



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL
SERVICES

Reference: Regulation of property investment advice

THURSDAY, 28 APRIL 2005

CANBERRA

BY AUTHORITY OF THE PARLIAMENT

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:
<http://parlinfoweb.aph.gov.au>

**JOINT STATUTORY COMMITTEE ON
CORPORATIONS AND FINANCIAL SERVICES**

Thursday, 28 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: Senator Chapman and Ms Burke

Terms of reference for the inquiry:

To inquire into and report on:

- (a) the effectiveness of current regulation (including the Trade Practices Act 1974, the ASIC Act and the Corporations Act 2001) of the property investment advice industry in protecting consumers;
- (b) allegations that property investment advisers engage in behaviour including:
 - i. characterisation of their activities (for instance, as “education seminars”) in order to avoid regulation;
 - ii. habitual use of high pressure selling techniques in order to induce investment decisions;
 - iii. failure to disclose interests they may have in properties they are selling;
 - iv. failure to disclose commissions and fees associated with their services; and
 - v. failure to provide appropriate disclosure of downside risk associated with the property or financial products they recommend;
- (c) whether it is appropriate for property investment advisers to simultaneously sell an interest in property and financial products enabling such purchases;
- (d) advantages and disadvantages of possible models for reform of the property investment advice industry including:
 - i. national coverage through uniform state and territory legislation;
 - ii. Commonwealth legislation; and
 - iii. a scheme of self-regulation of property investment advisers on a national basis; and
- (e) whether current legal processes provide effective and easily accessible remedies to consumers in dispute with property investment advisers.

WITNESSES

COPPARD, Mr Jason, Proprietor, Willerby’s Solicitors; and Member, Law Institute of Victoria..... 16
STEVENS, Mr Bryan, Chief Executive Officer, Real Estate Institute of Australia 2
VERHOEVEN, Ms Alison, Public Affairs Manager, Real Estate Institute of Australia..... 2

Committee met at 4.39 p.m.

CHAIRMAN—I declare the hearing open. Today the committee will hear evidence regarding its inquiry into the regulation of property investment advice and relevant and related matters. The committee expresses its gratitude to the contributors to this inquiry, including those who will be appearing before it as witnesses this afternoon.

Before we start taking evidence, may I reinforce for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to the evidence they give. Parliamentary privilege refers to the special rights and immunities attached to the parliament or its members and to others, necessary for the proper discharge of parliamentary functions without obstruction and 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. Also, unless the committee should decide otherwise, this is a public hearing and, as such, all members of the public are welcome to attend. If any witnesses wish to give evidence in camera, they may request that of the committee and the committee will consider such a request.

In relation to this particular reference, the committee has already held two hearings, one on the Gold Coast and one in Sydney, and we will have a further hearing tomorrow morning in Canberra.

[4.40 p.m.]

STEVENS, Mr Bryan, Chief Executive Officer, Real Estate Institute of Australia

VERHOEVEN, Ms Alison, Public Affairs Manager, Real Estate Institute of Australia

CHAIRMAN—Welcome. We have before us your submission, which we have labelled No. 4. Are there any alterations or additions you wish to make to the written submission?

Mr Stevens—No.

CHAIRMAN—I invite you to make an opening statement, at the conclusion of which I am sure we will have some questions.

Mr Stevens—On behalf of the REIA, I would like to thank the committee for the opportunity to provide our viewpoint to this inquiry and to answer questions subsequently. As you may know, the REIA is the national professional association for the real estate industry in Australia. The REIA is a politically non-aligned organisation that provides researched and well-informed advice to the federal government, the opposition, the media and the public on a range of issues affecting the property market. REIA has eight members only, comprising the state and territory real estate institutes, which have licensed agents as their members, and it represents collectively about 75 per cent of agencies across Australia.

The REIA welcomes this inquiry and also the separate inquiry established in August last year by the Ministerial Council on Consumer Affairs. The REIA has publicly stated on a number of occasions over the last couple of years that property investment seminars used by unscrupulous property spruikers are a practice that we see as unacceptable. The REIA has previously called for state and federal governments to work together to ensure that those who prey on property investors are appropriately regulated.

The REIA was pleased to make submissions to the ministerial inquiry and to this inquiry. I assume that the committee has read our submission. In outline, the REIA considers that the regulation of financial advice is primarily a responsibility of the Commonwealth rather than the state and territory governments. The REIA suggests for your consideration that any review of the situation should take account of the nature and extent of the problem, together with extant legislation and policing measures, before adopting new remedial measures. In other words, the prescribed cure should fit the symptoms.

The problem gained significant public attention through unscrupulous property seminar spruikers over the last couple of years. It included the provision of financial advice whilst not licensed, misleading and deceptive conduct, consumer detriment as a result of high fees and difficulty with seminar related refunds, and high-pressure selling strategies from the spruikers.

The REIA submits that these problems are adequately addressed already under the Financial Services Reform Act and the Trade Practices Act. There is also a range of state based legislation to protect consumers for the straightforward sale of property—for example, there are cooling off

periods, transparency in fees and access to refunds. As far as we can ascertain, ASIC can already address financial advice under the four structure reform act, and ACCC can already address misleading and deceptive conduct under the Trade Practices Act.

Indeed, further to this, in consultation with the ACCC, the REIA provided our members with guidelines for the Trade Practices Act, in order to be more specific about what real estate agents could and could not do under the act. This approach was very well received by our members. Similarly, last year, after consultation with ASIC, the REIA provided guidelines to members on insurance advice under the Financial Services Reform Act, and that was equally welcomed by our members.

So, if the nature of the problems can be addressed, perhaps the extent of the problems needs further review. We do not know the number of complaints received by either ASIC or ACCC, but, if these are beyond investigation currently, perhaps the allocation of resources of ASIC and ACCC needs to be reviewed. I am aware that, whilst they work cooperatively, there are some demarcation issues between ACCC and ASIC.

The REIA promotes business professionalism and supports the need for consumer protection. Both need legislative cover, but that cover should not be so prescriptive as to stifle competition and burden small business with weighty compliance. For example, 73 per cent of agencies have nine people or fewer and 39 per cent of agencies have up to four people. So, as far as real estate agents are concerned, you are primarily talking about small businesses. Real estate practices are already very highly regulated at state level and clearly subject to Commonwealth legislation—for example, the Privacy Act, the Trade Practices Act and FSR.

In outline, the REIA proposes, firstly, that anyone providing financial services advice should be licensed under the FSR and that anyone who sells property as a business should be licensed under state regulation requirements. A new regulatory regime on top of what we currently have would probably not be useful. Finally, we believe that any adjustment to extant legislation should not unduly affect the high street real estate agent.

