



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL  
SERVICES

**Reference: Regulation of the timeshare industry**

WEDNESDAY, 13 APRIL 2005

GOLD COAST

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**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 and 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**

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**Committee met at 11.49 a.m.****DEMPSEY, Associate Professor Mike, Head of Finance Discipline, Department of Accounting, Economics and Finance, Gold Coast Campus, Griffith University**

**CHAIRMAN**—Today the committee will hear evidence regarding its inquiry into the regulation of the timeshare industry and relevant and related matters. The committee expresses its gratitude to the contributors to this inquiry, including those who will be appearing before us as witnesses today. Before we start taking evidence, may I reinforce for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to the evidence provided. Parliamentary privilege refers to the special rights and immunities attached to the parliament or its members and others necessary for the discharge of parliamentary functions without obstruction and fear of prosecution. Any act by any person that operates to the disadvantage of a witness on account of evidence given by him or her before the parliament or any of its committees is treated as a breach of privilege. Unless the committee should decide otherwise, this is a public hearing and as such all members of the public are welcome to attend. That does not prevent a witness seeking to give evidence in camera, if they so desire, and the committee considering such a request. The committee will hold further hearings on this reference on Friday, 15 April in Sydney and on Friday, 29 April in Canberra.

I welcome Associate Professor Mike Dempsey. I invite you to make an opening statement, at the conclusion of which we will proceed to questions.

**Prof. Dempsey**—I am connected with the delivery of educational material and the examination for PS146 for the timeshare industry with ATHOC in regard to their compliance with PS146. As an educator reading through the submissions the issue is whether members of timeshare should be subjected to tier 1 or tier 2 compliance. The nub of the argument from the industry appears to be that ASIC itself has pronounced that timeshare should not be advertised or sold as an investment. The industry have quite neatly wrong-footed ASIC, it would appear, by then turning around and saying, ‘It is not an investment; it is a consumable, just like someone buying a caravan or a boat,’ and hence that purveyors of timeshare should just be like people selling boats or caravans.

But there are two distinct differences it seems to me between selling a boat or a caravan and selling timeshare. No. 1 is that if I am walking down the spit, it is unlikely that I will be pulled in to look at somebody’s boat; in other words, I am not actually cold-called. There is a sense in which, if I privately decide I want a boat, I go to the person who sells boats rather than the other way around—that the boat seller does not tend to accost me when I am on holiday.

No. 2 is competition, an important concept in capital markets. If somebody did bring me into the marina to look at his boat, almost immediately I am looking at somebody else’s boat as well and there is competition. There is, if you like, a tenet of market theory that competition is good for the consumer in that it brings the price down to a fair price. If both of those things are lacking in timeshare, it is dangerous to think of it as a consumable and put it in that domain. The public would probably be better served if they were protected from somebody enticing them to invest a considerable amount of money in something as innately unpredictable as an investment.

It seemed that having tier 1 compliance involves two things. One is that it raises the educational standard that is expected of purveyors of timeshare almost by definition above tier 2. An objection that has been made is that much of the material might not be directly relevant to the notion of timeshare. As an educator, I know education of itself can enhance the standards. In other words, if you raise the level of education of your work force you are more likely to raise the level of ethics and standards and the understanding of what it is that is being sold, even if at some point in the education process you are teasing out concepts that may not at first sight appear to be directly relevant to the product.

The second point that I would address, and I think this is important as well, is that tier 1 does insist that there is some kind of independent surveillance of the timeshare industry, in that tier 1 means that the examination process as to whether the professional person is adequately educated or trained to interact with the public on an issue of timeshare is discharged outside the industry itself—for example, at this moment in time by Griffith University. Griffith University has insisted, against some pressures at times, that it and it alone sets and mark the exam.

Tier 1 achieves two things: (1) a higher educational standard for the purveyors of timeshare and (2) an arms-length monitoring of the standards and capabilities of the work force in the industry. That is the end of my statement. Where we go from there is maybe outside of where I would wish to push my position as somebody who is an educator rather than somebody who is at the core of the business per se.

**CHAIRMAN**—ATHOC support the development of a training package for timeshare. Have you been involved in that process with them?

**Prof. Dempsey**—I have been involved in helping to set up the manual for tier 1, the examination and even the marking of the examination.

**CHAIRMAN**—And course content?

**Prof. Dempsey**—Yes.

**CHAIRMAN**—How does that compare with the tier 1 and tier 2 topics for financial advisers or planners generally? Is it quite distinct content, overlapping or similar content?

**Prof. Dempsey**—I have seen something on financial planning. The standard is similar and there would be an overlap. As to where they differ I cannot articulate particularly well at the moment. The idea is that everybody does general awareness of markets and then does the managed investments stream and the financial planning stream. They are on a par on standards but, as to the material—given that they are two different streams—there is some overlap and some difference. Financial planning goes more into monitoring the development of your investments, the idea being that you are planning explicitly for some time in the future, like retirement. There is probably less of an emphasis with managed investments, where I think the emphasis is more on risk and return. So there is overlap and there are differences.

**CHAIRMAN**—I understand—and it again comes from ATHOC's submission—that the generic knowledge component of tier 2 training includes topics such as:



... characteristics and impact of economic and business cycles; interest rates ... inflation; government and fiscal policies;

- operation of financial markets—  
including—

roles played by intermediaries and issuers; structure and inter-relationships within the financial markets; inter-relationship between industry sectors—

and the nature and characteristics of different financial products. How much of the overall training or the overall course content do those items make up?

**Prof. Dempsey**—I think that is a similar arrangement to the way the ASIC training works. Everybody has to do the generic knowledge component, which was the name that slipped me a moment ago. It is then split off into insurance, financial planning or managed investments. The generic knowledge component, I think, was adequately summed up in those topics. So I can see, on the one hand, that ASIC is saying: ‘Well, our guys are just selling the bolts; they don’t need to know about the broader awareness of what’s involved in investments—how investments can go up or down, notions of risk or return, what are the competitive products, how you may achieve the same end in other ways. They don’t need a perspective, if you like, of their product in the marketplace. They are just selling the time share. They are just selling the bolts.’ In other words, it is appropriate that they are quite blinkered.

**CHAIRMAN**—You are saying that is ATHOC’s view?

**Prof. Dempsey**—That is the view that is taken by ATHOC, yes, as to why they need to be educated beyond the product that they are actually trying to shift, to sell—the time share. It is difficult for me—and I probably feel I should not do it—to try to tease out the philosophy of why education is of itself good or helps to raise standards. But I think the argument would need more and so I will say the following. If that education was considered appropriate to tier 1—with its generic knowledge component and then splitting off into its particular stream, whether it is insurance or financial planning—for purveyors of insurance or financial planning products, it strikes me that the purveyors of time share should have the same level of education and awareness of the market, the same perspective of that particular product within the range of the other products that are out there in the marketplace for the public, as the purveyors of, say, insurance or financial planning. They should have that same education rather than being blinkered to the product itself without any sense of feeling a need, as there is in tier 1 compliance, to know the customer and to relate to what is best for the customer in some shape or form.

All of that is negated if you move to tier 2 compliance. In tier 2 compliance, the purveyor has not really got any responsibility to the would-be client other than to shift the product and make a sale, short of presumed certain statutory requirements, like telling the truth. Even the monitoring of all of that is then in-house, so that tier 1 raises the education level of the work force involved in the industry, and tier 2 allows for an arms-length monitoring of the calibre of that work force.

My personal perspective would be that what ASIC has deemed appropriate for people who are talking to people about parting with \$20,000—that is, what is considered appropriate by ASIC for other, further purveyors of financial products—would then be, by the same sorts of tokens,

appropriate for people in the work force who are purveyors of time share. Just to repeat, the nub of the argument against that was that time share is not an investment but a consumable, and so the public do not need quite the same level of protection.

**Mr BARTLETT**—I think our intentions are the same here: to provide greater protection for those investing in time share. I am interested in your philosophical approach to it. My view is more that time share is a long-term consumption product rather than an investment, because it does not yield, or it is not aimed at yielding, a future return or income stream. Therefore, I would have considered it to be more appropriately regulated as a product rather than as an investment. My view is that the appropriate way is to ensure greater regulation of the timeshare industry as a long-term holiday product rather than as an investment product.

**Prof. Dempsey**—I agree that it is not to the investments—

**Mr BARTLETT**—The question is: can't we still consider it as a long-term consumable product rather than an investment product and yet put in place an adequate protection regime that provides the sort of protection consumers need?

**Prof. Dempsey**—I think that is a good point; I will address it by saying I agree that there would be other ways of achieving the same end of consumer protection. If tier 1 was taken to be not quite a tier 1 compliance, then there would maybe be more appropriate ways of achieving the same ends that we could all agree on. I could not argue directly against that for sure. I would be feeling more concern if the tier 1 simply dropped down to a tier 2 compliance and that was the end of it. The reason for that is, much as we agree that it is an ongoing consumable, it is characterised by these two facets, which, I think, consumers need some form of protection from. I take your point on the question of whether or not tier 1 is the right way of achieving that or not. Unlike other consumables, the public are not subjected to being cold called—accosted, if you like—and given what we would all think of as a fairly hard sell. In other words, it is very much the seller coming to the buyer, who is persuaded—

**Mr BARTLETT**—That also happens with door-to-door vacuum cleaner salesmen and encyclopaedia salesman.

**Prof. Dempsey**—It does, yes; I do not deny that. Tier 2—and, again, I would say the same thing if we were talking about \$20,000 plus—should be pulled into the domain of surveillance that we are talking about. What worries me a little about tier 2, of course, is that you do not have this basic tenet of competition as market protection for the public; that is, that at the time the person is being given the sales pitch they are not aware of the alternative timeshare products. They are put in a position where the one product in front of them is being sold by the person who is giving them quite a convincing sales pitch on that particular product.

**Mr BARTLETT**—Isn't the way ahead greater regulation in terms of cooling-off periods et cetera, rather than a tier 1 approach?

**Prof. Dempsey**—Yes. The limits of what I can say with any kind of authority is that tier 1 compliance at the moment is helping to make the situation better than it would be if you simply were to take tier 1 compliance away and replace it with tier 2. If you say, 'What we have in mind is something different to tier 1—more than just a drop down to tier 2,' then, in principle, there

are always ways of doing things better. It could well be—and I am sure it is, of course, almost a priority—there is always a better way of doing things than what currently exists. What would worry me would be simply doing away with tier 1 and dropping down to tier 2.

The cooling-off period, I think, is a particularly good point. I noticed—was it Trendwest?—some of the submissions said that a cooling-off period should be no more than five days. That means that by the time the person gets back from their holiday their days are up—by the time they have recovered from their hangover. So, yes, if you were to sell, there is a belief in the market that there is a better way of protecting the public than tier 1. I could not argue against that in principle, obviously—and it may be that that is the way to go—but I repeat: it would worry me if we took away tier 1 and dropped it down to tier 2 in the meantime, and ‘in the meantime’ carries on for however many more years until another head of steam builds up, on the basis of complaints or whatever, to do something about it.

**CHAIRMAN**—It seems to me that time-sharing is not a financial product. As Mr Bartlett has said, it is a consumption item, not an investment product, except perhaps in the sense that, whereas normal consumption items are consumed over a relatively short time, time-sharing has an indefinite future. It is a right to enjoyment or consumption that you are purchasing, so you want some guarantee that that right is going to be maintained and that the property is going to be there and adequately maintained to be able to enjoy that future consumption. So you need a regulatory regime that is going to ensure that. It seems to me the other area that needs some regulation is the sales process, to prevent the high-pressure selling atmosphere that—

**Prof. Dempsey**—I am reluctant to speak about that because I am—

**CHAIRMAN**—Perhaps you would respond to those two issues from your perspective.

**Prof. Dempsey**—Okay. On the first one, I guess I would agree with you about it being a consumable, and ultimately it is; what worries me a little bit is that people who part with considerable amounts of money are convinced at the time that, if they change their mind a couple of years let alone months down the line, they can always on-sell their time share. In one sense, even an ongoing consumable—one that is consumed over many years, as you said—becomes a sort of investment because if you want to part company with it a couple of years later then you are selling it and taking the money to go to where your consumable requirements want to take you now, two years later. The important point is that the consumer does not pay more for the time share than it is intrinsically worth, and that is a level of protection that anecdotally, I would say, consumers are looking for. They feel that if they change their mind, as we all do, two or three years later, and they want to sell the boat, the caravan or whatever, they will be disappointed by its resale value.

**CHAIRMAN**—Does that indicate perhaps that at present there is not really a competitive market for time share?

**Prof. Dempsey**—It would, yes.

**CHAIRMAN**—How would we go about developing a more competitive market that reflects the real value? As I understand it, units that are selling for \$20,000 to \$25,000 new can be purchased on the resale market for as little as \$3,000 currently.

**Prof. Dempsey**—Yes. That is the kind of thing that I am hearing, yes.

**CHAIRMAN**—There is clearly not a competitive market there at the moment in terms of a new product: within a couple of years its value has diminished so much. The value of a second-hand car would not have diminished by that amount in two or three years.

**Prof. Dempsey**—That is right. You might get hurt, but you do not suddenly start thinking what a fool you are, which is—anecdotally, I should say—the impression I get of people who enter into time-sharing. As it happens, I have been subjected as a member of the public to a selling pitch which I thought was quite excessive, and these people, I thought, were very clever. I actually walked away full of admiration and I just managed to keep my card in my pocket!

**Ms BURKE**—Was the pitch line, ‘This is a consumable’ or, ‘This is buying your holiday house for two weeks a year’?

**Prof. Dempsey**—I should say it was not in Australia. I should have said that.

**Ms BURKE**—That is all right. From some of the articles I have seen recently in the press, the consumer is not seeing time share as a consumable; they are seeing it as their equivalent to buying a holiday house. They cannot afford one. What they have bought into is two weeks each year at a holiday house. Then, if circumstances change, they can on-sell that. It is not something that you are going to buy and then throw away. It is not like taking two weeks in Bali. You would think that, year in, year out, you have access to this thing.

**Mr BOWEN**—But that is not an investment; people are thinking there may be a return.

**Prof. Dempsey**—It can almost become pedantic. If I consume something like the holiday in Bali, in six months from now it is gone. That is a consumable. And if for my retirement I am investing in stocks and shares—which do not give me any particular enjoyment other than they may be worth more than they are now when I come to retire—you can say that is an investment. But if you have what you referred to as an ongoing consumable that lasts for 20 years, it starts to have those characteristics of an investment. If you suddenly decide that it is not what you want after all—we all change our minds two, three or five years later—then as much as you may have thought of it as a consumable at the time, when you come to part company with it for a very disappointing price, for all intents and purposes, at that point in time it is now an investment that in your own thinking went badly wrong. The distinction between a consumable and investment in the case of time share is not quite as distinct as it may be normally. A holiday in Bali is a consumable; putting extra money into my superannuation fund is an investment. But what we call a consumable over many years can have characteristics of an investment when you part company with it, especially if you did so prematurely—meaning that you do not wish to keep it for life after all.

**CHAIRMAN**—Is it an investment or is it more in the nature of a consumer durable, like a motor car, which you would expect to own for an extended period of time and then sell and get a proportion of your money back? Is the real issue here that the new price, as it were, of the time share is inflated because it is not a competitive market—depending on what the second-hand value is going to be?

**Prof. Dempsey**—That is correct. There are two points relevant to the way the public is protected with the example of the motor car. One is that, typically, the person goes to the buyer or the other way around. So they decide to trot over to the pool of cars, then maybe go across the road to look at another pool of cars and see what is selling privately in the newspaper. So they take the initiative, which is an important point. They are not accosted, if you like, and persuaded by highly developed marketing skills. Secondly, there is this sense of competition. If you are buying a motor car, you probably bought it at roughly what the going price was at the time. The market principle is that, if enough people are buying and enough people are selling, then almost by definition the price is a fair price. The equilibrium price between an equal number of buyers and an equal number of sellers is the fair price by definition in buyer's theory, to use a bit of jargon. But it has something going for it, whereas once you take away competition, the price is going to be taken out of the clouds. If that is combined with their setting the agenda and accosting, for want of a better word, a person on holiday or on the street, then there is a real possibility that the person will, down the line, see this as an investment gone wrong.

**CHAIRMAN**—Why isn't there a competitive market at the moment? There are a number of providers of timeshare facilities. Is it too oligopolistic? Is there not enough knowledge about the market among consumers?

**Prof. Dempsey**—I think so; that is my understanding. I am not ultra-expert in the timeshare industry. I am connected with it but I am not steeped in the culture or the business. The products are marketed not by customers opening the supplement on a Sunday, seeing a list of alternatives and checking them out against each other and then maybe talking to friends. They are marketed so that both of those things are deleted. They come and accost you and, if you like, freeze you away from the influence of your companions, friends and would-be advisers. This is the notion of 'they come to you'. Also, at that point you are not presented with a whole range of products and asked which one you want; a single product is put in front of you without competition.

