



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL
SERVICES

Reference: Regulation of property investment advice

WEDNESDAY, 13 APRIL 2005

GOLD COAST

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**

Wednesday, 13 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, Mr Bartlett, Mr Bowen and Ms Burke

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

ALLEN, Mr John Henry, General Manager and Licensee, The Investors Club Ltd 30

HIGGINS, Mr Neil Trevor, Business Development Manager, The Investors Club Ltd..... 30

**HOPKINS, Mr John Stephen, Founding Chairman, Property Investment Association of
Australia..... 1**

**SYMON, Mr Bruce Richard Sydney, General Manager, Property Investment Association of
Australia..... 1**

THAM, Mr Joe Yew, Legal Manager, National Credit Union Association Inc..... 20

Committee met at 9.14 a.m.**HOPKINS, Mr John Stephen, Founding Chairman, Property Investment Association of Australia****SYMON, Mr Bruce Richard Sydney, General Manager, Property Investment Association of Australia**

CHAIRMAN—I wish to reinforce for the record that all witnesses appearing before this committee are protected by parliamentary privilege with respect to the evidence provided. Parliamentary privilege refers to 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. I also wish to state that, unless the committee should decide otherwise, this is a public hearing and as such all members of the public are welcome to attend. The committee will hold further hearings on this reference on Friday, 15 April in Sydney and on Friday, 29 April in Canberra.

The committee welcomes Mr Hopkins and Mr Symon from the Property Investment Association of Australia. The committee has before it your submission, which we have numbered 5. Are there any alterations or additions you want to make to the written submission at this stage?

Mr Hopkins—No.

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

Mr Hopkins—Thank you. First I might explain very briefly my history. I have been involved in the property industry in Victoria and New South Wales for approximately 32 years. I started a company called John Hopkins and Co. in 1980. I think it would be fair to say that we were the first company to advise people on property investment when we started the company. Since that time our clients have purchased in excess of \$3 billion worth of investments in Melbourne and Sydney. We have managed more than 3,000 tenancies at the one time and been involved in a lot of property investments, but at the core of our business is advising individuals on gathering property. So I would like to think that we have something to add to this inquiry. Richard's history, if he does not mind me saying, has been very much involved in financial planning and in broking houses. He has been in recent years an executive director of the Securities Derivatives Industry Association (SDIA) in the professional side of that association.

Property investment is a hugely important issue for our country—I am in no doubt that we are all aware of that. It is important to the general economy, it is hugely important for housing—my understanding is that private investors provide approximately 20 per cent of the housing for Australians—and it is a very important vehicle for individuals who are attempting to create some form of independence in their retirement. But in recent years malpractice—in particular, the property spruikers spoken of in the reports that we read from the Queensland inquiry—and some practices which have occurred in the industry and allied industries have been of great concern to

the general public and to all of us. In regard to that I would like to make the point: instead of speaking of property spruikers, what we are speaking of is what we refer to as the 'get rich quick brigade'. They talk about how to be a millionaire in a minute with no money and no risk. In fact, they come in all forms and they are not just up spruiking—they are in various industries. At the core of what we would like to put to you is that we think that more needs to be done than addressing what is described in the Queensland inquiry as 'property spruikers'.

If we look at the property industry and we think of 'property investment', we say to ourselves, 'Where does this fit?' The terminology, of course, is 'property' and it is 'investment'. Recently I was speaking on the radio and an investment adviser was saying that property investment needs to come under the auspices of the investment industry. I said that I did not think that there would be that many people who could confidently say that they have had their feet in both the property camp and the investment camp for 25 years. It is my firm belief—and I am pleased to explain further, if required—that at the heart of the investment industry financial planners, broking houses and managed investment houses do not understand property investment as it relates to retail property investors as described in the report.

Then there is the property industry, which consists of valuers and developers but in the main we would think of estate agents. Estate agents would say that they do not understand property investment, because they know they do not understand the financial planning side of property investment. So we have this enigma of an industry—it sits in between and it has for many, many years. It needs to be recognised, in one form or another, as an industry on its own and it needs to be recognised that the industries that are part of it are financial planners, stockbrokers, accountants, financiers, some of the managed investment scheme creators and the property industry—real estate agents, property developers and valuers—because they all play a very big part in how an individual can be successful or otherwise when they involve themselves in property investment. I would like to discuss that further.

In finishing, the PIAA has been formed in response not to the inquiry—it was formed before that—but to the range of things that have been happening, particularly the media response to property investment and the way we felt that was going to detrimentally affect what is of course a very important thing for our country. At the core of why it is being conceived are our goals, which are to set a range of values and create codes of conduct and ethics. We want to create consumer protection, with a consumer dispute mechanism, and to have formal accreditation.

I would like to draw your attention to the advertisement in the magazine that I have given to you. You will see that it is an advertisement for what I, another training organisation and DeakinPrime, which is part of Deakin University, have been working towards for the last 2½ years. We have been working to create a property investment accreditation program through to a diploma and then a much more in-depth certification program. That is the education side of it.

It is very important to create an organisation that can represent the disparate industries that are involved in property investment. We do not want to compete with any of the other associations or institutes but to be a subassociation so that estate agents can be involved in the part that they want to be, along with financial planners and developers. Each can have their particular code of ethics and code of conduct for their industry as it relates to property investment by retail investors. We think if we do not have a group, an association, to do something like that it is going to be very hard for you to rein in the problems that exist in the industry at the moment. We

used the analogy the other day that it would be like trying to crack a walnut with a sledgehammer on the top of a swimming pool, because you would find it hard, I think, to get to the advisers and stop some of the malpractice. Then the industry really is so big that it is like a swimming pool. We need to get everybody together: those responsible developers—and there are many of them—and those responsible financiers who want to make certain we clean up this side of our country.

As far as the government is concerned, we do not believe in an AFSL type licensing regime. We believe that the ACCC and ASIC have the powers already to control malpractices that are happening. We believe that we need to have self-regulation through an association or associations. It does not have to be PIAA; it may be another association. We can see with the accountancy profession and the legal profession that self-regulation can work very well. What we do need is some assistance from government to create some regulations so that we can have approved codes of ethics and conduct and are able to strike out the rogues of the industry. We need accreditation in terms of the education that we have spoken of, we need a complaint resolution system and we need to go a lot further with property investment literacy with good commonsense behind it.

CHAIRMAN—Thank you. Do you have anything to add, Mr Symon?

Mr Symon—No.

CHAIRMAN—I take it from what you have said that the Property Investment Association would, in effect, be the peak body of the advisers in the industry.

Mr Hopkins—It would be for the advisers, but the adviser side of the property investment world is minuscule. It is a very small group of people. It is getting bigger. One of our, for want of a better word, passions is to create a real career for people in property investment advice, but at the moment it is very small. What we find is that the finance industry and the property development industry in particular are the industries with the weight of money that drives property investment. We are here, and the investigation is into advice. It needs to be broadened a great deal into the provision of product. The financial planning profession, or industry, was really just doing advice because the product was created and already controlled by ASIC under the securities act, but with property the product is not controlled.

There are issues with the availability of finance, for example. Let us think about finance. If I think about the banks, off-the-plan purchasing is a very good way for people to get advantages in terms of getting to quality property first, as long as it is done properly. The banks approve finance at the point of purchase, but then, over the next year or two, they can change—not change their commitment, because the commitment may be subject to valuation. One of the things we would like to do is go to the financiers to protect consumers and say, ‘Hey, once you give permission or once you grant a loan, that grant stays in place.’ It is the other industries, not just the advice industry.

CHAIRMAN—Is there an organisation that represents the investors? If not, is there a need for such an organisation, particularly for mum and dad investors in property?

Mr Hopkins—There is not. Is there a need? I would like to hope that our association, at the core, is doing what it is doing to make certain that the responsible people—the reputable people, the people who are really passionate about property and investment—and the allied industries are going to do it to protect the consumers.

CHAIRMAN—You said that you believe ASIC already has the power to provide, if you like, the framework of regulation to allow basically the sector to regulate itself under that framework, without the need to go to the extent of an AFSL. Under what head of power or regulations do you see ASIC operating in that way?

Mr Hopkins—The point that I was making, and Richard may like to add to this, goes to the powers with ASIC and ACCC. Regarding the people who are acting illegally or in an inappropriate way—for example, some of the property spruikers that we have seen, and misleading advertising and misleading conduct at seminars—it seems to us that maybe the powers need to be beefed up a bit—it is taking a long while. But through ASIC and ACCC those things can be controlled.

Mr Symon—John is talking about the fact that there are obviously trade practices rules in place about false and misleading statements and those sorts of issues. In terms of the ability to prosecute when someone does step over the line, there has been an issue. It has been difficult for the industry watching some of the past practices go on with apparent silence from regulators in taking action. Financial services reform legislation is an umbrella over investment that captures everything beyond taking a deposit. So going to a teller is not involved, but any form of product beyond that which includes insurance, financial planning practices and stockbroking—so investments and securities are defined—comes under the act.

The issue is the definition of the act at present, and that is probably something that will give the committee some concern. The definition of financial service and the definition of financial products, which are covered under financial services reform, miss out or do not cover property as an asset. That is the issue and that is why, effectively, this committee is here.

Where a financial service or a financial product is involved, there are requirements. The person has to be licensed—they have to hold an Australian financial services licence. You do not if you are discussing a property asset. There is a process whereby responsible officers have to be appointed. This all comes under the ASIC policy statements, and in this instance 164. People have to meet policy statement 146 requirements on accreditation and continuing professional development. You have to consider the client's financial situation; you have to be able to prove that you have taken into consideration their circumstances; you have to deliver a statement of advice so that there is actually follow-up; and you have to be a member of a recognised complaint handling regime.

So it is very clear. When it comes to property as the actual asset that you are giving advice on none of that falls into place. But it is not quite that clear because I can come to you gentlemen and say, 'Listen, there's a property down the road here that we can put money in together and go and buy it.' If we are actually buying the property we do not fall under the regime. But if we said we are going to buy this property and securitise it and actually sell you units in it—pieces of paper that say we all own 10 per cent—then we have fallen under it. It could be the same

property. It could be the same level advice. One falls under the FSR regime and the other does not, and that is perhaps where some of the issues come about.

CHAIRMAN—Do you think the whole property regime should come under the same sort of disclosure and know your client provisions as financial investment advisers?

Mr Symon—In terms of advice and people coming to you and saying, ‘Is this going to be good for me?’ instead of just saying flippantly, ‘Yes, you can’t go wrong,’ it should be ‘Well, let’s look at the circumstances.’ Frequently, when people are making a decision to invest in a property there is a whole heap of other considerations that come in such as: how are we going to finance it? Maybe it is a negative gearing strategy. A lot of issues are brought to mind. Surely, if a person as defined as a retail investor comes to you, you should be going through and looking at the circumstances making sure the person has the right education and knowledge about the ups and downs of the market. Make sure they can cover that risk. Your definition of risk and mine might be different. Some people cannot sleep at night because they are scared to wake up crossing the road or something. In terms of stockbroking, some people would be very nervous about buying shares in the Commonwealth Bank, whereas for others that is a no risk scenario at all. You are punting on some penny dreadful and that is a risk.

The risk perception has to be mapped and needs to be thought about and explained to the investor. These are the issues. Are you comfortable with that? If the market does come back and the banks start moving to lower the threshold of loans that they will have and all those sorts of things are you prepared for it? How are you going to cover a situation where the bank revalues downwards and you have to come up with cash? You have on the table the impact of a downside movement in the market. At present the spruikers have been talking upside. They really are not giving you the necessary information on how to cope in an adverse movement. We all know that nothing goes up in a straight line. We are probably confident that through a lot of circumstances property will appreciate over time, but it is steps and stairs. It does move around a little bit and be ready for the time that you pick up the paper and, yes, the property has moved down. That is part of the process: know your client; know your product.

