the maintenance levies and so forth and where they go. I would like to counter some of those comments because we do not quite spend $25,000 on an apartment.

CHAIRMAN—Would you like to proceed with that now?

Mr Nissen—Indeed.

CHAIRMAN—Does Mr Walton have anything to add?

Mr Walton—I would support the concern about the perception of expense. I think it is very important that the committee understands the problems with the cost structure, the recovery of costs and the on-selling problems at each resort. The levies that we do collect are based on a cost budget. That is how we do it. It may work out at $25,000 or what have you, but we have a very high cost structure in place. Our total levy could be to the tune of $1.6 million and our labour budget is $1.2 million to $1.3 million. That is all spent on giving service to the owners, tariff rentals and the other areas where we have to raise funds outside the normal levy structure. That is done in the interests of keeping the levy affordable to the owners.

There is a big variance across the resorts, say, on the Gold Coast as opposed to those which are elsewhere. The Gold Coast is the Mecca of time share, and I think it is held in a higher level of regard as far as ownership goes. People have expectations. When sales are made, the people who buy in our resort do not pay big money for their weeks. It is essential that the levies are kept at a level that they can afford or we suffer an attrition rate or a delinquency rate, which really gives us a problem because of our inability to make up for that shortfall of payment that they make. The resort really has nowhere to go in the collection of funds to support its budget once those delinquent owners fall over. To that extent I would certainly support what John is saying.

CHAIRMAN—Thank you, Mr Walton. Your resorts are fully sold-out schemes. On the other side of the coin you have the Accors and the Trendwests, who are continually building new resorts, as I understand it, which are based on a points scheme rather than a title scheme, for want of a better word. There is also the group who are involved in the beach houses, Classic Holidays. I understood that they were a fully sold-out scheme, but they say they are now in the process of converting to a points scheme. From what they have told us, up until recently they

were a fully sold-out scheme. They also seem to be a core member of ATHOC. I think the chairman of ATHOC is one of their executives. Can you perhaps explain the difference between them and you. They seem to me to be running the same sort of scheme as you, but they think ATHOC is good and you think it is not providing what you need.

Mr Nissen—The chairman of ATHOC is from Classic Holidays, and Classic has two other representatives in two other departments of the board. Classic is a developer, a management company and has now bought 50 per cent of dialanexchange.com, so it is in the exchange business. It has started the Classic Holidays Club, which is points based, converting some of the members in the title based resorts that it manages into points.

Holiday Concepts is another group that is on a par with Classic, I would suggest. Of course, where the Trendwests and the Accors are coming from is a new part of the industry and I suspect that we are probably the dinosaurs of the industry. Having said that, there are still 60,000 to 70,000 Australian families who have title based, old-style, week-for-week exchange type activities. But there is no doubt that the points based business is the future of the industry.

CHAIRMAN—Is that good or bad, or are you indifferent to that change?

Mr Nissen—It is a new product, a different product. It is in the timeshare business. There are holiday clubs as well, the BreakFrees and those sorts of groups, who are selling room nights to the RCIs in the exchange business. So there are a lot of different players, a lot of different styles of products. It is a bit like a wolf in lamb's clothing, if you know what I mean. You do not change the leopard's spots; you just re-engineer and reinvent a tired old system, you put new clothes on it and you put it out in the street again. It is happening in the UK, it happens in South Africa and it is happening in America. Australia happens to be a little bellwether down south, so we are being blessed with the big boys from America and South Africa that are pushing these big schemes.

Clearly, the points scheme is offering flexibility; there is no doubt about it. But what do you buy into when you buy a points scheme? There is no hard physical asset that goes with it. We can talk at length about whether you are actually buying a physical asset or a lifestyle holiday program when you buy a title based resort. This is where we have a lot of difficulty with the tens of thousands of dollars that people pay, because you can look at that apartment and you can say, 'That is not worth $500,000. That is not worth $1 million, that apartment.'

That is why, down at our level when we are doing the resales, all we are interested in doing is collecting our maintenance fees. This is the best business you have ever come across. You have 100 per cent of your members paying 100 per cent of the maintenance fee on the financial date it is due. You tell me another business that is as good as that. You can sit back for the rest of the year and have a holiday yourself. It is not quite as easy as that, regrettably, but if you can get your happy owners paying their maintenance fees and you treat them fairly they are very happy with the product—and we have worked very hard over the last 10 to 15 years to achieve that from a group of very disgruntled, wrong people in these resorts who were sold on very expensive linked finance packages. But it has turned out to be a very strong product for these particular 14,000 people.

CHAIRMAN—So did this arise on the initiative of people who had bought into the scheme, in effect taking it over?

Mr Nissen—I think I can answer for Tony and me. We have both been long-term chairmen of our resorts. They are all owner based boards of directors, no outsiders at all. We do not have management companies, we do not incur management costs and I think in Tony's case there are no directors' fees. I introduced low directors' fees—you cannot get much out of the timeshare members but you can get a few bucks for directors' fees.

CHAIRMAN—But you are members of the schemes yourselves?

Mr Nissen—We are members of the schemes.

Mr Walton—You cannot be on the board unless you are an owner. If I could give you my experience: I bought in 1985 and I must confess that I was subjected to the guru of salesmen—he was good. But I have never regretted it. I paid $6,800 in 1985. If I got $3,000 tomorrow I would be lucky. I do not see that as a problem; that is just how it is. It was not how it was sold, but that was a long while ago. We formed an action committee to get rid of the committee that was there. According to the constitution it was a committee formed by the developer, and we got rid of it. Then we got a board full of owners; there are seven of us. Two of us have been on the board since then, and most of us are fairly long term. We saw the points system come in. We were one of the first ones approached under the points system by RCI. It was not much of a presentation, I would have to say. It was all about handing over your title deeds and paying $3,000 or $4,000 for the privilege of another 1,000 points. It was a dreadful presentation. It only lasted a week and then they withdrew it.

But all the exchange companies were in the same boat. This was their new method of recycling the old product; they had to change. We resisted the points system because the co-owners do not control it. They can change the goalposts tomorrow—who is to say?—so that you can get airfares or you can get hire cars. Our resort is fairly highly valued. At the time, they put Port Pacific at 59,000 or 60,000 points. You might have got three weeks holiday at some lesser resort somewhere else, and that was the selling point. That might be fine for some people, but somewhere down the track what is to stop them from moving the goalposts? What value do they put on a cab ride? There were all these things; there was nothing solid there. It was just another method of selling. The big worry was the handing over of your title. From our point of view it was a real concern because, if they really followed it through to a logical conclusion, they could manoeuvre the manipulation of our board—if it got to that point. It was indecently pushed, and that was the worrying factor.