**Ms BURKE**—I will go to something you can talk about. Is Griffith University the only provider of education in this area for the timeshare industry?

**Prof. Dempsey**—It is the only one for ATHOC at the moment. The answer is yes.

**Ms BURKE**—Do you know how many students you have who are undertaking the training for the timeshare industry versus all the students going into these areas?

**Prof. Dempsey**—At Griffith?

**Ms BURKE**—Yes.

**Prof. Dempsey**—Griffith sets the exams for departments and makes the material for would-be professionals, people who are now members of Trendwest or are about to join the company.

**Ms BURKE**—Do you know how many you have?

**Prof. Dempsey**—About six, eight or 10 a week.

**Ms BURKE**—So they come in, they do the modules and they do the exam in a week?

**Prof. Dempsey**—No.

**Ms BURKE**—Sorry, I am showing my complete ignorance.

**Prof. Dempsey**—That is all right. Through the system in Australia, Griffith marks something like eight, nine or 10 exam scripts per week. That is the ‘through’ part, if you like. In terms of how long they spend studying, it was designed wayback to enable tier one to be done in about a week. The last time I spoke with ASIC they said it should be more than that. I think standards have been raised over the years. It should take somebody between a week and two weeks to be able to take and pass the exam.

**Ms BURKE**—So they go to Trendwest, they sign up, Trendwest sends them the materials and then you examine them.

**Prof. Dempsey**—Yes. There is a concept called ‘train the trainers’ where we do not educate by getting in front of the class with the students; we get in front of the class at least once with the person in the company who is going to deliver the material. So we do not meet the students directly; we meet them indirectly.

**Ms BURKE**—You are getting eight or 10 exams out a week throughout the year. How long has the course been going on?

**Prof. Dempsey**—Three or four years.

**Ms BURKE**—That is a fair proportion of people.

**Prof. Dempsey**—Yes, it is.

**CHAIRMAN**—Is this particularly focused on time share?

**Prof. Dempsey**—Yes.

**Ms BURKE**—Do you know whether they are employees or they are seeking employment in the industry?

**Prof. Dempsey**—If they are taking the exam they must already be employed. Maybe I am exaggerating the numbers a little bit. I know there are three every week—maybe four, five or six every week. I am revising down what I said a moment ago.

**Ms BURKE**—You are in the ballpark. You are getting a sufficient number out weekly.

**Prof. Dempsey**—I take your point; it does seem like a lot.

**Ms BURKE**—It seems like a huge amount for what I have always taken to be a fairly small industry, to be quite truthful. Do you know anything about the connectivity with the New Apprenticeships scheme, how that operates and how these people are new apprentices?

**Prof. Dempsey**—No, I do not. The other question which I do not have an answer to is this: because it is kind of another wing of Griffith University, to what extent does Griffith University have an axe to grind? After all, we make money out of it. I see myself as being a bit more objective in that it is not my company. Maybe subconsciously I am thinking, ‘Griffith would prefer to keep this money rolling in, however much it is.’

**Mr BOWEN**—Do you know roughly how much an average student would pay?

**Prof. Dempsey**—It is about \$1,000, I believe.

**Mr BOWEN**—That is not insubstantial.

**Prof. Dempsey**—It is \$1,000 or a little less. I remember hearing the price. It was \$800 or \$900, I believe. I think it would be fair comment to call it a little money earner for Griffith University.

**Mr BOWEN**—Say you are getting five a week, that is potentially \$200,000 a year in income.

**Prof. Dempsey**—Yes.

**Ms BURKE**—I am impressed by the mental arithmetic.

**Mr BOWEN**—It is a big call doing a sum in your head in front of an associate professor.

**Prof. Dempsey**—We have to keep records—we effectively have a full-time person keeping the records. We have to receive my mail and check that we have received all the exams and see that they all go back out again in the time frame that we agree to. We actually have somebody external marking them.

**Mr BOWEN**—There are costs.

**Prof. Dempsey**—But it obviously makes some money.

**CHAIRMAN**—Does the course include anything about the requirements of the Trade Practices Act in relation to sales and marketing activities?

**Prof. Dempsey**—The students need to show that they are fully aware of the document that describes the company, the financial services guide—the FSG—and the document that describes the product more.

**CHAIRMAN**—The PDS; the product disclosure statement.

**Prof. Dempsey**—Yes. Then there is a ‘know the customer’ routine that they should know how to follow as well.

**CHAIRMAN**—How much does it focus on knowing the customer?

**Prof. Dempsey**—The assignment tends to be focused on that and on their being aware of attendant legal obligations, the structure of these documents and what is involved in terms of timeliness and so on. That includes a basic awareness of the legality of the documents. There is a strong emphasis on this.

**CHAIRMAN**—But the emphasis is really on what you might call the financial advice aspect rather than on their role as a salesman or a marketer and compliance in that area.

**Prof. Dempsey**—There is a fair emphasis on discharging their duties professionally, particularly in terms of those two documents and the ‘know the customer’ guidelines. They are aware of how they should in principle be making clear to the customer both the nature of the organisation they work for and the nature of the product. Those documents at base are the property of the companies, so we do not have any involvement in preparing them. But the students should be aware of what is considered to be the appropriate manner in which those documents should be communicated to the public.

**CHAIRMAN**—Do you think it would be advantageous to have a bit more training in the course in relation to the Trade Practices Act and marketing practices?

**Prof. Dempsey**—I heard you ask a question in the previous hearing about the extent to which the same people come back. One of the things at the heart of the industry is the fact that people are not looking to build up a reputation. Obviously, a reputation can only help them but—

**Mr BOWEN**—You only buy a time share once.

**Prof. Dempsey**—The feeling you get is that you grab that person once. You are not looking for that person to come back. Also, I think a motivator for the individual is going to be their particular commission rather than the wellbeing of the company. So you do not really see the way that person communicates their experience to other members of the public as impacting on you particularly, because it is another company. They probably will not come back to you personally, anyway. So how do you protect the public in the way these things are marketed or communicated or the acceptable professionalism in terms of interaction with the public? It is difficult to know how to answer if the individual has a huge incentive. He is simply completing a sale.

Of course, people are sceptical even about these documents, if the purveyor is smart enough or wily enough—dare I say it that way—to say, ‘Legally I must show you this document and I must ask you to read it and come back to me with anything at all you do not understand completely, but it is mostly just fine print and jargon,’ and claims to have discharged their duties. They know at that point in time that the client has been hooked, for want of a better expression. You were asking how you get around that. Most financial services, I guess, are driven by people getting commissions—stockbrokers and so on. But there is, thankfully, even in the stockbroking industry—Goldman Sachs, Ord Minnett or whatever—the adherence to some kind of professionalism so that you do not bring the company or even the profession into disrepute. One gets the feeling in the timeshare industry that people are actually very individualistic. It is a little bit like an estate agent, if you like, with a house. Their wellbeing is not a function of how they enhance the estate agent’s reputation or how well they are perceived individually as an estate



agent on the Gold Coast but rather how many hits they can get per week in terms of sales completed.

We are aware that the estate agent industry is moving towards elevating itself to being not a 'bunch of cowboys', to use the jargon. I guess we would be asking how you achieve the same for the timeshare industry. It does seem to me a little flawed when it is in the interests of the person representing the company to complete a sale. In other words, what is good for the industry in the long-term is not what is going to drive their incentive as to how they connect with a would-be client. Let's say I have been talking to stockbrokers. At the end of the day, you walk out and you say, 'I'll think about it,' and that is the way it should be. I hope I was not muddying the name of estate agents without any good reason. I have been to estate agents. They give you a card and say, 'If you're interested, let us know.' And the cooling off period is there too, of course.

But it almost seems to me that the public has less protection from time share than it does from, for the sake of the argument, an estate agent or a stockbroker, because their remuneration is largely based on the number of hits that they achieve. There is an incentive for them to cajole or persuade the customer or convince themselves and then convince the customer. That is very often how these things work. These people convince themselves first of what a wonderful product it is that they have. Also, there is no sense of duty of care. Even in the estate agent industry or in stockbroking, there is a sense that, if I treat you well, you will bring back more clients to me. That is the case even for an estate agent or a stockbroker. It does not seem to pervade the timeshare industry. So these checks and balances, if you like—they are not checks and balances exactly but things which in practice tend to afford to the public a level of protection—are missing.

**CHAIRMAN**—What would you do?

**Prof. Dempsey**—I would firstly be looking at the whole basis of the person's remuneration. It is so biased towards commissions, but I guess it is easy to say that. Secondly, I would be looking at the extent to which the public should be accosted by an individual doing more than simply advertising their product in the colour supplement or whatever, but that puts a whole downer on the notion of door-to-door sales pitches. Of course, if you achieve that second measure you would then get the third, which is a sense of having competition out there. The argument is that, if I have to get to you by advertising in the colour supplement or on the TV and if my competitors are doing it, I then start to compare and contrast—and, of course, it means I talk to other people about what they know about it.

So the three things that worry me at the moment are: (1) that there is a bias in the salaries or remuneration of people in the industry towards commissions, (2) that they accost the public—for want of a better word—rather than have the public come to them through the more normal ways in which people make the public aware of their product, which is through advertising, and (3) that at the moment there is a sense that, when you are in communication with a would-be purveyor, there is not really a sense of competition. What are the other options? Can I get a better car? Is the other car not a better deal?

**CHAIRMAN**—It seems to me—I am commenting here rather than asking a question but perhaps I could seek your response—that it is a higher pressure situation than the door-to-door sales situation. If someone comes to your door or telephones you and says, 'I'm offering this

product,' you can just say, 'No thanks.' But the techniques that seem to be used here mean that you will be rung up or there is some kind of communication with you saying, 'You've won a prize and to pick up your prize you have to come to this presentation.' It is, in a sense, a misrepresentation of what they are about. They are not giving you a prize; they actually want to get you to the presentation.

**Prof. Dempsey**—Anecdotally—it was not in Australia; it was in Thailand, but it was a European based outfit—I found myself in there for the prize and, as I said before, I was quite impressed with their act. It was almost like a magician—you think: 'I saw him do it. How did he do it? How did that pigeon suddenly appear on his arm or wherever?' Again, it was almost impressive. They were good. But it would worry me, yes.

One of the comments made was that the level of complaints is not huge. That is the claim, but I think people have a tendency to lick their wounds in private. Very often they think: 'Buyer beware. I bought it—silly me. I don't have a leg to stand on.' Even complaining is not easy. How do you complain? What is ASIC, and who do I write the letter to? A lot of people, even people like me, are never quite sure how to go about making a complaint. What am I going to complain about—that I was silly?

**Mr BOWEN**—A fool.

**CHAIRMAN**—There being no further questions, thank you very much for appearing before our committee and for the information you have given us. It is very helpful for our inquiry.

**Proceedings suspended from 12.40 p.m. to 1.33 p.m.**

**BENGASINO, Mr Joseph, Director and Legal Adviser, Australian Timeshare and Holiday Ownership Council Ltd****FILO, Mr Ramy, President, Australian Timeshare and Holiday Ownership Council Ltd**

**CHAIRMAN**—Welcome. As I indicated earlier, this is a public hearing and therefore the committee prefers that all evidence be given in public. If at any time you wish to give evidence in camera, you may request that of the committee and we would consider such a request. The committee has before it two submissions from you, submission No. 10 and supplementary submission No. 10B. Are there any alterations or additions you want to make to your written submission at this stage?

**Mr Bengasino**—No.

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

**Mr Filo**—I want to thank the committee for taking the time to conduct the hearings into the regulation of the timeshare industry. It is important to state for the record that this inquiry was requested by the Australian Timeshare and Holiday Ownership Council some two years ago. The reason for the industry body wanting an inquiry is the changes in financial services laws that have not taken into consideration the impact on our industry, on both consumers and the development of the industry.

The timeshare industry is regulated within legislation that fits our industry like a square peg in a round hole. Although the corporations legislation is the best overall framework for our industry, there are key aspects that need modification and/or review for their appropriateness. We have detailed these aspects in our submission. Our industry is the most regulated consumer product in Australia. Even as a financial product, time share is subject to more regulatory requirements than many other financial products. For example, the product disclosure document of a timeshare club is some 100 pages of A4 size in 10 point print, and I have a typical sample of that here. Yet the product disclosure documents of other financial products, such as insurance, are a simple DL size of 10 pages in simple form.

A PDS is supposed to be a layman's explanation of the key aspects of the product. Time share PDS documents by their nature confuse consumers. Typically, time share is sold at an average price of \$15,000. In real terms it is a consumer product of the same range and type of an around the world holiday for a couple. Yet we are more regulated than real estate, which can commit consumers to a purchase of, say, a \$500,000 property. It seems that every aspect of the current legislation is applied to our industry. One of the best examples is policy statement 146, entitled 'financial services training', which requires the industry to meet tier 1 training for all our representatives, even those who simply show consumers around the resort facilities. This training includes covering such topics as business cycles, monetary and fiscal policies, inflation, futures and derivatives. Yet other true financial products are only required to meet training at the tier 2 level.

ATHOC is a national body that acts not only for its members generally, resorts and industry operators but also to support the spirit of time share with consumers. With over 140,000 timeshare owners in Australia, a product that has one of the highest satisfaction ratings in the world, we are proud to be an industry that provides real value in tangible holidays to many families for many years rather than a speculative financial investment product based on forecasts, which the regulation we are bound by implies. I trust that my colleagues and I can assist with your inquiries today and in the future.

**CHAIRMAN**—Mr Bengasino, do you have anything to add?

**Mr Bengasino**—No.

**CHAIRMAN**—The real issue, among several, that we are trying to explore is the appropriate regulatory format for time share. Your argument is that essentially it is not a financial product, or that it is a financial product but it should not come under the current financial product regulatory arrangements.

**Mr Bengasino**—Our argument is that it not a financial product, nor should it be regulated as an investment. So there are really two arguments. We have detailed in the submission that, in our view, the appropriate way to proceed is to amend the provisions of the Corporations Act so that a separate, discrete part of that act is dedicated to the regulation of time-sharing. That is consistent with one or two other submissions in the sense that they have also said that timeshare specific legislation is required in Australia. Our point of difference is the regulator, if you like. In our view ASIC is the appropriate regulator and there is an appropriate infrastructure already in place. The only thing, really, that needs to change is the rules relating to this particular product.

**CHAIRMAN**—So you are accepting in the sense that it is an investment? The other option I was going to explore with you was whether it might be more appropriate for time share to be regulated under the Trade Practices Act by the Australian Competition and Consumer Commission.

**Mr Bengasino**—That is really the only other available existing infrastructure on a federal basis. ATHOC believes that it is inappropriate for regulation to be on a state by state basis, for the reasons mentioned in the submission. On a federal basis I guess the only two existing infrastructures are either ASIC or the ACCC.

**CHAIRMAN**—If the current regulatory structure is inappropriate, what issues do you believe that an ideal regulatory structure needs to address and be involved with in terms of protecting consumers?

**Mr Bengasino**—In order to protect the consumers, the consumers really need to know effectively and concisely what product is actually being directed to consumers. It is very difficult within the Corporations Act—if time-sharing continues to be regulated as a financial product—to separate the holiday or time-sharing component from the financial product or investment component. That is really the confusing aspect that filters through a number of levels of regulation and the number of documents that are required to be provided by the seller to the proposing purchaser. The distinction really is not obvious from those documents, because the time-sharing or holiday part is buried within the investment part.

**CHAIRMAN**—In your submission you seek more formal recognition as a co-regulator with ASIC and with the complaints handling body, in particular for the timeshare industry. Does this pose something of a conflict of interest, given that on the one hand ATHOC relies on the membership fees of the operators and on the other hand would be resolving disputes with operators?

**Mr Bengasino**—No. The application has already been made to ASIC. The industry supervisory body application has been on foot for the last four or five years. ASIC at this stage are really just rolling over the interim relief whilst they develop their own policy dealing with industry supervisory bodies. As far as the complaints body is concerned, ATHOC made a submission to ASIC around five years ago, which ultimately proved unsuccessful. ATHOC has commenced proceedings in the AAT, dealing with the refusal by ASIC to approve the external complaints body. But the body that is being sponsored by ATHOC is in fact independent of ATHOC. It is intended to be a company limited by guarantee, which draws its directors from the industry and the consumer group, has an independent chair and a tribunal which gives effect to the same sorts of interests. The reality is that there is no conflict of interest at all, because the complaints body would be totally independent from the industry body.

**CHAIRMAN**—Have ASIC given any reasons why they have rejected your application for co-regulation?

**Mr Bengasino**—They have given two basic reasons: one is resources and the other is independence. We think that both of these issues have been resolved in a further submission that was made within the context of the AAT proceedings. ASIC at this stage is refusing to provide any guidance or reasons as to why they maintain their refusal. Our directions hearing is due sometime next month.

**CHAIRMAN**—Is your real concern with the current regime the extent of disclosure required, or is it just that you are a square peg in a round hole?