Mr Hopkins—There is a huge difference between the two investment classes—equity based or cash based investments, and property investment. In the financial planning education books, they talk about long-term investment being five to 10 years. For the 25 years we have done what we have done, we say, ‘Don’t buy a property as an investment under 10 years.’ Even if it is 10 years, we think it might be a bit two short. So properties are 20-year or a 30-year investment, and the youngest investor we have ever had was 17. He could own it for 50 years as far as we are concerned. There are fundamentals that are different and to try and grab them under the same thing is in our view impossible. The other issue is that the education for financial planners says that if you borrow money against an investment you are an aggressive investor. That is not right with property. Whilst we need to protect people, we need to provide the opportunity of property investment. We do not want to hit it so hard that it is incorrect at the core. If we follow the equity based regime, the stockbroking based regime and the financial planning based regime, I am absolutely confident that we will knock out the opportunity and the upside.

Finally, this is fundamental to the way the industries do this. I do not know of any country in the world that has singled out property investment in the way we are suggesting it needs to be. However, equities based investments from around the world have been developed fundamentally

through brokerage houses and, in more recent decades, through managed investments. Those broking houses have research departments. The managed investment organisations have their research departments. These days we have independent organisations around the world and in Australia researching the opportunities and the managers and the broking houses. The financial planning adviser sits there with all this information, which is mostly given to him after having been checked out by very well-educated, experienced and talented researchers. The only way for somebody to check out property—if you will excuse the expression—is to go and kick the bricks.

A hugely important part of the career and the training of any property investment adviser must be learning about property in a far deeper way than they might be taught at the moment. I am not casting aspersions on the general investment industry; I am just saying it needs to be different. They must be able to kick the bricks, they must be able to know value, they must be able to assess supply and demand and they must be able to have a philosophy about what the future will be for that particular category of property. With the others, the research departments are there.

What Richard is saying is that insofar as giving the financial advice is concerned there should be similar regulations. However, the understanding of property is a hugely important extension that does not need to be there so much with regard to financial planning. Estate agents may do this course. They might get exemptions from the property side, while a financial planner might get exemptions from the financial planning side. But the idea is that they will end up with a much greater breadth of understanding.

CHAIRMAN—This leads me to my next question. Is what you are proposing a broadening of the scope of competency of financial advisers and financial planners? It seems to me that at the moment financial planners focus on advice about managed investment schemes. If you want to directly invest they do not advise on that; you have to go to a sharebroker. If you want to invest in property you have to go to someone to talk about property. But there is no-one who can give you an overall picture and, if you are making an investment, tell you whether you should invest in one or the other or what share of investment you should put in each. When you get to property, you have different categories of property: residential, commercial, rural and the like. Would what you are suggesting give someone the expertise to advise across that whole range of investments, including shares, managed investments and the various forms of property?

Mr Hopkins—Yes. That question also goes to income generation for different businesses. I doubt if one per cent of financial planners in our country involve themselves in direct investment in property—or retail investment, as it has been described. That is primarily because their businesses cannot easily generate an income from that area. Again, I am not casting aspersions on the quality financial planners. What I am saying is that it is very hard for them to be involved in an area of business that they do not make an income from. If we can make it so that they can be appropriately licensed then they can bring their experience to the marketplace. The developers, financiers and all the people we have spoken about will then be able to carefully deal with these financial planners and create a method by which they can make an income. In that way, it will be worth these quality financial planners having exactly what you are saying: an overview.

Mr Symon—Under policy statement 146 there are two aspects. One is that to have the course on the register there needs to be a generic level of understanding, and that is where the whole

area is discussed. In an accreditation program to become a stockbroker, say, you are also talking about property and managed investments and other issues such as superannuation and the like.

So, in the process of accreditation under PS146, you do learn about a whole plethora of investment. Then you are actually signed off for the specialist area that you want, which might be securities or superannuation or financial planning. There are actual boxes, if you will, that your course gets ticked off for. So, in this instance, the course that we are pulling together with Deakin University will cover the generic side so that all areas of investment are covered, and then you become an expert in that property area. So I guess what we are looking for to enable this to happen is another box. You will probably be aware that about three weeks ago a new area called 'self-managed super funds' was introduced. There has always been superannuation, and now we have created a new specialist category of self-managed super funds for advice. In this instance property would be perhaps the next box. For that to happen we need to bring the FSR type regime over the asset called property.

CHAIRMAN—The role of the John Hopkins Group is to represent purchasers, rather than the role of the traditional real estate agent who represents vendors. Is that correct?

Mr Hopkins—I would like to qualify that. Yes, the core of our business, if I may quote our corporate goal, is to assist individuals to become financially secure primarily through property, and the aim of our company is provide access to all the products and services they would need to achieve that. That was our goal from day one, and it still is today. So most definitely our promotion is to get an individual, to sit with them and go through their financial circumstances and, if appropriate, to encourage them to buy property. I must say that, as well as that, we speak of balance. We would never say that property is the only or the best investment. There must be balance, considering appropriateness and preference. Then, if appropriate, our charter is to go and find what we see as quality investment properties for individuals to purchase, which has not changed much over 25 years. We say they must be in the best inner urban areas of Sydney or Melbourne, and we fundamentally have not shifted from that.

But, if you look at the way in which we make our money, you will see that it is in two ways. We make our money where clients engage us to go and find one property. In the other circumstance we get presented with lots of properties—it is a bit like the John West ad: it is the salmon that John West rejects that makes John West the best—and we discard the ones that we do not like or the ones that we cannot negotiate terms that we believe are appropriate for the individuals. In that circumstance, we will negotiate our fee into the property, so the vendor would pay a fee. We would always make a commitment to our clients that they will be buying the property at market value or less, and we would nearly always get independent valuations and those sorts of things.

I say that to you because to me the concept of fee for service for investment advice generally, and definitely for property, is really a misnomer because it is all transaction based. The investment industry say, 'Yes, it is fee for service,' so the fees all add up, but what the investor notices is that as soon as the investor makes the decision to invest they get the fees back. So it is a transaction based thing. The issue is, and Richard might like to add or subtract from me, that people will not pay the fee. The investors will not pay the fee, the amount of money they would need to pay, to get the sort of quality advice they need. To me, if we go down that road and believe, as is sometimes promoted, that this, therefore, is independent, it actually will not

happen. To us it is creating this code of ethics, this code of conduct. There are quality developers, and I will not name them but there are lots of them, who are responsible people and responsible financiers who say, 'Hey, we're happy to commit to that standard of measurement so that somebody purchasing this property can absolutely rely upon the fact that that standard measurement is there.' They can rely upon the fact that for fixtures and fittings we will use this standard format so that everybody can easily understand. We will provide depreciation schedules and other information in this format. We will make certain that prices are not X above independent something.

To me, that is the way to cover it, because the activity of property investment is so important to our country. If we try to hobble this thing that is discussed as advice, because the spruikers came out and did shocking things, in some ways we could cripple part of the industry—which we do not want to do, because we need people to rent houses and we need places to invest in to pay for our retirement. That was longwinded, but I hope I am making a reasonable point.

CHAIRMAN—Is this the way you have always operated or is the offering of advice to buyers rather than vendors something that has developed over time?

Mr Hopkins—From day one. I was in a normal agency in Hawthorn and I decided I did not want to be in an estate agency for the rest of my career. I loved property and I thought, 'What can I do?' I decided to advise people on investing in property. That is how this company started in 1980.

CHAIRMAN—Have you ever been directly involved with any property development or had any links with property developers?

Mr Hopkins—Yes, over the years. It is not our core business, but we have most definitely. We have created syndicates, most often unlisted public companies—of which I have been chairman. We create a syndicate of clients and we may purchase a property and develop it. Some long-term investors over the years have purchased those properties. Companies that I have a great deal of respect for—Mirvac, Becton, Lend Lease—have done similar things. When that happens our clients love it, because the property is what it ought to be.

The other issue that is important to add is that from day one, as far as we are concerned, in any code of ethics and values, full disclosure in a way that everybody can understand is crucial. We have been committed to that since 1980, and it would be part of the charter for everybody involved with the PIAA so that there could never be any confusion about conflict of interest or disclosure of anything that was relevant.

Mr BARTLETT—Thank you for your submission. Going back to the earlier discussion, you talked about the need to bring property investment under the auspices of the investment industry—I think that was the term—and about expanding the role of FSA into property investment. I notice that the submission by the Financial Planning Association advocated a degree of compulsion in this. In their submission they advocate:

... compulsory protections include membership of an external dispute resolution service, professional indemnity insurance by the adviser, having compliance structures and appropriate resources in place, and specific educational training requirements.

Do you agree with those recommendations? Would you go that far?

Mr Hopkins—I definitely agree with the insurance. On the issue of education, I have confidence. It seems to me that the education world speaks a different language, and I have learnt it over the last 2½ years. I definitely agree with that. I would like to add a qualification, which may add or subtract, by saying that we believe the property investment industry should be an industry on its own. We are adamant that the financial planning industry does not understand property. With respect to the financial planning industry, it does not understand property. We are confident that to attempt to twist the regulations as they exist for the financial planners for property will not achieve the results that we all want and that we will not have an industry that is free flowing but has consumer protection.

Mr BARTLETT—Notwithstanding that you say the property investment industry ought to be an industry on its own, would you agree with the same degree of compulsion and standards as applies in financial planning?

Mr Hopkins—We would agree with what I was saying before about what I think are the commonsense ones—for example, disclosure of conflict of interest, disclosure in other ways, education and all those things. I will explain an instance to you. There is a small organisation that we work with. Had you believed the headlines of the papers in the daily and national media two years ago, particularly in Victoria, you would have thought that people were jumping out the windows in Collins Street and South Yarra and that Melbourne, as a property marketplace, was going to be in absolute trauma.

A financial planning friend of mine said, ‘Gee, we could not recommend property in Melbourne at the moment.’ I said to him, ‘What do you think about the philosophy that Warren Buffet might promote, which is buying straw hats in winter?’ In fact, it was the best time to buy property but, because of the restrictions and constrictions on the financial planning industry, they nearly could not give the advice they believed in. What would come back is: how could you recommend property at that time when the headlines were saying that?

We would not want you to misunderstand the point. We believe in rigour. We believe that it needs to be across the different industries, because the property investment industry nearly does not exist. We definitely believe in rigour. We have got to look after the consumers; we have got to have property investment literacy. We need to do it through those sorts of things, because I think the financial planning thing has gone too far.

Mr Symon—The only change that we would make over the recommendation in front of you is to do with the licensing regime. We agree that there should be an approved code of conduct or code of ethics, and it might be the ACCC that looks at those and stamps them. There should be the ability for us to strike off people such as lawyers. Obviously we need the right mechanisms in place—appeal tribunals and so on—but it is the professionals in industry that see very quickly where the rogue element is coming in. If there is the ability somehow to either strike off people or have a memorandum of understanding—the Stock Exchange, for example, has a memorandum of understanding with ASIC that it must report—

Mr Hopkins—There is an obligation.

Mr Symon—Yes, there is an obligation in place for the association to say, ‘You should be looking at this,’ so it can be nipped in the bud and not allowed to go on for years. We have spoken about the accreditation training, so we are in full agreement there.

Mr BARTLETT—And an agreement that it would be compulsory?

Mr Symon—Absolutely.