The resorts are subject to absolutely no financial input from these people and yet they are the tool by which they all earn their living. This is what they do. The people who control the resorts up north, the ATHOC board and what have you, are not what we call 'indigenous' owners—I have to use that word. The hard-core mums and dads who go in and buy their holiday are the people who run our resort, as I am sure they run other resorts. But the mums and dads are not the people who control the industry at the upper level and they are certainly not the people on the board of ATHOC. Somewhere they have lost the plot or business has got in the road, and that is our real concern. We are becoming isolated because, through their management companies, they are grouping time shares together, which will exclude those who are not in it.

The whole basis of time share is the ability to exchange. If you lose that you get a very limited view, and owners do not understand it until they phone up, try to exchange and cannot—and of course there is always a new level of fees for exchanging. So there is this level of income that is being generated and the resorts are being used. It would be a bad week if I did not get two calls at home from Accor or Trendwest—I live in Taree. So I let them just go on with their selling spiel and, contrary to what the witness said before, they are quite good. There is nothing offensive about it. Then I tell them I am on the board of Timeshare and that is the end of the conversation. But they are entitled to call me. It is ongoing all the time, but I would never say that it was offensive.

CHAIRMAN—Could you clarify something. In your case, your owners own the title to one-fiftieth of a resort or whatever it is and therefore they can appoint the board. If you are on a points system, there would really be no way of effectively having the owners appoint a board, would there, because the points can relate to any resort in the world. They are not tied to one particular resort.

Mr Nissen—As I understand it, the points system is a unit trust system with a manager as a responsible entity who has an underlying portfolio of assets.

CHAIRMAN—Properties.

Mr Nissen—Properties, time shares or whatever it might be, yes.

CHAIRMAN—But from a practical point of view it is, as you have demonstrated, reasonably practical for your owners to be able to appoint the board and control the management of the resort.

Mr Walton—Very much so.

CHAIRMAN—Whereas it would be very difficult in a points system for the owners of all those points to get sufficient people together to change the manager or the responsible entity.

Mr Nissen—That is correct, and I think one of the problems that Tony has is that the Interchange Vacation Club have five per cent of his register, and the Classic Holidays group have five per cent of the register as well, through the points system. We have it slightly differently down our way, where you have to differentiate between the owners of the blocks of land and the shareholders. We really forget about the owners, albeit that we want to get the titles back, because we do not have to talk to them for another 80 years, but they are not as dominant on our share register as they are on the Port Pacific share register.

Mr Walton—We have 4,000 and 29 weeks. If the owners there are subjected to a points conversion and those people accept the deed then we really only have another owner. It has to be registered at the resort before anybody can vote anywhere. We have a share register, and you have to be on it and paid up before you can go to the AGM. The people who have acquired weeks at Classic Holidays and the Interchange Vacation Club, in some instances for on-selling—and that is another problem we have—have never been a problem. In most cases we may get their proxy or something of that nature. We have had representation to the board in one instance, which we rebutted, but, putting that aside, I could not say that it is a problem. Our biggest worry

is that we have no control over who those weeks go to. The last time I counted, we had one owner in France, 36 in New Zealand and about 12 or 15 in Malaysia. You cannot get to them. They do not pay their levies. Some of the New Zealanders might, but they are very disaffected owners because they have paid big money for a week—$12,000 to $15,000 in New Zealand—and they come over here and find it is worth $3,500.

CHAIRMAN—So these are people who have bought into your resort—

Mr Walton—Through Classic or Interchange.

CHAIRMAN—because one of the original owners has exchanged their entitlement for points in Classic.

Mr Walton—Yes. They are in the resale business.

CHAIRMAN—But these people have not bought points; they have bought a share in your unit.

Mr Walton—I am not sure. At this stage I would say they had bought the week. I do not think it would be a points conversion.

CHAIRMAN—So they have bought the week from an original shareholder and sold it to someone else.

Mr Walton—Classic has bought it from us. They have bought it from Classic.

CHAIRMAN—The original owner would now have points from Classic instead of their week.

Mr Walton—Yes. The biggest problem is that they tell you that the gap between the price paid by a reseller and the next selling price is as a result of regulatory costs, asset charges and the costs of complying with the selling point. The price suddenly leaps from $2,500 or $3,000 up to $12,000 or $15,000 and sometimes higher. I have no idea what profit margin there is in that but I am sure it is not small.

Mr Nissen—It is patently obvious that to establish yourself in the marketplace, if you were Classic or Interchange, you would use your database of existing members. Clearly, the product of Accor and Trendwest is quite different. I am not sure that they are building product; they are actually buying units in new apartment developments. I am not sure that they are developers. Aren't they buying blocks of 20 units in larger unit developments?

CHAIRMAN—That is part of what they are doing.

Ms BURKE—Trendwest is building.

Mr Nissen—Trendwest is actually building some; you are right. But Accor, of course, are a hotel group and they have a mixed use concept.

CHAIRMAN—Does that mean that your members have fairly limited exchange opportunities, or are they not interested in exchange?

Mr Nissen—Exchange is the whole core of the timeshare industry.

Mr Constance—There is a growing perception amongst our members—it is yet to be proven—that their choices are limited if they do not go to the points system, rather than using the traditional exchange system. Generally, across the whole industry, that is probably true, in view of the fact that we are moving more from a traditional bricks and mortar exchange to holiday ownership. Anyone can be accosted in a Westfield shopping centre, for example, and be invited to attend an evening seminar where you can pay $4,000 to become a member of a holiday club and, for another $400 or $500 a year, have an annual holiday. The actual costs of doing that are not really all that different to the costs today of purchasing a time share with a certificate of title—bricks and mortar—at the resort. The difference is that you do not own a tangible slice of a building; you just own the right, one day in the next 12 months, to go on a holiday somewhere.

CHAIRMAN—How does your exchange system work compared with how Accor or Trendwest operates through RCI or whatever? Do you do a direct exchange?

Mr Constance—We do it on an exchange system. Our members, our owners, go to RCI, IVC or any of the other exchange companies and exchange their week of time at Port Pacific Resort. We are one of the most sought-after locations for holidays in the timeshare industry, not just in Australia but also overseas. So we get a large number of timeshare exchanges coming from the United States and New Zealand, and we get some from Canada and Europe as well.

CHAIRMAN—So the reality, as distinct from the perception, is that your owners do not really have a big problem if they want to exchange and go somewhere overseas?

Mr Constance—No, but they believe that if they want to do a traditional exchange they are being limited on where they can go, whereas if they converted their week of time at Port Pacific Resort into a points based exchange then they would have a greater choice of places to go. I suppose that is the reality of where the industry is going.

CHAIRMAN—Is RCI controlling that or is it Accor or another company?

Mr Constance—It is not just RCI; there are many players.

CHAIRMAN—So the exchanges themselves limit the exchange opportunities for your members, as against the points based members.

Mr Constance—There is a growing perception, and where there is a perception there is often some fact. Also, within the points exchange system the various operators have various sub-schemes. One is that for the period of the exchange of their time for points—up to three years in one instance—the exchange company gains control of the title. So for that period of three years, for instance, that exchange company can come and legitimately vote at our AGMs and add to any time share that they may own as well. So at any point in time they can have a substantial voting bloc within the company and therefore wield influence on the board at any AGM.