**Mr Bengasino**—It is both the nature and the extent, because disclosure, as I said before, is clouded by the investment component. The reality with this product is that it is a very simple product to understand. The confusion in the marketplace is because of the necessity to comply with the investment-driven provisions in the Corporations Act. We as an industry are not unhappy with the manner in which ASIC has regulated. Their hands are tied as much as ours are. Even though they may wish to relax a bit more the provisions in the act, they are not able to do that whilst time-sharing is defined the way it is within the act and it continues to be an investment based product.

**CHAIRMAN**—To what extent is it an investment product? It seems to me to be more in the nature of a consumer product, albeit a long-term consumer durable, in a sense. Therefore, to me, the real areas that seem to need attention in terms of regulation are, firstly, the marketing practices surrounding the product and, secondly, some insurance that the product is going to be there long term for the consumer to enjoy the benefit of what they have purchased.

**Mr Bengasino**—We certainly do not disagree with that view. We have maintained that view. ASIC has enshrined within a policy statement that is now superseded—PS66—a prohibition against this product being characterised as an investment. That still remains the unwritten policy

of ASIC. ASIC acknowledges that there is an uneasy alliance, if you like, between the product and the Corporations Law, but I think it has become a lot more pronounced since the managed investment provisions have formed part of the act. With other financial products there is less scope, I guess, to give the type of relief that the industry had prior to the introduction of those provisions.

**CHAIRMAN**—You note in your submission that points clubs have dominated the market in recent years. Does that development require any particular attention in the regulatory framework?

**Mr Bengasino**—No. A points based timesharing scheme still retains its character as a timesharing scheme, so it is improving and enhancing a product that has been around for 30-odd years. It is just a different way of approaching a holiday. Instead of the unit being measured in a week, with, say, one apartment being divided into 51 weeks, the unit is now a point, which is a currency. So, if you acquire X number of points, that then entitles the holder to a week or a day or some other period of time at a particular destination. Each destination, if you like, is graded in terms of how many points are required for a period of time—accommodation—at that particular destination.

**CHAIRMAN**—In your submission you also note:

ASIC has exercised its discretionary powers to establish further defacto policy settings outside of SPS160.

This includes:

3.3.6 The requirement to report and account to members at least annually on the composition of calculation of all charges to members

Do you object to that?

**Mr Bengasino**—No, not at all.

**CHAIRMAN**—So that was just an observation; it was not a concern?

**Mr Bengasino**—Yes.

**Mr BARTLETT**—Thank you, gentlemen, for your submission and your time today. Mr Filo, in your introductory comments, you said—and I think I have it right—that the timeshare industry has one of the highest satisfaction ratings in the world. How do you measure that?

**Mr Filo**—About three years ago, a survey was done of the members—it was an addendum to our initial submission and it is a fairly thick document; this is the document—comparing worldwide timeshare schemes and the satisfaction ratings. Australia came second to New Zealand in satisfaction of product.

**Senator BARTLETT**—Is there any measurement of the level of complaints?

**Mr Filo**—Yes. There are two types of measurements. All the regulated timeshare schemes have to be members of the Financial Industry Complaints Service—FICS. As well, internally ATHOC runs its own complaints resolution committee for the non-regulated timeshare schemes, the sold-out schemes and so on that are not able to be members of FICS. In the report that was handed to us by FICS some six months ago, we found that there were 40 timeshare complaints over the last three years; that is considering that there were some—and I would have to verify the exact number—150,000 contacts with timeshare owners. Whatever the industry, there will always be complaints, but the number of complaints relative to the number of contacts with the consumers is the important thing.

**Mr BARTLETT**—What were the main areas of complaint?

**Mr Filo**—From our understanding, the ones that were received by FICS were more people realising that they did not want to be involved in the schemes and wanted to get out and thought that there was some way they could get out of the schemes. That was the main objection. The complaints that ATHOC gets relate more to resorts applying the provisions of their own constitutions. You have got to understand that some of these resorts are 20 or 30 years old and so, for example, if members do not pay their ongoing levies, the burden is left to the balance of the members of that scheme. So the directors of those individual schemes exercise forfeiture rights or rights to terminate that ownership. That is one of the areas.

The third area of complaint we seem to get equally is sales and marketing. There is no shying away from that. However, they are not really complaints that ATHOC or FICS can deal with. Once they become a member, those bodies can handle their complaints. Sales and marketing complaints are related to the various state bodies of consumer affairs, and they probably have more of those complaints coming through at that level than the actual operating or running of the scheme or being a member of the scheme.

**Mr BARTLETT**—It would seem to me that, anecdotally and from some of the evidence we have received, the complaints would fall into three or four main categories. As you said, the first one is the sales and marketing side of things—that is, the level of pressure applied in the marketing of the product. The second one relates to questions regarding the cooling-off period and the inadequacy of that. I suppose you would say that is also related to the marketing side of things. The third one relates to questions about the saleability of the product once the time share no longer meets the needs of the initial purchaser, and the inadequacy of the market and the lower price that often results from that. The fourth one, perhaps, relates to questions about the inadequacy of maintenance to retain the standard of that investment.

I take the point that you made, Mr Bengasino. You suggested that we ought to be amending the provisions of the Corporations Act and looking at time share as a product rather than a financial investment. I have got some sympathy with that view. There are significant enough differences between time share and financial investment products to warrant a different approach. My concern, though, is how we adequately address those three or four issues that I have suggested there. Can you suggest to me how we could perhaps tighten aspects of the Corporations Act to address those key concerns and adequately protect consumers without being under the umbrella of financial service legislation?

**Mr Filo**—I will work my way backwards from the easiest to the hardest. Predominantly, if you look at the accounts of all the sold-out schemes, they do adequately provide for refurbishment funds. However, you are correct; there are some exceptions where it is not a requirement to create a refurbishment fund. I will speak on behalf of the company and not ATHOC at the moment, but my experience is that some companies operate in the same manner as strata operators, where a body corporate has to have a quantity surveyor's 10-year plan put forward to them and, based on the quantity surveyor's 10-year plan, put sufficient funds into a sinking fund—the same as any strata application. That does not happen in time share. However, I would say that 80 per cent of the operators take on that approach and do engage quantity surveyors and do put refurbishment funds in a sinking fund provision for the long term.

**CHAIRMAN**—Besides their initial capital?

**Mr Filo**—As part of the ongoing annual maintenance fees it is not a requirement. There is provision in all their constitutions. There are two ways of operating. You can operate with no sinking fund provisions and after 10 years you need to paint the building, so you then instigate a special levy, a one-off payment, for all the owners, who might have to pay \$150 each and who collectively agree, 'We will paint this building.' The other way of doing it is collecting an extra \$10 a year for the 10 years and putting that into a sinking fund so that when the time comes to paint the building it is there.

**CHAIRMAN**—That is what I wanted to clarify. So it is an annual payment rather than something taken out of the initial capital?

**Mr Filo**—Exactly. That is part of the annual maintenance of the operation of the system. As for the resale side, it is sold as an investment in terms that it has always been the mindset that you buy this today and you will gain. As with any financial product, people have an appreciation for a product that they buy that they think they are going to gain when they come to sell it. It is like shares: everybody has had it drummed into them that an investment in shares is going to increase over time. The nature of the investment side of this forces people to think that the initial investment is going to grow. In a sense, if you used it for 10 years there would be the savings that you would have received. I have just stayed in the snow for two weeks at Lake Tahoe in the States. It cost me \$A500 a week for a two-bedroom apartment. I saved eight thousand-odd dollars on that holiday alone. But people do not take into account those savings at the end of the time period when they want to sell the product. They want to regain the initial capital outlay and more.

**Mr BARTLETT**—I think what is probably more to the point—and sorry to interrupt—is that they do not want to lose too much. I think anecdotally the evidence would suggest that if they want to sell it after three or five years and have not used it as much as they might have anticipated there is a substantial loss in resale.

**Mr Filo**—We can use analogies and try to dance around the subject, but the product cost is not the total cost of the selling price. There are some significant overheads. Compliance is one of them. The product is not a product for which people wake up in the morning and say, 'I'm going to buy a time share today'—and I will get to the sales and marketing of it—so they are telemarketed or whatever means is used to get them to attend a presentation so that the product can be explained to them. But a component of the cost of the initial purchase is the cost of the



sales and marketing and administration, not that of the actual product. It is like this: the Van Heusen shirt for \$50 at Myer is made in China for \$3 and then packaged. Why has it cost \$50? It is not as if the product cost \$50, but there are the costs of sales and marketing, the people standing around, the stock levels and airconditioning. Similar things apply to time share, yet because it is a financial product compared to shares in BHP or whatever, people then make that assumption.

**Mr BARTLETT**—I do not think people anticipate making a profit on a resale, nor do I think they anticipate taking a substantial loss. I would suggest to you that a lot of the language used in the marketing, particularly the use of the word ‘investment’ even though it is not a financial product, would seem to indicate that you cannot lose your money et cetera. I will put a suggestion to you. Would it be possible as part of the marketing of these products for there to be a schedule, based on historical analysis, of average resale values as a percentage of the purchase price of these products over a period of, say, the last five or 10 years so at least potential purchasers would have an idea of the cost component that they would lose if they resold in five or 10 years? Is that sort of thing feasible as a form of protection?

**Mr Filo**—As long as you can put in parallel the cost savings and benefits you are going to get by utilising the product, because that is a financial—

**Mr BARTLETT**—That is well and truly part of the sales pitch anyway.

**Mr Filo**—Secondly, the scheme realises its value. You will see an example tomorrow when you visit a resort that was sold around 15 to 20 years ago—a sold-out scheme: The Beach House at Coolangatta. Apartments in Coolangatta today are worth \$750,000 to \$1 million for that size of apartment. I am not talking about new ones; I am not talking about The Beach House. But when is that realised to the time share owners? It is when the scheme is wound up and the building and asset is sold. Then that asset, which is owned by the time share owners, is realised. But as long as they are trading during the scheme it is only market forces that determine the shareholding of that product. That is the difficult part of this industry. The realisation of the ‘investment component’ is the realisation at the end of the term of the scheme when all those assets—

**Mr BARTLETT**—A lot do not stay that long.

**Mr Filo**—I appreciate that too. That is correct.

**Mr BARTLETT**—Do you have an average or ballpark figure in your head of what percentage of the initial purchase price would be recouped across the industry on a resale after, say, five years? Is there a ballpark figure for that?

**Mr Bengasino**—The difficulty is that there is really no established resale market for any product. So if in a disclosure document there is disclosure of X number of sales with an average of Y dollars, that really does nothing further to inform someone, because of the circumstances in which people sell. Because this is a personal use product, people would have any number of reasons for wishing to sell a time share. I guess they will accept a price which corresponds to the reason they want to sell. If someone pays \$50 for an airline ticket or a ticket to a football match, it really does not have a value. The only value is what someone is prepared to pay for this

particular ticket. It is really the same with a time share because, other than the real estate value and the infrastructure value, it does not have a value which can be quantified. The only value is what someone is prepared to pay for it. There are a number of circumstances in which someone would wish to sell the product.

**Mr BARTLETT**—I think this is the critical issue, though. If I were considering paying \$20,000 for a timeshare arrangement I would want some indication that if I needed to bail out in five years time for health reasons or whatever I would recoup 40 per cent, 60 per cent or 80 per cent of what I had invested—certainly no guarantees but you would want some sort of indicative market price.

**Mr Bengasino**—Why for this product as opposed to, say, an airline ticket?

**Mr BARTLETT**—An airline ticket is a one-off purchase. This is a purchase that is supposed to provide a benefit over a period of years.

**CHAIRMAN**—In earlier discussions we were trying to determine if it was really a financial product or not. To me it is more like a motor car, for instance, which has a resale value. A second-hand motor car has a resale value—

**Mr Filo**—Correct. But it is a consumer—

**CHAIRMAN**—and there is a second-hand market.

**Ms BURKE**—I would argue something different. I suppose it gets to the nub of how you sell the product. What is actually given as advice at the time of sale by the marketing people? What is told to that investor? If you read the stuff in the press at the moment, you will see that most investors say, ‘I see my time share like my own holiday house’. That is a totally different concept from value you lose from a car because you believe that, if you have bought a holiday house and you are going to resell it, you are going to gain money at this point in time in the current property market. What are people told? What do people think they are actually buying? You said time share is an easy concept. I am sorry, but I dispute that because I think it is a bizarre concept. Up until you get into it, you have no idea what you are dealing with. What are you actually selling people? What do you tell people they are buying?

**Mr Filo**—The next two groups of witnesses are from companies that are actually involved in the sales. We are only the industry association. Some of those issues will be addressed by my colleagues. I am happy to answer your questions, but I think you are better off getting their response.

**Ms BURKE**—I suppose it gets to the nub of how you are regulating it and the central issue—that is, how do you regulate something unless you know what they are selling?

**CHAIRMAN**—I will raise the issue which I think is relevant to you as an association. Is it fair to say that there is not yet a proper competitive market in this field both in terms of the primary market and the secondary market?

**Mr Filo**—There is a number of issues in the secondary market.

**CHAIRMAN**—It is more in the nature of an oligopoly.

**Mr Filo**—You still need a financial services licence to sell the secondary product. Individual results that are sold out have to have a security dealers licence to sell their secondary product. A private person may sell their own time shares through the *Trading Post* or whatever, but they cannot exceed four. There are four a year, but if they are deemed to be trading in time share then they are deemed to be illegal—for example, if you call yourself Joe’s Time Share Sales. It is too hard to sell anyway.

**Mr BARTLETT**—But that is one of the critical issues in terms of consumer protection. As Senator Chapman said, if there were a more effective secondary market, you would build in a degree of confidence and a degree of protection for consumers. Is it possible that the association could undertake some sort of analysis, with a view to providing the sort of indicative information that would provide greater confidence for potential buyers?

**Mr Filo**—I understand what you are saying. I see no problem, as an industry association, in obtaining the typical values in resales from the initial outlay. We have said in all our documents that you cannot expect to gain financially from it. You will gain financially from the usage of the product. All I am saying is that, as long as it is in the context of valuing it against the usage of the product, I am sure it will exceed the return of the initial investment. But in real terms, if you are saying, ‘I bought it for \$20,000 and I sold it five years later for \$5,000 or \$10,000; I’ve lost money—

**Mr BARTLETT**—I do not think that is a problem. Obviously, you would expect the face value to have diminished—or I would, anyway.

**Mr Filo**—Sure.

**Mr BARTLETT**—You would at least want an indication, so you can say, ‘Yes, I’ll lose \$5,000, but I got more than \$5,000 worth of benefit out of it.’

**Mr Filo**—The analogy is the same as if I bought a brand-new car and sold it five years later and never used it—it was a waste of money.

**Mr BARTLETT**—Of course. You know you will lose money, but you will have had the benefit. At least you know that in five years time you can sell that car, albeit at a loss. Consumers would feel more secure if they knew they could sell it, albeit at a loss in face value, and the loss would not be too much compared to the benefit they derived.

**Mr Filo**—It is the market forces, though, that drive the secondary market. None of us can drive that secondary market.

**Mr BARTLETT**—I think it is an issue of information.

**Ms BURKE**—Also on the resale issue, isn’t part of the problem for some investors, though, the forced buyback and fully sold issue? It is an argument that is happening in Melbourne at the moment, and it has been running in the paper a little bit: (a) that the money being offered to investors is certainly not what they would have expected to have had it bought out at, and (b)

with what will then be on-sold, the price that some companies are currently selling at is a hell of a lot greater than what is being offered to purchase back some of those units in various areas. Cumberland—

**Mr Bengasino**—That is a different—

**Mr Filo**—He is from Victoria, so I'll let him speak.

**Ms BURKE**—Cumberland, Lorne.

**Mr Bengasino**—That really turns on its facts with Cumberland, because people have a choice as to whether to accept the offer to acquire their interest. I think the offer is backed by an independent valuation as well, so it is a question of choice. If someone wants to accept that offer, they can. I think that, in the majority of cases, people are being offered substantially more money than they actually paid for the property 10 or 15 years ago.

**Ms BURKE**—I suppose that is not their argument. Some of the consumers are feeling they are being forced and do not have an alternative. That is the stuff that is playing out in the press.

**Mr Bengasino**—I have privileged information relating to that.

**Ms BURKE**—I am only quoting press reports.

**Mr Bengasino**—I can only speak in general terms, but as far as I am aware there has been quite full disclosure to each of these people and they had the choice to either accept the offer or reject the offer, so there is no element—

**Ms BURKE**—But if they reject the offer?

**Mr Bengasino**—If they reject the offer, they still remain a time share owner.

**CHAIRMAN**—Isn't the real problem with the development of a competitive market generally and, in particular, a secondary market the fact that it is not in the interests of the industry to have a secondary market because, if there is resale of existing units, then that is potentially taking away from the sale of new units? The situation is a bit different from a motor car in that eventually a motor car wears out and you have to replace it, so there is always a repeat customer base, in a sense. But in this instance, once you have bought your time share, if you retain it, therefore it is not resold. If someone else wants one, they have to buy a new one. If there is resale then there is not such a demand for new ones.