On top of that, we think problems do need to be addressed. Some specific measures that you might consider would help the situation include, firstly, an enhanced education package on investment advice parameters for licensing real estate practice. We have had preliminary discussions with ASIC on this and they have expressed some interest in that approach. Secondly, REIA could provide more detailed guidelines to agents specifically on investment advice under the FSR, in consultation with ASIC, similar to what we did with the ACCC under the Trade Practices Act. The final measure is the promotion of general education for consumers by governments—for example, we wholeheartedly support the Consumer and Financial Literacy Taskforce which the federal government put together. We think that would do great things for consumers. I thank you for your invitation to attend the hearing and welcome any questions that the committee might have.

CHAIRMAN—You comment in your submission:

... the ... regulatory actions of the ACCC and ASIC in regards to property investment seminars have been too little, too late.

Mr Stevens—Only insofar as we had been calling for regulatory action long before either of those bodies made any public moves on some clearly wayward seminar spruikers. As long as two years ago, we were publicly saying that we felt this was quite untoward. What we referred to there specifically was our observation about some of these marketers, who started off in Brisbane, if you like. Queensland introduced some legislation and they moved south to Sydney and then into Melbourne. That is what we were trying to alert authorities and government to, to basically say: ‘We don’t want these people practising the way they are.’

CHAIRMAN—ASIC’s submission that we have received in relation to this inquiry concludes that real estate agents should be regulated in terms of both the general and individual advice they might provide relating to property investment. Do you agree with that? If that had been implemented, would incidents such as the Henry Kaye situation have been avoided, or what else would be required to stop unscrupulous promoters operating in the marketplace?

Mr Stevens—I have to say that one of the reasons we came out a couple of years ago, because we could see where this was going to go, was very simply that we felt that high-street agents were not the offenders, generally speaking, in these sorts of situations. The offenders are the high-pressure salesmen who put on seminars—that have a web of companies underneath or behind them—with a view to taking money from unsuspecting clients, quite frankly, by education packages that they give them, like ‘Be a millionaire overnight’. Then they will hand the clients off onto a company that they have dealings with, where they will do them a ‘really good deal’ in property.

That can become shonky, because what they do then is say, ‘The retail price for this property is \$400,000, but we can give it to you for \$360,000 if you do the mortgage with us and a few other things.’ What we are saying is that we see a difference between the operations of high-street agents and the operations of these spruikers who are clearly in the financial services business. We think there is ample scope under the FSR and/or the Trade Practices Act, particularly with respect to misleading and deceptive conduct, for these people to be taken to court.

CHAIRMAN—Do you think the division of responsibility between ASIC and the ACCC has been a problem in dealing with this area?

Mr Stevens—I could not comment on the detail, except to say that I have read the *Hansard* of the Senate hearings with respect to ASIC and the ACCC that have gone before, and I have spoken to individuals in both camps. It seems to me that they are working together very cooperatively, they recognise there is a problem, and they are trying to sort out some protocols and demarcation lines as to how best to go efficiently about their business. In the broad, it seems to us that the legislation is there.

CHAIRMAN—In your submission you state:

... there may be scope for the ACCC to be more assiduous in addressing breaches of the Act by property investment either in response to consumer complaints or as a result of ACCC investigations prompted by their suspicion ...

Can you expand on what you think might be appropriate in that context?

Mr Stevens—We have had a general feeling, going back a couple of years, that things have moved on a little bit—insofar as it has got public and government attention and two inquiries are running, and there have been one or two successful prosecutions. That comment was largely pre the end of 2004. We felt that there was some obvious, misleading and deceptive conduct with respect to property spruikers. Everybody knew it. You could pick up the newspaper and find ‘Be a millionaire overnight.’ You could surf the Internet and find ‘Be a millionaire by next Tuesday. Come and see our seminars.’ Clearly these people were misleading the public. We felt that if the ACCC was simply waiting for complaints, they might not be getting all that many, because people do not want to show that they have been done over. Quite frankly they get embarrassed, and they do not want to declare that they have been duped. We felt that there was so much evidence in the public marketplace that the ACCC should have been able to go in there and investigate it off their own bat.

CHAIRMAN—You make the point in your submission that available research suggests that:

... property investors are more likely to belong to population groups with reasonable consumer and financial literacy skills.

Yet it appears there is a disjunction with respect to the significant number of consumers who are investing in real estate as a result of the activities of the so-called property spruikers. Property investors are generally reasonably sophisticated and yet they are falling into the clutches of this group of people. Can you comment on the apparent disjunction?

Mr Stevens—Alison has done a bit of research on the detail of this. I will ask her to comment.

Ms Verhoeven—Those comments were based on some fairly extensive research done by the ANZ Bank. That research looked at property investment decisions—amongst other financial investment decisions. They broke down the categories of people according to the type of research they had done prior to making their decision and their various socioeconomic backgrounds. Largely the findings were that people in general were well informed about their property investment decisions. Of course, there is always a sector of the population that is not well informed about not only their property investment decisions but also their broader investment decisions.

Mr Stevens—As a general observation which is not backed up by research, we would all know well-informed people who have made some terrible judgments on investments, and not only in property. Well-informed people have been duped by get rich quick schemes also. What I am saying is that you do not have to be thick to be done over by a carpetbagger.

CHAIRMAN—Some of the submissions we have received assert that real estate agents in reality provide the bulk of property investment advice because consumers regard them as experts in the sector. Would you agree with the assertions in those submissions? If that is the case, why should real estate agents be exempted from any further regulation to try and deal with this issue of property investment advice? How do you distinguish between comment and advice?

Mr Stevens—I will take that in two parts, with respect to knowledge and with respect to legislation. With respect to knowledge, when anybody goes to get an investment property they want to know the likely performance of that property. The real estate agent has usually been in

the business for some time. If he or she has not, they have access to a lot of property data and experienced people inside their own agency. The sorts of questions that any investor would ask—and, even if they do not, the answers are provided—include: how much the property is; what the outgoings are in terms of land tax, maintenance, rates, water, sewerage and all those sorts of things; and what the rents are likely to be. Therefore, they can calculate the yield. None of that is foreshadowing what might happen; it is simply revealing what has been.

We put out data to this effect. We have vacancy rates and we have median house prices. We have those by suburb and by street if you go to various places and certainly by capital city. We have that information for apartments, town houses, inner city, outer city, fringe, coastal, rural—whatever you like. There is an enormous amount of data available. A good real estate agent will simply collect that data. All he or she is doing is providing a compendium of data encapsulated in one or two pieces of paper to say what has been happening with respect to property in that city, in that area and in that street. I do not think that is giving financial advice in any way. I do not think you could construe that as financial advice.