To clarify a point about Classic Holidays, as I understand it, a lot of time share at Port Pacific Resort was sold to Classic Holidays specifically for the purpose of resale. Classic Holidays then resold some themselves directly. I believe that in the case of New Zealand they passed it on to a third party who resold it. Last year I copped the wrath of many New Zealanders. Our closer economic cooperation with our Tasman Sea partners came to a low point when they came over here for their first holiday. A lot of those sales came with a free airfare attached for the first holiday. That airfare was basically at the expiry date. A lot of these sales happened approximately three years ago.

They came over, having paid up to $NZ25,000 for their time share at the resort. They enjoyed their time and said: 'Right, we've been here. We want to sell.' Firstly, we cannot take that on; we are not permitted to under legislation. Secondly, when they discovered that the resale value was about $3,000—that was normally the total cost with all the add-ons; the actual value was about $1,500—I had plenty of angry Kiwis. Most of these problems come back to the manager at the end of the day. Quite often you listen during the day and you work at night. That was just to clarify the point that Classic themselves were not actively on-selling for those higher things. In a lot of cases they used third parties to on-sell.

Ms BURKE—Mr Nissen, you were going to tell us your concerns about linked credit. I thought you might expand on that.

Mr Nissen—I am not quite sure what the definition of linked credit is.

Ms BURKE—I understand what it is.

Mr Nissen—They put options back to the developer, which I do not think are disclosed. That is how they do the finance on the spot.

Ms BURKE—Do you sell any new stock?

Mr Nissen—No, we have no new stock to sell.

Ms BURKE—I suppose it is a bit difficult—Classic is building some others—but even though they are sold out at Beachcomber they have a sales department.

Mr Nissen—They are just selling Classic product.

Ms BURKE—So you are not in the sales and marketing area anymore?

Mr Nissen—No, we are timeshare managers.

Ms BURKE—You are timeshare managers nowadays. When you originally sold the product that you bought, did you think you were buying an investment?

Mr Walton—We were in a brand-new building and it looked pretty good. If it were a nice day in Port Pacific Resort, you would have to say, 'This can only go up.' There was no doubt about it, thinking back. There is no way anyone would have said it was not an investment. I cannot sit here and say that it was pushed hard, but I am sure it was a factor there. They had chequebooks

ready for you to sign on the spot in case you forgot your own. They had all points covered. You would have to buy it thinking that—and I am sure I did at the time—but you had no idea that it would escalate.

I was a little concerned at a comment earlier about the value of the buildings escalating all the time. They are really not worth anything to anybody unless you are going to sell them, and if you have 3½ thousand owners, you would have to get them all in one room at one time and say, 'Let's sign and sell.' It would not happen. Those buildings—ours especially—have their problems. Developers were not known for not cutting corners, and over time it has cost us a lot of money to fix problems that keep coming up. It is just one of the costs of running, and that is why it is terribly essential that we somehow get the right to recover the debts we have or to get our titles so that we can put an unsavoury situation in order. Sometimes the owners want to get rid of them and we cannot help them—we dare not even talk to them. It is a ridiculous situation.

Mr Constance—It is also complicated for us by the fact that ours is a nine-storey building, which makes it even more difficult to maintain. But the resort only has an interest in approximately 94 per cent of the building. The majority of the ground floor shops are on separate strata titles and they are owned separately. That complicates it for us, whereas in John's case there are second and third parties involved too, but some of the resorts have a 100 cent interest in their properties.

Senator MURRAY—I wanted to ask you about that. It is not an exact analogy, but some years ago this committee had to deal with legislation which proposed to make it easier for minority interests to be bought out of public companies. The committee considered that, the legislation passed and the market operates much more effectively. The greenmailers were very annoyed, but I do not think we were really sad about that. If a majority—and I am not referring an absolute majority; I am referring to 50.1 per cent—either by proxy vote or any other mechanism were able to agree that the entire body repurchase or reacquire a defaulting owner or somebody who is proving to be a nuisance, that would be very difficult to do at present. Is that what you are telling us?

Mr Nissen—The share is okay; you cannot force the transfer of the title.

CHAIRMAN—Other than by taking recovery action.

Mr Nissen—No, it is my understanding that, through the Land Titles Office in Victoria, you cannot change who signs the transfer. You cannot force someone to hand their title over.

CHAIRMAN—Except if they were encouraged to do it because you were taking recovery action against them and they are in arrears. That is the only way.

Mr Nissen—Indeed, but you have got to find them.

CHAIRMAN—The problem is finding them and dealing with them.

Mr Nissen—Exactly.

Mr BARTLETT—And then you can buy back the share.

Mr Nissen—The share we just forfeit.

CHAIRMAN—The share forfeits but the property interest does not, unless you can find them and force them to do it because you take recovery action against them.

Mr Nissen—Correct.

Mr Constance—In our case, we would need to have 4,029 titles basically signed over at the same time to be able to sell the interest. If there are one or two people who retain their title or we cannot find where they are, it throws a spanner—

Mr Nissen—I do not think Senator Murray was going quite so far as to suggest the sale of the property. Were you?

Senator MURRAY—I think any impediment to an operating capability needs to be addressed. In the end, it is not equivalent to a strata title situation where title is easy to identify and the process of ownership and the management of ownership are easy. This is an area where owners can literally be untraceable—that is my understanding of it. Therefore, the law would need to be adjusted so that an amount of money is put in a trust so that if ever an owner is found they can get it. But you are interested not so much in the amount of money put in a trust as in getting the title. It does seem to be an effective law at present, which is why I drew your attention to what we fixed in terms of minority interests with the Corporations Law. But this specifically refers to state legislation, doesn't it?

Mr Nissen—It does. We would like to see the principle where we had the ability to get a defaulting member's title back either by a court order or someone signing the transfer after, say, a two- or three-year period. And, for recalcitrants, if you just cannot find them or they will not deal with you, the share is gone and they are out.

Senator MURRAY—In probate law, there is capacity to determine that somebody can be considered deceased and you can set aside the estate in a particular way. I do not see why the same principle should not apply when you cannot trace somebody but that somebody may, in due course, emerge. It does not seem to be an insoluble problem without precedent in law. Although we have no authority over the states, would you like the committee to try and come up with some innovative ideas in this area which we might suggest the states look at?

Mr Nissen—With my companies, it would be close to the Holy Grail of our business. Resales is the other one, but that would be the best thing we could ever hope for.

CHAIRMAN—When you talk about resales, that is your capacity to get involved in resales.

Mr Nissen—There are two holy grails that I seek: resales and the title problem that we have.

Mr BARTLETT—If you could repurchase the shares, wouldn't that partly overcome the—

Mr Nissen—No, because we do not get the title with it. We only get the share.