**Mr Filo**—There has always been a resale market in this industry, more so with the wider acceptance of the internet. There are internet based resale companies now. It has never been a problem to the industry. In fact, as an industry we have to support resale because some of the schemes are closed loop schemes, in the sense that there are a limited number of shares. A building is sold, and so on. Resale is intended to continue to ensure that the members of that scheme, the paying customers, are going to keep up the maintenance. Otherwise, they will burden the rest. So we have to support the resale industry as well as the primary industry.

You find that most of the primary sellers are selling a brand new inventory, so that is totally different when compared to the older resorts. There is that differentiation of the new car and an older car. You also find that, like I said earlier, consumers do not wake up, turn round and say, 'I might buy a time share today,' like they would an airline ticket or a plasma TV, until they attend a timeshare presentation. That is what the problem is. You will find that the resale market is actually bought up by existing timeshare owners who have already bought primary stock from attending a timeshare presentation. Through resale they buy additional weeks or points to top up, now that they are comfortable with the product and understand. Yes, they are a bit wiser that maybe they could have bought it at a different price, but they do not understand the product until they attend a presentation that explains the usage and the benefits of the product.

It is not something that you can just pick up. I would love it if one day we could walk into every travel agency and see a selection of points and consumer products; if it became a standard consumer product so people say, 'I think I'll buy some time share today,' or if there were a shop in downtown Sydney where people say, 'Which time share would you like to buy?' We will get there with brand names coming into this country. Accor is one of the first in Australia. If you look at the largest timeshare groups in the US—Hilton Vacation Club, Marriott Vacation Club, Hyatt Vacation Club, Disney Vacation Club—they are all the brand names. Until those guys come here, the Marriotts and so on, we are still seen as the small, individual, stand-alone resorts without the brands—the Beach House Seaside Resort, the Mariner Shores, the Port Pacific. But now we are seeing that change. The same issues that we highlighted are across the world.

**CHAIRMAN**—It puzzles me. We have been given figures, for instance, of a new time share that would sell for \$20,000 to \$25,000 on the resale market for about \$3,000. That seems to be an enormous discrepancy.

**Mr Filo**—No. For a new time share, from what I have seen they are about 50 per cent. What you are seeing is an old time share to a new time share—a sold-out scheme that the resort just wants to get rid of. The directors of that resort are not in the selling game. All they want is a person who will pay the annual levy to fill that void, so those weeks are sold at very low prices. They are the weeks of sold-out schemes. The point schemes of the new resorts, three or four years on, are in the order of 50, 60 or 70 per cent.

**CHAIRMAN**—But if you buy into a scheme aren't your points or your weeks transferable between resorts?

**Mr Filo**—Not every scheme allows exchange. There are two major exchange companies, and in this country, because of commercial reasons, the new timeshare points schemes have affiliated to one exchange company while the traditional, older resorts are affiliated to a different timeshare exchange company. Hence, there is that differentiation. They cannot cross over. But that is for commercial reasons and not anything to do with an industry association that could drive that.

**Mr BOWEN**—I want to take you to the issue of training and accreditation. You argue that we should move from tier 1 to tier 2.

**Mr Filo**—Correct.

**Mr BOWEN**—Could you give us a flavour of what the implications are of having tier 1 training for your members—what sort of burden it is, how much it costs, how many staff hours would be involved—so we can weigh that up with the potential benefits?

**Mr Filo**—The tier 1 training was developed with Griffith University and the Australian timeshare association to provide a course that, hopefully, would not be as onerous as others offered by the securities institute and so on. The problem we have with the training is that we are driving all of our staff not to describe this product as an investment product and yet 80 per cent of the course material is talking about macro-economics, derivatives and the economics. So the economic component of the course is the dominant part. In terms of the cost of doing the training, we need to train anyway. We are not saying that we do not want to train people. We do recognise that every person who comes into this industry must train before they talk to the public about a product and they must have that product knowledge. What we are saying is that we believe that training should be more focused on the product rather than the complexities and the details on the economic side of things. In terms of saying that it will reduce our costs, it will reduce our costs in some aspects because it is not going to be a full two-day course—it may be a one-day course rather than a two-day course—and it may not require an external university to administer. We pay in excess of \$55,000 a year for them to administer the course—not counting the over \$100,000 that we paid to develop the course.

**Mr BOWEN**—So you pay them \$55,000 a year. Do your employees, when they do the course, pay them any money directly?

**Mr Filo**—No, ATHOC as an industry association pay that. We then, as an industry association, charge a fee to recoup that from each company that wants to do the course.

**Mr BOWEN**—But does the individual pay them money as well when they do the exam?

**Mr Filo**—No, each company pays on behalf of their employees to ensure that they meet the requirements of PS146. Any changes in legislation mean we have to go back and change the course—and we have to not only send that information out to the existing employees but also track down the other people who attended those courses and try to give them that. The other side of it is that legally these people are not allowed to talk to a consumer or sell products in any way until they have completed the course. So there is a dilemma here about how many people you send through the course. How many are going to stay if they want to do this job? You cannot test them and they might not like the job. There is no waiting period or apprenticeship period where they can work with another representative who is already experienced. That is not allowed. So the legal requirement of having to complete that course to be an authorised representative to talk to a consumer is where the cost comes in—because you have a high attrition rate for employees you have sent on the course. The course costs \$110—because we are subsidised we are basically running it at cost for our members. The big cost factors are the time it takes to complete, the attrition rate and the administration side of getting people together from around the country, depending on where their companies are located.

**Mr BOWEN**—I take your point that it is investment based. You are saying, and we are agreeing, that it is not an investment.

**Mr Filo**—It is not an investment.

**Mr BOWEN**—The issue is the perception of people.

**Mr Filo**—I have just finished doing a training session for a couple of people. At the end of it I said, ‘You’ve got to learn all of this to pass but once you’ve passed I want you to forget everything you’ve learnt here—just understand what time share is about and make sure you never say that it is an investment.’ It is an investment in lifestyle, but you should not use the word ‘investment’. There are many timeshare schemes that people invest in. How many people own shares in a Snowy Mountains ski lodge? A lot of people do. For example, 10 people may get together and buy a share in an apartment. The Hyatt Coolum, one of the well-known resorts, is a timeshare resort. It is actually fractional—it has quarter shares. One bungalow is divided into four, so each owner owns 13 weeks. They lose thousands of dollars because there are still usage charges and so on that the Hyatt charges. That is a timeshare scheme. Time share is not constrained to just our area; it exists in a lot of different forms.

**Mr BOWEN**—I want to turn to the topic of cooling-off periods. You argue that there should be a cooling-off period, but you also argue that there should be less onerous requirements for disclosure. I want to explore your thinking on that because, intuitively, to me a cooling-off period that is not prominently displayed or not clear to the purchaser is not worth having. For things to work people have to realise that there is a cooling-off period. I am interested in exploring your argument, because it seems counterintuitive to me.

**Mr Bengasino**—There are cooling-off requirements under the Corporations Act that relate to financial products, and there are no prominent disclosure requirements as far as telling people in a PDS that cooling-off rights exist. It is just another statement that needs to be put in the disclosure document. However, time-sharing was a sort of pioneer in cooling-off periods—there was no other part of any industry, as far as I am aware, that was regulated under the Corporations Law that had cooling-off obligations. The time-sharing industry has had these obligations for probably 15 years or so, well before the managed investment cooling-off obligations.

Historically, they developed in a particular way—in an odd way, as it were. Initially there was some requirement that they be prominent. Then there was another requirement that there be a prominent document in addition to a prominent disclosure. Then there was another requirement that there be an acknowledgment on this prominent document that someone had actually received the prominent document, and that acknowledgment needed to be on the prominent document. So there are all of these prominent statements and prominent documents, and the person who is actually being told this and who is signing off concludes, from a selling point of view, that the product must in some way be defective because they are being told that, even though it is a great product, you can change your mind.

A survey was done two or three years ago which indicated that, with the disclosure of the cooling-off obligations in this prominent way versus just putting something in a disclosure document that draws prominence to it, twice as many people cooled off with the prominent treatment as with the non-prominent treatment, even though they were being pitched the same product, if you like. So the only variable was the degree of prominence and the additional documents and acknowledgments.

**Mr BOWEN**—That could be an indication that it works, though.

**Mr Bengasino**—No. If it worked so well, ASIC and the regulators would have included this prominent treatment within the Corporations Act for financial products, but they do not. There is no requirement that there be a separate acknowledgment of the existence of these cooling-off rights. So it works in the sense of causing people concern that they are buying a defective product. People are saying that you can get out of this deal in seven or 14 days time, but they are not saying it in the way I am saying it. They are saying it over and over again—and just in case you missed it the first 10 times, you are asked to sign this document the 11th time to acknowledge that you actually understand that you have cooling-off rights.

**Mr Filo**—The majority of operators do have, in simple terms, a statement of understanding at the end of a sale. The statement of understanding typically highlights that they understand that they have received a cooling-off notice, that the product they have purchased is not an investment, that no capital gains are promised or expected, that it is a lifestyle product and that they have the financial capacity to enter into this agreement and so on. This is for our own protection because we know the laws are pretty stringent. But we also go that one step further and do a simple statement of understanding. So it is done one more time just to make sure that people know. That is our record of basic understanding but also our record that the cooling-off notice has been handed to a consumer.

**Ms BURKE**—Do you think this is down to a lot of concern about the marketing practices of time share, the cooling off and the regulation of it?

**Mr Filo**—I do not understand your question. What do you mean by that?

**Ms BURKE**—There is a notion that the marketing of time share—as you said, people do not wake up and think, ‘I’ll get time share’—is something that either is cold-canvassed or comes to you direct. You do not pick up the newspaper and find it listed. It has been described by some people as fairly aggressive marketing and that is why some of these things are in place, because of the aggressive marketing nature of trying to sell time share.

**Mr Filo**—I do not know whether ‘aggressive’ is the right word. All the marketing that I have seen has been done in a fairly professional way. Fifteen years ago I would have agreed with you wholeheartedly, but today there are touting laws. For example, on the Gold Coast you cannot just walk down the street and hand things out; you have to be standing in a rented premises. All the competitions are really competitions. Yes, the end result is to attend a presentation but people do win the cars. They are regulated by the lottery offices of each state. Is that heavy-handed marketing? I disagree. People have the choice of going to a presentation or picking up a prize—or the gift of discounted accommodation if that is the nature of the prize.

I, like you, may decide that I will say, ‘No, thanks,’ whether it is a survey by Telstra or whoever on changing my telephone or attending a presentation on holidays. I do not think the marketing can be seen as heavy-handed. In our codes—and you have copies of those—we make it very clear that all our members who market to consumers must say, ‘This is a timeshare or holiday ownership presentation.’ The consumer must know that that is what they are attending. They must not be told, ‘Come to a holiday expo or a tour of our resort,’ without being told that they are coming to be sold a product. That is important.



**Ms BURKE**—Are they employees—the people who are marketing and who have undergone the training course?

**Mr Filo**—Most of them are.

**Ms BURKE**—Are they direct employees or are they employed on a commission basis? How does that work? I am asking you because I do not know.

**Mr Filo**—Again, different companies have different ways of operating. As for the industry association, I do not know. I can answer on behalf of the company that I represent.

**Ms BURKE**—That is fine.

**Mr Filo**—In the company I represent all our employees are direct employees; they have a salary and a commission incentive.

**Ms BURKE**—But they are employees?

**Mr Filo**—Correct; they are direct employees.

**Ms BURKE**—Do you have other ways of selling? Do you have contractors?

**Mr Filo**—No.

**Mr Bengasino**—It is possible, though.

**Mr Filo**—It is possible.

**Ms BURKE**—In relation to the people who undertake the training course, does anybody do that on the basis of what is known as New Apprenticeships?

**Mr Filo**—No.

**Ms BURKE**—In your experience nobody is using that? I can ask the others when they come in.

**Mr Filo**—Do you mean a government—

**Ms BURKE**—I am referring to a government subsidy.

**Mr Filo**—We do that; we encourage it. Obviously, there is an incentive to employees and employers on that basis.

**Ms BURKE**—So you would class the two-day thing as something for a new apprentice and get the—

**Mr Filo**—No, not that course. We would take them on as a trainee.

**Ms BURKE**—You take them on as a trainee?

**Mr Filo**—We take them on under a traineeship. That course does not qualify them. It is more a requirement in relation to financial services.

**Ms BURKE**—So the traineeship would relate to someone new you were hiring as a trainee, and they would come on for 12 months?

**Mr Filo**—Yes, and they go through a normal traineeship through a registered training organisation—RTO—and so on.

**Ms BURKE**—And it would be fairly standard throughout the industry to use that?

**Mr Filo**—Yes. Predominantly we are in the hospitality industry. I represent a company that has 500 employees and 25,000 traditional timeshare owners. So we have the same HR requirements and traineeships. We are real; we are not different from any other company.

**Ms BURKE**—We were discussing the notion of resale, and from the notes we have been given it seems that there is a much greater market within New Zealand—double what is here. It seems that in New Zealand it is 40.2 per cent compared with 19.6 per cent here. The resale market there is twice as large as it is in Australia. Have you come across that?

**Mr Filo**—Do you mean the price is twice as much, or the turnover?

**Ms BURKE**—From what I am reading I would take it to be turnover—but I am not 100 per cent sure, to be more than truthful.

**Mr Filo**—I am not aware of that.

**Ms BURKE**—You mentioned that time share is an issue in New Zealand because they have a larger market share and it is a bigger product.

**Mr Filo**—The funny thing is that the regulations in New Zealand are tighter at the front end, which is the sales and marketing area—in terms of the trade practices side of things—and not at the back end, which is what we are regulated under. You can go there with a minimal PDS and there are minimal requirements to open up a club. Most operators use the basis of what they have here and supplement that. I am not a legal person or an operator.

**Ms BURKE**—No, you can only talk for yourself.

**Mr Filo**—My colleagues who will be speaking later are about to operate in New Zealand and they can tell you about the details of operating there.

**Ms BURKE**—From an industry perspective, do you think that would be a better way of doing things—to compare it with what is happening in New Zealand?

**Mr Filo**—With our fair trading and trade practices regulation, our protection is in many ways similar to that of New Zealand. From that perspective we are very protected and no less so than

New Zealand is. Less regulation at its back end perhaps allows it to transact more. The cost of its regulation is not as high as ours, and that impacts on the cost of its product. If we were to sell at \$20,000 with the resale value being, say, half of that, that would not mean we would be making a \$10,000 profit. I think all of us at this table would recognise that. In our businesses, we would be lucky to make 10 to 15 per cent in normal gross profit, and that is what it is about. It is all about the costs of the product. Regulation, sales and marketing, employment and premises are all costs.

**CHAIRMAN**—Basically, assuming a unit represents one week's use, the selling price of a unit would be one 52nd of how many apartments there are in a development divided by the capital cost of the facility, marketing costs, regulation and profit.

**Mr Filo**—Correct.

**CHAIRMAN**—Then the ongoing maintenance is an annual fee.

**Mr Filo**—And that is non-profit based. It is the actual costs for the year, which are then divided. Tomorrow we are going to show you examples of a 20-year-old resort and a brand-new resort. Both operate side by side and at no profit. There is a non-profit sort of operating budget—whatever the costs are of running that resort divided by the number of owners.

**CHAIRMAN**—I note in your submission that you provide a telephone service for consumer inquiries. Do consumers ever direct complaints to that inquiry line?

**Mr Filo**—Yes, they do.

**CHAIRMAN**—What percentage of calls received via the inquiry line are complaint calls?

**Mr Filo**—A major one is: 'Is this product a viable product? Is this company a real company? Am I getting ripped off?' For many years there has been much misunderstanding about the nature of the product and the industry, and the majority of the calls relate to that. We do not have the capacity to handle complaints of a formal nature and that is why our submission—

**CHAIRMAN**—I understand that, but what percentage of your calls would be complaints? Obviously, you do not deal with them; instead, you refer them on to ASIC or wherever.

**Mr Filo**—It is a very small percentage.

**Mr Bengasino**—A negligible amount.

**Mr Filo**—With what you are asking, you have to understand that there are 140,000 existing timeshare owners.

**CHAIRMAN**—You also indicate that membership of ATHOC is by application and not by right. What percentage of membership applications is rejected and on what sorts of grounds do you reject them?

**Mr Bengasino**—Because the industry in Australia is relatively small, it is fair to say that the majority of industry participants are members of ATHOC. On one or two occasions in the past,

organisations have been expelled from ATHOC based on all sorts of things—largely to do with selling practices, I think.

**CHAIRMAN**—Kyneton Bushland Resort in its submission to the committee says:

Your committee should give careful consideration to differentiate between the interests of developers and their marketing/sales teams—

that is on the one hand, I assume, and on the other—

and those of the management of resorts and the shareholders of sold out developments.