But, and we clarified this with ASIC—and it is in our submission, as you have undoubtedly read—if the agent steps outside of those parameters into comparisons with other asset classes such as gold, shares, derivatives, futures or whatever then he or she has clearly overstepped the mark and is purporting to have a knowledge of other markets, which he or she is not licensed to do under the real estate licensing. That gives our thoughts on the knowledge issue, which is a broad demarcation issue.

With respect to the regulation, they are highly regulated at state level already. They have an education package which, as I indicated in my opening remarks, after discussions with ASIC we might be able to enhance to give agents a clearer view of what constitutes investment advice so that pretty much what I have just said is clear to them. We also feel that the FSR is fairly clear in saying that if you step outside the parameters you need a financial services license, and some of our members have that because they run their own property seminars. They are quite kosher. You turn up and they will tell you the investment advice that they are going to give you. If you want to stay behind and talk about that, you can. And people do.

CHAIRMAN—Take a sharebroker, a financial planner and a real estate agent. The sharebroker might say to a client, ‘I think at this time this stock is better to buy than this stock.’ The financial planner might say, ‘At this time, this managed fund is probably the better one to go into than this one.’ If a real estate agent says, ‘I think this property is probably a better one to buy at the moment than this one,’ is that investment advice or is that just—

Mr Stevens—There are a couple of things I will say about that. Firstly, what happens with property is that, generally speaking, the purchaser—bearing in mind that he represents the vendor—has a price limit. He will come in and say, ‘I am looking for a property up to \$400,000,’ and the agent will get out a book, a computer printout or something and say, ‘Here are all the properties under \$400,000. Mr Chapman, what are you looking for? Are you looking for two bedrooms or three bedrooms? Do you want to be close to public transport? Do you want a two-storey or a single-storey?’ You narrow the parameters down until you get to half a dozen or two, three or four and the agent will then say to the prospective purchaser, ‘Would you like to have a look at those properties?’ And you go from there. I do not think any reasonable person could construe that as being, ‘You really have to buy this property. There are ten fewer stairs, therefore

you won't tire the tenant and they will pay more.' I do not think there is much you could reasonably construe there.

CHAIRMAN—The Stock Exchange has fairly well-developed educational programs and financial planners are qualified to advise potential investors in equity investment and the like. Given the importance of real estate as an asset class, why does it seem that advice for people interested in investing in real estate is less well developed? In a sense, that may be why the spruikers are being given an opportunity to get off the ground. There does not seem to be an established path of property investment advice in the way that there is for the other asset classes. It appears that the industry has not taken a great role in providing education programs in relation to investing in property?

Mr Stevens—I have to say that that is a perception of yours, and I am not sure that I would share that perception, for a number of different reasons. One is that the average Australian is very well informed on property. You cannot go to a dinner party, a lunch or some sort of outing where someone does not have a real estate story. But it generally does not happen at a barbeque that someone says, 'I just bought 5,000 Telstra shares,' and somebody else says, 'Gee, that was silly; you should have got into Amcor because they have just gone down and their price is better.' That generally does not happen. So, anecdotally, I think Australians are well informed. It is something that they can see—it is tangible—and it has been handed down through families that this is a pretty solid investment to make.

The next thing I would say is that the institutes and the real estate agents promote property seminars—on web sites, on flyers and what have you—which are available for the public to go to. I am talking about kosher ones, as opposed to the Henry Kayes of the world, which are clearly 'millionaire overnight' stuff and quite deceptive. So I think there is information out there to that effect, and those who want to get into property advice compared to other asset classes, as I have said before, actually get financial services regulation licensing so that they are able to do that.

Ms Verhoeven—You also suggested that there was not adequate training for real estate agents, and I would like to address that. There is a training package for real estate agents. The licensing and certification arrangements in each state and territory require that real estate agents undergo training which is part of the Australian qualifications training framework. That ranges from certificate II level right through to diploma level, depending on the state and territory and depending on the level of certification or registration that the person is undergoing.

I think the issue is, however, that the people you are referring to—the property investment marketeers—are not licensed real estate agents, they are not certified salespeople and they have not undergone that training. In fact, our members, who are licensed or certified, have undergone significant training. They often also have continuing professional development requirements which address issues such as property investment.

Mr Stevens—Certainly the CPD tries to pick up on issues of a topical nature that might arise. It is like any profession, trying to keep itself updated on emerging issues.

CHAIRMAN—Given that the primary role of a real estate agent is to represent the vendor and get the maximum price on behalf of the vendor, do you accept that they are not, therefore,

really in a position to provide impartial advice on property investment to a potential purchaser? And, if that is the case, where does the purchaser go to get impartial investment advice in relation to property?

Mr Stevens—I think they are. They are simply representing a commodity. It is like anything in the marketplace: a car, a house, a washing machine and so on. They are representing a product for a price on behalf of the owner of that property or commodity in the marketplace. I do not know that that is any different from any other person in the marketplace. And, at the end of the day, whilst that real estate agent represents the vendor, he or she does not represent one vendor. Quite often, the agent might have half a dozen properties under the \$400,000 mark that he or she is presenting to a purchaser for their consideration to suit their needs. It would be useless for someone representing a vendor with a \$1 million property to try to sell it to someone with a \$400,000 budget. It is just not possible. I do not know if that covers the question or not. If I could ask you a question in order to clarify—

CHAIRMAN—I will ask another question and it might tie in. Where can a person go in the marketplace now to get across-the-board investment advice? My perception is that, in the main, financial planners tend to focus on managed investments, share brokers focus on direct equity investment, and real estate agents sell real estate—I am not sure who is giving advice. There seems to be a gap. If someone wants advice across the board, if they want to ask, ‘I want to invest some money: should I put it into real estate, shares or a managed investment?’ no-one has the experience or knowledge to advise across those alternatives.

Mr Stevens—Firstly, an agent with a financial planning licence can do that. Secondly, in the public domain there are any number of publications on a daily, weekly and monthly basis that consumers can absorb. For example, Paul Clitheroe puts out magazines on investment advice. Quite frankly, the marketplace is flooded with advice with respect to—

CHAIRMAN—That is general rather than specific advice, though, isn’t it?

Mr Stevens—Can you give me an example rather than a generality? Give me an example of what you are seeking.

CHAIRMAN—Who can answer a question such as: ‘Over the next five years, am I going to get a better return if I buy this property, some Argo shares, a managed investment or some BHP shares?’ Obviously, there is an element of prediction in that, but who could provide some sort of reasonably competent assessment of the potential of those different assets?