Mr BARTLETT—For instance, the course that is proposed with Deakin University in this magazine you distributed earlier. Would you require that was compulsory before any investment adviser was granted a licence?

Mr Symon—No, we are trying to avoid the licensing regime. We are saying that the person needs to be accredited. ASIC has a policy statement, PS146 it is called, which states that to give advice to the unsuspecting public—it does not state that; they are my words—you need to be accredited. The issue for the spruikers is that they will still be able to get up and talk about property in a generic capacity. They will not be able to say, ‘Yeah, this is perfect for you and if I were you I’d be writing out a cheque right now,’ without being accredited. They have still got that in place with accreditation, but the process of advice is detailed. Having given that advice, you need to follow up with a statement of advice explaining why you gave that recommendation, why it is appropriate and what you should expect to receive over it.

CHAIRMAN—This is for the person who is going to specialise in property advice rather than the broader issue I was talking about earlier, where you would have someone who could advise across the whole range of managed investments, property, shares and the like.

Mr Symon—That is correct.

Mr Hopkins—Mr Bartlett, we are most definitely saying that if you are not accredited, if you are not educated in property investment, you cannot in any way give advice on property investment. In responding to your point, Chairman, we believe it is a great pity for the real estate agency world, because there are some very good and responsible people in the real estate agency world that could really enjoy property investment. It is a way to get property investment to the whole community to its advantage. What we are saying is that those people, even though they have an estate agent’s licence, would have to be accredited with the property investment education.

Mr BARTLETT—So every estate agent would need to be accredited, because distinguishing between generic advice and specific advice in the case of a real estate agent is quite problematic.

Mr Hopkins—Only those agents who want to be involved in property investment advice.

CHAIRMAN—Who are advising buyers rather than sellers.

Mr Symon—Exactly. If you go to a real estate agent and say, ‘I want to list my house,’ the person would not need to be accredited. But the agent needs to be accredited if you go to them and say: ‘I’m moving from Sydney to Melbourne. What would be the most appropriate area for me to invest in?’

Mr BARTLETT—There is a grey area in there, though, isn't there. Every person who walks into a real estate agency and says they want to buy a property is seeking some sort of advice. It might be broad, it might be general or it might be specific. If the agent says, 'This is a good time to buy,' or, 'This is a good area in which to buy,' or, 'Here's a property that I'd recommend for you,' where is the dividing line where you require this sort of accreditation?

Mr Symon—Under FSR at present it is fairly clear where the advice process comes in and whether it is generic or personal. For example, if you were a stockbroker and I asked you to buy me some National Australia Bank shares, you obviously have to be licensed to deal but you are not invoking your requirements under PS146 to be accredited. I then might ask, 'Do you think it is a good time right now to buy those shares?' and I am looking for an opinion from you. That is the point of accreditation. As soon as you hear that, your brain should be going through the whole process of determining what advice means. Is it an appropriate investment? Is it a good time? It was a quick question, but you actually have to go through a process as a doctor would in working out what is wrong with a patient. You go through a process, and advice is about learning that process.

So there are two components to the accreditation: the knowledge and the skill. To compare it to flying, you can read the book on flying till the cows come home, but you have actually got to get up in a plane and make something happen. So one is the knowledge and one is the skill. Through PS146—and I am sorry to harp on this—I think it has been done particularly well. Yes, you do have to have the knowledge. You have to sit down and read the books and pass an accreditation process. It is mapped—it is at diploma level—which all of a sudden sets out a whole set of requirements as far as the deliverables are concerned. It needs to be signed off by a registered training organisation, an RTO, which itself is signed off with ASIC. Then the next part of it is the skill. So you actually look at the way that the person will engage the retail client and go through a role-play scenario or some other form of determination on how to determine skill.

Mr BARTLETT—I understand all that, but I do not know that you have clarified where the dividing line is for an agent who is offering advice to someone who walks in the door.

Mr Hopkins—I think that the best way to clarify it is to explain the daily activity of an estate agent and to explain their education. I did the estate agents course—it was so long ago I can hardly remember. What the course is really about is teaching me how to build a good estate agency. That is what it is about. It is a good course and it does talk about the ethics and responsibilities of an agent—a principal—to the general public and so on, but following that is learning how to be a good estate agent and run a good estate agency. My daily activity as an estate agent, if I were one, would be looking for a property to sell, advertising it, trying to generate somebody interested in buying it and then, when that person put their hand up, trying to sell them the property.

The daily activity in our company, and in those companies that are like ours, and there are not that many, is to look for an individual who wishes to expand their financial circumstances into the future—a long-term investor—sit down, do financial planning with them, encourage them and work to make certain that whatever advice we might be giving is appropriate and doable in the way of finance, other investments and so on. We might introduce them to an accountant or a lawyer to work out what vehicles they should be investing in or how that can be done. Then the other part of our business—and I will not bore you with our philosophies; in my office they say I

could speak under water with marbles in my mouth—is to go through our process and rules with regard to what is and what is not a quality investment. We could sit here for the afternoon and I am confident I could just keep talking about our strategies and why they are our strategies in terms of quality property. It is about having a very firm belief about what is and what is not a quality investment. Then our job is getting out and finding it and making judgments about that property for the future. It is a far cry from what an estate agent does every day. I am not saying it is any greater or lesser; it is just a hugely different activity.

Mr BARTLETT—Let me wrap up with this question, still with the estate agent: would you require that, before an estate agent can recommend any property to a potential investor, they have accreditation to do so, as distinct from an estate agent's licence? If I walk through the door of an agency and say, 'I'm looking for an investment property,' can that agent not say to me, 'Yes, there's one around the corner that would suit you well'?

Mr Hopkins—Yes. The distinction is—and it is a good point—that the agency world most definitely ought to be able to list a property that may be a good investment. The point of distinction, as Richard said, when it comes to property is that if I give you advice on investment in terms of your particular circumstance—financial planning or other advice—or if I branch into telling you that that is a good investment or that that area is a good investment, as far as I am concerned, I need to be accredited. But if they come in and say, 'I'm thinking of buying an investment; do you have properties that are for sale?' as long as they not giving advice, that is fine; they are doing the job of an estate agency. Those are the criteria. I think Richard is right. I think there is a way to make that distinction. It is a very good question and it needs to be flushed out and very clearly put forward to the different industries.

Mr BARTLETT—I am not sure that it is quite as easy as that to make the distinction, although I agree that that needs to happen. I will finish on that point.

Mr Symon—In most areas where the financial services reform sits there has been a major degree of conservatism. You will find that a lot of people beyond advisers in financial planning and stockbroking have done the PS146 accreditation course to be sure. You will have research analysts, for example, inside the major stockbroking firms who on a day-to-day basis do not give advice, but you will find, if you inquire, that most of them have done the PS146 accreditation just in case. It is the same with superannuation. Frequently an investor will come to you as a financial planner or stockbroker and say, 'Is this investment appropriate for me?' As an individual you might say that it is okay. They might then say, 'Yes, I'm thinking of putting in my superannuation fund.' You say, 'There's a whole separate criterion as to whether it is appropriate for a super fund.' Most people in that area who might be challenged by that go on and get their PS146 accreditation in superannuation to be sure.

Mr BOWEN—Mr Bartlett went down the same line of questioning that I wanted to go down, which is, obviously, the real estate agent question, so I will follow up his question. If I went to a real estate agent and said: 'I see you have for sale this property which I'm thinking of as an investment; what do you think I would get in rent?' and the real estate agent said, 'I manage the property next door and I get \$400 a week,' is that property investment advice, in your view?

Mr Hopkins—It is a very good question. Because I have worked in the industry for years, I have a pretty clear understanding that the answers can be defined, but you are asking exactly the

right questions. It comes to the different industries where we need to make certain—and, as I say, we hope it is the PIAA but, if it is another association as well as ours, that is fine—that we make those clear distinctions. An estate agent has two fundamental areas of business: one is listing and selling property and the other is tenanting property. To the extent that they are experienced in tenanting property, I do not believe they are getting into giving advice on investment. They are talking about something that is a specialty and that they know. In my view, they would need to be able to prove that they were experienced in giving that advice, more under their estate agent's licence than on the investment side of things. Investment advice comes into financial planning and what property will be a good investment in the future. I would like to think we know rentals relatively well in the areas we work. Nearly always we would go to an estate agency—the ones we know—and say, 'Clarify for us if you think we're right.'

Mr BOWEN—So your answer is no; you do not think that is property investment advice if they are giving an indication of rental.

Mr Hopkins—No.

Mr Symon—The reason that we are not proposing an AFSL type situation is that you have property experts in place who can actually work through those issues and nuances. It was a generic question and a generic answer, but when you get down to the micro level you can imagine. We are proposing putting it back on to the industry to say, 'You determine the code of conduct and the code of ethics and take it down to those micro levels.' We believe that, if a regime is in place, as an authorised, accredited industry association we need to go to the ACCC, ASIC or whoever to have that stamped.

Mr BOWEN—It seems to me that you are heading down the road where almost every real estate agent in the country is going to have to be accredited.

Mr Symon—It will depend on the side of the business they are in. When you walk into a real estate agency and say, 'I'm thinking of investing in the area and I want advice,' perhaps one of the definitions the real estate agent needs to ask is: 'Is this the home you are going to live in or is it an investment?' If you go into a bank, make a deposit and say, 'I'm thinking about putting \$20,000 into something or other,' you are taken aside and a person who is correctly and appropriately qualified speaks to you.

Mr BOWEN—In answer to my question, you said that, if you gave an indication of what the rent would be, that would not be property investment advice. But if I said: 'I'm thinking of buying this property for investment. How much has property been appreciating in this area over the last five years?' would you then say that that has probably crossed the line?

Mr Symon—No. I would say that you have crossed the line as soon as the person says, 'Do you think that's right for me?'

Mr Hopkins—Or if they say, 'What do you think that property will do in the future?'

Mr BOWEN—So historical data is fine, but any projection gets into the realm of advice.

Mr Hopkins—That is correct.

Mr Symon—As soon as opinion has come into the conversation and the appropriateness of that investment to the person, that should all of a sudden trigger a process of know the client and know the product.

Mr Hopkins—In relation to the presumption that all estate agents would need to be accredited, my feeling—not my gut feeling but my experienced intuition—tells me that in fact a lot of that would not need to be accredited. They would not want to get into it, because it involves a whole range of other things that they really do not do in their daily activity. A lot would need to be accredited, and I think they should. I think they would enjoy it, and it would be great for their clients. But you would be surprised that a lot would say, ‘No, I’m happy getting a property and putting it on to the market and selling it. And I can be careful about what I say. I don’t have to say that it is going to do this in the future.’ A lot would not want to be accredited, but it creates a whole career opportunity for those agents who add this education and accreditation.

Mr BOWEN—Just taking you to another area, your submission emphasises the issue of education, and you are obviously backing up your submission with actions. Other submissions that we have received talk about the experience of New Zealand and Oregon in the United States. They have introduced improved education for real estate agents, in particular. Is your model based on either of those or any other best practice model overseas, because they appear to have achieved some pretty impressive results?

Mr Hopkins—In fact, Richard may say that it has crossed his mind but it has not crossed my mind. What crossed our mind, when this education process started, was really in response to what everybody seems to be defining as the spruikers and whom we categorise as the get-rich-quick brigade. So that is where that was. The model is based on two things. It is based on the financial planning industry a bit and the accountancy world. We believe there needs to be minimal accreditation. There needs to be the opportunity to have a diploma level certification, to get into a more serious career, and a much more in-depth certification, like a certified practising accountant or a certified financial planner. For the really serious career person, we would love to extend this course through to that. We are not in a position to do that yet, but that is exactly where we, and Deakin University, believe it should be heading. So a certified property investment adviser would be a very well educated person in terms of that activity.