It further says:

We would contend that the industry body ATHOC is dominated by the interest of developers, marketers and exchange companies with little real representation from the membership bases of time share resorts.

What is your response to that submission?

**Mr Filo**—In our submission, the last point relates specifically to sold-out schemes. As president, one of my problems has been that, for the last five years, all I seem to have been doing is putting out fires regarding regulatory things and not looking after the member base in the sense of servicing them and providing real value—other than attending ASIC and making submissions and so on. That has been recognised and our business plan for the future has changed that. The national body of ATHOC is made up of its directors and three representatives from regional bodies; there is also a management class—‘management’ meaning the resort management side. We have, for example, southern, northern and western. To tell you the truth, Kyneton is not even a member of ATHOC.

**Mr Bengasino**—No, it is not.

**Mr Filo**—Sometimes they do not see the value of what we are trying to do. However, if they read the submission, they will see that we address many things there. Some of those things, unfortunately, are state based. For example, there is the land tax issue in Queensland versus stamp duty issues in New South Wales. As time share is a title transfer, it falls under these categories. Sometimes aspects of that are really important to them. It was hard for us, as a national body, to try to address that in this submission, appreciating the short time we had to put it together. Under the final category, there is a blanket statement. Many issues affect different sold-out schemes, depending on which state they are located in. A major one, which I think was addressed by Kyneton and Port Pacific, was their ability to sell their own interests without a licence. Again, ASIC sees that as being outside the law—but we would love to do that.

**Mr Bengasino**—Could I just make one or two comments on Kyneton? The author of that document, John Nissan, is and has been for a number of years well aware of the make-up of the board. Of the nine board members, three are voted in or appointed by the management component of the industry; one of them is totally independent and resides in Western Australia. ATHOC, as an industry body, has geographic representation throughout Australia and gives

representation with the selling, management and exchange aspects and has a professional adviser. So ATHOC certainly does not agree with Mr Nissan's observations.

**CHAIRMAN**—Section 2.3 of your supplementary submission deals with ATHOC's powers of sanction regarding breaches of the code of practice by members. Obviously without naming individual members, can you give examples of breaches that have occurred, what sanctions have been imposed as a consequence and perhaps what percentage of members breach the code each year?

**Mr Filo**—On an annual basis they are minimal, but we have had the forced reversal of transactions where there may have been a misleading incident or misunderstanding. So ATHOC has imposed on a member the reversal of a transaction, even though it has been after cooling off and full moneys have been paid. We have applied sanctions in terms of compensation in the form of additional benefits being provided to the consumer because they were represented differently from their understanding. Also in extreme cases we have applied the sanction of expulsion. It is fair to say that you can search the ASIC web site and find that a certain company licensed a deal that we then cancelled—and this is publicly available—and, prior to any action by ASIC, we expelled that company. That enterprise is no longer operating in this country anyway; it has gone offshore.

On the other side, we warn consumers about pseudo timeshare operators. 'Time share' is defined as any membership in accommodation for over three years. If it has an annual membership or its membership is for under three years, it is not a time share and is not regulated as one. It can be a holiday club or a travel club that you join for \$3,000 or \$5,000 and then pay a \$50 fee to get discounts at resorts; what protection do you have as a consumer there? These travel clubs operate in Europe under the guise of the timeshare industry. When they came out here, and there was a prominent one—

**Mr Bengasino**—IRN in Western Australia.

**Mr Filo**—IRN in Western Australia. Again, ATHOC was instrumental in getting that shut down and moved out of the country. Our extreme sanction is expulsion and also advising ASIC of what, in our view, have been potential breaches of law.

**CHAIRMAN**—For those people that have had sanctions against them, are they typically one-offs or are there particular companies that are repeat offenders?

**Mr Filo**—Typically it is a one-off. Not only do we issue a sanction or a reversal or whatever but we also ask them to correct the documentation to make it clearer or to enhance the way that is presented. We want to review that documentation subsequently.

**CHAIRMAN**—Do you think the sanctions you impose are a sufficient deterrent?

**Mr Filo**—They are sufficient enough. If we had the power to do more then we would. It is like anything—I would love to be able to penalise them financially and put the money into the association. I am always looking for money for the association.

**CHAIRMAN**—In the interests of transparency, would you support the establishment of a formal secondary market where there was some sort of central register of timeshare units that were available for resale?

**Mr Filo**—That happens now. There are a number of web sites that are freely available—all they cost people is something like \$50 for a three-month period. Even eBay sells time shares. How would we support that? Remember, private individuals have the right to sell, so these secondary markets are provided by the individuals rather than companies. As soon as a company gets involved there are the regulations side, the disclosure documents, the statement of understanding and all those costs and then there are the risks to that licensee which add the costs to it.

**CHAIRMAN**—Would people typically be made aware of that at a sales presentation for a unit?

**Mr Filo**—No.

**CHAIRMAN**—So unless they have got some greater level of sophistication they are not likely to be aware of the secondary market.

**Mr Filo**—No.

**Mr Bengasino**—Beyond, say, statements in the product disclosure statement—the disclosure document—about the unlikelihood of recovering the application moneys on a resale. So there are a number of statements made in the disclosure.

**CHAIRMAN**—After they get to the presentation.

**Mr Bengasino**—No, this is during or before. It is actually beforehand that they have a chance to read it. It is certainly not after.

**CHAIRMAN**—If they are given it.

**Mr Bengasino**—No, they are required to be given it at the point that they enter.

**CHAIRMAN**—I went to a presentation two or three years ago and there was no documentation whatsoever given to me—none at all.

**Mr Filo**—Was it a resale or a primary?

**CHAIRMAN**—It was a primary.

**Mr Bengasino**—ASIC must have picked up on that point just afterwards.

**CHAIRMAN**—I think I might have raised with them!

**Mr BARTLETT**—Mr Filo, in response to a question from Ms Burke you said that for your company your marketers are on a combination of salary and commission. What is the proportion, roughly? What is the breakdown there? It is predominantly salary or predominantly commission?

**Mr Filo**—It depends on how good they are.

**Mr BARTLETT**—For a typical salesperson.

**Mr Filo**—There are two levels. There is a primary seller, who is on a wage of roughly \$500 a week. They get a two per cent commission on a sale. If they are selling a \$10,000 product that is \$200.

**Mr BARTLETT**—When you say the primary salesperson, you mean the person to clinch the deal?

**Mr Filo**—The first person, yes. How much it is in proportions would depend on how many sales they did per week and how many cancellations there were. They only get paid on the ones that go all the way through, not cancellations during the cooling-off period and so on. It is not 10 per cent or 20 per cent of the product. The total commission, I think, is around 14 per cent—that includes everybody involved.

**Ms BURKE**—I just want to clarify where that stuff came from. Apparently it comes from your report.

**Mr Filo**—What is that?

**Ms BURKE**—The stuff about the resale in New Zealand. Part of the key findings on timeshare purchases says:

Developers and other commercial sources sell 71.2% of the timeshare weeks acquired in Australia, and 49.4% of those in New Zealand. Resales account for another 19.6% in Australia, and fully 40.2% in New Zealand. Remaining acquisitions represent gifts, inheritances, and other transfers of ownership.

**Mr Filo**—That is saying that 40 per cent of the sales in New Zealand are resales and 19 per cent of the sales in Australia are resales, but the volumes are totally different—the volumes in Australia are much higher.

**Ms BURKE**—That would be your argument—that volumes in Australia are higher as opposed to them having a resale market. I suppose that is what we are trying to get to.

**Mr Filo**—No, they do not. It is different to here. New Zealand has not been a primary seller for the last two years. I think the larger companies are just about to move into New Zealand. I think one of them opened a number of months ago. At the time of this report, 2002, there were two major primary sellers. Individual resorts do not need licences over there to sell. Someone can walk into a resort and the manager can walk up to the desk and say: 'Would you like to buy one? Here's the price.' They do not have to give disclosure. Remember that I said that regulations are more at the back end here than the front end over there.

**CHAIRMAN**—Thank you very much for your appearance before the committee. You have been very helpful to our inquiry.



[2.48 p.m.]

**DUTTON, Mr George, Chief Financial Officer, Accor Premiere Vacation Club**

**KANDEL, Mr Martin, Chief Executive Officer, Accor Premiere Vacation Club**

**REGHENZANI, Mr John, Corporate Counsel, Accor Premiere Vacation Club**

**KNOWLES, Mr Gary, Vice President and Chief Executive Officer, RCI Pacific**

**SCHWARTZ, Mr John, Manager Special Projects, RCI Pacific**

**ROBINSON, Mr Barry, Chief Executive Officer, Trendwest Resorts South Pacific**

**SIOW, Mr Shin, Senior Counsel, Trendwest Resorts South Pacific**

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

**Mr Schwartz**—I am also the manager of RCI Securities.

**CHAIRMAN**—As I indicated earlier, this is a public inquiry and therefore the committee prefers that all evidence be given in public. But, if at any stage you wish to give evidence in camera, you may request that of the committee and we will consider such a request. I invite one or all of you to make a brief opening statement and then we will move to questions.

**Mr Kandel**—I am here representing not just the club but also our owners, Accor Asia-Pacific, led by David Baffsky, and the Becton Corporation, led by Max Beck. My chief financial officer, George Dutton, who is with me today, has extensive timeshare experience and extensive knowledge of regulatory arrangements from his former positions with Trendwest and Marriott. John Reghenzani, formerly a 12-year veteran senior lawyer at ASIC, has particular experience in the regulatory oversight of time share here in Australia. Like John, I am a former timeshare regulator from the US state of Maryland, where I served as Assistant Attorney-General. I witnessed at first-hand the abuse of consumer protection and property law by fledgling timeshare developers.

That was in 1982. Timeshare developers are no longer a collection of journeymen and unethical individuals out to make a fast buck in an unregulated environment while wearing white shoes and gold chains. Today's timeshare companies tend to be large corporations, including many hospitality brands that are well known to all of you, or smaller companies or firms that are well capitalised to pay the high cost of entry into this highly regulated and controlled industry.

APVC strongly supports the submission to the committee by ATHOC. Of particular concern to APVC is the classification of time share as a financial product and the resulting requirement for operators to comply with a broad range of mandatory processes intended for the financial services and investment advisory industries. APVC is strongly supportive of the continued

regulation and supervision of the timeshare industry by the Commonwealth government. We operate on a national scale and indeed aspire to operate on an international scale. We believe that stringent, consistent and nationwide regulation can only assist the timeshare industry in its quest to move from the category of a bought good into the mainstream world of commerce and be viewed as a sought good.

However, like anyone else operating under legislative and prescriptive administrative regulation, we seek clarity of the existing law and modifications to the law so as to make it relevant to today's commercial marketplace, less burdensome where the law fails to achieve its purpose, and directive so as to clarify for the regulators the will of parliament in relation to regulations and policies. On behalf of the 550 employees of APVC working all around the country and the nearly 10,000 club members enjoying the benefits of better and more flexible holidays, I wish to reaffirm our express support of ATHOC's submission to this inquiry. Obviously, we are available to answer your questions. Thank you.

**Mr Knowles**—RCI is a global company operating in the exchange and value added product and services market, which supports the timeshare industry. We see ourselves very much as a key player in that industry. We look to bring value to the holiday investments of members post the primary acquisition. RCI is part of Cendant Corporation. Cendant Corporation is a Fortune 500 company and is listed on the New York Stock Exchange with a market capitalisation in excess of \$US35 billion. RCI sits within the hospitality services segment of the Cendant business, along with brands such as Travelodge, Days Inn, Ramada, Howard Johnson and the car rental group of Avis and Budget. Galileo is also part of the Cendant portfolio.

What I am trying to illustrate here is that they are very committed to the timeshare industry. They have significant brands. Our sister company, Trendwest, is also part of that Cendant group of companies. We, like APVC, very much support the ATHOC submission and we are here to take any questions that may aid the committee in clarifying any issues that they may have. John Schwartz is here to deal with any of the detail around the regulations and RCI's securities business.

**Mr Robinson**—We have two parts to our opening statement. I will cover the bit about the company and then Shin will cover the submission. Trendwest commenced operation in Australia in 2000. We were the first timeshare company to receive a dealer's licence to manage and operate a timeshare club regulated as a managed investment scheme. Over the past five years we have become one of the leading timeshare companies in Australia and the South Pacific area with 400 resort apartments in 10 locations used by over 24,000 owners and supported by over 1,000 staff.

Trendwest has invested over \$103 million in resort apartment investment for our owners, including greenfield developments in Port Macquarie, the Gold Coast and Fiji. Our corporate office is based here on the Gold Coast and we have offices in Brisbane, Flynns Beach, Sydney and Melbourne and in Auckland, New Zealand, which opened earlier this year. As Gary mentioned, Trendwest is a subsidiary of Cendant, a top 50 publicly listed New York company. Cendant is the leading provider in travel, hospitality and residential real estate franchises and is the largest car rental company, so we have some good support. We are totally committed to and focused on public recognition and maintaining the integrity of our name.

**Mr Siow**—We are here today to address any questions from our submission to the inquiry dated 24 February 2005. Our submission covered nine issues, and I would like to take this opportunity to speak on some of the more pertinent issues. Firstly, we see the confusing nature of labelling time share as a financial product and managed investment scheme. While being legally and conceptually correct, it runs the risk of misleading the public into thinking that time share is similar to other investment linked products. Time share is fundamentally a holiday and leisure product, and labelling it as a financial product and providing documents such as a financial services guide at the onset of a sales presentation will produce, and does produce, inevitable confusion among the public.

Secondly, we believe that the ongoing compliance imposition requires clarification and direction so as to reduce costs and unnecessary burdens. As an example, Trendwest has spent a lot of time in discussions with the various departments within ASIC regarding when is the appropriate time to present clients with a PDS. Having settled this issue with one division, say, in Queensland, we will be challenged by another division based in Sydney. This discussion has been continuing on and off for the past four years and has created a lot of uncertainty in our compliance program.

Thirdly, we believe a cooling-off regime is necessary for time share but it should not be any more onerous than that imposed on liquid schemes. The prescribed cooling-off regime is not intended by the legislature and is currently more onerous than that prescribed for liquid schemes. Fourthly, we believe that many of the current licensing and compliance requirements are ineffectual in consumer protection—for example, requiring us to produce a financial services guide and very long and detailed product disclosure statements. On the contrary, they tend to confuse and mislead the consumers. We believe that the following are more than adequate: a workable and rigorous compliance plan; a simple, clear, concise and informative disclosure document on the product; a cooling-off period for consumers and a robust internal complaints handling system with the right to refer to an external body; and regular training in and testing on product knowledge and trade practices issues rather than on financial elements.

Finally, we are not in favour of self-regulation or separate state and territory legislation, as we believe that time share should be regulated by the Commonwealth within the overall framework of the Corporations Act but without labelling it as a managed investment scheme or a financial product. It should have a separate chapter within the Corporations Act with relevant consumer protection provisions but dispense with the irrelevant financial product related requirements.

**CHAIRMAN**—Mr Kandel, in your opening remarks you made the point that the industry has developed from being a fly-by-night, white shoe brigade type activity into a much more substantial industry. Could you take us through, perhaps in a bit more detail, how that has occurred and the way in which it has developed over the years? What sort of organisations are now involved in the industry, compared with way back?

**Mr Kandel**—‘Way back’ in my experience is 1980, and back then time share was a new product. It was the invention of some very clever people—not only in the product and in assembling a program but also in sales and marketing. At that point in time there really were no branded players or hospitality players involved. The exchange companies were fledgling and there was no regulation. In the United States there are fifty regulatory schemes—it is state by state, which is unwieldy—and very few of those existed.

In fact, when the Attorney-General called me to his office and asked me about time share, I had never heard of it. I was sent to seminars to learn as quickly as I could so that I could come in and draft emergency legislation, which ultimately resulted in jail time and serious fines for some of the perpetrators. I had seen product being sold numerous times by developers, and they did not in fact own the product they were selling. People were defrauded out of their money. In the state of Maryland the real estate guarantee fund, which was set up to bankroll problems through the sale of real estate, was bankrupted. That then resulted in a run on savings and loans in a Depression era type of run on banks.

So I saw some of the start, which was really ugly—that is the only way to describe it. But, seeing through all that, this is a product that works for a lot of people. This is a product that allows people to flexibly holiday in accommodations that they would not otherwise be able to afford. It allows them, in essence, to prepay their vacations over a number of years. The exchange systems, both RCI and Interval International, truly work. In 25 years I have taken 19 exchange holidays, and I can only think of one particular place that was not up to snuff.

It was just a maturation of the industry. In a large hospitality company like the Marriott, for example, the vacation ownership division was their most profitable division; they sold about \$US1.3 billion in time share last year. Brands have found, as Accor is finding today, that there is a synergy between their hotel customers and their business customers and those people then taking their families on holiday. In my view, that is really what has fuelled the growth.