Mr Stevens—Under current arrangements, a financial planner could give that advice. The extent to which that financial planner is across all those asset classes in sufficient depth to give someone the confidence that they are getting good advice is a questionable issue. I would say to any prospective purchaser that they would need to go and talk to a real estate agent and say: ‘I have got \$400,000 to spend. What do I get for \$400,000? Where is that going to be in four or five years time?’ Most people would not have much of an idea. Some people saw the October 1987 share market crash coming; some people picked the property boom a couple of years ago, and a lot of people did not—for a number of different reasons, not the least of which is that a lot of people did not trust the low interest rates at the time because they could still remember the high interest rates.

Whether it is a boom time or, as currently, a time when the market has come off—which it has almost all round the country; certainly on the eastern seaboard, although in the west and in the north it is doing okay—if you ask an agent: ‘How much is this property worth?’ then generally the answer will be: ‘I’ll give you my best advice but it is what the market will bear.’ That is the case in a rising or a falling market. So we will not know. We know that down the road two months ago a property sold for \$450,000, but that was two months ago and interest rates have gone up twice, so we think it would probably be in a certain bracket. What we ask our members to do in order to comply with the Trade Practices Act is to give a band of an estimate that they think that property would go for, because they simply do not know. No financial planner can tell you what BHP is going to be worth in four years—well, no-one would put any money on it.

Ms BURKE—We had the financial planners come and see us as well and their indication was that property was not going to be high on their list of recommendations—they are licensed to talk about products. So there seems to be a gap in getting advice on investing in property. You have rightly said that the agent’s is actually acting on the vendor’s behalf. They need someone to come and buy, so they are going to give information, but it will not be about investing. So there is still a gap for people who want to go and get decent advice: ‘I’m about to get my super. What should I do with it to make sure I’m going to be able to live comfortably for the next 30-plus years in retirement?’ Is there a way of filling that void so the Henry Kayes of the world do not reappear?

Mr Stevens—It is a good question. I have to say that I think that is for the marketplace to provide. As I tried to explain, that gap is already being filled by real estate agents who have got themselves a licence and who are out there promoting kosher property seminars for the public. If you look for them, there are actually quite a few of them around.

Ms BURKE—If it came to your attention that there were people conducting these seminars who did not have their financial licence, what would you as the industry body do about it? Has that come to your attention?

Mr Stevens—It has not come to our attention. The way we are structured is under a federated states arrangement. That has come about for a number of different reasons, not the least of which is that the licences are all conducted at the state level. Real estate agents are actually members of state institutes, so that question is one you would have to variously ask state institutes and state governments. I hate to dodge the question; I am not trying to do that. I would say, though, that no institute would tolerate that if they knew about it. They would take steps to inform the member that that is just not on and then there might be other steps taken if they did not stop doing it. It tarnishes our reputation and we do not want that to happen.

Ms BURKE—I suppose it would be the same as if somebody at a state level or at your level found out that there was a real estate agent practising without his real estate agent licence. There are ways and means.

Mr Stevens—Absolutely. We would not let that go unchecked; there is no question about that.

Ms BURKE—Do you think the Henry Kayes of this world have damaged your industry, though, and investment in property?

Mr Stevens—That is one of the reasons we came out a couple of years ago before it became a public issue. We felt that people were mistakenly seeing agents as being Henry Kayes. What we have tried to go to some lengths to do is to say that he is not a real estate agent. We represent real estate agents, not unscrupulous dealers like Henry Kaye, who is licensed to do neither—he is neither an agent nor a financial services planner. We think that is quite untoward. We would not tolerate that.

Ms BURKE—The difficulty with the Henry Kayes of this world is that they offer advice, sell you a property if you buy into a development and then finance you, with some great mezzanine finance or whatever was going on. Would many real estate agents actually get into the whole plethora of the market, in that they would be offering off-the-plan developments as well as then offering financial packages or ways of getting them?

Mr Stevens—Some do, there is not doubt about that. Some of the bigger agencies, franchises in particular, have their own mortgage arms and will provide finance for the purposes of buying property. They are nice package deals for people to be able to get, provided they are on the up and up—and we like to think that, other than the Henry Kayes, they generally are.

Ms Verhoeven—Providing that sort of information is governed by the FSRA anyway. There are obligations about arranging, and we have done a lot of work with our members to ensure that they are very well informed of their obligations in that regard.

Mr Stevens—And as I alluded to earlier, particularly with respect to, say, insurance advice—for example, whether I should insure my house—agents need to avoid being a representative of an insurance agency unless they are qualified to do so. We have given some good guidelines to our members on that so that, if they cross the line, they have to get themselves licensed.

Ms BURKE—If we expand the FSR to include property investment advice—because it is sort of silent at the moment in that area—do you believe that will resolve the issue? How do you then protect the high-street real estate agents?

Mr Stevens—I guess therein lies the nub: what do you define as property investment advice?

Ms BURKE—That is the problem, isn't it?

Mr Stevens—I guess we would say no, we do not think that is a problem. If you are buying a property and you as the purchaser want to know what the outgoings are and what the incomings are so that you can calculate what the yield is, is that property investment advice?

Ms BURKE—I would say it is advice. I am not sure it is investment advice, because you are not telling someone to invest. But that is what we are here to explore.

Mr Stevens—That is exactly right. I am saying that I do not see that as crossing the line of their current regulatory requirements. If you are asking what is beyond that, I would ask you, if I may: what is beyond that?

Ms BURKE—Invest \$300,000 in this property as opposed to \$300,000 in shares.

Mr Stevens—We are currently telling our members—and it is covered under the FSR—that, if they do that, they must be licensed. We say that the FSR already covers that quite adequately. It is very clear. About 2½ years ago we deliberately wrote to ASIC to ask them, because we were unclear ourselves. The FSR came out in, I think, 2001 and we read the act and basically said, ‘We need to be able to tell our agents about this.’ We are talking about small businessmen who, quite frankly, do not read parliamentary acts—

Ms BURKE—Who does?

Mr Stevens—One of the reasons that they employ institutes is to interpret those things with a view to compliance—so that they do not overstep the mark. I wrote to ASIC and said, ‘We would like your clear guidance on what you are actually saying in the act.’ We got a letter from ASIC which basically says—and we have reiterated it in the submission that we put to you—‘Provided you stick to property, you’re fine; if you step outside property and compare it to other asset classes, you’ve crossed the line and you must be licensed.’ If your classification of property investment advice is stepping over that line, I would submit for the committee’s careful consideration that that is already covered, and we are out there telling our agents accordingly.

Ms BURKE—So how do you think Henry Kaye slipped through the net for so long?