Mr Symon—The accreditation is the benchmark that you must have, and then as a certified property investment adviser you would want to hand over your business card, because you have taken it to a higher level. That is self-regulation at work. People will strive to achieve that as quickly as possible.

Mr Hopkins—Better than that, I know in fact a lot of young people who want to get into property, and presently the opportunity as a career is really as an estate agent or a valuer, unless they are nearly in their own business, maybe from the construction development side. It offers a fantastic opportunity as a career path, but that is obviously not this year.

Ms BURKE—On that self-regulation idea, don’t you think it has failed the industry to date?

Mr Symon—There has not been a lot of regulation in place. We covered this a little bit earlier, and we were told that you were held up.

Ms BURKE—Yes, I am sorry. I had to meet a whole lot of Greeks last night, which meant getting up at 10 minutes to five this morning, so please forgive me.

Mr Symon—Just to summarise, I think our point is that there are a number of rules and regulations in place about misleading behaviour and those sorts of things. The issue for us is that we saw that happen for a long time before anyone acted on it. By setting up a self-regulatory regime we will see that happen a lot quicker than currently. We would be aware of it. If there were an MOU type regime in place that gave us some responsibility to go to an ASIC or an ACCC to say, ‘We are concerned about this and it didn’t get investigated,’ you might nip the problems in the bud a lot earlier.

Mr Hopkins—An obligation.

Mr Symon—Yes, an obligation on—

Ms BURKE—But it did not help with Henry Kaye, did it? The industry have been saying for quite some time that he was doing irreparable damage—

Mr Symon—Yes, that is right.

Ms BURKE—and ASIC was onto him, but self-regulation did not help in that instance.

Mr Hopkins—I understand you were late because the plane was late, but the point that we are making very strongly is that the property investment advice industry is nearly non-existent. But the activity of property is not, when you consider that 20 per cent of housing in the country is provided by private investors. I would not like to be quoted on this, but I think one in six or one in seven Australians over 15 have an investment property. It is a big industry.

I recently said to one of the major financiers of our country, ‘How important is property investment to you?’ and he said, ‘It is 60 per cent of our business.’ If I go to the big property developers and say, ‘How important is property investment to you?’ they will say that it is 50, 60 or 70 per cent of their business. However, there is no linking anywhere of these things to property investment advice. I could probably name the companies that do what we do on only one hand.

In my view, Henry Kaye—as you have brought the name up—is an individual in the get-rich-quick brigade. They promise to tell people how to become a millionaire in a minute with no money and no risk. It is said that they are spruiking, and I am, in a sense, slightly disappointed that this is the word everybody is using, because businesses, definitely including ours, use workshops. We use presentations as a method of working with our clients, and so do brokerage houses and a whole range of different sections of industry. To me that term is misleading. But the get-rich-quick approach is what gets 500 people to a hall.

Out of the 500, 10 per cent will be naive, and they are the ones that spend \$15,000 for a weekend of education which they forget before they get home for dinner on Sunday night—and they borrowed the money to pay for it in the first place. It is very wrong. But that is not the industry of property investment. That is in fact somebody who, in our belief, is absolutely misleading the public and leading them in a certain direction based on falsehoods—things that

are absolutely impossible and will never happen. There was no indication that some of the things that those sorts of people were saying had ever achieved the results they were saying they would—not just in Australia but, frankly, around the world. So he is not the industry.

Ms BURKE—Has the heat gone out of the industry, though?

Mr Hopkins—If you mean the conversation about all the bad things—

Ms BURKE—No, sorry—the market for investment properties. Is that on the wane now that interest rates are threatening to go up? I will give you a Victorian example: if you have an investment property and your land tax has just gone through the roof, so you are thinking—

Mr BOWEN—It is not just Victoria.

Mr BARTLETT—It is also New South Wales.

Ms BURKE—It is a bit close to home at the moment.

CHAIRMAN—It is everywhere we have those state Labor governments.

Ms BURKE—Fantastic, aren't they! Brilliant people.

Mr BARTLETT—And I just sat on the fence.

Mr BOWEN—Give them more money!

Ms BURKE—Exactly right. So you are living with this reality nowadays that the return on your investment is not that great—rentals are not as fantastic as you thought they would be, interest rates are going up and land tax is killing some small-time investors—and there are all these people out there who bought an investment home as their super. So are we seeing a decline in housing as an investment market? Is the heat, the notion of this as an industry to create wealth and to be your super, declining?

Mr Symon—The figures that came out a couple of days ago were quite staggering, because our perception was probably that the heat was turning down a little bit. But the actual figures that the ABS released were quite strong.

Mr Hopkins—There are some fundamentals, too. The first, I think, is this. We can define investment, as compared to trading and speculating, as being long term. We can say that investment is where an individual does not have to do any work in their own right—so they do not have to go and paint houses or develop them or trade in their shares daily by reading the *Financial Review*. And we can say that investment is non-speculative. So if we define investment as something that is long term, where people do not have to do the work, and as non-speculative, then there are three investment classes: cash, equities or share investments, and property. In terms of movement of capital, you can see that movement of capital over a half decade period is from one to the other, Ms Burke. Even in times when that movement happens, let us say, in a year of good stock market performance when property investment quietens down,

unless the world turns itself on its head—and I have been watching for many years now—within two or three years it will be back again. It is always going.

There are another couple of things that are happening in our country which are really important. That is the fundamental population growth and that requirement for housing, which actually fits for people who want to build wealth for the future. In Victoria we are talking about Melbourne having a growth of one million people between now and 2030. That housing will need to be provided to an important degree by investment. This is not an industry—that is the point. Respectfully, while you were not here we were saying that it needs to be an industry. It needs to include the process from the start where we would literally sit with developers and say, ‘What we want for our clients is that and that price.’ It needs to start from there in terms of the developer so that they have got a set standard of quality values that the consumer can rely upon, through to the financier, the marketer, the adviser, the financier and the manager. That process is what we have set in motion and I am confident in knowing that each of the separate industries have their separate code of values, although they fit within this umbrella.

CHAIRMAN—Before we wind up I have a couple more questions. You submit that:

Until some form of self-regulated response and minimum standards are introduced, these so-called ‘get-rich-quick’ experts will not undertake any form of detailed explanation as to volatility or risks, nor will they disclose secret deals or provide accurate information, on which an investor needs to rely when making an informed decision.

Can you elaborate on what you mean by the ‘secret deals’?

Mr Hopkins—Queensland had a spate of circumstances involving what they call two-tier marketing. The two-tier marketing to which Queensland responded involved not only the people who were directly involved in the activity but also the lenders and some lawyers and valuers that were involved. What was happening was that somebody would go to some country town in New South Wales or Victoria and say, ‘Queensland’s population is increasing at 20 per cent, it is the only state to be in and not just because it is sunny,’ although it is not sunny today. They would explain how negative gearing worked and how leverage worked and they would bring them to Queensland. They would talk about the 20 per cent increase in population and they would fly them for free. There would be a valuation that was incorrect, there would be funding available, there would be a lawyer to handle the process immediately and they would buy the property immediately. In terms of the price that the developer got for the property, the two-tier marketing—from what I understand from what was happening in Sydney—there was another arrangement whereby there was one price of the property for the developer and what the person paid was another price again. That sort of thing happened.

I know of one instance in Victoria—and I should say this is hearsay but I am pretty confident that it is right because I think I heard it said by a number of people—where a development with one of the very well-known property spruikers was negotiated. There were 10 or 15 properties. The individual put in some electric curtains, some stereo equipment and added a substantial amount of money, a ridiculous amount for the work that was done on those properties. He then went to Sydney and sold the properties to people in Sydney. So it is that sort of thing that was not disclosed. Frankly, I think that is easily fixed. That is criminal so it is easily fixed. With disclosure anybody that does that—

CHAIRMAN—Under your proposed accreditation and code of ethics those sorts of arrangements would have to be disclosed?

Mr Hopkins—Everything should be disclosed. The issue of reasonable market value and proving it are things that stop a lot of that happening.

Mr Symon—It also brings into play the issue of having a federal jurisdiction. You have got a marketplace where you can have a property developer in one state, a financier in another state, and the investor somewhere else. We do not want to have a disputation over who has got jurisdiction.

CHAIRMAN—Does John Hopkins operate in every state?

Mr Hopkins—We are fundamentally Victorian. We have done quite a lot of work in Sydney over the years in terms of buying property in Sydney and we have a range of organisations that we work with based in other states that refer clients to us to buy property in Victoria.

CHAIRMAN—And PIAA is in its early stages of gestation, as it were?

Mr Hopkins—Yes.

CHAIRMAN—Do you actually have a membership established as yet?

Mr Hopkins—We have the good fortune to have some terrific organisations that are absolutely behind it such as Baker McKenzie, Pitcher Partners—a major accountancy practice—and Charter Keck Cramer and Archicentre and a range of other organisations that are not necessarily national. We need to be national. We have a number of substantial developer organisations and financiers and we are just about to finalise our directorate. Over the last six to seven months they have already committed money and are ready to get going and be involved.

CHAIRMAN—When it is up and running you will have members in every state?

Mr Hopkins—Absolutely.

CHAIRMAN—There are people in every state who would be eligible to join?

Mr Hopkins—Absolutely.

Mr Symon—And specialist committees to concentrate on the education and code of conduct side.

Mr Hopkins—We already have the fundamental foundations of the states worked out and the personalities and how that will be. It is the beginning but by the same token it is not a standing start; we are quite a way down the road.

CHAIRMAN—What stage are you at with organising the course with Deakin University?

Mr Hopkins—That is the first advertisement. In June it is available.

Ms BURKE—Did you talk about what some of the spruikers offer as far as mezzanine financing and all that? Did you go down that avenue at all in your discussion? I have got a huge array of victims of Henry Kaye. I am not sure whether they were completely stupid or beautifully naive—I have not quite worked that out. Two groups bought into seminar series but did not get a seminar when it fell over. But there are a whole lot of other small businesspeople who bought into the mezzanine finance and financial arrangements and did not see pyramid selling when it came to them—it was just a new name. Would you envisage that your area would be excluded from those things because you are just talking about property rather than talking about financing for a property or do you always see that there is a linkage?

Mr Hopkins—We have not spoken about this. With all of the groups that we are talking about and with the different activities that property investment includes, those things are all part of what an educated property investment industry would be involved in. Therefore I would think that they would all be included and part of what was done, part of what we do.

What comes in there is the education that the financial planning world has already addressed, which is giving people good advice. One of the things we say to our advisers is that the most important thing we do is make certain that our clients know what they are doing. Risk-reward is not something that has just been created in Australia. It was created before Babylon, 6,000 years ago. While mezzanine debt can be made to sound very safe, you do not get 20 per cent for nothing. It is about sitting with those nicely naive people—or those people conveniently jumping on the wagon to get their money back; one or the other—and saying, ‘Christmas comes but once a year. There are no free lunches, and if you want 20 per cent know there is a risk and you could nearly certainly lose all your capital.’

Ms BURKE—So the notion of self-regulation and education would incorporate the notion that they are getting not only property advice about returns on assets but advice on where to go for finance.

Mr Symon—Under FSR at present, you are bringing property under the same umbrella, basically, so that there are no gaps. And you are talking about the gaps.

Mr Hopkins—We have come across a lot of those people, too, who have been in trauma.

Ms BURKE—There are a lot of them in Melbourne, sadly.

Mr Hopkins—In creating courses that make sense, the issue is that once you create a course that makes sense and is not exaggerating you do not get the hundreds. The exaggerations get the people you are talking about.