Stringent regulation has come in throughout the globe—including in Europe, Australia and clearly the United States federal and state governments—to force people to clean up their act. The net result is that the scam artists, the fly-by-night people, (a) cannot afford the barrier of entry to get into this business today and (b) are regulated out of existence. So what you have left are reputable companies with excellent, outstanding products delivering customer service. Accor is all about its brand. I have more concern if a complaint goes to Accor than if it goes to ASIC, because that brand is everything. We are, as is Trendwest, looking for a lifetime customer, not a customer for a few years. So we stand behind our product; we handle our complaints.

There is clearly no resale market to speak of, and there is no sense in me or anyone else ducking that. That is the hole in the doughnut, and the way we at Accor address that is to say, 'There is no resale market—flat out, full stop.' If I hear any of my salespeople pitching an investment, they will be terminated immediately, and I have been doing that very same thing for 15 years. This is, as you have heard, a lifestyle product, and if somebody wishes to resell it then I would recommend to them to give it to their children, to their parents, to a relative or to a friend. If you are not using it, please give it to somebody who will, and that is where you will get your value. To put it on the market, through the internet or any other way, is problematic at this point in time. I think as the industry continues to mature there will become a resale market, but as it exists today there is none. That is clearly the case.

**CHAIRMAN**—So that I can get my head around the industry, let's take Accor as an example. I understand Accor is traditionally a hotel management company; it does not actually build hotels—or does it? You can clarify. A developer or an investment group would build a hotel and then Accor would buy or lease the management rights. Is that how it generally operates on the hotel side?

**Mr Kandel**—Close. They do build some of their product, but mostly it is under management contract.

**CHAIRMAN**—Can you contrast that with how Accor's timeshare operation works? Who builds the building and how is it managed from there?

**Mr Kandel**—Accor Premiere Vacation Club is a joint venture, as I mentioned, between Accor and Becton. We are a stand-alone company. Either we will purchase inventory in places where our members want to go—in fact, we have a number of units here in Legends in Surfers—or we will go out and build or purchase our own product on our own account. All property that is purchased then goes in trust for all of our members.

When the member comes in, he buys points—say, 5,000 points, which would be a platinum membership. Those points can be spent in any way our member desires. If he wants to stay for two days, it will be this number of points; if he wants to stay for five days, it will be this number of points. If he wants to go to Lake Crackenback in the ski season, it will be more; if he wants to come to the Gold Coast in the off season, it will be less. We have budgeted to acquire \$25 million in property this year and \$40 million in property next year. We will always be out in the marketplace acquiring property, because without that points pool we would be out of the business. We are perpetually a buyer of real estate, and that real estate is held in trust for our members. They are not buying a particular week, as they did in the old days. In the old days you would buy week 6 in unit 5 in a particular resort. That is long gone in our business.

**CHAIRMAN**—When you say you own rooms here, are they specifically identified rooms or are they units in the hotel?

**Mr Kandel**—They are specifically identified rooms that have been modified to become an apartment.

**CHAIRMAN**—You actually have separate title to those rooms?

**Mr Kandel**—Yes.

**CHAIRMAN**—So this is a strata titled building, in effect?

**Mr Kandel**—Correct.

**Ms BURKE**—Seeing this is a worldwide trend and you are operating in it—I will start with you, Mr Kandel, and go around—where do you think the regulation is working best? Is there a good example of where a country has established a good model that we could look at and review, a model that you think has achieved a decent outcome for the industry—for you and for consumers, which is where we are coming from?

**Mr Kandel**—My unfortunate experience in the United States is that, in addition to federal regulation, there is regulation literally on a state by state basis. It runs the gamut. New York State requires a securities licence. Other states require real estate licences. Some states—Florida being the one that I am most familiar with—have enacted specific timeshare legislation with built-in

consumer protections. There are licensing requirements, bonding requirements and disclosure requirements.

Most disclosures that I am aware of are always prominent. I would not leave it to an industry member to decide what is or is not prominent. The legislation drafted in Florida required a disclosure of cooling-off rights in 10-point bold print type right above the signature block of an agreement so that it could not be missed. I believe it was Ramy who discussed it. We too at APVC require people to look at and read an acknowledgment that they understand that there is no resale market—that we are not making any representations about resale—and that they understand every which way down the line. We use that for our own protection.

Part of the problem that you have heard is that people do not get up and buy time share. People do not go to presentations to buy; they are there for the gift—they are there for the free holiday, the television or the DVD player. That is why sales and marketing costs in this industry can run upwards of 50 to 60 per cent. That is where some of that money you are hearing about comes from. We are not ready to mass-market. As we get more owners and as customer satisfaction grows and people talk about it, the day will come when people will walk in our door. That is very rare today. The people who walk in our door are already members or friends of members or referrals from members who know the product works. But we are not yet mainstream. That is why the sales and marketing costs are high and why we operate as we do.

In terms of a hard sell, I would suggest that if we were a hard sell we are not very good at it, because for every 10 people who walk in our door only one is going to purchase. To my way of thinking, they are not being beaten over the head. They are there, though, as I say, for the gift. During the course of a presentation they will be convinced that this is for them or that it is not. The average person who buys time share today has attended three sales presentations. They were there for the gift three different times. Ultimately they buy or they do not.

**Ms BURKE**—Mr Knowles, do you have a comment?

**Mr Knowles**—I agree with everything Marty said. Without a doubt, the sales and marketing costs have escalated over the years. When the market kicked off here in Australia—and I was not part of that—I believe that sales were far more fluent and there was not as much need for the strong sell, the campaigning and the telemarketing, but I think that has become evident as markets have matured, just in terms of the time that they have been around rather than the size of the market.

**Ms BURKE**—Have you come across a country of origin regulation that you think works better for the industry and for consumers?

**Mr Knowles**—I think that regulation here is good and strong. It certainly has got the market positioning of time share to a place where it needed to be. I think a lot of the bad reputation that was attached with time share is slowly working its way off, and that is partly through having a highly regulated environment. I agree with ATHOC's submission, however, that it needs to be looked at more as a holiday product than a financial service. If we could somehow work that into legislation, we would not be far off where things should be.

**Ms BURKE**—Do you have anything to add from Trendwest's perspective?

**Mr Siow**—In terms of which countries' legislation will work, I used to work in New Zealand and I fairly understand how time share would be regulated over there. It would be regulated as mainstream securities because of the interest in land. When you buy into time share, you are buying an interest in land. If you do not have an interest in land then it is not a security. I think this is perceived right through all the legislation around the world. If you have an interest in land, it would come under the securities regime. It is the same in Singapore and it would be the same in Hong Kong. In the United States they treat it as real estate. It is regulated as real estate in seven jurisdictions, but some states will regulate it as securities. In Malaysia, they see it as securities, but they overlay it with a bit of trade practice kind of control, so they say, 'If this is going to be a timeshare arrangement, these are the things that you need to do: you need to produce a disclosure document, you need to have a cooling-off period and you need to set aside some end-funds.' Those are the three things that they have prescribed in the legislation.

The problem with the current legislation here in Australia is that we tend to lump everything into one basket and we are not being very prescriptive about how we should treat each individual financial product or securities, because certain securities have a different nature. If we were to address that and treat it fundamentally as securities then there are certain rules and guidelines that you need to address for those securities. We would then be in a better shape.

**CHAIRMAN**—You said that in some countries it is treated as an interest in land. Is that not the case in Australia? You are not actually getting an interest in anything tangible, are you? If you are buying points, you are buying—

**Mr Dutton**—No.

**Mr Kandel**—You are getting a beneficial interest in a pool of real estate that is backed by real estate and trust.

**CHAIRMAN**—So you still have a share of that trust.

**Mr Siow**—Yes.

**CHAIRMAN**—But it is backed by what? The total property holding around the world or in Australia?

**Mr Kandel**—It is owned by the club. In our case APVC will go out and the title to that property will be in the name of the club. That property is then held in trust for everyone. When the club winds up—and it was set up as an 80-year club—you would get your proportionate share of the proceeds if you elected to liquidate the club and sell all your real estate. You could also elect to continue the timeshare plan for another period of 50, 60 or 80 years. That would be the choice of the individual members.

**Mr Robinson**—In Trendwest, for example, the club currently extends to Fiji, so it incorporates our property in Fiji, our properties in Australia and our properties in New Zealand. When they buy into the club in Australia or New Zealand, they have access to all of the properties through the points scheme. Also, there is an internal exchange, through our WorldMark properties in the US, Canada, Whistler, and through that border. But if we were

going to wind it up or if the 80-year term finished and we wanted to sell our assets then we would sell all of those assets and disburse the funds amongst the membership base.

**CHAIRMAN**—So, in effect, is it a unit trust?

**Mr Reghenzani**—Yes, because under chapter 5C of the Corporations Act, about the managed investment regime, the interest of a participant in a scheme is that of a beneficiary and a statutory trust. So it is roughly equivalent, in a points based scheme at least, to a unit trust arrangement.

**Mr Schwartz**—Senator, just finishing off your question regarding the global regulations, one thing that the forum, ATHOC and all the industry participants are quite clear on after searching the world for legislation is that we are absolutely positive that we cannot allow this to be drilled down to state based legislation. At the moment the federal government cannot agree with the states on important issues like health; how on earth could they ever agree on issues like timeshare interests and sales? So the forum is quite clear that, of any recommendations that you put forward, we would certainly be advocates of nationally based legislation or, as ATHOC and Joe Bengasino explained, some variations to the current corporations legislation to keep it within national focus. That is quite important for the operators in Australia.

**CHAIRMAN**—Mr Knowles, in your submission you say:

Timeshare is a much maligned product around the world and any endeavour which ensures only financially stable, compliant operators are permitted to do business in this market can only enhance and hopefully change the opinion of non timeshare owners.

On the other hand, ASIC's submission says:

... the greatest risk of consumer detriment in relation to timeshare, relates to the way in which timeshare interests are sold.

So it would appear that both large and small operators have to some extent contributed to the industry's poor reputation, particularly with regard to their sales and marketing techniques. What is your view of that?

**Mr Knowles**—First of all, I probably did not make a clear enough differentiation in the opening address but RCI is an exchange organisation as opposed to a sales and marketing organisation. Trendwest and Accor are both in the club administration, resort management and sales and marketing environments. We operate purely in member based management, member based marketing, exchange facilitation and value-added products, which is where we believe we bring value to the primary investment.

As we said in our submission—and I think I alluded to this earlier when Ms Burke addressed a question to me—essentially in the early days of time share, in any of the markets you can go through, we have traditionally had bad practices. Marty alluded to it in the US, I am very experienced with it in South Africa and I think there are a number of players here who have seen it grow up in the Pacific market. Quite often when you are the dominant brand in the market, as RCI is in most regions, people have tended to be positioned to think that they are buying RCI as opposed to buying the product that the person is selling on the deck. That works very well in our



favour, but, as a consequence, when there are people with bad sales practices, they are the ones who tend to sell more on the back of the credibility of RCI or another brand in the industry.

I think the industry has been tainted historically, and a lot of us in the industry are now moving towards an area where we can actually hold our heads up and say, 'We are time share.' We are, relatively, an infant in this market, although we have been around for a long time. I think there is going to be significant growth and I think it is going to be in a positive way—rather than dragging a negative perception behind us.

**CHAIRMAN**—The Trendwest submission says:

The Australian Financial Services licensing requirements are onerous and cost prohibitive, thus have the unintended consequence of reserving the market for large corporations. The minimum standards prescribed for responsible officers prevents diversity in the management of timeshare.

On the other hand, Becton—your partner, Mr Kandel—in their submission say that high standards are needed to 'impose an appropriate barrier to entry to less scrupulous operators'. Are you suggesting that only large operators have the capacity to provide adequate protection for consumers and the services provided?

**Mr Kandel**—I can only wish I were Max Beck's partner!

**CHAIRMAN**—An Accor partner, then.

**Mr Kandel**—I think what he is suggesting there is what I touched upon earlier, which is to keep the fly-by-night guys out of the business. These people literally cannot afford to set up a company today and meet all the regulatory requirements without a substantial financial commitment. That is really what we are saying. I do not necessarily agree that all brands are the way to go. There are niche markets and niche developers, and I think there will always be a place for those developers.

I do agree that sales and marketing have been the No. 1 problems in terms of people's perceptions. Accor has made a representation about the satisfaction rate of our owners—and that is true. Satisfaction rates globally with time share exceed 90 per cent. But what people do not like, whether or not they are a member, is sales and marketing. People do not like to get telemarketed and cold-called and people do not like to be spammed—all those sorts of things. You will find that APVC, Trendwest and bigger brands do not engage in those kinds of marketing practices; however, they are out there and they exist. In the US, it led to a 'do not call' registry, to which almost 80 million families have signed up. That is all related to sales and marketing, but the product itself is really a different story.

**CHAIRMAN**—I will relate my own experience and then seek your comments. I think I might have filled out one of those marketing surveys or something at one stage and then got a phone call to say that I had won a prize but that I had to go to a presentation to collect the prize. I guess I went more because of my chairmanship of this committee and to see how it actually operated than to see the presentation as such. It was not until I got there that it was made clear to me that this was a timeshare marketing exercise. The presentation was very professional on the facilities, what was offered and all that, but I have to say that the selling process—or the attempted selling

process in my case—was very high pressure. It was: ‘If you sign now you get a 50 per cent discount but, if you wait until next week, you won’t get that.’ I said, ‘I’m not interested in signing now. I want to make a full investigation of all this. I will go away and look at all this and make some inquiries. Give me a phone call next week.’ I never got the phone call. To me they just appeared to be interested in selling on the spot. If they could not seal a deal then, they were not interested in any follow-through, which you would normally expect in a marketing process.

**Mr Kandel**—Short-sighted.

**CHAIRMAN**—And there was no product disclosure statement or anything like that given to me.

**Mr Robinson**—How long ago was that?

**CHAIRMAN**—Two years ago.

**Mr Reghenzani**—From my own experiences on both sides of the fence, acting for the regulator and acting on this side, there have been a lot of enhancements that have been voluntarily assumed by the industry or forced on the industry in the last two or three years. You have to remember that at that time the industry was in the fledgling stages of adapting to the managed investment regime and perhaps the new licensing regime—though I do not exactly know whether it was at that point in time. There have been a lot of enhancements to make sure that these schemes are a lot more compliant proof than they have ever been, and they are improving continuously as they become more mature business entities. That is the developer side.

In my own particular case, I now wear two hats in the office I currently serve for APVC. One is looking after the interests of the participants in the scheme—which is not necessarily coincidental with the other interest, which is advising and assisting the development and pursuance of its business initiatives. But I think those interests can be reconciled from one office and I do that. I am actually heartened to see—because I am concerned—that our owners are concerned about reputation damage and are concerned that we get it right. We aim to get it right and things are improving continuously.

**CHAIRMAN**—So you are both former regulators turned poachers!

**Ms BURKE**—I want to follow on from Grant’s question and the question that I was asking ATHOC. It has probably been a long time since any of you were selling this product direct, but how is it marketed? If someone walks into one of your seminars—they have come for the TV, the car or the gift; some of them week in and week out, by the sounds of it—and you cannot say it is an investment product, what do you tell them? What do you tell them they are buying? What is the pitch?

**Mr Robinson**—That they are buying a lifestyle product. That is basically it. That is drummed into them.

**Mr Siow**—It is a holiday.

**Mr Robison**—Yes, it is a holiday product—‘You will get a return on your investment; it is an investment in your lifestyle,’ ‘You can take your families away,’ and so on. We have—and I think Accor is the same—mystery shoppers who go through our complexes regularly to try to monitor that. I do not know whether your experience in the past was through our company, Mr Chairman, but we have certainly changed over the last—

**CHAIRMAN**—You might be able to work it out. The actual presentation was at a roughly three-star resort at Goolwa on the south coast of South Australia.

**Mr Robison**—It would not have been us, then.

**Ms BURKE**—All right, they are safe. None of them are here!

**CHAIRMAN**—A person of the same origin as you was doing the main presentation, Mr Knowles—South African.

**Mr Robison**—We have had our issues over time. I think that since our company was bought just over two years ago by Cendant, which owns another large timeshare company in the United States, we have had a different slant on the business and a different focus. We invest a lot of money and time into the compliance side of things. We had some issues with ASIC, which is public knowledge, so we are very focused on the way that we conduct and handle our business. That is part of the reason we are employing and recruiting executives who are not necessarily from the timeshare industry. The Cendant point of view is that they want to look at different ways of approaching the market and selling. If you look at the South African market, for example, which Gary can elaborate on, they are probably more advanced than anyone else as far as selling techniques are concerned. They have HomeCert and Roadshow teams, so it is not always the on-the-day sale. Both our company and Accor will start to take things like that into this marketplace. We have already started those types of approaches where people do not necessarily have to buy on the day.

