ATHOC
AUSTRALIAN TIMESHARE
HOLIDAY OWNERSHIP COUNCIL

Submission to the Senate Economic References Committee

Inquiry into the Scrutiny of Financial Advice

Provided by

Australian Timeshare and Holiday Ownership Council (ATHOC)

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Executive Summary

In summary, ATHOC considers any proposed new training requirements the committee may recommend that are relevant for financial investment products and hence the financial planning industry, are not applicable for a lifestyle product, such as timeshare, and that timeshare should be specifically excluded from the majority of the increased training obligations, such as those proposed by ASIC in Consultation Paper 212.

It is ATHOC's position that the status quo be maintained and that any changes made to the current skill requirements be implemented with only minor modifications in regards to the timeshare industry.

ATHOC is of the view that any proposed increase in educational qualification requirements will have a detrimental effect on the timeshare industry and its ability to attract and retain appropriately qualified persons to undertake sales and marketing activities.

The same principle that applied in 2012 in the granting of an exemption from the ban on conflicted remuneration as part of the original FoFA reforms, when the then Federal Government with bipartisan support recognised that timeshare products:

(a) are lifestyle products, as they are not designed to generate a return on investment for consumers; and

(b) while defined as a managed investment scheme under the Corporations Act, are inherently different compared to the financial products advisers typically advise their clients on.[1]

Similarly, both the Senate Economics Committee[2] and the Parliamentary Joint Committee[3], in recommending that the timeshare industry be excluded from the ban on conflicted remuneration in 2012, made reference to and relied on the following:

(a) timeshare offers a lifestyle product and not a personal financial investment;

(b) timeshare representatives provide advice only in respect of a single timeshare product and do not provide any financial advice about other products. They do not provide advice about different ways of investing – only advice as it relates to purchasing a single timeshare product;

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1 Office of the Parliamentary Secretary to the Treasurer and Parliamentary Secretary for Small Business (Cth), 'Application of FoFA to the Timeshare Industry' (Media Release No. 028, 20 July 2012).

2 Senate Economics Legislation Committee, Parliament of Australia, *Corporations Amendment (Future of Financial Advice) Bill 2011 [Provisions] and Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011 [Provisions]* (2012) 7.4.

3 Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Corporations Amendment (Future of Financial Advice) Bill 2011 and Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011* (2012) 7.45.

(c) timeshare interests are not distributed through dealer groups or advisers, but are sold directly through sales offices; and

(d) timeshare interests are in-house products and not provided by a financial product manufacturer.

It is ATHOCs considered view that these same principles apply to the consideration of increased education and training standards for the financial planning industry. Additionally, ATHOC asks that the committee be cognisant that any reasoning and recommendations it may make in regards to increased educational and training standards for financial planning, do not necessarily apply to the timeshare industry, and that any recommendations made by the committee be consistent with the carve out the timeshare industry received in regards the conflicted remuneration rules in 2012.

Indeed if the current proposed ASIC changes are accepted across the board and apply equally to the timeshare industry as other financial products it may well mean that the timeshare industry will be unable to continue in Australia due to a lack of sales representatives who will be qualified to sell the product.

Introduction

The Australian Timeshare and Ownership Council (ATHOC) is a not for profit body established in 1994 to represent the interest of member bodies in the Australian timeshare industry, to ensure industry best practice.

ATHOC has an elected board representing a range of members covering timeshare resorts, timeshare owners, developers and promoters, marketers, exchange companies and organisations providing professional advice to the timeshare industry.

ATHOCs members include the Accor Vacation Club, Classic Holidays, The Holiday Club and Wyndham Vacation Resorts Asia Pacific.

Timeshare Products

Timeshare products are generally structured as either:

(a) a title-based scheme, whereby members hold an interest in the entity that manages the resort (which gives them a right to use the accommodation at the resort for a certain period (usually either a 'fixed' or 'floating' week) in accordance with the constitution of the club) together with a factional interest in the property on which the resort is located; or

(b) a points-based scheme, whereby members receive an allocation of points which can be used to book accommodation at one or more resorts or holiday accommodation in various locations. Each of the Accor Vacation Club, Classic Holiday Club, The Holiday Club and Wyndham Vacation Resorts Asia Pacific are points-based schemes.

Members pay a fee to acquire their interest in the timeshare scheme, as well as annual fees and/or maintenance levies.

It is important to note and a key point that ATHOC wishes to reinforce with the Senate Committee that in Australia, timeshare is sold (and marketed) as a lifestyle product, rather than as a financial investment product, which is the domain of the financial planning industry.

This is a very important distinction that is often forgotten when laws and regulations are proposed and enacted that subsequently and inadvertently impact on the timeshare industry. (This will be discussed further in the submission).