CHAIRMAN—There being no further questions, thank you for your appearance before the committee. Your evidence has been very useful to our inquiry.

[10.27 a.m.]

THAM, Mr Joe Yew, Legal Manager, National Credit Union Association Inc.

CHAIRMAN—Welcome. As I indicated earlier, this is a public hearing and therefore the committee prefers all evidence to be taken in public. If at any time there is any evidence you wish to give in camera, you may request that of the committee and we would consider such a request. Having said that, I invite you to make an opening statement, at the conclusion of which I am sure we will have some questions.

Mr Tham—I will keep the statements that I have to make this morning short, given that the National Credit Union Association is not directly related to the property investment industry. We are actually an industry association representing member credit unions. Essentially, this topic is of interest to us and our members simply because the main business of credit unions is to take deposits, in the form of savings and term deposits, and to lend money for investments, including for acquisition of investment property.

What I want to highlight in my submission is the fact that we believe the FSR provisions are most suitable to cover and to correct or regulate some of the activities of spruikers and of the rogue element in property investment advice. We say this simply because the licensing regime, the training regime and the disclosure regime, all set out in the FSR, are flexible enough and have to date covered a wide range of financial products.

In the credit union situation it is, I guess, nonsensical to have savings accounts and term deposits which are well understood by the majority of the public and low in value in most instances covered by the full regime of the FSR, especially when property investment advice which can potentially cause financial ruin to consumers is still not being regulated. The scope of the FSR regime can be tweaked. ASIC has made comments to the effect that property is not specifically covered under the FSR provisions, but we believe that that should be revisited or carefully examined and, if it is considered that the provisions do not cover property investment advice, then they should at least be widened to include that.

CHAIRMAN—Can you explain how the National Credit Union Association fits into the overall structure? I am aware of CUSCAL—Credit Union Services Corporation Australia Ltd. Can you distinguish between the two?

Mr Tham—CUSCAL is a competitor of our sister company, CreditLink. CreditLink was originally formed to provide back office services—things like chequing, ATM cards et cetera—for credit unions. It represents about 30 credit unions spread throughout Queensland, New South Wales and Victoria primarily. NCUA is an offshoot of CreditLink. It was specifically set up separate to CreditLink because not all the interests of credit unions et cetera could be well served by having it as a joint association with CreditLink as CreditLink runs its own business. That is how NCUA came about around 25 years ago.

CHAIRMAN—So you represent some credit unions but not all of them?

Mr Tham—Not all the credit unions.

CHAIRMAN—What is the proportion of the market share?

Mr Tham—Approximately 15 to 20 per cent of the credit union market.

CHAIRMAN—Is there another organisation like yours?

Mr Tham—The other organisation would be CUSCAL.

CHAIRMAN—So they have a representative role as well as a back office role?

Mr Tham—Yes.

CHAIRMAN—You probably heard some of the evidence of our previous witnesses. What is your view of an approach to this industry that involves accreditation and self-regulation through an enforceable code of conduct—perhaps under the Trade Practices Act as distinct from bringing them completely under the umbrella of FSR?

Mr Tham—I think that would be a piecemeal approach. Sure, it is one step before full regulation but, when you look at the regulation, you see that it is exhaustive. The licensing regime is essentially proving to ASIC that you have controls in place, that your staff are appropriately trained under PS146 and that you have responsible officers who have the appropriate expertise to run the business and who will take responsibility and provide support for the business. Our view is that self-regulation is probably not the best way to go. We believe that the full licensing regime should apply, especially when credit unions—some of which in country towns are small and all they do is take deposits for savings accounts and term deposits and lend money based on security over mortgages on property—have had to go under the full regulation of the FSR. We do not believe that it is too much of an ask to subject the property investment advice industry to that.

CHAIRMAN—CUSCAL says in its submission:

It is a mockery of regulatory and consumer protection principles that prudentially-regulated, low-risk investments such as deposits are subject to a stringent consumer-protection licensing regime while high-risk property investments are virtually unregulated.

Do you share that view?

Mr Tham—We share that view.

CHAIRMAN—They also state in their submission:

The alternative approach of the States and Territories introducing their own licensing and disclosure regimes is inefficient and these regimes may be inconsistent between States and Territories and with the FSRA. A new and distinct layer of investor-protection regulation would risk unnecessarily increasing the regulatory compliance burden on law-abiding businesses.

Mr Tham—To embellish on that, certainly a states based approach would cause disparity. Even though things are set out with the best of intentions at the start, sometimes through various government idiosyncrasies disparity will occur. Any disparity will not be good for the industry, especially when you look at property investment advice. It has become national, in terms of investors in Victoria investing in the Gold Coast or whatever. I do not think a states based approach would be appropriate.

CHAIRMAN—As you know, the FSR regime operates on the basis of what is defined as a financial product.

Mr Tham—Correct.

CHAIRMAN—Should property investment be classified as a financial product or should there be some sort of separate stream that defines property. If you want it under FSR, how would you distinguish it?

Mr Tham—To classify it as a financial product would be the easiest and most efficient way of bringing it into the current legislation. Whether it should be or not, we submit that it should—whether it does is questionable. At the moment, ASIC does not believe it does specifically. But if you look at the definition of financial product it includes things like managing a financial risk. Although you often relate that to the insurance industry, a lot of the investment seminars which are tied to investing in properties and various schemes are essentially teaching how to acquire something in a risk-free way or by minimising the risk. We believe that the type of advice—for want of a better word—provided in these seminars can come within the scope of the FSR.

CHAIRMAN—But with FSR it is really the end product that determines whether it comes under the regime. Financial investment is pretty easily defined or understood, or seen as a financial product. Property may or may not be a financial product, depending on the purpose for which it is purchased.

Mr Tham—The focus should not be on the property itself but on what surrounds the acquisition of the property. If you look at the financial planning industry, a lot of the advice which may or may not be taken up relates to what particular clients should put in particular asset classes and how they should allocate their funds. Really, in financial planning circles, property is seen as another asset class. When fund managers look at stocks or bonds et cetera, property is another asset class which you allocate a certain portion of your funds to, depending on your circumstances. I do not see why property—especially the advice surrounding it, how to minimise your risk et cetera—should not come under it.

Mr BARTLETT—Do you think there is a potentially greater role for the credit union industry in property advice? I know that you are not directly involved, but obviously there is a commonality of interest if your customers are borrowing money and making unwise investment choices—it impacts on them as well as you. Do you think there is a capacity for greater assistance in advice on property evaluations? Are those risks and so on spelled out clearly to your customers when they are buying for investment?

Mr Tham—At the moment the credit union industry, in terms of lending anyway, is governed by the Uniform Consumer Credit Code. We do not believe that much more can be done to advise investors from the credit union side.

Mr BARTLETT—What percentage of your loans would be for investment purposes?

Mr Tham—I do not have any statistics on that specifically.

Mr BARTLETT—Do you have ballpark figures?

Mr Tham—I could not even hazard a guess. I know that about 70 per cent or so of lending would be for home loans. As to the split on investment to owner-occupied, I do not have any figures for that.

Mr BARTLETT—What percentage of your loans would subject to default?

Mr Tham—It is not very high. I could not put a figure on it, but it is not a very high percentage of defaults at this stage.

Mr BARTLETT—Before a credit union makes a loan, presumably it does a valuation to determine the value of the property?

Mr Tham—That is correct.

Mr BARTLETT—Are those valuation figures automatically made known to the borrower?

Mr Tham—Not necessarily, but sometimes they are. It depends on the credit union's policy and, more generally, whether the customer asks for them.

Mr BARTLETT—Do you think there is a potential role for, say, the automatic disclosure of valuations which might provide some safeguard for borrowers, or at least would alert them to the fact that they perhaps might be paying more for a property than they should be?

Mr Tham—We believe that is probably a matter for the buyers themselves. As long as the figures stack up with the credit union's internal credit-lending processes for serviceability of the debt, if a client does want to borrow money for a property it is hardly the position of the credit union to advise them against that.

Mr BARTLETT—So you do not think there is a responsibility for credit unions to advise against unwise purchases, based on borrowing from the union?

Mr Tham—No.

Mr BARTLETT—That is interesting. I would suggest that perhaps there is a role. In your submission you suggest that the current provisions of the Corporations Act would adequately cover the property investment advice industry if 'certain definitions are widened'. Could you elaborate on that? What definitions and how do you think they ought to be widened?

Mr Tham—The Financial Services Act effectively hangs on what is a financial product. There are two important limbs. The first is whether there is a financial investment being made, which ASIC has said and the legislation, as set out in the notes, says does not really cover acquisition of a property. The second concerns managing financial risks. Often when you look at property investment, and the advice surrounding that, it is something that people do as opposed to acquiring managed funds or acquiring shares directly or bonds. In that case they are making a judgment on which asset class is going to perform. Especially from an investment perspective they will be making judgments about the future returns and the cash flow from property et cetera and weighing that up. We believe that that in itself and the advice around it should come sufficiently within the meaning of management of financial risk. If it does not, we certainly believe it would be open for government to widen or clarify that in regulation to specifically include property investment advice activities.

Ms BURKE—If someone walks in and asks to borrow money for property, would you automatically ask whether it is for personal or investment purposes? Is there a standard question you would ask when lending?

Mr Tham—Yes.

Ms BURKE—If it is on the basis of investment, do you then go and explore a bit further about the ability to service that loan and the rental?

Mr Tham—Of course. That all comes into the process, and that I think is where the responsibility starts and ends. At the end of the day, the credit union want to lend so that their clients can achieve whatever financial outcome they believe acquiring this property will lead to. In terms of serviceability and the value of the property, the credit union will make sure that there is an ability to repay a loan and that there is sufficient security in the asset if there are adverse circumstances that require a foreclosure or something like that. But I think that would be as far as the credit union should go.

Ms BURKE—If you assess that they can service the loan but that it will be a dud investment—which are two separate things—you would not advise, ‘Don’t go there,’ because you will get your money back, but they will not be making any money?

Mr Tham—Yes, but credit unions are not generally in a position to assess whether it is a dud investment—that is the problem. We do not have first-hand experience of the circumstances surrounding how someone came about the property—why they decided on that particular property and that sort of thing. It is almost one step removed and—

Ms BURKE—You are looking at your credit risk?

Mr Tham—Yes, exactly.

Ms BURKE—That is what your exposure is. That is what you are assessing versus the risk to the investor in the long run, depending on their investment outcomes?

Mr Tham—And assessing something beyond the credit risk to the credit union is, I think, something which should not be pushed.

Ms BURKE—You would like to know, when people are coming to borrow from you and they have had other investment advice about the property, that that has been sound advice?

Mr Tham—That is correct.

Ms BURKE—If someone comes to borrow for personal housing investment purposes, what sorts of savings do you like to see? Do you have a benchmark within the credit union industry?

Mr Tham—I do not know. I cannot make any comment because I do not have any first-hand experience of that at all.

Ms BURKE—Would you know whether the situation would be different if you were borrowing for an investment property? Would you need to demonstrate that you have something behind you?

Mr Tham—In terms of cash flow et cetera?

Ms BURKE—A cash flow would be demonstrated savings. You are not just relying upon income; you have saved some money before you walk in to buy something.

Mr Tham—Generally, as part of the lending process, credit unions will look at the assets of the borrower beyond just what they are borrowing for and the acquisition that they are about to make, so yes.

Ms BURKE—If you cannot answer my next question—and I would then put the question on notice—could you see whether there is any information you could get afterwards? Do you know what the percentage is of people who borrow against existing house purchases to buy an investment property?