**Mr Kandel**—Just so there is nothing misleading, we do like to get a same-day sale and we do give people incentive to make a decision today. In my mind a same-day sale is not necessarily a high-pressure sale; the interesting paradigm is that the guest who is there to hear the presentation is putting pressure on themselves in some ways. Again, it has to do with the greed factor in a lot of cases, but this also dovetails into the cooling-off provision. Because you are in a sales environment, you do not really have a chance to read. We have mass marketed; we are supposed to know our client. There is no way in the world I could know your financial condition when you come in and talk to me. And we do want to get the sale that day. You are surrounded by other people buying and selling and all kinds of things, and that is why you go home and cool off. Fully 25 per cent of purchasers will cool off. That is what tells me that in a lot of ways the law is working.

**CHAIRMAN**—Are the presentations normally done at a resort?

**Mr Kandel**—We have sales centres that are situated both on-site in resorts and in urban environments in the CBD—for example, Melbourne, Sydney and Canberra.

**CHAIRMAN**—With those that are done at resorts, would the people have a chance to examine the type of thing they are purchasing?

**Mr Robinson**—Yes, and it varies. For example, Fiji will do a seven-day stay, so they are there for six or seven nights. On the second or third day they will attend a presentation and they may buy then or they may say, ‘We’ll go back and have a coffee or a meal and see you in the morning.’ If we look at the Gold Coast and the Kirra resort, it might be a three- or four-night stopover. We also have day visits there. So there is a variety, and I think it is the same with both our companies.

**CHAIRMAN**—But the ones you do in the CBD would not have that opportunity.

**Mr Kandel**—They do, however, have an opportunity to try the product. We do sell a lot of products that way. We will take people up to Twin Waters, for example, on the Sunshine Coast. We spent \$3.5 million last year just on room nights. Those are people who are there, out of the sales environment, staying in a resort to see if they like it. If they do, we bring them back and they tend to buy. The other reason we have to be very careful is that we get Accor’s rewards program customers. They happen to be our best customers because they are already familiar with our brand. Again, because we know that people will come back ultimately, we want them to leave with a good experience. It is really counterproductive for us to beat them up.

**Ms BURKE**—But are your two companies representative of the industry?

**Mr Kandel**—Yes, I believe they are.

**Ms BURKE**—Or are you at the very top level, where—

**CHAIRMAN**—The world’s best practice?

**Mr Kandel**—I really believe we are representative of the industry today, as is Marriott and as are Disney and Hyatt. Because of the regulatory schemes—

**Ms BURKE**—But are you representative of, say, the average operator? A fully sold resort in Cumberland in downtown Lorne is sounding very different to you lot.

**Mr Kandel**—No, nothing like that.

**Mr Robinson**—There is a large gap, I would say, between ourselves and some of the others; they may sell to 50 or 100 people a year compared to us, who are selling to 1,000, 10,000 or 8,000 people a year.

**Ms BURKE**—You are representing the premium end of the market, if I can put it that way, versus—

**Mr Robinson**—Well, we are selling more. It may not necessarily be premium product, because there may be people who are selling a more upmarket product but only selling a few of them; they may have different sales techniques. We probably have the opportunity to have more structure and infrastructure to focus on the compliance side of things and so on. It is a heavy

burden; we have four or five lawyers in our office—that is a reasonable overhead. I know small operators for whom the numbers would not stack up to be able to do that.

**CHAIRMAN**—But how is the unsophisticated customer going to distinguish between you and someone else? If they are not contacted by you they might be contacted by one of these lower-level operators.

**Mr Robinson**—Hopefully, they go back to the local industry body and, again, as Ramy reiterated, would ask the questions: ‘Is this a reputable company? What type of product is it? Is what they are telling us correct?’ Providing they have complied and they are part of ATHOC then we would respond appropriately, I would assume.

**CHAIRMAN**—You have referred to Accor accommodation customers. Are they targeted in some way for marketing? Are they asked if they are interested in looking at time share as an option?

**Mr Kandel**—Yes. We get their details.

**CHAIRMAN**—Tariff-paying customers?

**Mr Kandel**—Yes. They are called ‘advantage plus’ customers. They have a loyalty program and indeed they are loyal, as evidenced by the number of time shares that they buy from Accor.

**CHAIRMAN**—Do you provide finance to customers who might need to borrow?

**Mr Kandel**—Yes, sir.

**CHAIRMAN**—Is that done through a linked organisation or is it a completely independent source of finance?

**Mr Robinson**—We are funded internally ourselves, but I am not sure what Accor is doing.

**Mr Kandel**—Do we do finance? Yes.

**CHAIRMAN**—Concerning the secondary market issue, are you all of the same view in that you basically stress that there is not an available secondary market to your potential customers?

**Mr Robinson**—The only thing I would raise here is that we are using percentages. I think Gary raised the point earlier that, depending on what market, and maybe not necessarily in Australia, there are markets around the world—or in South Africa certain products—that have increased in value. To say that to put a set figure on that you are going to lose 50 per cent or 70 per cent is very judgemental as to what is correct for every product. For example, when we first started selling our product in the market four or five years ago it was \$1 or \$1.50; we are now selling for \$2.08 per credit. I believe that in the secondary market you can buy our product anywhere from, probably, \$1.20 to, maybe, \$1.60, depending on who the secondary person is selling it at the time. How much a person has lost depends on when they bought the product and what utilisation of it they have had. In markets in South Africa there are products that people have bought for \$15,000 that are now selling for \$30,000.

The other thing with the points scheme is that, when you first bought into our product three or four years ago, we had two or four resorts. We now have 12 in Australia and we will have another four or five this year depending on how many greenfield developments we buy versus buying product within an existing resort. So, with the points scheme, provided we keep on developing and selling, customers' access and coverage expands each year.

**Mr Knowles**—In terms of what Marty was saying, they do not promote resales—they are not saying that you are going to get anything for the resale of your points—and I think that was similar to what Barry said. There is most definitely a resale market. We have the independent resorts, which, basically, I think Ramy covered quite well with Joe in the ATHOC discussion. Those people need to move so many units in a particular week to cover an overhead that exists within the structure of the club or the sold-out resort. That will always be the instance in the, shall we say, traditional market.

In a points environment, you have to look to the responsible entities, the clubs, which would be APVC or Trendwest's WorldMark Club. They would be responsible for making sure that those resorts are maintained, and they would manage that within a group portfolio, as opposed to a one-week portfolio. Their ability to manage delinquencies is far greater than that of independent sold-out resorts. The resale market will always be there, as long as there is a week's product in the market. The points best scenario alleviates some of that problem.

Earlier, when we were talking about the top echelon of the sales and marketing practices, they are very much a part of that. Even the smaller independents who have made it in the current regime also stand by those product disclosures. They fulfil all the regulatory requirements. Certainly, in relation to those that are registered or affiliated with us, RCI, we have a compliance committee that goes around and does the mystery shopping to check the integrity of the sales process. Compliance is not only reserved for those at the top end but probably for everybody who is currently still in the industry and operating.

**Mr Dutton**—I would like to make a couple remarks in relation to the resales market, which we have talked about to some extent. As Marty has said here, certainly at the present time there is no viable or significant resales market in this country, other than private sales that are facilitated through either trading posts or private treaty sales and those that are done at the resorts, primarily the older sold-out resorts. To put this in context—

**CHAIRMAN**—When you talk about sold-out resorts, would that just be a right to use that one resort?

**Mr Dutton**—Yes.

**CHAIRMAN**—It would have no exchange.

**Mr Dutton**—It might have an exchange.

**Mr Knowles**—It might have a membership with an exchange organisation.

**Mr Dutton**—But it would not be a multideestination club of the sort that is being marketed today.

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**Proceedings suspended from 3.37 p.m. to 3.48 p.m.**

**Mr Dutton**—I would just like to raise a couple of issues that have been referred to this afternoon in relation to the resale aspects of the industry. It is correct that in this country there is no what we might call liquid market or major public market. There is certainly no exchange or anything of that nature whereby members of the public can buy and sell second-hand or pre-owned time shares. I would like to place that in the context of another market that I have been involved in recently—that is, in the USA. I have recently spent 18 months consulting to the Marriott Corporation. I spent five months living in Orlando, Florida, which, I think it is fair to say, is the world capital of the timeshare industry, in some respects.

**CHAIRMAN**—It is a hard life, if you can get it, isn't it?

**Mr Dutton**—As Marty Kandel has pointed out, Marriott is the leader of the industry. Sales in the last year amounted to well over \$US1 billion, and they have plans at the moment to become a \$US3 billion company. They own very large resorts in Orlando and sell on a very large scale. One of their sale sites over there, for example, has 100 sales representatives in it.

In relation to resales, each of these resorts in Orlando has billboards, bus shelters and what have you outside its front doors with big, prominent advertisements saying: 'Marriott time share resales. Don't go in here. Call this number.' The same applies to the Hilton properties, the Disney properties and indeed all of the other timeshare resorts. As one drives in from the airport to downtown Orlando or the theme park areas, there are enormous billboards on either side of the freeway advertising these toll-free numbers and web sites where you can go and buy timeshare resales. It is an enormous market over there. Does the industry that sells the primary interests care? The answer is no. Nobody is afraid of having resales interests in their resort sold. It provides some healthy competition. It keeps everybody on their toes. In the USA, unlike here in Australia, primary sellers are able to say to their customers: 'If you want to dispose of this thing, you know where to go. You've seen the billboards, you've seen the adverts.' As an industry grows and gains critical mass, a resales industry almost naturally follows.

One major difference, however, between the USA and here is the licensing process whereby a reseller can get into the industry in the first place. As Ramy Filo pointed out earlier, one of the main reasons, I suspect, that there is no significant resales market in this country is that financial services licences and all of the attendant costs and complexities are simply way beyond the means of the average small business person or independent trader who might be the sort of person who would enter into such a business in this country. That is certainly a major factor in terms of non-liquidity.

Another factor I would like to point out in relation to the discussion between the old type industry, what is sometimes called the sold-out industry, and the present day industry, which certainly appears to be dominated by Accor and Trendwest, is that Accor and Trendwest are homogenous organisations which provide development, sales and marketing and resort management functions. We do the whole lot, right across the spectrum.

**CHAIRMAN**—Fully integrated.

**Mr Dutton**—Fully integrated, absolutely. In that context we take the long-term view of developing our markets and developing our customer base. Both of our organisations rely heavily upon referrals from existing owners and what we call upgrades from existing owners. We have an existing owner that owns a certain number of interests in these trusts, and we will solicit them to upgrade or buy more interest in the trust. That is a significant profit source and a significant revenue source.

In the traditional time share industry as it developed in this country in the early years, essentially, you had a developer, you had a marketer—who would sometimes be a different organisation from the developer—and then you had, ultimately, a resort management and operations company. So you might have three different entities, each with their own agenda and each with their own time scales. Eventually you might find that the project sells out, the developer and the marketer fade away and you are left with a management organisation. So there was often no incentive for the marketing companies, or indeed the developers, to take a long-term interest in the relationship with the customer or how the product was sold. Once it was sold, the commission was earned—that was that and they would move on to the next deal. In looking at this industry in its historical context, that distinction is very important. It is also one of the reasons why the large corporations and the hospitality companies now dominate the industry on a global scale—they recognise this integrated long-term perspective rather than the small-scale, fragmented approach.

**Mr BARTLETT**—It seems to me that marketing is where we have still got a problem. That is where most of the complaints seem to come from. You have obviously got a good product by and large, apart from maybe some cowboys around the edges. Generally you have got a really good product, but there is still a high level of complaint about the approach in marketing and the pressure involved. Senator Chapman has recounted his experience. I had an experience as well that was not dissimilar to that. It took all the willpower I had to stop my wife signing up at the time. Obviously it is an effective marketing mechanism.

Mr Kandel, you said only 10 per cent of people who come to these presentations actually sign up. You said that, therefore, that is an indication of non-pressure. I would have thought that was evidence that the system worked fairly well. I just wonder how we can put in place some changes that will reduce that pressure or provide some protection for consumers, besides the cooling-off period, against overzealous marketing. As a preface to your comments on that, with your own three organisations, what is roughly the breakdown of the structure of remuneration for your salespersons? Is it mainly a salary component or is it predominantly on a commission basis?

**Mr Knowles**—We do not participate in the sales and marketing activities. We are largely reliant on sales and marketing companies such as Accor and Trendwest for members.

**Mr Dutton**—The structure is really a hybrid. Everybody is guaranteed a certain minimum dollar value per week. It is not actually called a salary; it is called a ‘draw’. So in respect of a particular week—and let us say that a particular sales representative made no sales—they would still earn a certain amount of money. They would be paid—and I cannot remember the exact amount—an amount in line with one of the awards. They would receive that amount of money that particular week and then, as they earn commissions over and above that amount, that amount might be clawed back. So in essence they are guaranteed a minimum weekly income



during the course of their employment, with the opportunity to earn upside commissions and also productivity bonuses which are paid monthly and annually for different aspects of performance. In other words, there is a flat base level and then there is upside on top of that which is commission and bonus based.

**Mr BARTLETT**—Typically, is the commission the larger proportion of the—

**Mr Dutton**—Typically, no. If one looks at our average sales representative, a lot of them do not earn that much more than their base over time. But to put that in context—and I would not wish to mislead you—the representatives who would be at that lower end will tend not to have a particularly long career in the business because they would not feel that they were earning enough money to make it worth their while. So there is some churning of personnel over time. Those that stay longer, those that thrive in that environment and do well and are successful, tend to be those that do follow-up contact with owners. You have mentioned the experience that you have had, Mr Chairman, with a sale where you said that you had come back and that you had expected a follow-up call and none ever arrived. That would probably be one of the sales reps that you would not expect to be hanging around very long in the industry, because they would not thrive. Follow-up is important. Incomes can vary enormously between just scraping above the award rate to literally a couple of hundred thousand dollars a year for the absolute topnotch individuals. Frankly, that is probably no different from the real estate sales industry or others.

**CHAIRMAN**—Say, with regard to representatives' earnings, you are looking across the industry to the 50 per cent to 75 per cent quartile, what would their average earnings be? Have you got any idea?

**Mr Dutton**—Fifty or 60 grand, but that is a very ballpark number. If you require more specifics, we would have to get back to you on that.

**Mr BARTLETT**—And of that sort of figure, most would be commission rather than—

**Mr Dutton**—No, most of that would comprise the base level guaranteed draw, as it is called.

**Mr Robinson**—In a similar sort of process, we have different levels of base and a slightly different structure, but basically we run similar pay scales. The higher they go, the more commission they are earning as well and the less the guaranteed component is.

**Ms BURKE**—Can you disclose the commission to customers and what they are earning? Do you see that there is a problem with that or not?

**Mr Robinson**—Yes and no. As a personal observation, and I do not have as much history in the industry as the rest, when you are buying a lot of things you do not always get disclosed the commission or the salary that you are going to earn. It can be confronting for a salesperson as well to a certain degree.

**Mr Siow**—I am trying to understand why financial services require commission to be disclosed. For example, if a financial planner is selling multiple products from different entities—you could be selling an AMP product versus another product—that is where commission really is important because that impacts on the price of the product. Whereas, we are

all selling our own individual products. Trendwest would not sell an Accor product; neither would Accor sell a Trendwest product. So I cannot understand why the commission is relevant. Just as a Ford motor car dealer selling for Ford would not be telling you how much he earned—

**Mr Robinson**—This is basically what I see as an evolving industry. It is a bit like the hotel industry when it first started off in this part of the world. No-one took it really seriously. People did not see that they had a career in that industry. Now there are dedicated careers; there are university degrees specialising in hospitality management. Likewise in the United States, the time share industry is now mature enough for us to focus on developing people coming out of university for our company. In the US certain legislation supports the time share buyer. They have tax deductions and so on for people who buy time share. How can the government support it? They can support it by supporting and promoting the industry. We do not mind being regulated. But if I remember rightly, one of the government acts is about promoting lifestyle to people, making sure people have adequate time out of the work environment to refresh and recoup. I believe this is one of the ways they can do that. If they have bought our product, it is there, they have to use it. Otherwise, after two or three years, they can only accrue so many times and they lose their week. So it does force people to make sure that they take a vacation.

**CHAIRMAN**—In terms of the properties that are part of the system—Accor, Trendwest—how would you rate them?

**Mr Robinson**—A star rating?

**CHAIRMAN**—Yes, comparing them with, say, a hotel star rating where you have three-, four- and five-star hotels?

**Mr Robinson**—Our product—hopefully you will see this if you visit later today or tomorrow—has a four- to 4½-star rating. We are basically shifting the benchmark up each year. Kirra was developed three years ago. Our newest product is the next notch above that again. I think you will see segmentation. Certainly with our product, as time goes on and we get more product we will start to segment the products, so we may have a five-star echelon and a four-star echelon.

**Mr Kandel**—Our product tends to be in the four-star category for a club-owned property. We also allow our members to utilise 37 Accor properties, hotel properties, in places where the club is yet to purchase its own inventory. We call that Accor on request. That is a Novotel-Grand Mercure type standard. It is a hotel inventory for the most part.