It is equally important for the committee to know that timeshare interests do not provide members with any monetary financial returns and there is no expectation or representation made that members will be able to sell their interests for a profit or for any particular price.

Timeshare Industry and the Corporations Act 2001

For the purposes of ASIC Regulatory Guide 146 (**RG 146**), timeshare interests are a Tier 1 product and are also categorised as an interest in a managed investment scheme.

Further, timeshare advisers generally provide personal advice, however such advice is limited to recommending the number and type of interests a particular consumer should acquire in a particular timeshare scheme (if any), based on their holiday needs, holiday preferences (such as preferred holiday location, standard and type of accommodation, facilities available, holiday duration and time of holiday) and anticipated spend.

Timeshare advisers do not give advice about other financial products, indeed typically under their AFSL, members of ATHOC are restricted to advise only about their own timeshare lifestyle products. Also, timeshare advisers do not otherwise take into account a potential client's financial needs, circumstances or objectives, beyond affordability of the product being sold.

The timeshare industry in Australia

The timeshare industry makes a significant contribution to the Australian economy. Overall, the direct output of the timeshare industry in 2012 included approximately $271.3 million in purchases of timeshares, $110.8 million of spending on maintenance fees, $22.7 million spending on exchange services and $211.6 million of spending by timeshare owners and guests while on holiday, yielding total direct spending or output of approximately $616.5 million.

The following table compares the direct economic contribution of the Australian timeshare industry in 2009 and 2012 (generally being a time of subdued economic activity).

Year	Output ($M)	Employment (FTE)	Salaries, wages and related income ($M)	Value add ($M)
2009	$504.2	2,836	$171.1	$230.5
2012	$616.5	2,962	$173.7	$342.1
Increase (%)	22.3%	4.4%	1.5%	48.4%

Further, based on information available to ATHOC, approximately 600 representatives are currently engaged to promote and sell timeshare and these representatives provide financial product advice in relation to timeshare products, as timeshare products are defined as a financial product under the Corporations Act. It needs to be reiterated that timeshare sales representatives do not provide financial investment advice unlike financial planners who do so on a daily basis.

For the timeshare industry to continue to survive and prosper and not become burdened by unnecessary red tape, ATOHC asks that the committee recognise the uniqueness of the timeshare industry and that this uniqueness be recognised in any recommendations it makes regarding proposed regulatory or policy changes to the training standards of the financial services industry.

It is often the case that proposed changes that are appropriate for other financial products and the financial planning industry are not appropriate for the timeshare industry and would only impose unnecessary red tape and stifle the growth of this multi-million dollar industry.

The timeshare industry experienced this first hand when the original FoFA rules were proposed that saw the industry initially caught by the conflicted remuneration rules.

As a result of bipartisan recognition that the timeshare industry should not be caught be these rules, the Joint Parliamentary Committee on Financial Services and Corporations recommend that the timeshare industry be exempted from the conflicted remuneration rules. Then Minister Bill Shorten MP in his capacity as Minister for Financial Services, subsequently provided a carve out for the timeshare industry by regulation.

This was a welcome relief for the industry and a very clear recognition that the timeshare industry does stand apart from the financial planning industry and as a consequence from time to time does need specific recognition that rules that may apply to the financial planning industry do not and should not be applied to the timeshare industry.

Timeshare representatives

The remuneration of industry sales staff is commission-based.

Remuneration is based on the sale of interests in a timeshare scheme and is exempt by regulation from the ban on conflicted remuneration under the Future of Financial Advice (FoFA) reforms.

Also, unlike financial advisers who provide financial advice to clients on investments, such as superannuation and insurance, there is not an ongoing relationship between the particular sales representative and the timeshare purchaser, as it is a lifestyle product being sold and not a financial investment product.

ATHOC is concerned that, if the training and educational qualification requirements in RG 146 are increased (as proposed by ASIC in Consultation Paper 212) and this higher standard applies to timeshare sales representatives then it will be difficult if not impossible to attract and retain suitably qualified sales staff. This will have an undeniably substantial and negative impact on the timeshare industry for no discernible gain.

In particular, as timeshare representatives are commission-based sales personnel, imposing a requirement that representatives hold an advanced diploma or bachelor level educational qualification, in order to provide advice to consumers will result in timeshare providers being unable to source new representatives (including to replace representatives who leave the industry).

This is because there is no bachelor degree or advanced diploma relevant to timeshare, and nor is it likely a bachelor degree or advanced diploma specific or relevant to timeshare will be developed. People will not undertake four or five years of part time study or three years of full time study in order to obtain a timeshare sales position nor undertake such a high level of study for such a boutique industry as timeshare.