Mr BARTLETT—Sure, but if you could repurchase the shares wouldn't that partly overcome the delinquency problem? If people knew that they could sell the shares back to you at a discounted price then they would be less inclined just to walk away.

Mr Nissen—The problem you have with that concept is that the bad members who do not pay the maintenance fees are relying on the good members who do pay the maintenance fees because that is where the money to buy back comes from. This business is a cost based business. The only place that you get the revenue is from the member through his maintenance fees.

Mr BARTLETT—But someone would be less likely to become delinquent if they knew that they could sell the share back to you.

Mr Nissen—At Sunraysia Resort, we now want the ability to buy back shares not of delinquent members—we have not got to delinquents yet; we put them at the bottom of the pile—but of those members who would like to redeem their shares. As I said, it has taken us 12 years. We are not talking about a pot of money that is a redemption and we are not talking about buying them for $500; we are talking about buying them for a fair value when they cannot get a fair value through the resale market.

Mr BARTLETT—What do you deem a fair value, then?

Mr Nissen—When we did all our forfeitures and so forth to restructure this thing 10 years ago, we flicked them all out at $500, $1,000 and $2,000. We have now got the price back to $4,000. We have the demand there; we want to get the stock to supply that demand. If we are selling them for $3,000 or $4,000, we would give the member $500 less than that. Our business is not around buying and selling securities; our business is collecting the maintenance fees and managing a good organisation.

Senator MURRAY—But, from a legislator's point of view, a scheme would need to be set up whereby independent arbitration is capable of being exercised and there is a fair formula so that the interests of those acquiring and the interests of those who either are not traceable or who are disposing are properly looked after.

Mr Nissen—People say to me, 'What happens if some of these recalcitrant members come back to you after 10 years?' and I say, 'It's very simple: I tell them to pay their back maintenance fees and we will give them the share.' They are then back in the business—although, of course, it is cheaper to buy a secondary share. So we are at no risk in that at this point in time. I would not like to be challenged too hard, but—

Ms BURKE—Do you have any excess stock that you also rent out?

Mr Nissen—Yes, we do.

Ms BURKE—Is there much of a market in that?

Mr Nissen—Port Pacific is probably stronger than my resorts, but Sunraysia Resort is huge. It is $600,000 or $700,000 a year of income.

Mr Walton—It is a balancing act between what is a fair price to pay for a guaranteed one week a year holiday and what a person thinks—$10,000? Hardly. Whatever that sum is, our job is to keep the maintenance to a level that is reasonable and keep the price to the point where they do not get disenchanted with it. There are owners who just will not pay their levies. At Port Pacific we have an off-street rental—a tariff business—which has always filled that gap, so we have been able to operate at the levy level at a reasonable price. The more that drops, the more the balance that the owners have to pay for the running costs of that resort, subject to cost cutting or whatever it is that we decide to do.

At this point Port is going through a drop of 30 per cent in tourist numbers. That has a direct effect on our rental. There has also been a lot of opposition accommodation built et cetera, but we do not worry too much about that. It has an effect but we reckon we can hold our own with that, and we have been doing that. But the number of people going to Port to support the tourist side of it is dropping—and the question begs: where do we go? We have a cost structure that we have had a levy set on which we cannot do anything about. Sure, we can hit a special levy, but that is not an option. If we lose that off-street rental and it becomes a severe financial strain on the resort until possibly the next 12 months when it does its budget, we will have to work through how high a level we can charge—and, I have to be honest, the GST has not helped. It is another 50 bucks a week that has gone on top, and owners see that as a levy cost. They have to find it. So the GST does not help either.

So there is this build-up of costs that we have to try to keep contained to a level that the average week owner can afford. A lot of people buy in and then they find out that they cannot afford it and then they cannot get out, and we are not able to help them. That is our dilemma as the management of the resort. We cannot help our owners. We have to tell them to ring the exchange company, and then they are in the hands of that body and we are not there to look after their interests. We really should be able to introduce a buyer to a seller with no penalties. We are not there for a profit; we are there to replace an owner who has a problem with an owner who wants to come in for a week's holiday—and we would have another happy owner in there again and we will get our levies.

Ms BURKE—ATHOC has argued that ASIC provides an exemption so that a sold-out club does not need an Australian financial services licence to deal in a secondary interest in time share.

Mr Walton—That is not our understanding.

Mr Nissen—We are licensed to resell.

Ms BURKE—I am sorry, I meant to say that ATHOC has argued that ASIC should provide that you do not need the licence in a sold-out situation? Would you agree with that?

Mr Nissen—We agree with that.

Mr Walton—Yes.

Mr Nissen—If Kyneton Bushland Resort wants to sell Kyneton Bushland stock to other people and Sunraysia to Sunraysia—

Ms BURKE—So the big thing stopping you is that you do not want to be licensed?

Mr Nissen—Correct. I do not think we need to be.

Mr Walton—It is the cost of having a licence.

Ms BURKE—Under the current legislation, if you want to, you have to have a licence. But you have not sought that because the cost of doing it is too prohibitive?

Mr Walton—Correct.

Ms BURKE—But, if you were exempt, you would be creating your own secondary market?

Mr Nissen—That is our point. We have the demand from our own membership base, people are staying who would like to buy, and we do not have that ability without a licence.

Mr Constance—I believe the starting cost, just to think about getting a licence, is about $25,000, and that is before you have to go through all the training and compliance issues.

Ms BURKE—And you would have to put up your maintenance fees to cover those costs—and you are going round in circles again.

Mr Nissen—That is what I said before, Senator Chapman: it is not $25,000 that we spent on a unit; we have all the other costs—you appreciate that, I understand—entertainment, facilities and everything that goes with it.

Mr Walton—It is balancing act of cash. It is all cash.

CHAIRMAN—Just a few moments ago you were talking about a fair price for buying this long-term holiday. Ordinarily you would say a fair price would be the cost of developing your one-50th of however many units are in the facility, plus some marketing costs, plus some profit for the developer. It seems to me that, with the prices that are being charged, there is a much larger marketing figure in there than there would be for a normal strata unit resort that was being sold off.

Mr Nissen—It is well recognised that 50 to 60 per cent is in the marketing costs of a primary week.

CHAIRMAN—And that is because they are bringing all these people in for free accommodation rather than someone just coming into a real estate agent and saying, ‘I want to buy this unit.’

Mr Walton—People have now made businesses out of reselling. They were not there initially because the developers were selling them. They are off the scene and now it is the reselling side. There are whole businesses—never in conjunction with the resorts; they are separate entities outside the resort system.

Mr Nissen—And the developers of course hate us at our end selling these weeks for $1,000, $2,000 or $3,000 when they are trying to sell them for $10,000 and $15,000. As I said, the product is still—

Ms BURKE—$20,000 and $25,000.

Mr Nissen—Exactly.

CHAIRMAN—You said earlier that you do not really get anything out of your membership of ATHOC but you are a member because you get some concession from ASIC as a result of your membership.