**CHAIRMAN**—So it is around four-star for Australia and overseas?

**Mr Kandel**—Yes.

**CHAIRMAN**—What would a week's right to use one of those properties typically cost now?

**Mr Kandel**—Our average price is about \$17,000. That would get you the equivalent to one week in a two- bedroom, in season.

**CHAIRMAN**—There is an annual fee as well?

**Mr Kandel**—Yes, that is an average of about \$400.

**CHAIRMAN**—If an owner wants to dissolve their interest or if they are delinquent in making their annual payment or whatever, what process do you take them through?

**Mr Dutton**—There is a very distinct process for that. It was something which resulted from quite a lot of negotiation with ASIC after the managed investment scheme came in, because the MIS legislation did not really address this contingency at all. Let's take the example of somebody's failure to pay annual maintenance fees and let's ignore for a moment whether they have a financed or a cash purchased product. The process is essentially that the club, under the terms of its constitution, has the right, after due notice, to forfeit the points or, in the case of the sold out type of time share scheme, the week, and to dispose of that week in whichever way it sees fit in order to recoup the unpaid fees. In practice, certainly with the points based club type products, those points are then resold. The proceeds of that sale are then applied in a certain order. Again, this order comes out of this process with ASIC. The first thing in the order is the recouping of the unpaid or delinquent fees due to the club. That is in order not to disadvantage the other club members and to ensure the maintenance and solvency of the club. Secondly, reasonable costs in relation to the resale—sales and marketing costs and so on—are applied. Thirdly, if there is a finance loan outstanding, the finance company can take whatever it is entitled to, provided it is taking the appropriate legal steps to lay claim upon it. Then if there is any surplus—in some instances there would be a surplus—that surplus is paid back to the delinquent owner. That process has now been working fairly successfully for a few years.

**Ms BURKE**—In relation to the regulation of industry and ATHOC's bid to become an industry self-regulator, are people supportive of that move? If not, why not? Everyone wants the answer because you are sitting here.

**Mr Dutton**—The concept of coregulation is strongly supported, and has been for some considerable time. Different members of the industry have taken different positions on the matter over time. Somebody here may demur, but in general terms there is a consensus that some form of coregulation makes sense. ATHOC has taken serious steps in recent years to improve its level of resources and its practical capabilities to be able to address its responsibilities under such a scheme. The issue of going forward is really one, as much as anything, of principle and practicality. If, for example, there is to be some legislative or regulatory amendment in the method in which the timeshare industry is regulated, certainly the major players in the industry would welcome some form of coregulation. We see that as part and parcel of our ongoing compliance role in providing bridges between the industry and regulators, and ATHOC is very well placed to provide that bridge.

**CHAIRMAN**—I understand there have been complaints from some owner-operated resorts that large developers and marketing companies are buying shares, dominating boards and offering time share at inflated prices to overseas buyers, leaving the resort left to explain to the unsatisfied consumer. Do you have any response to that claim?

**Mr Robinson**—I will answer the board one to start with. For the last two years, Accor and ourselves have never been on the, for example, ATHOC board. This is the first year we have been on it. We have not bought any timeshare shares, either.

**Mr Dutton**—There may be some overseas entities that are doing that. I do not know if any names are named in there, but we have heard rumours from time to time of overseas entities doing these sorts of things and marketing them in other countries. One of the problems is that it is obviously beyond the jurisdiction of this country, and that has been an issue in the past.

**CHAIRMAN**—As there are no further questions, I thank all of you for your appearance before the committee. It has been very informative from our point of view and very helpful to our inquiry.

[4.11 p.m.]

**ROBBIE, Mrs Marie Ellen, Immediate Past President, Southern Gold Coast Chamber of Commerce**

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

**Mrs Robbie**—I thank you for and I appreciate this opportunity to address you today. I thought I would start with a little bit about my background and how I am linked to the timeshare industry. I am the immediate past president and a life member of the Southern Gold Coast Chamber of Commerce. I have also held positions on the Gold Coast City Combined Chambers of Commerce. I was a regional councillor of Commerce Queensland for many years. I have a strong knowledge of the tourism industry, having served on the board of the Gold Coast Tourism Bureau for nine years and also on the board of Tweed-Coolangatta Tourism, and at that point the timeshare industry was recognised by the tourist bureaus as an integral part of the tourism industry. I was also on state ministerial committees and on the federal area consultative committee for south-east Queensland. I have had various other federal, state and Gold Coast City Council commitments over the years.

I am very proud to have worked in the timeshare industry for the past 19 years with Classic Holidays, managing the very popular Beach House seaside resort and Beachcomber international resort in Coolangatta. I have also held the position of general manager of Classic Holidays and I am currently their HR manager. I was a foundation member and president and treasurer of the Queensland Timeshare Resort Managers Association, which is now known as ATHOC Northern. Finally, I am a director of a timeshare training company, One Step Further, which provides training and career guidance to employees within the industry—an industry that maintains a very high level of staff retention.

The timeshare industry has grown considerably over the 19 years that I have been involved in the industry, my role being mostly in timeshare resort management. I see the other side: once people have purchased their timeshare, they then have their holidays in our properties. I refer to those timeshare resorts particularly in Coolangatta. I can speak more closely about Beach House and Beachcomber, Beach House being the catalyst for ongoing development of the region. If you had been to Coolangatta many years ago, very much back in the forties, you would know that was when Beach House was established and that it became a very successful timeshare property. Beachcomber followed. That was fully sold out within 18 months, and it has remained a very popular resort since then.

The industry has employee awards, which I think help the retention rate of our employees. Through ATHOC we have an awards night every year recognising those in housekeeping right through to those in management. I recall some of the problems that we had in the early days. Most of the complaints were about touting, about being pulled up on the street. That has certainly now been streamlined. The chamber does not receive any adverse comments in relation

to that. Gold Coast City Council have now taken over the management of that and put in strict guidelines that operators have to adhere to in relation to touting. The timeshare industry is very committed to community. Quite a few of the resort managers and other staff members are on various volunteer committees and contribute considerably. Also, financially, the timeshare industry supports particular festivals and charities. A significant amount of money goes to charity.

Going back to education, one of the most outstanding things the industry has done is to bring through good employees—so much so that the training company One Step Further created a timeshare management course which was embraced by Griffith University and which is now in all their business degrees. It was a world first for time share to be recognised in a rather conservative university. That university won an award from ARDA—whom you may have heard of earlier today—which is the American division of the timeshare industry. One Step Further nominated Griffith University for an award from ARDA and, for the first time in their history for any award, ARDA gave the award outside of the US. It was quite an achievement for a university here in Australia to be recognised by the American Resort Development Association.

They are all the nice things. It is very important to me, from the point of view of management and the chamber of commerce, to see that people are bringing through very well trained people who are on the end of the phones and at the front desk. They are the face to the people. If a person—in particular, an owner—comes in and has a complaint about anything, they are very well trained to address those issues and to ensure that the person coming for a holiday has gone back feeling that they have been informed of how they could have done their time share a bit better. For example, they could have booked a bit earlier or asked for a different type of room. They sound like minor things here today, but they link back to the image of the time share and if we have very happy owners—as we have—that then goes out into the community and back into parliament and spreads the word of how the industry is going.

**CHAIRMAN**—Your experience really goes back to the early days of time share.

**Mrs Robbie**—It does, yes.

**CHAIRMAN**—I do not know whether you were here at the time, but we heard from previous witnesses that they believed there had been a substantial transformation in the industry. Mr Kandel was probably referring to his experience in America but I think you can also translate it to Australia. He talked about the transformation from what he called the white-shoe fly-by-nighters to the big, long-term operators. From what you have said, you have been involved with one that initially was one of the smaller operators—the Beach House and so on.

**Mrs Robbie**—And Beachcomber. It is part of Classic Holidays. I have been with that same company for 19 years.

**CHAIRMAN**—Is that locally based?

**Mrs Robbie**—That is in Coolangatta.

**CHAIRMAN**—So it is not an Accor—it is not a multinational?

**Mrs Robbie**—No. The company is based here. It has 12 properties under management, nine of which are under full management, and six of them are on the Gold Coast. The resorts under the management of Classic go from Coolangatta right up to Labrador.

**CHAIRMAN**—So you see a place for what I might call a smaller operator compared with an Accor in the marketplace?

**Mrs Robbie**—Yes.

**CHAIRMAN**—Do you think there are barriers to entry for smaller operators coming into the market now and that it is only really open to the big players?

**Mrs Robbie**—Yes. That is the way it has moved in recent years. I do not know of any smaller operators that are starting in the industry. There have not been, to my knowledge, any new small operators, particularly on the Gold Coast, for many years. Also there has been no development of new timeshares. WorldMark have built a beautiful property down on the southern Gold Coast, but there has not been a lot of new product.

**CHAIRMAN**—I think I asked our last witnesses a question that came out of the Trendwest submission, which said:

The ... licensing requirements are onerous and cost prohibitive, thus have the unintended consequence of reserving the market for large corporations. The minimum standards prescribed for responsible officers prevents diversity in the management of timeshare.

Would you agree with that?

**Mrs Robbie**—Yes, I guess that would be true. I am not on that side of the industry so I could not be 100 per cent sure about that.

**CHAIRMAN**—You are involved in what you would call the operating side of the industry rather than the marketing side.

**Mrs Robbie**—Yes, exactly.

**CHAIRMAN**—From that perspective, what has been your observation of, in particular, the marketing practices of the industry?

**Mrs Robbie**—I will digress a little bit. I had a very bad accident—I was struck by lightning—and I was told I would not go back to work. After three years I was encouraged to become a salesperson at the Beach House resort. I had never sold anything in my life before and I have not sold anything since, but I did very well at the time. That was where I was first was introduced to the industry. It is very special to me because it got me back into the work force, so I have been very passionate about it ever since.

Comparing how the operations were back in the 1980s, which I have experienced, to how they are now, I would say they are almost 100 per cent better. These days we do not see the white shoe brigade, which you mentioned. It is highly professional. The new players, like Accor and

Trendwest, are very professional in what they do. I see that from a chamber perspective and the way they are looking at the community. They join the chamber and they go to the meetings, so they then become part of the community. I think that is good for businesses on the Gold Coast because they are hearing what these operators are doing. At a chamber meeting someone from Accor might comment about what they are doing. They are educating not only the businesspeople but the community at large. There is no doubt that that is accepted as part of the tourism industry on the Gold Coast.

**CHAIRMAN**—Do you pick up comments from your customers?

**Mrs Robbie**—At the resorts?

**CHAIRMAN**—Yes.

**Mrs Robbie**—Very much so. They have comment cards the same as a traditional hotel does. The staff find the comments very rewarding. You will always get comments about there only being two pillows instead of three; every resort gets those comments and suggestions. But we get very highly complimentary comments from the owners, particularly owners that have just visited the first time. They may have come from the States or Europe. Perhaps in Europe the quality of the resorts is not to the standard that we have, so they are highly impressed with our product.

**CHAIRMAN**—Are your facilities part of an exchange program?

**Mrs Robbie**—Yes. I can speak about resorts like Beach House and Beachcomber, which are under Classic management. They undergo refurbishment every year. There is a very sound sinking fund that they work from and some of that is spent every year on upgrading—replacing carpets, furniture, shower screens and bathrooms. I think all of the resorts under Classic management are 4½-star resorts. And some of them that are not under Classic management I know are also very conscious of doing refurbishments and keeping up to standard. The difference between staying at a timeshare resort and a traditional hotel significantly relates to the activities they have. The resorts that I have managed in the past have had waterskiing and jet skiing, and they have three or four activities people who run karaoke nights and activities such as scarf tying. There is just no end to the activities, so the owners who come there do not have to worry about how they are going to entertain themselves. There is much to do at those resorts and we have childminding so that parents can go out during the day if they wish. It is quite unique. I think those are a lot of the things that people really enjoy about the timeshare industry. The majority of the activities are cost free—that is part of the enjoyment of the holiday.

**CHAIRMAN**—Is yours a sold-out scheme?

**Mrs Robbie**—Yes. As I said, Beachcomber was sold out. They started marketing in the late 1980s and sold out within 18 months. Beach House was fully sold out. It took a lot longer because it was a new property. It sold out in about three or four years. There were 132 apartments there, and in Beach House alone there are 6,732 owners. When I was on the board of the Gold Coast Tourism Bureau they could not come to terms with the fact that all the properties have a consistent 97 per cent or 98 per cent occupancy rate. And that is very good for the local community and the business community. Without those people coming in, the southern Gold



Coast, in particular, would not be where it is now. Just for those two resorts there are nearly 9,000 timeshare owners.

**CHAIRMAN**—Do you get a fair spread of people wanting to come throughout the year or do they all want to come in school holiday time?

**Mrs Robbie**—Yes, there are peak times. September school holidays is a particularly high-demand time. The week system means that they can buy a September school holiday week or an Easter week, and they are fixed into that so that they are guaranteed to get a holiday in the week that they own. The other weeks are floating.

**CHAIRMAN**—Is that at a higher price?

**Mrs Robbie**—They pay a higher price for that but if they choose the floating week they have the flexibility of coming whenever they desire. The down times change. Some years ago, November was the quiet month. Now that has changed and I guess schoolies has put a lot more of a burden on a lot of the resorts. I cannot think of anything else.

**CHAIRMAN**—Have you given consideration to what an appropriate regulatory structure would be?

**Mrs Robbie**—No, I have not. Ramy Filo has been explaining it to me but I need to know a little bit more about that before I comment. I believe it needs to have some changes, and I am sure they are being put forward to you here today.

**Mr BARTLETT**—You cannot comment on what you think those changes should be?

**Mrs Robbie**—No, I do not feel comfortable doing that.

**Mr BARTLETT**—But, from what you are saying, I gather it is your very strong impression that the vast majority of users are very happy with the product.

**Mrs Robbie**—They are. You will always get those who are not—I think they are not happy in their own home. In any industry you always have those you can never satisfy, but we make every effort to make their holiday the best it can be.

**Ms BURKE**—Do you think most owners appreciate what they have bought into?

**Mrs Robbie**—That is a good point—no. Interestingly enough, despite all the newsletters we put out to members regarding specials—there might be some special rentals—a lot of them do not. They just think that they can come and have their holiday and that is all there is to it. The resort managers have an information hour at the resort with the owners who wish to come on a Monday afternoon, and those managers are trained and quite highly skilled in explaining the options the owners have and how to get the best out of their timeshare week. That is proven. We have been doing that now for some years, and I think it has been very beneficial to the owners.

**Ms BURKE**—Do you have much resale. If it is sold out, do many people on-sell their weeks or try to get out?

**Mrs Robbie**—Yes, that happens. That has happened since people first bought. People will always want to move on for some reason—a partner passes away or something. Beach House has an ageing ownership, because it was sold in the eighties. But, in saying that, Beach House—and I know Ramy, who is here, will agree with this—is desperate to get weeks to sell. There are very few available in Beach House. Beach House is a different resort from the one down the street, which is in the same area but has different types of owners. The owners of Beach House use the resort, and a higher percentage come to their home resort at Beach House than the other resorts, so that tells me they are very happy and that is why there is not a lot of stock there to be sold.

**Ms BURKE**—Do you know whether people are happy with the price they get if they on-sell? Do you get any complaints about that?

**Mrs Robbie**—Yes, that does come up—that they paid X amount for it and now they are only getting such and such back. I explain what time share is about. It has never been, or should never have been, sold as an investment, and this is what I explain to them. They have had, perhaps, 15 years of holidays, whether at Beach House or somewhere else. Some people exchange. I myself have been to London, Las Vegas and Canada—to beautiful resorts—and if I were to add up what that would have cost me had I been paying rent I would probably find that I could not have stayed at those beautiful places. So I explain that—and the resort managers do this too on a Monday afternoon—and I explain that if they want to use an agent to sell then that agent has costs in getting salespeople to sell it et cetera. I recall only a few complaints of people saying, ‘Why did I only get this?’ Perhaps at the time they were told it was going to go up in value, but I know that when I was in sales for a short time we were never allowed to say that. It was an investment in holidays.

**CHAIRMAN**—You have referred to owners. Are people clear as to exactly what they own?

**Mrs Robbie**—Yes, they know they are owners, let me tell you. Sometimes we make a slip and say ‘members’, and they let us know quite clearly that they are owners, not members. There certainly would be a percentage of people that are unaware of what they own. But with the sales system now at point of sale—correct me if I am wrong, Ramy—after they have their sales presentation and they purchase they are then taken in to a highly experienced person who walks them through the steps: ‘Do you understand this? Do you understand that?’ That was not done in the early days—they signed off on the contracts, the person left and that was it. Now we do have specialist people who can explain that to them. Classic Holidays do roadshows. The roadshows go to New Zealand and all around Australia and they will get maybe a couple of hundred people there. They give them an update on all the things they can do—whether it is exchange, rentals or travel insurance. Those roadshows have been very successful, and that makes people more aware of their ownership and what they can do with that.

**CHAIRMAN**—Mrs Robbie, thank you very much for appearing before the committee and giving us your perspective.

**Committee adjourned at 4.36 p.m.**