If the timeshare industry is unable to attract new representatives, as a result of the proposed increased training, skills and educational requirements, it will have a material adverse impact on the growth of the timeshare industry and the timeshare industry's contribution to the economy, through reduced sales, reduced employment and stagnation of spending by members and guests on holiday, spending on maintenance fees and spending on exchange services and reduction overall in employment.

In granting an exemption from the ban on conflicted remuneration as part of the FoFA reforms, the Federal Government recognised that timeshare products:

(c) are lifestyle products, as they are not designed to generate a return on investment for consumers; and

(d) while defined as a managed investment scheme under the Corporations Act, are inherently different compared to the financial products advisers typically advise their clients on.[4]

Similarly, both the Senate Economics Committee[5] and the Parliamentary Joint Committee[6], in recommending that the timeshare industry be excluded from the ban on conflicted remuneration in 2012, made reference to and relied on the following:

(e) timeshare offers a lifestyle product and not a personal financial investment;

(f) timeshare representatives provide advice only in respect of a single timeshare product and do not provide any financial advice about other products. They do not provide advice about different ways of investing – only advice as it relates to purchasing a single timeshare product;

(g) timeshare interests are not distributed through dealer groups or advisers, but are sold directly through sales offices; and

(h) timeshare interests are in-house products and not provided by a financial product manufacturer.

ATHOC submits that a similar approach should be taken in respect of the proposed training requirements under RG 146 as they apply to the timeshare industry. That is, ASIC should take into account and recognise that timeshare, as a lifestyle product, is different from other financial products and therefore should not be subject to the same increased training requirements.

Further, given timeshare representatives only provide advice on whether a particular timeshare product is suitable for the holiday needs of a consumer, the knowledge, skills and educational qualifications a timeshare representative requires to provide this service and discharge the best interest duty and other obligations in providing personal advice are different from, and more limited than, those required of a representative who provides advice to retail clients on investment, superannuation and insurance products.

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4 Office of the Parliamentary Secretary to the Treasurer and Parliamentary Secretary for Small Business (Cth), 'Application of FoFA to the Timeshare Industry' (Media Release No. 028, 20 July 2012).

5 Senate Economics Legislation Committee, Parliament of Australia, *Corporations Amendment (Future of Financial Advice) Bill 2011 [Provisions] and Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011 [Provisions]* (2012) 7.4.

6 Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Corporations Amendment (Future of Financial Advice) Bill 2011 and Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011* (2012) 7.45.

The current training regime

One Step Further Pty Ltd (**One Step Further**) is a Registered Training Organisation (RTO 31215) that has been providing training services to the timeshare industry and the broader tourism/hospitality, events, management and small business sectors for the past 20 years.

One Step Further has been an approved provider on the ASIC training register for the past 5 years.

One Step Further is currently the registered training provider for the timeshare industry for the RG 146 THOEP training program. One Step Further has arrangements with Accor Vacation Club, Classic Holidays, The Holiday Club and Wyndham Vacation Resorts Asia Pacific, being the significant timeshare clubs involved in new sales, for the provision of training to timeshare representatives to satisfy the current requirements of RG 146.

These timeshare clubs deliver training to their representatives via their own training advisers who have been trained by One Step Further to deliver its RG 146 compliant training program for timeshare. All of the materials created by One Step Further that make up this course have been approved under Audit as per the standards for VET training at a national level. One Step Further has a remarkable record under Audit of no rectifications in the past 3 audits and is deemed a low risk RTO under ASQA, the relevant regulatory body.

One Step Further's training program covers the generic knowledge areas currently listed in RG 146, the specialist knowledge areas for managed investments currently listed in RG 146 and additional specialist knowledge for timeshare. This training meets the current educational level for Tier 1 products pursuant to RG 146. As timeshare representatives provide personal advice, the training also covers the skill requirements listed in RG 146. In addition, each timeshare organisation provides further specialist training on its own timeshare product.

The amount of time it takes a person to complete the training program and meet the RG 146 requirements for the provision of personal advice on timeshare differs between timeshare clubs but is generally between 3 to 5 weeks of full-time training. The timeshare clubs add in the mandatory learning of the ATHOC Code of Ethics and the ATHOC Code of Practice required by all members of ATHOC, and such requirements are supported by ongoing site visits and compliance reviews conducted by ATHOC.

ATHOC believes that this existing training program (which meets all of the ASQA VET training requirements and continues to pass audit each year) already provides the requisite skills, knowledge and experience required for timeshare advisers to be able to provide appropriate and accurate advice to consumers on whether a particular timeshare product is appropriate for the consumer, based on their holiday needs and intended expenditure in light of the accommodation available through the timeshare scheme, the initial membership costs and annual levies. As such, it is appropriate for the current regime to continue in respect of the timeshare industry.