Mr Tham—I do not have any figures that I could quote. But certainly I can have a look at that and provide the committee with some information.

Ms BURKE—It would be interesting if we could find out. If the credit union has a big exposure—and, no offence, but you are a smaller player in the housing loan market for investment property—it would be interesting to correlate what the bank's exposure might be.

Mr Tham—I suspect that APRA or even the Australian Bureau of Statistics may have specifics on that, which I can have a look at.

Ms BURKE—It would be interesting. I am curious to see, from the Credit Union's perspective, what it is.

Mr BOWEN—You recommend extending FSR to property investment advice. My concern about FSR is the onerous paperwork burden it creates for not only the recipient but also the provider. For example, if you take out a loan you get 16 pages of bumph which nobody ever reads. If you are providing advice you have to go through a very onerous paperwork burden which is particularly concerning considering that I think many of these providers would be small businesses. I think the paperwork burden on small business is already too high. I know it is also

an issue for your members and other big providers that huge amounts of money are spent on complying. I am wondering if you could comment on how you find the compliance burden of FSR and whether you think it might be too onerous for the people that we are talking about.

Mr Tham—What is important to recognise is that consumers believe, whether rightly or wrongly, that there is a bit of parity in terms of legislation and coverage. When they go in and open a savings account or get advice on term deposits, they see all these product disclosure statements—the various statements under the Corporations Act that are required to be given. It is not unreasonable for some consumers to think property investments are of a higher value and must be protected in some way in terms of what institutions have to provide. In terms of credit unions' perspective, there are a lot of mechanisms that have been built into the act to reduce the numbers of statements of advice et cetera when credit union teller staff or inquiry staff provide advice, whether it is general or personal, in relation to term deposits, for instance. There are minimum disclosures as to whether there are conflicts of interest or whether there are other benefits that you are getting—commissions et cetera. That is where the legislators have drawn the line as to minimum disclosure. They have not imposed the full statement of advice that you would get if you were to go to a financial planner. Certainly the current FSR already has mechanisms to reduce the burden on our members, and something like that could be applied in terms of property investment advice as well so you could at least have some minimal disclosures.

CHAIRMAN—In your submission you say approximately 72 per cent of credit unions' total loans and advances are attributable to housing loans. You also include figures that show that as at December 2003 housing loans were responsible for 57.2 per cent of the total assets of 180 credit union institutions. There seems to be a disjuncture between those two figures. Can you clarify it for me?

Mr Tham—Are you referring to a schedule in the submission?

CHAIRMAN—It is table B1. That is where there is the 57 per cent figure. It is under loans and advances.

Mr Tham—In table B1, the housing loans and the other loans and advances are actually percentages rather than dollar figures. So if you look at table B1, under the heading 'All'—as in 'all credit unions'—you will have 57.2 per cent, as a percentage of total assets, being attributed to housing loans, as opposed to 21.6 per cent being attributed to other loans and advances—personal loans et cetera. So effectively 57.2 as a percentage of total loans, which is 57.2 plus the 21.6, gets you to the 72 per cent.

CHAIRMAN—Okay. Has that percentage—housing loans compared with other loans—changed over the years?

Mr Tham—In the last couple of years, that has been fairly consistent.

CHAIRMAN—What about over, say, five or 10 years?

Mr Tham—Again, I have not looked that far, but that is certainly something I can have a look at, as well as the proportional split between investment loans and domestic loans.

CHAIRMAN—That was my next question: owner-occupied as against investment.

Mr Tham—I do not have any specifics on the split but I can certainly have a look to see what it is.

CHAIRMAN—Do you lend on property other than housing, such as commercial or retail property?

Mr Tham—APRA is not very keen for credit unions—or ADIs generally, or credit unions anyway—to lend on commercial investments. There is certainly nothing stopping that from happening and some of our member credit unions are moving into commercial lending. It is on a very small scale at this stage, but there is a little bit of that.

CHAIRMAN—Do you have figures on the average level of loan defaults?

Mr Tham—No.

CHAIRMAN—You would not, therefore, have figures on owner-occupied versus investment.

Mr Tham—No, but again I will see if I can put together a package of statistics.

CHAIRMAN—For loans that are out of arrangements, do you pursue the same sorts of debt recovery arrangements between owner-occupied houses and investment properties?

Mr Tham—In terms of lending criteria?

CHAIRMAN—No. In debt recovery. If a loan gets out of order, behind in payments or whatever, do you go through the same process whether it is owner-occupied or investment? Are you more stringent in your recovery process—more aggressive, might I say—in relation to investment properties?

Mr Tham—It depends on the nature of the credit unions in terms of what area and geographical location they service. A lot of the smaller credit unions will be set up for a particular regional area. Certainly in terms of the process that they would go through, there may be differences in terms of whether it is owner-occupied or investment. Again, I apologise, but I do not have any first-hand experience of that.

CHAIRMAN—Do your loan criteria vary between owner-occupied and investment properties—for instance, the percentage of the value you lend against?

Mr Tham—I believe they do. It is more stringent for investment properties in terms of cash flow to meet the loan and in terms of the total assets a borrower has.

CHAIRMAN—Would you have any information or views on the level of sophistication of a typical credit union borrower, particularly for investment purposes?

Mr Tham—I have no specific first-hand knowledge. You can draw parallels from the areas in which they service, but you can certainly be sophisticated in country Australia. So not specifically, no.

CHAIRMAN—You say in your written submission that one of your key areas of concern is:

- The variable quality of advice services, including concerns about the appropriateness, feasibility and, in some cases legal or ethical character of recommended investment strategies ...

Could you elaborate on that for us?

Mr Tham—In terms of property investment advice, there are some fly-by-night operators. Certainly, the type of advice they are giving—even though they say it is a free information seminar et cetera—is often tied to project development that they are undertaking which has kickbacks or commissions for them for marketing those sorts of projects via the seminars. At the end of the day, in some cases the seminars are really not so much for investor education but rather a marketing exercise to get people through the door to look at investment property.

CHAIRMAN—In your submission you also say:

Comments on the growth and rental potential of property may often be misleading and overstated to induce potential buyers.

Do you have any knowledge of the tactics that are used in that regard and perhaps who the main offenders are?

Mr Tham—Not of tactics, but, just to put things in context, the FSR provisions try to draw a line between what is factual information and what is advice—what is general advice and what is personal advice. As Mr Bartlett indicated earlier, there are a lot of grey areas as to what is and what is not advice. Certainly, ASIC has said in various policy statements that, where factual information is given in a context that is likely to induce someone to buy, it can be seen as advice. For example, where an investment property buyer comes into a real estate agency, declares that he is an investor and asks about things like rental yields and so forth, even though the agent is giving an opinion, that opinion can mislead or influence a potential investor. In that situation we think it is dangerous that that area is not regulated. In terms of financial products, the FSR has tried to regulate that area by drawing all these distinctions.

CHAIRMAN—I think you indicated to Mr Bartlett that you do not ordinarily advise borrowers of the valuations of the property they are borrowing against.

Mr Tham—I do not believe so.

CHAIRMAN—Do you think that credit unions should do that and that that would then perhaps alert potential purchasers who might have been given a different valuation or an overvaluation in contemplating a purchase?

Mr Tham—I am not sure of the practices of different credit unions; I suspect there would be some disparity between various credit unions on that issue. But we do not believe that there would be too much harm in giving the valuation to a purchaser. The only thing, I must add, is

that by the time purchasers are going to a credit union they have already entered into enforceable contracts, which of course may be subject to finance. But, again, if they do want the financing and if the figures in terms of credit risk et cetera stack up for the credit unions, it would be approved. So it might be a little bit late to get that sort of advice. Either you stop property investment advisers from providing misleading information or there are some sort of protective mechanism for purchasers prior to entering into a contract.

Ms BURKE—I am curious: would you know if credit unions had lent money to borrowers for things like buying into mezzanine finance and attending some of the property-spruiking seminars?

Mr Tham—No, I do not have any knowledge of that at all.

Ms BURKE—It was not something to do with concern within the industry following Henry Kaye's collapse and exposure?

Mr Tham—No.

CHAIRMAN—Thank you, Mr Tham, for your appearance before the committee and for your contribution to our inquiry.

Mr Tham—Thank you.

[11.07 a.m.]

ALLEN, Mr John Henry, General Manager and Licensee, The Investors Club Ltd

HIGGINS, Mr Neil Trevor, Business Development Manager, The Investors Club Ltd

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

Mr Higgins—I am the business development manager for the finance arm of The Investors Club, the role being to head finance for the group.

CHAIRMAN—The committee prefers that all evidence be given in public because this is a public hearing. If at any time you wish to give evidence in camera you may request that and the committee will consider such a request. Having said that, I invite you to make an opening statement, at the conclusion of which, I am sure, members of the committee will have questions.

Mr Allen—Our submission is based on four concepts, which I will summarise here. The first concept is titled ‘The need for new regulation’. The last thing this industry needs is new regulations. Consumer protection in this area has never been greater. Some of the states have got it right—the best way to protect consumers is to offer full disclosure to the transaction. This is relevant in two specific areas: (a) fees and costs charged, and (b) the valuation at the time of purchase. It is interesting that in the states where the regulations appear higher than others there is more existence of the problems that this inquiry is attempting to deal with.

In the area of financial services, where there is regulation, the problems of bad and biased advice have not diminished. My fully qualified and regulated superannuation adviser has run out of excuses why his preferred investment strategy for me has lost money. There are many thousands of people whose investment in superannuation shares has diminished in value. Has regulation protected their interests? I think not. Real estate agents want to sell real estate, and have no interest in comparing this purchasing decision with any other form of investment.

The second concept is titled ‘The real estate agent’s role’. The committee’s questions suggest that there is an unlicensed industry out there promoting property. It is the licensed real estate agents who are doing the promoting, but they have got a dilemma: how can they possibly be responsible for the consumers’ interests when the current legislation—it varies between states but specifically in Queensland—confines them to looking after the best interests of the seller. The agents are required to get the best price for the seller. In nearly all investment sales the seller is the developer—what chance has the consumer got?

The third concept is titled ‘Education’. Our submission is based on promotion of an in-house TAFE-accredited property advisers course. We specialise in residential property sales. After 10 years and over 6,000 property sales, we believe we are better educated than your typical real estate agent.

The fourth concept relates to the way forward. Disclosure and openness is the key to having buyers being reasonably informed. Current legislation has already weeded out nearly all of the shonky operators. We have some suggestions. One is for licensed agents to have the ability to act with both seller and buyer. All fees, charges and commissions are to be disclosed to all parties. Both the buyer and the seller are to make their informed decision based on that disclosure. Under disclosure, the agent must direct the buyer to have access to direct comparisons in the marketplace, and have proof of such direction, to result in an informed decision. Lending institutions are to provide copies of the valuation to the buyer. Contracts, for instance, could be terminated without penalty if a variance of, say, over 10 per cent of the purchase price existed. The last suggestion is that education be based on our proposed accredited property advisors qualification.

CHAIRMAN—From what I have read of your submission and what you have told us, the Investors Club is a business, in a sense. Why is it called a club?

Mr Allen—The concept of the club relates to the camaraderie around the membership. It is the flow of information, the sense of ownership and the cooperative nature of common interest. It is rather a colloquial term.

CHAIRMAN—I do not know whether you were here when Mr Hopkins gave his evidence.

Mr Allen—Not all of it.

CHAIRMAN—He has a business which operates on providing advice to potential purchasers rather than to vendors. How would you compare the Investors Club with his business?

Mr Allen—We have just done a business card swap; we will be very interested to talk to each other after this. There could be some synergies there. Our role is with the category of people we call our members, who are just normal people who have an interest in investing in residential real estate.