Mr Nissen—We get the exemptions that we referred to just before.

CHAIRMAN—I am sorry—which are?

Mr Nissen—Around licensing and the ISB concept.

Ms BURKE—And the cooling-off period.

Mr Walton—As a sold-out resort.

Mr Nissen—Yes.

Mr Constance—A short cooling-off period and access to industry complaints resolution.

Ms BURKE—Are you both still members of ATHOC?

Mr Nissen—Yes, we are.

Mr Constance—We cannot afford not to be at the moment, for that exemption.

CHAIRMAN—So it is still cheaper for you—that exemption is worth your membership, even though it is a high membership fee and you do not get anything else for it, from your perspective?

Mr Walton—We do not get any other regulatory problems if we are exempted. They got us the exemption through ASIC, and one of ASIC's rules is that you have to be a member of ATHOC or another body. We are in ATHOC, and we are looking at it on a time-by-time basis, but while ever we are required to be there to satisfy the exempt status we will stay a member of ATHOC.

CHAIRMAN—Are there are enough sold-out schemes with which you could form another body that could get the same exemptions from ASIC?

Mr Constance—I believe there would be.

CHAIRMAN—That would cost you less?

Mr Constance—In essence, Classic Holidays are a management company who have the management rights to 14 resorts. They are largely sold-out resorts. Classic have simply manoeuvred to get the management rights of them. They have not put anything into the capital of those buildings.

CHAIRMAN—Were they not the original developer of Beach House?

Mr Nissen—Yes, they were.

Mr Constance—Yes, that is right.

CHAIRMAN—That is what I understood.

Mr Constance—Twelve developments or whatever it was.

CHAIRMAN—And they have gone on from there, as it were.

Mr Constance—Yes. If, for instance, you took those types of resorts into account, there is a sufficient number of sold-out resorts in Australia. If you are not actively involved in it, you do not realise any of those benefits anyway. That is the point.

Mr Walton—At every conference that I have been to, and I have been to a few, they have a working party between the industry bodies and ASIC representatives. A lot of gobbledegook goes on. You do not gain anything from it. It always worried me that, because of the exempt status of wholly sold units, along will come some representative from ASIC who has never been down to look for themselves at what the situation is—although they may have up north—or to ask some questions at the grassroots level. So I can assume that, because of the industry requirements, they are only dealing with ATHOC, and I think they are getting a lopsided view. That is my concern now as the chairman of our resort.

CHAIRMAN—Apart from the right to be involved directly in resale yourself and the regulatory change that might be required there, what do you think would be the appropriate regulatory vehicle or structure for time share? Do you think it should sit where it is or should it come under the Trade Practices Act rather than the Corporations Act?

Mr Nissen—The question was asked before: is it a lifestyle or is it an investment? It is certainly a lifestyle product, and therefore I think it should not be under the Corporations Act or ASIC.

CHAIRMAN—It should not be?

Mr Nissen—It should be under the Trade Practices Act.

Mr Walton—It is more workable. It is a specific type industry. They could have their rules specific to time share just to cover whatever has to be covered. But we are getting roped in with the financial services act, and it really is a thorn in our side.

CHAIRMAN—You say that when you originally bought your share you thought, 'This should go up in value.' In that sense did you think you were making an investment, or did you think you were buying lifestyle?

Mr Walton—I am not sure what I thought—my daughter roped me into it. I would say it was a combination of everything. It was new to me. I thought we were going to look at home units. They were originally built for that, and they changed direction. They are very big units.

Senator MURRAY—Was it a specific part of the building?

Mr Walton—They had set up rooms. They had not been completed.

Senator MURRAY—Were you buying a specific part of the building?

Mr Walton—No, you just buy the right to a week.

Mr Nissen—In ours, people actually think they own something. They actually bought a one-51st interest in lot 171, and that has an apartment on it. They believe they own one-51st of that.

Ms BURKE—So they want to stay in that apartment every time they come?

Mr Nissen—They want to stay in that apartment and they feel at home. They actually think they own something.

Senator MURRAY—That is why I asked the question. You see, when you are talking lifestyle product to a property right, your end of the product is closer to the property right perception than is the points system, which is much closer to lifestyle.

Mr Nissen—Indeed it is.

Mr Walton—In the points system, to me you are buying froth and bubble—air. There is no tangible asset that you can see. At least in ours—

Ms BURKE—Every person does that nowadays. It is called FlyBuys; it is your credit card. People probably understand that concept better.

Mr Walton—We have pushed the line with our members to look after their resort: 'Don't damage your resort.' We are telling that all the time.

Mr Nissen—The damages are paid by the guest, by the member, by the exchangee. If you damage something—

Mr Walton—You pay for it.

Mr Nissen—That is within reason—we are not talking about glasses or plates.

Mr Constance—In my experience in the last 15 months I have met a handful of owners who had bought it as an investment. They are the angry owners. They say, 'We bought this; we expected the price would go up; we have been paying $500 a year to maintain it.' Now they are aware that others are selling them for $1,500 to $3,000, and they are angry. The other group who I see probably more regularly, who come every year and over the years have been fully aware that it is not an investment—it is a lifestyle thing—have bought additional weeks so that they come for a four-week block or for up to six weeks of time. I have owners there this week whose children were conceived at the resort 20 years ago—

Senator MURRAY—In room 252!

Mr Constance—Their children have now had children and they want to buy another week so that they can come and have holidays with the grandparents. They know it is not an investment. They are making a pure lifestyle decision. It is very easy to say it is this or it is that, but there is a balance. I think the vast majority of people, although there may originally have been a bit of positive thought about potential growth in what they were buying, very rapidly came for the lifestyle. Those who have used it as a lifestyle decision are those who have gained the greatest benefit from it because they have enjoyed their week of time there.

Senator MURRAY—But if you introduce the secondary market concept and you make buying and selling more feasible—and in my view that means that people will not only sell at a discount to the original purchase price but sell at a premium to the original purchase price—you will in fact return to more of an investment mentality, surely, because people will be buying and selling something that gives them a return?

Mr Constance—Yes. But do you go that way? All the resort is interested in is having working members who will pay the cost of running that resort each year.

Senator MURRAY—No. Get away from the members. We have to consider whether the proper home for this sort of regulation is ASIC or ACCC. That is affected by the way in which the consumer regards the product. I am saying to you that I am inclined to accept the lifestyle view of things. However, if you create a secondary market, so that there is no longer just an issue of trade or exchange but also an issue of being able to buy and sell your entitlement or right, you enter much more into the investment field than you were before, because people will feel that a profit is capable of being taken in certain circumstances.

Mr Walton—We see it as a service to our owners more than anything.

Senator MURRAY—Yes, but the secondary market would be entirely a matter for the person holding those rights.

Mr Nissen—As long as the secondary market is outside our bailiwick of being—are you going to create a secondary market on the Newcastle stock exchange or something of that ilk?