Mr Stevens—I think there were a couple of reasons. One is that no-one really got stuck into him. Everyone knew it was going on. If you picked up the paper you could see it: ‘Be a millionaire by next Tuesday.’ If it seems too good to be true it probably is, but he duped a lot of people. What it boiled down to, we think, is that ASIC and the ACCC needed to be more assiduous—and I think they have now got the message in that regard. Rather than just wait for complaints, they have to be more proactive and trawl the marketplace. I am delighted to see ASIC taking some web sites to task because ‘Be a millionaire next Tuesday’ was clearly misrepresenting and people were also purporting to be sponsors—‘sponsors’ is not the right word—

Ms BURKE—Wealth coaches.

Mr Stevens—That is right. The word was ‘endorsed’—they were purporting to be endorsed by ASIC, which was quite patently untrue. I would submit for the committee’s consideration that there are measures in place if agencies have the resources and choose to pursue those people. To be fair to those government areas, resources must be an issue for them. I cannot speak for them but I am sure resources are an issue. The extent to which they are able to get together collaboratively and sort out some demarcation lines must be an issue for them. I understand that. Some of the test cases they have been running must have been informative for the way they will go about their investigations in the future. Therefore, my expectation would be that they would be more readily able to bring these people to heel.

Having said that, I can see that people might say, ‘Are you proposing that the REIA do nothing about this?’ The quick answer to that is: absolutely not. We are proposing that the REIA do a number of things which I have recommended. For example, we believe that, in consultation with ASIC, we could put out some guidelines on the FSR. We did that with the ACCC on the Trade Practices Act, and that went down really well. As you would know from the reading it, the Trade Practices Act is a very general document. It covers a whole bunch of industries. It is very

generic—and quite reasonably so. You probably have not seen the guidelines that we put out, but they get down to things like not being able to falsely advertise by, for example, airbrushing out a bus shelter in front of the house when you advertise it. The guidelines get down to some very specific can-dos and can't-dos, which agents pick up and say, 'That's fantastic'—and they have been told. I think Graeme Samuel was pleased with that outcome. We are very pleased with it. The members like it.

So, as a first thing, I think we could sit down with ASIC and do something like that to distil the FSR into something that is specific to the industry and really meaningful for agents. The next thing is that, in consultation with ASIC, we would like to beef up the national training package, which is authorised under the Australian National Training Authority, ANTA, with a view to ensuring that those demarcation lines are very clear to people who are going for their licence. The third thing is to get the message out to consumers.

Ms BURKE—You talked about some education stuff, the financial literacy and the task force and said that there needs to be more general financial education as well as property education.

Mr Stevens—We think that is a great initiative by government—amongst a number of initiatives. We would simply submit for consideration that maybe you need to get the message out there a bit more. We would be happy to be a conduit for that. We do it, for example, with the Australian Taxation Office. We do it regularly. We do it with the ACCC and we do it with ASIC. We do it in a number of government areas. Where government have a problem insofar as people are not complying, we work with them. We put a little package together and we are used as a conduit to get the stuff out there to our members to say: do this or do not do that. We are delighted to help. We think that is one of our functions. In dealing with a number of different issues in the last couple of years we have found that, by and large, government departments have been very good. They consult well and they listen. Cooperatively working together to get messages out helps our members with all their difficulties and it helps government to get people to comply.

Ms BURKE—Another witness we heard from—I cannot remember the name—was an investment group that helped purchasers and investors. They were at pains to tell us that they were not agents—but it did sound like they were real estate agents—and there was this notion of the person who looks after the interest of an investor rather than the interest of a vendor.

Mr Stevens—Yes.

Ms BURKE—Who were they?

Mr Stevens—Buyers agents?

Ms BURKE—No. They were the first witnesses we heard from in Queensland. I am told by the secretariat that they were the John Hopkins Group. I suppose you could say buyers agents.

Mr Stevens—Buyers agents?

Ms BURKE—This is a group, though; it is not just a one-off.

Mr Stevens—They have formed small groups.

Ms BURKE—The John Hopkins Group appeared before the committee and said, ‘The real estate agent is acting on the vendor’s behalf.’ For example, if an individual comes along and says that they have a certain amount of money, that they are going to purchase a certain property which will give them a certain yield and they are going to seek finance to do that—and it is not so much about the investment class, because they have decided properties is the investment class, but—

Mr Stevens—Where do I get best value for money?

Ms BURKE—Yes. In reality, would a real estate agent turn around and say, ‘Don’t do that, because you are actually not going to get the best return on that and you’re financing options are going to send you belly-up’? Then we had people from the credit union saying that, if someone comes along and says that they have the ability to borrow an amount of money and repay it, they do not care whether that money is actually going to earn them the return they want. So there was this notion that there were investors who were going unsupported in that environment. Do you see that there is a need to have those sorts of buyers advocates around? I suppose it is at odds with your industry, but their arguments were interesting about the need for a middle ground.

Mr Stevens—We do not see that it is at odds with the industry at all. Indeed, in America, buyers agents started a few years ago. They started with only a handful of people and I think there are now something like 40,000 of them. They are actually part of our sister organisation in America—which, by the way, is the biggest trade association in the world: it has more than one million members. They started off here a few years ago—only a handful of them—and they are being embraced by some of the state institutes. We do not see them as being separate; we see them as being part of the profession, and we reckon that they should be licensed accordingly.

Ms Verhoeven—In some states and territories there is already a provision in real estate legislation for a restricted licence category for buyers agents. I think that four states and territories have that in place. Most of the offices of fair trading, in interpreting the real estate legislation, say that if you accept a consideration—which a buyers agent does—you are covered under the ambit of the act. So it is fairly difficult for a buyers agent not to be licensed.

Mr Stevens—And, indeed, we would support licensing rather than saying that it does not matter. We think very clearly that they should be licensed. To get back to your point about the investment advice, if you commission me as a buyers agent on your behalf and you have got \$500,000, where am I going to get my best value? My purpose is to scout around. You have made the decision that property is for you—so I am not comparing it with shares or anything like that. I am simply scouting around and asking, ‘Where is the best value for money?’ and I will come back to you with a short portfolio that basically says: ‘If you invest in Balmain, there is a nice townhouse for \$500,000; its outgoings are this, its incomings are this and its yield is that. Over the last X years it has grown by 20 per cent. Or you might go to Chatswood. I have a two-bedroom apartment there. The vacancy rate in Chatswood is not very good, so you might want to stay clear of that, but it is a lovely unit.’ That is the sort of thing you will get back. You have to ask yourself: is that property investment advice? I would argue that it is not. The agent is simply telling you data that is in the public domain and has been collected. He has basically done your legwork.