Ms BURKE—Do people pay a membership fee to belong to the club?

Mr Allen—No. It is a loose definition. To be a member, you just need to show an interest. To benefit them we have things like monthly newsletters. We have somewhere between 60,000 and 70,000 recipients of the newsletter. We use avenues. We had a recent national conference at the Gold Coast, last month. About 700 people attended that.

Ms BURKE—Did they pay to attend?

Mr Allen—The conference had a fee, yes.

Mr Higgins—My fee is not a major fee like some of the other competitive industry groups.

CHAIRMAN—You say that you represent the buyer rather than the vendor, yet you earn a six per cent fee paid by the vendor. Is there a potential conflict of interest there?

Mr Allen—That is part of our dilemma. What we have done to fit into the requirements is split our business between what we call pre-settlement and post-settlement. The pre-settlement process is purely under the category of what you would call the property sale. We do that under the auspices of the real estate laws in each state. The benefits associated with purchasing through the club system really occur from the date of ownership onwards, under what we call post-settlement. We look at our service and benefits to our members as a lifelong thing. We do receive the money as our fee at settlement, but our service to the member goes on for as long as they want it, frankly.

CHAIRMAN—Your web site says:

The Club's mission is 'to help the maximum number of people achieve financial freedom in the shortest time with minimal cash outlay'.

At face value, that seems to me awfully close to what the Henry Kayes and the like promise. It is very close to the get-rich-quick promise.

Mr Allen—Not at all. It is purely based on individual people buying individual properties. There is no pooling of funding or people or mezzanine debt or acquisitions in that way; it is individual people buying individual properties.

CHAIRMAN—You say you have a successful track record of 'making investors rich by using their deposit to start up a project to remove the need for a greedy developer'. Could you perhaps enlarge on how you operate in that way?

Mr Allen—We have been around for 10 and a bit years, and we have recorded 6,000-plus property sales in those 10 years. Those 6,000 property sales are represented by about 4,000 different people—so a significant number own more than one property. Nearly all of them started off as very typical mum-and-dad owners, if I can use that expression, and used the system that we run—the basis of the club—as a mechanism to buy property and increase their asset base. We are not espousing financial planning or financial advice in that sense but, through the mechanism of acquiring properties, the result is that people have done well over that period of time.

Mr Higgins—I guess the point that you are raising is that it is also under a disclosed buyer list, so it is not hidden from anybody who comes to our business; they could feel free to talk to any of our own membership at their own authority.

CHAIRMAN—Has the club been directly involved in property developments or do you have any financial relationships with developers?

Mr Allen—The director of the club has done a couple of projects himself—when I say 'a couple' that might mean three or four; it is more of a hobby than anything else—but the properties that are sold through the system are provided by developers and builders. We have relationships that go back from the start of the business. Some are in the category you would call regular suppliers. The more important position is that the criteria that we run for the selection of the stock that we list for sale eliminate a lot of properties. Only certain criteria fit what the club is looking to be involved with. Some developers do specialise in that product. We do not

entertain the others that do not. Again, we are different from an agency arrangement that would look at listing stock, putting it in a window and selling it. We go through a selection process—location is a pretty typical criterion—and provide a pretty standard standard of product that is available.

CHAIRMAN—Would you tell me, if you can—you might need to take it on notice—the proportion of properties purchased through the club that are off the plan, those that are completed but new and those that are pre-existing properties changing hands?

Mr Allen—The last category is the easiest one. You could describe that as second-hand properties. At the moment, that would be less than five per cent—not very many. I guess the answer is a little bit more complicated because the nature of the property market recently, in relatively booming times, means there is a shortage of developed stock already available, because it sells earlier in the process. So, with the cycle of the market that we have been through in the last couple of years, the percentage of off-the-plan sales has increased. Prior to the last property cycle, 100 per cent of the properties we had for sale were completed and already available. That is probably running at about 50 per cent now.

Mr Higgins—I think some of the long-dated stock would be perhaps two years out, from what I understand, so it has certainly been a growing percentage of off-the-plan as we have moved forward over the last 24 months.

Mr Allen—It is a function of an active market over the last couple of years.

CHAIRMAN—We have just heard from the National Credit Union Association. In their submission they indicated that one of their main concerns with property investment advice was misrepresentations that proposed investment strategies are risk free or very low risk. Do you share this concern and, if so, to what extent? What sort of advice does the club give to its members in that regard?

Mr Allen—In that process of listing the property, we produce a document we call a property profile. It is a comprehensive document that analyses the property and its location relative to schools, shops and transport. There is an assessment done on the potential rent for the property. That is not done by us; we look to three of the local real estate agents to provide a letter indicating what they believe that unit would rent for—and I am talking about a typical suburban home unit here. All the data is in that document. We would supply a list of comparable sales through RP Data, one of the suppliers of that sort of information, based on suburb, price and a comparable number of bedrooms, bathrooms et cetera. There would be a set of plans, a list of details and probably a bit of a resume about the builder. There would be a comprehensive document on what the property entails. If any club member enters into a contract, one of the conditions of the contract that we specifically put in is for a physical inspection. So the contract is subject to their physical inspection. There are also a number of other buyer-weighted conditions over and above the standard contract conditions.

Ms BURKE—You mentioned location. Do you have a specific location which you tend to focus on?

Mr Allen—The long and short answer is that if you look at Brisbane, for instance—it is an easy one to describe—we are not in favour at all of the product called CBD units. We believe there are potential issues with rental vacancies in that type of structure. We are not in favour of areas that are in the outer suburbs. So we look at the area commonly known as ‘the doughnut’ around the CBD area, which means typical suburban type units. Our preferred price point in the Brisbane market is somewhere between \$200,000 and \$300,000—that might be a bit hard to achieve at the moment, but it is what we are trying to do—and we look in established locations.

Ms BURKE—Do you deal outside Brisbane at all?

Mr Allen—Yes. Of all the properties that we sell—and the maths here might not be exactly right—about 65 per cent of them are Queensland based. There are a significant number in Perth and there are some in Melbourne and some in Sydney.

Ms BURKE—If we are looking at the Brisbane market, are they mainly Brisbane buyers or are you getting interstate people buying in?

Mr Allen—They are predominantly interstate buyers.

Mr Higgins—There is certainly a good percentage of Queenslanders as well.

Ms BURKE—But they are all investment properties that we are dealing with here?

Mr Allen—Yes, they are all investment properties.

Ms BURKE—Do you know what your track record is? Do you keep an eye on where these properties go—that is, that they do return the investments that you were going to say and that they actually achieve the resale? Obviously Queensland has been plagued with claims, made particularly to interstate buyers, that, for example, ‘If you buy on the Gold Coast, the value will exponentially rise,’ and then the buyers find the property is a complete lemon when they come to sell it. Have you actually tracked where these 6,000 properties have gone and how people have fared, given your advice?

Mr Allen—Absolutely. What we do not get into is forecasting those results. Fortunately, with the market movements it has been quite an easy thing to track. I guess part of the answer is that more than 43 per cent of our buyers have bought a second or third property through our system. What does that mean? If that first property had not done well, they would not have been in a position to acquire further property. So we would be the first know if one of our members had an issue with a property that was not satisfactory—and we are not aware of any of those.

Ms BURKE—Do you offer finance to people who come through this system as well?

Mr Higgins—That is my role as head of finance.

Mr Allen—My colleague here is from the finance brokerage and mortgage origination division within our entitive companies. There is no compulsion or requirement for them to use that service. It is a free service. Neil can probably expand on that a little further.

Mr Higgins—I will give an update on your previous questions with the chap from the credit union. My history is over 30 years in banking, primarily through Westpac, so I know a little bit about the major bank scene. You may be asking questions of the major banks in due course. I will answer your question from the perspective of what we offer. We have a network of accredited club loans brokers—eight interstate—represented in every capital in Australia. I head a team in Brisbane but also have direct relationships with those brokerage businesses interstate. The question that you raised before is something that the banks have addressed in terms of if a valuation is short. What tends to happen around the market and for our members is that, if a valuation comes in and it is more than 10 per cent outside the value of that contract, the banks—or a lot of the banks—will advise their clients of that disparity. That certainly is one method of alerting people to give them a choice as to whether they still wish to proceed.

The other aspect—and it was mentioned before—is to do with the potential to release a copy of the valuation. That is something that has been near and dear to a lot of banks' hearts over a long period of time. You can appreciate what is behind that angle: there is a lot of commentary on mortgage protection given on valuations from time to time, and banks obviously are reluctant to release some of those details across their valuations. My suggestion is that an abridged valuation may be appropriate to be released to a client. As I said, if you are covering both angles, of over 10 per cent or an abridged valuation, I think you are going to have some value towards a member of the public having an informed decision.

Ms BURKE—Have you sought your FSR licence, given that you are providing finance and financial advice? Is your arm of the business covered by that?

Mr Allen—It is not a financial advisory service; it is a provision of mortgage loans.

Mr Higgins—As an accreditation through the Mortgage Industry Association of Australia.

Ms BURKE—So you are going through that?

Mr Higgins—And under the—what is it called?

Mr Allen—The Finance Brokers Association.

Mr Higgins—The resolution scheme—COSL.

Ms BURKE—The majority of your loans would be through the majors again. You are just brokering for them; you are not providing advice.

Mr Higgins—Through the majors and some second tier and some non-conforming lenders.

Ms BURKE—So would you go down the no docs, no loans, deposit bonds and mezzanine-financing route? Are you delving into all those wonderful things?

Mr Higgins—It sounds all nasty—yes.

Ms BURKE—It is all nasty—that is where I am going.

Mr Higgins—I do understand your question. The no doc, low doc market across Australia has been blossoming, for want of a better description. It depends on what time of year it is as to whether a self-employed person has returned their tax information to the ATO. For many varied reasons, there are a lot of heavy cash flow businesses across Australia that may or may not—

Ms BURKE—They have got a child support sue pending—sorry, I am being very facetious.

Mr Higgins—I hear what you are saying, Ms Burke.

Mr Allen—In the interest of the members, one of Neil's primary roles is obtaining a loan that could be cheaper obtained elsewhere, which nine times out of 10 will knock out a low doc or a no doc loan because, by their nature, there tends to be a premium on their rate.

Mr Higgins—That is right. Some of the banks obviously need to grab higher market shares, so they are carding their rates along the same lines as a full documented product. If I guesstimated—and I think that is what your question might be—in terms of the low doc, no doc facilities that we would offer across a normal full doc percentage, I would say it is probably 10 or 15 per cent maybe of what business is written across the properties we finance in that type of market.

Ms BURKE—I am also trying to investigate the ability of your investors to actually buy into what they are getting into—their serviceability of the market that they are trying to buy into.

Mr Allen—One of the very first things we do in our process is to test that exact point. One of the first inquiries they do through our system is to submit an inquiry form that lists their assets, liabilities and income. Through Neil's section that is put through a number of banks' models. It gives a result.

Mr Higgins—It gives the capacity to purchase to a certain dollar value and a certain loan value that would be of a moderate conservative position across a number of banks.

Mr Allen—And, frankly, if they do not pass that test, the whole equation stops there. At that point nothing has happened.

Mr Higgins—Sometimes it might be what they might need to do to structure themselves to move into something they can do down the track.

Ms BURKE—Would you then be providing them with financial advice to get them to the stage where they—

Mr Higgins—No.

Ms BURKE—I am just trying to find out why you think you do not fit in with some sort of model of FSR or some sort of regulation in providing advice.