Senator MURRAY—But you surely do not care whether people make a profit; you just care that a regulator regulates effectively. Although you asked the question whether it should be ASIC or ACCC, it really would not matter that much to you, would it, if it were well regulated?

Mr Constance—It would matter to me in the context of my position as the manager of the resort. This is a selfish answer, but I would then be in a position where I have to answer the questions of that new owner when they come in with their great new investment to discover that there are also sales going on within the resort at a greatly lowered price. There are owners there who want to hand back, who do not want the liabilities of annual payments. I have 20 plus sitting on my desk at the moment where members just want to give me back their shares. So you would have to be very careful if you were going to create a secondary market to judge what the overall impact will be. Are you doing that to satisfy some greater good of allowing the market to flow and raise prices? If you do it for that reason, you run the risk some years down the track of a repeat of what happened on a smaller scale a couple of years ago in New Zealand when people were buying sight unseen.

I quite often get messages from overseas marketing companies saying, 'We have signed an arrangement with another company to market time share; can we have all the details and photos of your resort.' So I have third and fourth parties now, and I am refusing to supply them with information because I do not know who they are. You would have to look very closely at any concept of secondary markets.

Senator MURRAY—John Stuart Mill would say that if somebody wants to buy sight unseen, that is their right. That is what a market does: it allows people to operate on a basis that suits their attitudes and needs. It is not for you and me to decide that they should not be able to do that, providing there is disclosure and there is no deception. The key issue is that you are not deceived.

Mr Walton—But people are upset because they find they have been deceived by a sleight of hand, if you like. I know friends of mine in Sydney who bought for our resort. I think they paid $12,000 and all they saw was a video. I would say they are mad, frankly; I think they are silly.

Senator MURRAY—It is their right to be mad.

Mr Walton—It is their right to be mad, but we wear the result of it.

Mr Constance—The disclosure issue is important. In the case of resales at the moment, the resorts in most instances are not involved in the resale decision. Our resort is not involved in the resale activity. We are not part of the disclosure process. People are buying something based on information given to them by third parties. If the resort, under legislation, was made to be part of that disclosure process then I would probably feel more comfortable as a consumer—not as the manager of a resort, but as the consumer.

Senator MURRAY—That is a fair point.

Mr Constance—At the moment, there is no requirement for third parties to—they walk around town with postcards of our resort.

Senator MURRAY—What you are saying is the third party gets the benefit of the sale, but you get the liability. You do not want the liability unless you have been part of the sale.

Mr Constance—Exactly.

Mr Nissen—I do not have quite the same problems that I am hearing here, save that at our resorts we answer a lot of questions and so forth in a management sense. You go through the process of it all and then, all of a sudden, you find the transfers start coming through three weeks later from resellers at $1,000 or $1,500 cheaper than the $3,000 that we were offering. They have got onto the internet and picked up a cheap share, or they have gone into the *Trading Post* or something like that. That is okay; they have all got to be taken out of the market to get your price going again. That is okay, but I am not quite sure how you are going to create your secondary market.

Senator MURRAY—Maybe your experience is different, but consumers know that a product they are buying is being sold to someone else at a different price all the time. Take a hotel room. As you know, hotel rooms are constantly offered at different prices on the same night. There are different prices offered to groups, or if you come in at the last minute or you get a wotif.com discount or whatever, and you know that as a buyer of a hotel room. Why is it different in your operation?

Mr Nissen—I personally do not have an objection. All I want to be able to do is to allow Kyneton Bushland Resort or Sunraysia Resort to be able to resell shares in their own products.

CHAIRMAN—Which you cannot do at the moment.

Mr Nissen—No. We can create our own secondary market—I do not want Kyneton to be selling Sunraysia shares because the people at Kyneton do not have the expertise to know what Sunraysia is all about. That is one of those issues.

Mr Walton—The answer to that is that those people who are taking a hotel room only have it for a night or two nights, but here they are buying a long-term investment that they have no knowledge of. If everything was done as it should have been, if we had all the regulations, we would not be sitting here today. It is selling practices that have caused this problem, and they will continue to do it because they have to hard-sell. That is the problem.

Mr Constance—I agree. There is a limitation on the examples that you gave.

CHAIRMAN—Because they are creating more stock?

Mr Walton—That is right; it is their business.

Mr Constance—It is their business to get rid of them. They do not care how they do it. We have had practices in our own area using our resort—

CHAIRMAN—But if there was a limited stock, they would not need the hard sell because, to a greater degree, they would sell themselves if there was a limited supply. That is if you had a normal supply-demand situation, but here they continue to create more stock that they have got to find a market for.

Mr Walton—And there have been these changes to acquire that stock, so that they can resell and keep their separate resale businesses going. It is something that will always be there.

Mr Nissen—The other thing we tend to find is that maintenance levies, which you talked about, are not where they should be. The newer developments, or some of these marketing groups who are managers and have ongoing involvement in resorts, artificially maintain maintenance levies at lower levels whilst they are doing the selling program. These are not the genuine costs of running the resorts. Once they move on, the maintenance levies then increase quite rapidly.

Senator MURRAY—That comes back to disclosure.

Mr Nissen—That is correct.

Senator MURRAY—And that is back to the issue we were discussing, that the FSRA wants full disclosure of all costs so that consumers are fully informed. It is clear from the discussion we have had today that consumers are not fully informed. They are not sure of what product they are going to get when they actually arrive at the holiday they have got these points for and what the full costs are.

Mr Nissen—We have a package that we deliver to each buyer, which includes the annual report, newsletters, all our budgets, the constitution and so forth.

Senator MURRAY—I am not referring to your particular enterprise; I am referring to a general issue.

Mr Walton—If you are a prospective buyer it would be pretty hard to assess a resort, especially as most people probably are not capable of doing it. It would have to be very bad before it was obvious it needed a lot of work done. Or it could be an older resort that has really inherent problems that are not visible. You would never pick them. We have had major issues at our resort. You could buy in and then be hit with a substantial special levy to cover costs that you absolutely knew nothing about, and the management could claim they did not know anything about them.

CHAIRMAN—What happens to the revenue that the tariff-paying guests generates? Does that go into your maintenance fund?

Mr Nissen—It goes into consolidated revenue.

CHAIRMAN—So that would serve to, in effect, reduce the annual fee charged to your members.

Mr Nissen—It probably picks up the shortfall as well, one way or the other.

CHAIRMAN—It goes into that fund.

Mr Nissen—That is right. It goes into consolidated revenue, in our case, with which we enhance products and so forth.

Mr Constance—For Port Pacific resort, our members have a choice to use their week, exchange their week, convert their week to points or put it into the rental pool. If they put it into

the rental pool, I then manage that and rent it out to the general public as a tariff. Out of that we will take an administration fee and other costs because the annual maintenance levy is set on a set level of service to the apartment during the week that the owner will be there, whereas with the general tariff market there is an expectation of a higher level service—daily service of apartments et cetera. So we rent it out and return the net to the owner. That helps offset their annual levies.