The reason why the buyers agents are there is because, firstly, they are experienced in the industry and they know where to go and, secondly, you do not have the time or the inclination to scout around and suss all that out for yourself. I think that is what it boils down to. So we think that they are an important part of the industry but we do not think you need anything more than a financial planning licence to conduct that level of business.

Ms Verhoeven—They are covered under the real estate legislation in each of the states and territories, with provisions for disclosure of any beneficial interest in properties, and also for cooling-off periods, which now exist in seven of the eight jurisdictions.

CHAIRMAN—Would a reasonably simple way to demarcate between real estate agents and those providing investment advice in relation to real estate—you have talked about this data provision—be to limit real estate agents to providing past and current data in terms of prices, returns, valuations, rent and outgoings, and, if they go beyond that, they are providing investment advice?

Mr Stevens—I think you have got to ask yourself: ‘What am I trying to stop here?’ Are you trying to stop the Henry Kayes of the world, or are you trying to stop a real estate agent talking to a potential purchaser about a property that he or she may or may not buy? I would have to ask: what were the sorts of complaints from people about the high-street agents with respect to buying a property? I am not aware of a number of complaints.

CHAIRMAN—The aim is to stop the Henry Kayes.

Mr Stevens—Exactly.

CHAIRMAN—But to do that you have to have some regulatory structure to knock them out.

Mr Stevens—There are a couple of ways that he should be knocked out. Misleading and deceptive conduct—‘be a millionaire overnight’—is the first thing, because that is patently untrue. The Trade Practices Act would cover that in an instant.

CHAIRMAN—But it did not.

Mr Stevens—It did not because the ACCC did not move on him for some time. That is my understanding. He operated for a long time.

Ms Verhoeven—It caught him when it did act.

Mr Stevens—Yes, that is the point. It eventually moved on him and it caught him.

Ms BURKE—They would probably see it a little differently. It was other things as well. I suppose that is why we are here.

Mr Stevens—It is—that is true. But the nub of it, though, and my understanding is that, in that case, at the end of the day it was misleading and deceptive conduct that caught him out. It was not a case where the advice that he gave was outside a parameter that had been legislated. He had basically given misleading and deceptive advice. He misrepresented what he was doing.

The other thing is that, if you give financial investment advice, provided you are licensed then you are covered. I do not know if that answers the question.

CHAIRMAN—In your submission you say that the legislation should be amended to provide more stringent definitions of ‘property investment advice’, comparative with alternative investment advice already covered under the Financial Services Reform Act, so that the high-street agent is not unduly affected. Given that FSR really currently relates to the product and the advice is determined based on the product, a problem would arise, wouldn’t it, because you do not want all real estate defined as an investment product in the way that other—

Mr Stevens—No, we do not.

Ms Verhoeven—Much of it is not.

CHAIRMAN—That is right.

Ms Verhoeven—Much of it is about home ownership.

CHAIRMAN—You would still need to somehow carve out a different form of legislation, given that the FSR defines a financial or investment product, then the advice comes because you are giving advice on that product; it does not define the advice itself.

Mr Stevens—I think what we are trying to do there, if we could help, is give more definitive guidelines for the FSR. That has worked very well with the Trade Practices Act. Ask Graeme Samuel tomorrow and I would hope that he would reply accordingly. I cannot speak for him. But I can simply say that, from our perspective, those guidelines have been very useful and we think that doing that with the FSR would be equally useful.

You cannot be too prescriptive. I think government has a view that the less legislation that you actually need, the better. Once you start getting too prescriptive then you have absolutely no room for people to be flexible with the best intentions in the world. Further prescriptive legislation within the FSR would have to be very carefully worded. We think the best way out of it is further definition in those guidelines. I think that would work quite well.

CHAIRMAN—The whole concept of the FSR legislation is that it is principles based rather than detailed black-letter law.

Mr Stevens—Rather than prescription—that is right. I know that another association you have spoken to indicated that they would like to see a new regulatory regime. We think that probably would not be useful because that is another bit of legislation that needs to be policed. Quite frankly, we think it is already covered under the current arrangements. The FSR does not just cover property, of course. It covers everything, doesn’t it—it covers any sort of investment asset at the end of the day.

CHAIRMAN—It does not cover property—that is the thing.

Mr Stevens—It does in the sense that it is carved out at the moment. It does cover it in the sense that it is not a financial product.

CHAIRMAN—That is right.

Mr Stevens—Therefore, it has carved that out and we subscribe to that in the sense that it is adequately covered under the Trade Practices Act and state legislation and what have you.

CHAIRMAN—Thank you very much for your appearance before the committee and for your assistance with our inquiry.

Mr Stevens—Thank you for the invitation. It is very much appreciated.

[5.36 p.m.]

COPPARD, Mr Jason, Proprietor, Willerby's Solicitors; and Member, Law Institute of Victoria

Evidence was taken via teleconference—

CHAIRMAN—I welcome the representative of the Law Institute of Victoria, Mr Jason Coppard. 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 any part of your evidence in camera the committee will consider such a request.

Mr Coppard—I am happy for it to be in public.

CHAIRMAN—We have before us your submission, which we have numbered 19. Are there any alterations or additions you wish to make to the written submission?

Mr Coppard—No, that is pretty much in order.

CHAIRMAN—Thank you for making yourself available by teleconference and also thank you for being able to change the time from tomorrow morning to this evening.

Mr Coppard—That is all right. It suits me.

CHAIRMAN—I now invite you to make an opening statement. At the conclusion of that I am sure we will have some questions.

Mr Coppard—There is not much point in me reading over the submission—you have the written submission. I am a member of the Law Institute. The Law Institute put around a memo asking anybody who had an interest in this to be involved in the preparation of a submission. As things turned out, I ended up writing what ultimately got put into a bit of a different format and put in as the submission of the Law Institute. I have a pretty strong view on this type of thing. I have had quite a number of clients who have been victims of these types of schemes and I know other people through other sources who have been victims of schemes. I have seen this type of thing going on over the years and wondered why something was not being done to stop it.

I guess traditionally these schemes have been focused around south-east Queensland. I remember 20 years ago a promoter trying to sell properties in south-east Queensland. It is not

limited to that, but that seems to be the traditional area that is promoted. Over the years I have come across many people who have bought property at inflated prices. I have also had dealings with clients and developers and I have seen basically how it works.