Mr Higgins—It is not a case of structuring managed funds or anything. The FSR, I think, targets the strict nature behind that. Saying to somebody that they need to save \$20,000 to

perhaps contribute in a number of ways—it might be through parental guarantee equity or by genuine savings—is a different model, I believe, from the true spirit of the FSR.

Ms BURKE—Your web site talks about club members getting rewards by bringing people into the system. Isn't that a form of pyramid selling?

Mr Allen—No. In our system we do not have a professional sales force, to use that description. The members can go to a category of support member. They are the ones assisting other people to do so. It is part of the disclosure through the system. No pyramids are involved in that. It is a fundamental part of the costs associated with the fees that the club earns and how they are disclosed to each person.

Ms BURKE—Are the fees disclosed on a percentage basis or in real dollar terms?

Mr Allen—Either, but most times both. In certain circumstances it can be a flat fee and in certain circumstances it can be a percentage.

Mr BARTLETT—I would like to elaborate on the six per cent fee you charge the vendor. How does that compare with a real estate agent's fee?

Mr Allen—I think you could ask our friends next door: Ray White and any of the others such as PRD, LJ Hooker, Project Marketing et cetera. That is an industry standard amount. The difference between us and them is that their services and their responsibilities in a transaction cease at the moment of settlement. As I said before, that is when our system commences, because we look after the members' interests through their life of ownership. So the six per cent is a standard amount in the industry. However, we provide a much better range of benefits and services for it. We stick by it for the life of the relationship.

Mr BARTLETT—Can you elaborate on those other services?

Mr Allen—We have a building inspector who inspects every single property prior to settlement.

Mr BARTLETT—At no extra cost?

Mr Allen—At no extra cost. We have an in-house quantity surveyor who prepares the tax depreciation schedules, and we have an internal leasing department that does not specifically manage the properties in a rental management sense but it manages the managing agents to ensure that the optimum rent is being achieved, that the properties are adequately inspected and that if there is a changeover of tenancies there are no vacancy factors. There is a range of them. It means that ownership of the properties is simplified and made very easy.

Mr BARTLETT—It still seems to me that there is the potential, at least, for a conflict of interest here. If your fee is eight per cent of the sale price, it is in your interest to have a higher sale price, isn't it, because, therefore, your fee is higher?

Mr Allen—That is our dilemma, and that is what I opened with. We do have an issue with that. Our philosophy with the club is to obtain a better price for our members than they can get

through a high street agent. The issue we have is exactly that, with the legislation as it stands. We are not shy about disclosing that and showing that. The requirements under the act specifically in Queensland are about showing what relationships and what services are provided for that fee. The fee is made up of a number of different components. Part of the fee is commission and part of it is for access to databases and the provision of how that sale occurs.

Mr Higgins—I think the one critical thing that the committee might be interested in is that it is not just a case of doing a one-off sale like the average agent in the street does. It is actually growing a member to a number of properties that will expand their opportunity for some potential funds to be gained through the market rising over time. It is not in our interests to sell them for a higher price. We actually want to expand the number of properties.

Mr BARTLETT—What percentage of your members did you say come back to purchase another property with you?

Mr Allen—It is 42 or 43 per cent.

Mr Higgins—Some have multiple properties across their portfolio.

CHAIRMAN—Why don't you operate on the basis of a flat fee?

Mr Allen—The answer again is that it is about fitting in with some of the disclosure requirements. Some want to see percentages and some want to see flat fees. We prefer a flat fee. We say six per cent but, frankly, if it equates to the flat fee, which is \$12,000, we would deem that as satisfactory, and that gets down to three or four per cent. So the reality is that it is a lot less.

Mr BARTLETT—If you prefer a flat fee why don't you just do that?

Mr Allen—Again, some of the documents—some of the Queensland forms—call for a percentage amount.

Mr BARTLETT—On a different tack, Mr Higgins, you said that, because of the different nature of property investment, there is no need for it to come under FSR arrangements, because they are different types of products.

Mr Higgins—This is the financial aspect you are referring to?

Mr BARTLETT—Yes. But surely there are a lot of parallels. You are dealing with people's investments. Their future is at stake. They are planning for long-term wealth creation, retirement and so on. Isn't there an argument that, because of the gravity of the issues involved, the same sorts of regulations ought to apply in your industry?

Mr Higgins—I agree there might be some parallels between them, for sure. I do not think that is out of the ballpark at all. But I think it depends on the level of financial structuring and advice. It might come into the tax realm and other facets. As you know, investment property has large aspects towards tax issues, and it is not our role to be advising our members on tax matters. We do not provide that advice.

Mr BARTLETT—But you are advising them on investment matters, obviously.

Mr Higgins—When you say ‘on investment matters’—

Mr BARTLETT—On property.

Mr Allen—I am not too sure. We are certainly involved in the process of the sale of the property, but we are not in the business of promising or espousing returns as such or future values et cetera. That is where you have to draw the line. The FSR, based on those sorts of products, is precisely about that. It is about future returns, future values et cetera. That is where you have to differentiate between the two.

CHAIRMAN—So the service you offer does not go as far as what I perceived to be the service that Mr Hopkins offered?

Mr Allen—No.

Mr BARTLETT—In effect, you are more like an agent operating for the purchaser than a property investment service.

Mr Allen—We are a little hard to pigeonhole but that is probably not too far away from it, notwithstanding our dilemma of whom we act for. Part of my submission is that that part of the agency legislation should be altered to protect the people called the consumer. That is a particular bone of contention with me. We like using the word ‘club’ and the word ‘members’ because they are our consumers, yet the legislation is almost preventing us from protecting them.

CHAIRMAN—Do you have any idea what proportion of your members invest in asset classes other than property, direct shares or managed investments?

Mr Allen—No, there is no way we would know. Certainly they would—

Mr Higgins—There is some done.

Mr Allen—Anecdotally, I am certainly aware that they do but we do not play any role in that.

CHAIRMAN—Do you have any anecdotal evidence as to their degree of satisfaction with the sort of service that you offer compared with what is offered by people who market financial products?

Mr Allen—We had independent research through AC Nielsen two years ago on that point. People had an 80 per cent satisfaction rate coming through our system versus a significantly much lower result achieved with other avenues.

CHAIRMAN—In your submission you state:

Spruikers dominate the balance of the advisory market and at this stage their lack of credibility is not exposed by law. ... The market needs graduates from the ‘Property Advisors’ certificated course from TAFE.

In your estimation, what percentage of people engaged in giving property investment advice, as distinct from simply being real estate agents, hold qualifications such as the one to which you refer, or an equivalent qualification that might be available to them?

Mr Allen—Are you talking about spruikers?

CHAIRMAN—People who are involved in advising on property investment as against real estate agents.

Mr Allen—I think that they are either agents or not. When I look at Saturday's *Courier Mail*, for instance, there are still clearly unlicensed spruikers advertising every Saturday. They are still out there. The state legislation here has gone a long way in reducing their activity and some named players mentioned before have either fallen foul or have had their activities curtailed. It has not completely wiped it out in our view but it is certainly at much smaller levels than it was.

CHAIRMAN—What sorts of people have been undertaking that course you referred to—spruikers or real estate agents?

Mr Allen—That is our proposed course. We have that in a format ready to present to the state Minister of Fair Trading and Education at the conference on 10 June.

CHAIRMAN—So you are in a similar position to the Property Investment Association with Deakin University?

Mr Allen—There are parallels there. That is right.

CHAIRMAN—Is there danger of duplication here?

Mr Allen—Fortunately, we just swapped the details before so we might have some synergies there—

Mr Higgins—We will learn a bit more.

Mr Allen—When I heard them answer the questions I thought that we were very similarly minded in that sense and certainly we are great supporters of lifting the standard of qualifications of the people in the business. In our submission we wanted to make that a highlight. We see that as one of the best and most important ways forward.

CHAIRMAN—Do you think it should be mandatory for financial institutions to disclose their valuations—

Mr Allen—Yes, I do. It does not seem a big step. It is probably not an entire cure-all—if I could put a rider with that—but instantly it would take a lot of the smoke, lights and mirrors out of the system.

Mr Higgins—I will add a little to that. There are a couple of issues behind that and I covered a couple of those before with the mortgage commentary on valuations being always dangerous because it is obviously at the commercial risk of the lender to look at what they are considering.

I think that the issue with an abridged valuation will certainly release some detail and lenders can choose how they wish to do that in terms of what they would release.

The other side to it of course is that, if it is a double whammy, to have buyers having access to market comparisons is another added option for buyer protection. I have not got 100 per cent answers as to how that is actually formatted. It might be an expansion of the RPI data process in terms of what is comparable in the market. From a valuer's perspective, I can assure you, it is not an exact science. It is a very inexact science, in fact, and you may have come across that yourselves, so it is a little bit dangerous with just a reliance on purely a valuer's report.

Ms BURKE—As I was asking before, given that a lot of people now borrow against their existing house and go back to their bank to re-evaluate that house, is there also some danger with some of the overinflation of the market, in that they can borrow against an existing asset? There are some rather nice schemes that people are getting into with the valuation industry to demonstrate 'I have X percentage of equity to buy into other investments'.

Mr Higgins—You hit on 'other investments'. That does not necessarily mean property.

Ms BURKE—No, it does not. That it is exactly right: it is not limited to property.

Mr Higgins—It could be managed funds or shares. There are lots and lots behind that line.

Ms BURKE—But generally it is property.

Mr Higgins—In the market I guess we have seen escalated values behind principal places of residence. The level of activity out there in the marketplace in encouraging investment is certainly well and truly alive. I am not so sure that we would restrict people's capacity to want to invest. I am not sure, but that might have been what your question was aimed towards.

Ms BURKE—No, I was sort of looking at the risk of valuation—if people can completely get hold of valuations, the reasons behind them and what they are getting them for, as opposed to purchasing a property. A lot of people are getting valuations for other reasons nowadays. I suppose I am talking more about revaluations.

Mr Higgins—Are you suggesting that it could encourage people to overinvest if they actually knew what their property was worth?

Ms BURKE—Yes.

Mr Higgins—That has potential.

Mr Allen—It is up to the lender's criteria for their borrowing capacity et cetera, which still tend to be relatively conservative. The valuation industry—I am not a valuer—have to rely on historical data, by its nature, and nearly all banks would instruct a valuer to value the property on market price for mortgagee purposes.

Mr Higgins—Which is not fire sale prices either. It is more for an average marketing period—say, a three to six-month sort of time frame and that is how I understand the valuers are

normally instructed by the banks—for a fair price, nothing that is too fire sale and nothing that is the other way.

Mr Allen—With the major lenders, we are seeing a reduction in the number of valuers on their approve panels that controls that in a way. That seems to be a more recent sort of step and obviously a good one.

Mr Higgins—That is for cost frame and service issues.

CHAIRMAN—I have a final question. You suggest that every promoter should be made to provide details of their bona fides. What would you include in the detail that has to be provided? How would that stop unscrupulous promoters?

Mr Allen—It is a shot at the get-rich-quick merchants, to basically tip them upside down. If what they are spruiking is that good, how strong are they? It is basically a capacity test of what they are really worth and how they acquired that. Did they acquire it through their own system that they are espousing or not? It would flush out a lot of the ones who are just puffery.

CHAIRMAN—So they should be required to provide details of their own financial position—investments and the like—how they were acquired and what the sources were.

Mr Allen—Yes, and importantly how they got there. It would seem to be a long way forward to get rid of the high, revved up spruikers that seem to exist.

CHAIRMAN—As there are no further questions, Mr Allen and Mr Higgins, thank you very much for your appearance before the committee and for your contribution to our inquiry.

Committee adjourned at 11.49 a.m.