Mr Walton—More and more owners, because of financial stress, are putting their week into the rental pool and we have got fewer and fewer people in Port Macquarie to rent the properties, so it is a working problem.

CHAIRMAN—Where is Port Pacific?

Mr Constance—It is in Clarence Street. It is right in the centre of Port Macquarie, diagonally across from the ambulance station.

Mr Walton—You don't stay at Sails, do you?

CHAIRMAN—No. I was not even aware which town it was in.

Mr Walton—They are the opposition. We are the best in town!

CHAIRMAN—Thank you for your appearance before the committee. I think the length of time we have spent with you indicates the extent to which you have contributed to our inquiry.

Mr Walton—If you are ever in Port Macquarie, you know where we are. It does not hurt sometimes to come and have a look-see.

[4.03 p.m.]

STAVELEY, Mr John Peter, National Manager, Infrastructure and Investment, Tourism and Transport Forum Australia

CHAIRMAN—Welcome. The committee prefers all evidence be given in public but if at any stage you wish to give evidence in camera you may request that and the committee will consider that request. I now invite you to make an opening statement, at the conclusion of which we will have some questions.

Mr Staveley—Tourism and Transport Forum Australia is a tourism transport infrastructure group. We have numerous members in the hotel investment and accommodation sector. We have members in timeshare businesses and others in strata titled accommodation development, where timeshare businesses may have property interests. We are pleased to have made a submission to the committee and we are pleased to offer a few thoughts at this stage.

In our view, time share is effectively a leisure holiday supplier. There are many significant players on the global stage, including Starwood, Hyatt, Marriott and Hilton. Two major local players are Accor Premiere Vacation Club and Trendwest. The market for time share is not nearly as well developed in Australia as it is overseas, particularly in the United States, where it is much better understood. Time share provides a holiday product. From an objective viewpoint, what is supplied is a good or a service: a week at a certain location, supplied on a recurring basis—that is, for a certain number of years. That concept is not too complicated. It is not too different in our view from, say, someone taking out a long-term gym membership. It means that there is a purchase of a long-life product. The consumer needs security that the timeshare provider, or its successor, will remain in existence and recognise its obligations through the life of the arrangement.

I think the core of the regulatory issue is security and certainty. Regulation under Corporations Law, with oversight by ASIC, provides degrees of public assurance to the operations of time share. This regulatory oversight has a beneficial effect on the industry. However, there are difficulties created by the particular application of the managed investment scheme provisions of the Corporations Act. These difficulties include logical disconnects, duplication and confusion and result in large business cost imposts, with no obvious benefit to the consumer.

The difficulties which we have identified and which industry have identified—and I am sure the committee has probably heard these before—fall into three categories: one, an illogical definition; two, onerous and irrelevant training requirements; and, three, onerous and irrelevant information provision. The question of definition centres on time share being regulated as management investment schemes, yet it is prohibited from being represented as a financial investment product and it is subject to and treated as part of the financial investment industry. However, it cannot in itself be an investment. This contravenes the most contemporary views on efficiency and regulation. It is obviously imposing certain restrictions, obligations and costs yet is doing so obtusely or indirectly, and the regulatory intent is unclear.

As far as training is concerned, there are obligations for training personnel, requiring training in the provision of financial investment advice, even though it is not legal to promote time share as an investment product. The obvious disconnect between the obligation to train and the necessity to do so is quite stark. The imposition of an unnecessary cost is quite apparent. With respect to information, obligations for the provision of documentation to consumers, as part of the timeshare sales process, require an explanation that time share is not a financial investment, yet customers are also provided with documentation, because time share is regulated as a financial investment. In my view, as one of the earlier witnesses said, concentration on what is actually being supplied in terms of the nature and quality of the product is more important than going through the rigmarole of defining what the product is or is not, as a matter of form.

It is little wonder that time share remains shrouded by degrees of confusion. Investment documentation is required, although it is not an investment. Investment advisory training is required, although it is prohibited to advise that time share is an investment product. And it is regulated as an investment when, clearly, it is not. The implications of these substantial conundrums are significant compliance costs. Regardless of the quantum, where compliance is not necessary, where it is not underpinned by sound rationale, then it is purely an unnecessary imposition of costs on businesses, realises no productive purpose and is a waste of time and money. Any such waste is significant. One company has indicated that its compliance costs are $1 million per year. Compliance obligations and compliance costs are based on a legal fiction. These costs and obligations create a significant barrier to entry to the market and therefore also serve to restrict competition. Only the large and the strong can sustain and survive, particularly on start-up. The restrictive market and unproductive costs have the impact of increasing the price to the consumer.

It must be asked whether there is a more simple and straightforward way of achieving the regulatory intent—that is, customer security over the long term. We have observed that there are mixed views as to the way ahead, ranging from special legislation to maintaining the status quo. We see some advantages in maintaining the structure of the current regulation but toning down some of the requirements contained in it. As I pointed out, somewhat anomalous issues exist. A brand-new piece of legislation with a new array of systems, requirements and bureaucracy is not the most efficient way and would impose a new array of costs. In our view, self-regulation is not an option as it removes the public confidence element, which has been one of the advantages of the current—albeit flawed—regulatory regime. A toned-down current system prevents the reinvention of the wheel, would better align training and documentation requirements with consumer protection and would reduce business costs and improve prices to customers. The current regulatory environment for time share appears to owe more to Hacker than Hilmer. We commend to the committee's deliberations some softening of requirements to reduce the current inanity whilst improving the business environment and maintaining consumer confidence.

CHAIRMAN—Thanks, Mr Staveley. I take it from your comments that you still believe that the appropriate legislative framework and vehicle are the Corporations Act and ASIC, rather than moving the regulatory requirements across to the trade practices law and the ACCC?

Mr Staveley—The ACCC and the state consumer protection agencies already have, as I understand it, a limited role in any event. I guess it is like the Irish joke: if I were going there I would not be starting from here. But we are here now, and I guess our submission would be that

the increased costs involved in a wholesale change and shift of the system probably would not be commensurate with the benefits achieved.

CHAIRMAN—Would there be costs? The main complaint about the current regulatory structure, particularly from the people marketing time share, is that their marketing representatives have to be trained in and comply with all the provisions relating to people giving investment advice.

Mr Staveley—Yes.

CHAIRMAN—The whole argument that we have generally been hearing is that this is not an investment product but a lifestyle consumer product. So, in fact, wouldn't the compliance costs be reduced if the people doing the marketing were simply controlled by the Trade Practices Act and disclosure was required under that in terms of honesty, fair dealing and the like, rather than them having to have financial knowledge that they do not really use?