The promoters of the schemes seem to have the ability to sell to people, and they tend to put a mark-up on the price. I had an experience with a developer from Queensland who did some development in Victoria. He could not sell the properties at the prices he wanted and knew of a promoter working in Queensland who basically said: 'Yes, we'll get you whatever price you want and then we'll add on an extra'—I cannot remember the exact figure—'\$20,000, \$30,000 on top of that. If you want to do that, we can roll them over in a few weeks.' That was the story that was given. That client did not proceed with that, but that is the type of attitude. The promoter was going to take eight per cent—'Here's your commission from the developer'—but then also add another whack on top of a price that was already above the market, because he could not sell them at that price. I have known people who bought properties. It was promoted to them as the way to become a millionaire and, in reality, it has taken 10 years and another property cycle before they have got back to the position where they could get their money back. I do not purport to know what the Queensland law is, but I understand that Queensland brought in some laws a few years ago to prohibit multi-tier marketing, which is what it is labelled as in Queensland. But that does not prohibit people marketing to New South Wales and Victoria, which is what they tend to do. They find buyers in New South Wales and Victoria and then sell them properties in south-east Queensland.

The buyers are generally intelligent people—and people who have good jobs and good equity in their homes—and you would think they would know better, but it is all presented in an easy manner. To people who are busy and do not have time to go out and look for things themselves, it all sounds very good—nice figures and glossy brochures are given out to make it all look good—and they just go along with it because it is easy, I think. Certainly the Law Institute recognises that there are many people out there giving honest and reasonable advice in the course of general real estate practice or general financial advice by regulated financial advisers, but there does seem to be a loophole where these how-to-be-a-millionaire people are operating. The selling techniques are very high pressure. Commonly they involve so-called free plane flights to Queensland to view the property. Again, I personally do not understand how intelligent people can look at the money that is spent in promoting these schemes and flying them up to Queensland and not realise that somebody is getting a lot of cream out of it. Nevertheless, many people go ahead with the schemes.

I guess, from the Law Institute's point of view, there are a couple of things. There seems to be a demarcation issue about the regulation, where nobody seems to be doing anything about it. And, because it commonly crosses state boundaries, it would seem to need either a federal or a uniform state control. Federal control may raise constitutional issues, but something needs to be done, certainly on a global basis, to deal with it because it often does cross state boundaries.

The other thing from a lawyer's point of view is to look at what remedies are available—to look first of all at trying to regulate these people, yet separate them from the people who are honestly providing services out there, and then give some remedies to consumers who are ripped off. The submission outlines several ways that that might be done. One thing that probably is not highlighted in there but, thinking about it later, is probably a good way of doing it is the requirement for the promoter to give an independent valuation of a property before a person

signs. I like the idea of predisclosure, so that they must give a lot of information, including a valuation of the property—and give people a chance to actually get away from them before they sign something, because the high-pressure tactics are applied: ‘You’ve got to sign this now, because if you don’t sign it now you’ll never get this opportunity again.’ I knew this hearing was coming up, and I was up in Queensland, so I went to a place that was selling time share. It is not quite the same as this, but I was aware that they would be using the same tactics.

CHAIRMAN—Can I just intervene, Mr Coppard. We are also concurrently conducting an inquiry into time share, so anything you say on that could be relevant as well.

Mr Coppard—I think the same selling tactics are applied. Up there, you are offered a free gift if you come to a session to learn about lifestyle. I knew it was time share, and I went along there specifically, knowing that this was coming up, and thinking that I would like to get a first-hand experience of it. The pressure that was put on you to sign on the spot! You were put in a one-on-one situation. Initially he made out that you were stupid if you did not sign these things, because it was such a great deal. He then became quite angry and aggressive, saying, ‘Why are you wasting my time?’ It was certainly a high-pressure situation—and those are the same sorts of tactics that have been described to me from these real estate sales.

There is one thing that I thought was comical. I even told the seller, the agent, that I was a solicitor. He jotted down figures to try to show how it was going to be a great advantage for our family if we bought into this time share. I said: ‘Look, I’d like to think about it. Can I have a copy of the figures?’ He said: ‘Oh, I couldn’t do that; that’s the law. I can’t give you that; that’s the law.’ I am not aware of any law that says he cannot give me a copy of his figures. The other thing he said was: ‘Look, I can only offer you this deal now. You will never get offered this deal again’—with all the bells and whistles that he wanted to throw in. And again he said: ‘Of course, that’s the law. You can’t possibly get this deal if you don’t sign it today. That’s the law.’ I thought it was quite interesting that he said those things, but everything he said was very high pressure and very intense. It even made me feel guilty for not proceeding. That is the type of pressure that is applied.

That is why I like the idea of pre-contract disclosure, where they give you paperwork and they are not able to sign you up on a contract for a period of time later—I think we suggested it should be seven days. The other thing was the idea of getting an independent valuation. There are difficulties with that because a valuation is a fairly subjective thing and one valuer will give a value on a property and another valuer will give a different value. Certainly, an independent valuer has an obligation to provide a reasonable service and use his reasonable sense in providing a valuation. If he does not, then he can become personally liable, or his firm can become liable, under the principles of negligent misstatement. I am well aware that developers shop around for a valuer who will say what they want to hear—there is no question that that goes on—but if the valuer can become liable personally he will have to exercise some discretion. That seems to be another way of putting some third party influence into providing some disclosure to the consumer before they sign any contract.

I will now go on to the issue of remedies. I feel that the current system is very costly, cumbersome and time consuming. I have had numbers of clients who have been ripped off. They have been sold properties at more than the market value but when they look at how much more it was—it might have been 10 per cent more or more than that—they weigh up the implications

and the difficulties of going to court and, because there is no guarantee that they would be successful, many people are not interested in going down the long and costly path that they would have to go down at present to seek any redress. A simpler and cheaper system of seeking redress would be a system whereby the onus of proof is reversed if there is a failure of disclosure, so that it would be put onto the promoter to prove that the property had been sold at a reasonable price rather than all the onus being on the consumer. Those are the areas that the Law Institute is interested in. It is certainly recognised that there are many estate agents and other people who are providing genuine services and there is a need to delineate between those providing genuine services and those who are 'multi-tier marketing', to use the Queensland term.

CHAIRMAN—In relation to the issue of valuations, which you have just referred to, should it be made mandatory for banks to provide to borrowers information as to the valuation that they have put on the property? The follow-up question is: even if that were the case, would it solve the problem in relation to the property spruikers, given that a lot of the finance in relation to their deals actually comes from the 'mezzanine' finance arrangements that the spruikers put in place themselves? That is a two-part question.

Mr Coppard—I have never understood why banks have this policy of not disclosing the valuation. I have never understood the logic of it. I think it would be very helpful if the banks had an obligation to disclose their valuation. Even if a valuation is provided to somebody, the bank will want its own valuation. Large banks use their own valuers and/or registered valuers who are on a panel that the banks accept. Smaller banks tend to use registered valuers; but, again, there is often a panel of who they will accept. The banks have an incentive to know what the value is, because obviously they want to make sure that they are going to be covered for their loan.

I think there is some good sense in that. It would provide a second amount of information to the purchaser that would enable them to find out whether any valuation information that has been given to them is in the ballpark or not—bearing in mind, as I said, that it is still subjective and there is still going to be some variation. If a bank valuation of a property comes in at 20 per cent less than the contract price for that property or than another valuation given for it, that will certainly set some alarm bells ringing.

CHAIRMAN—Following on from that, and again in relation to valuation, is it appropriate for property investment advisers to simultaneously sell property or an interest in property and the financial products, such as mezzanine finance, to finance those purchases? And if the mezzanine financier is providing the finance, how do you get a true valuation, given that the purchaser has not gone to a bank to seek the money?

Mr Coppard—Firstly, as stated in our written submission, we do not believe it is appropriate for the promoter to also arrange finance, because clearly that gives them the opportunity to hide the value of the property—and, typically, that is what they do. It also gives them the opportunity to charge several thousand dollars in brokerage fees to people who really do not need to pay brokerage fees. Generally, the buyer is in a good financial position and can get a loan quite easily, so there is no need for them to be paying brokerage fees.

Secondly, by the promoters doing the finance themselves, they are able to keep everything under wraps and keep everything from the consumer. It has been more my experience that they go through a broker, but the broker still has to put the loan with a lender, and the lender is still going to want evidence of valuations. That might not be the case if the loan was solely secured against a person's home. In that situation the bank would not care at all what the value of the other property is. But if the bank is looking at loans over both properties—that has been my experience, of loans over the home and the investment property—then the bank does have an interest. The bank or the secondary lender has an interest in what the value of that property is and they will want to ensure that they are covered for that. I think a genuine valuation will be obtained by a lender along the way if the purchase property is used as collateral security.

CHAIRMAN—Your submission says that, whilst the Law Institute of Victoria considers that there is a need to reform the laws to regulate and deal with property investment advice, such reforms should not affect licensed real estate agents, bona fide financial advisers or purchasers' advocates. We have had other submissions that recommend that real estate agents should not be excluded from any new regulation because, apart from the property spruiker group, real estate agents are the ones providing the bulk of property investment advice. What is your response to that?

Mr Coppard—It is quite likely that there are real estate agents involved in these 'how to become a millionaire' schemes. Obviously the aim is to catch everybody who deals with these types of schemes. I have known of agents in my area who conduct negative gearing seminars but they have been on the basis of just trying to get buyers in their doors to sell the properties they are selling on behalf of 'Mr and Mrs Smith' vendors. So it would seem that the people who are doing that type of thing are not in this category of people that we are trying to deal with. But on the other hand you cannot say that, just because they have a real estate licence, somebody should not be regulated. The regulation should be of people who are conducting these types of schemes, regardless of whether they have a real estate agent's licence or not.

The position of the Law Institute is that we do not want to see undue regulation come in on the genuine people but there needs to be sufficient regulation to catch anybody who is conducting this type of scheme. If it specifically said it does not apply to anybody with a real estate agent's licence you can guarantee that every one of them will continue to conduct the scheme and just have somebody with a real estate licence as the front person. So that is not going to stop the scheme. It is really just a recognition that there are some genuine people out there and the Law Institute is not seeking to unduly regulate people who are genuine.

Ms BURKE—Your submission asserts that the current regulations do not properly protect consumers from these 'how to get rich quick' and 'how to become a millionaire' promoters. Where do you think the deficiency currently is in the legislation that we need to repair? You are missing out on clients, I suppose.

Mr Coppard—I do not have direct knowledge of that but I have read articles in papers and things about ASIC and the ACCC saying that this is a role for the other and nobody appears to actually be doing anything about it. Again, the submission states that somebody needs to be told, whether it be an existing body or a new body, that this is your responsibility, you are to deal with people who carry out this type of action, you have the regulatory power to do it and it is your job to do it, so that this demarcation issue that is apparently in existence at the moment no longer

applies. It is made worse by the fact that this often is an interstate matter so local authorities do not necessarily have power to do it either.

Ms BURKE—So whatever we did would need to be under federal jurisdiction?

Mr Coppard—To me, that would be ideal. Whether it can be done constitutionally is another matter. Setting aside the constitutional issues, ideally it would be a federal thing because then there are no state boundary problems.

Ms BURKE—If we extended the financial services regulations to include advice in respect of property investment, would you be familiar with that? Would that resolve the problem?

Mr Coppard—I have got to admit I am a property lawyer. I am not completely familiar with the financial regulation. Certainly I had discussions with other people at the Law Institute when this submission was being put together. That may be an answer, but I am quite aware that the people who are operating these schemes will look very closely at whatever regulation is done and look to find any loopholes that are in it.

Ms BURKE—You have instances where people are now sitting with properties that they cannot repay and they are going to make a loss when they sell. You went into that a bit in your submission. You recommend a simpler process for these people to seek some redress. Have you got something in mind?

Mr Coppard—In Victoria, for instance, we have got the VCAT—the Victorian Civil and Administrative Tribunal—which seems to be growing all the time and taking in new areas. It is a cheaper process than going through the court system. Perhaps something along the lines of VCAT could be used, where it is brought under the jurisdiction of the tribunal rather than the court system.

Ms BURKE—You also recommend something to do with an insurance scheme. If you marry the two, there would actually be a pot of money to redress these people.

Mr Coppard—An insurance scheme would be good. I have got my doubts, quite frankly, as to whether people would actually take out insurance. I feel that the operators are trying to operate under the radar. I do not know that you would get that many people stepping up and saying: ‘All right, I am a promoter as defined in this legislation. I will carry insurance to cover these types of things.’ I do not see that happening, quite frankly.

Ms BURKE—That is all the questions I have.

Mr Coppard—There was another point that you made, and I cannot remember what it was now. I was going to comment on it. Anyway, it does not matter.

CHAIRMAN—Is the jurisdictional problem between ASIC, the ACCC and state regulatory authorities at the heart of the problem here?

Mr Coppard—I am only talking from articles I have read. The current affairs programs show articles on these types of schemes regularly, and yet there does not seem to be anybody stopping

these schemes from taking place. I read an article in the *Age* where they were critical of the ACCC and ASIC for each blaming the other. Each one was saying, 'It's not our responsibility; it's their responsibility.' Neither of them was doing anything.

CHAIRMAN—Thank you very much, Mr Coppard. It seems that we have exhausted our questions.

Ms BURKE—Thank you; it was a different perspective from everybody else's.

CHAIRMAN—It has certainly been very helpful in terms of the issue we are inquiring into. Thank you very much for appearing before the committee.

Mr Coppard—Thank you.

Committee adjourned at 6.10 p.m.