Mr Staveley—Those sorts of provisions are nonsensical. I guess the question is: what are the appropriate rules that should govern the strength of them? To have people who have been trained to give investment advice but are then prohibited from doing so is clearly a cost impost that has taken no-one anywhere. It is just serving as a hurdle or a barrier to entry to the market, the business. Recognising the value involved in this, we have suggested that the requirements to do things such as that are wound back—that is, that they do not need to be undertaken to the same extent. Wherever those rules are based, be they in the Corporations Act or the Trade Practices Act, so be it. The point is that we are where we are now. I think it is probably capable of being salvaged in the location where those rules are located at present. I think it can be done there, rather than by throwing the whole industry into a brand new regime.

There is the question—I think more than what one would regard, say, in trade practices—of the long-term financial security element of this product. There are people taking out contracts for 70 or 80 years. There are issues with custodianship of the moneys that have been paid, with the security for those moneys to be provided in the form of a product in the longer term. So there is a very significant financial stewardship area that makes some sense of it being part of a management investment scheme. Where I differ is in terms of the requirements that are actually placed on performance under that scheme, which could be wound back.

Mr BARTLETT—In your earlier comments about the excessive burden of regulation I think you used the term 'onerous provision of information'. Can you give some examples of current requirements for information that are excessive or superfluous? A number of other witnesses have said to us that they thought the information should be more explicit and detailed.

Mr Staveley—I will preface this by saying that I am certainly not an expert on the minutiae of the provision of the information. I can make an observation on what it actually means as far as a consumer is concerned. When you are looking at the prospect of saying, 'I'm going to make an investment. For this, I get X,' and you say, 'Well, that's a pretty straightforward transaction.' Then you are handed a 20-odd page document and told, 'Here are the requirements for how we operate, and here is another document which is our prospectus and tells you how the company operates.' The consumer will look at that and say, 'My God.' There are various ways of not informing someone. One can not inform by providing no information and one can not inform by

providing a whole lot of information that will make the consumer desperately worry that if they miss the fine print on page 76 they could lose the farm. That is where I think the balance is. The information that is being provided in order to meet a form is not actually consumer friendly.

Mr BARTLETT—Clearly the aim of regulation is to provide a balance between protecting consumers and not excessively hampering investment by operators in the business. Is it your view that the balance is roughly right at the moment? Do you think it inadequately protects consumers or do you think it excessively hampers investment by potential providers?

Mr Staveley—We have come a long way since a decade ago, when time share had an extremely bad name in the Australian context. It is no longer a frequent story on the 6.30 news programs, and that is a good thing. I suppose it is appropriate that the committee is examining things at the present time, not from the point of view of asking, 'Should we or should we not have regulation?' but from the point of view of saying, 'Let's look at refining it.' I guess we are approaching it in that way. Arrangements have achieved a lot in order to get us from a situation of time share being largely regarded as suspicious and on the nose to a situation where it is uncontroversial and we are able to have a discussion on it such as this.

In terms of where the balance sits, I have made some observations relating to some of the perceived unnecessary imposts on business. They reflect on not only the cost of doing business but the price delivered to the consumer. So I feel from those in the industry who we have had discussions with that there is a disparity which is unnecessarily increasing the costs of business. It does not necessarily mean that the balance is out of whack, but business costs have increased.

CHAIRMAN—Please excuse me. I have to catch a plane to Adelaide.

ACTING CHAIR (Mr Bartlett)—The issue of a secondary market has been discussed at length this afternoon. Is it your view that there is a problem with the poorly developed state of the secondary market? If so, how do you suggest that could be improved?

Mr Staveley—Is this is the ability to on-sell one's share?

ACTING CHAIR—That is right.

Mr Staveley—It is not an area in which I have any experience, to be perfectly frank. My understanding of the nature of the product is that you purchase a product and you can dispose of it or bequeath it—that is your decision. The notion of the secondary market as being a sort of more formal market such as the primary market, I am not really aware of that. I have not heard that in my experience.

Senator MURRAY—You may not be the person to ask this, but the question put by Mr Bartlett is right on the money because if you cannot resell your purchase then it is plainly a consumer good. It is no different to buying a kettle. That is it. The forms of regulation attached to that are completely different from an investment product. However, if you are able to on-sell a product—and therefore there must be the potential to make a profit on it, because if you create a market where there are buyers and sellers the price is determined by demand and that may result in a profit—then the form of regulation changes completely.

That is why this issue of a secondary market is important. At the moment people cannot easily get out of their purchase. They can give it up or, as appears to happen, they can carry on using it even when they do not really want to. But they cannot easily sell it—and the idea is that you should be able to sell it because it is a long-term purchase which retains value and has value to a new entrant, particularly if the property is properly maintained. The reason the whole industry are striving to describe it as a lifestyle good is that they do not want the regulation that attaches to it being an investment good. Yet, if you create a secondary market and make the barriers to exit easier, you have created an investment good. That is the issue. This is a market oriented committee; it is interested in facilitating markets operating.

Mr Staveley—I am glad to hear that. I hear what you say but I am not sure of the restrictions on that. I hesitate, given the past reputation of time share, to cite the example of having purchased a car and being able to sell that. It may or may not retain value; it may increase in price and it may not. What are the restrictions on that? Your ability to sell it often depends on the condition of the car. There may be a market there but you might not be able to sell that.

Senator MURRAY—But, to use that analogy, all cars depreciate unless they become vintage, antiques or rare items. Millions of cars depreciate. You cannot sell a car for more than you bought it—certainly within a certain time frame—whereas that is not true for holiday investment. If the resort is upgraded, if expenditure is made or if the resort area becomes more attractive, price can go up.

Mr Staveley—It can, I suppose. It depends on whether you draw a distinction between the value of the property and what you have purchased as a product. In a way, it is quite right. The industry has said, 'You have bought a product; you have bought a week of time for a certain number of years.' That is potentially distinct from those who have initially invested in the capital and the property, which is not necessarily directly linked to the price that an individual has paid for their week of time.

Senator MURRAY—As I understand the secondary market concept, they want to enable a person to sell their week of time. The proponents were specifically arguing that it should be at the same price or lower, as I recall the evidence. But I am saying that that is not necessarily the consequence of a market. If you create a market you have no idea what the price is going to be because it depends on the buyers and sellers. If you start to generate a market where people can exit—can sell their weeks—rather than just trade or exchange, which is what they do at present, then you are going to see people take an investment view of it. That is my opinion.

Mr Staveley—You may be right. The conventional wisdom from those whom I have spoken to is basically that those who are making the product, as far as the market at the present time goes, are looking effectively to sell a good. If a market does develop, my philosophical view is that that is fine. The question is: is that opportunity foregone if you move the nature of the legislation somewhere else? Hence I go back to the original view that there is not necessarily a problem in leaving the regulation where it is at the present time.

ACTING CHAIR—It seems that we are being deserted.

Mr Staveley—I have cleared the room!

ACTING CHAIR—Is there one last recommendation you would make to the committee?

Mr Staveley—I think I have probably made my point a number of times. Thank you for the opportunity.

ACTING CHAIR—Thank you very much for your submission and your time here this afternoon.

Committee adjourned at 4.31 p.m.