

ATHOC Submission to Treasury

Lifting the professional, ethical and education standards in the financial services industry

Submission made by: the Australian Timeshare and Holiday Ownership Council Limited (**ATHOC**)

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Executive Summary:

Timesharing schemes are a type of managed investment scheme for the purposes of Chapter 5C of the Corporations Act, and accordingly interests in timesharing schemes are regulated by ASIC as financial products. However, as acknowledged by the Government when exempting timeshare schemes from the ban on conflicted remuneration under the Future of Financial Advice (**FoFA**) reforms, timeshare is an inherently different product to other financial products, and certain reforms introduced for the financial services industry at large are not always appropriate for the timeshare industry.

The timeshare industry fully supports an appropriate level of training and education standards for financial advisers, including timeshare sales representatives. We submit, however, that the level of training and education required to sell timeshare, a lifestyle holiday product, should not be elevated to the standard applicable to the sale of financial investment products for the following key reasons:

- (1) timeshare interests are not sold as financial investments designed to generate a financial return. They are more akin to paying a travel agent today for the right to book a certain number of years' worth of holidays in the future based on today's accommodation rates;
- (2) timeshare sales representatives only sell interests in the timeshare scheme they represent, which means that they are required to have full knowledge of how that product works, and their obligations under the applicable AFSL, but they are not required to have the knowledge, nor are they authorised, to advise a consumer of potential alternative financial products available in the market;
- (3) the majority of the existing workforce of over 700 timeshare sales representatives, who generate over \$271.3 million in revenue for the Australian economy, do not hold university or other tertiary qualifications. Accordingly, not only would the proposed training and education standards disqualify nearly all of the industry's existing sales representatives, it will pose a significant barrier to entry for potential new timeshare sales representatives, thereby jeopardising the future of the timeshare industry in Australia – an industry which contributed over \$616.5 million to Australia's economy in 2014; and
- (4) the proposal to impose the heightened training and education requirements on the timeshare industry is contrary to the Government's commitment to reduce unnecessary or inefficient regulation because these measures are not responding to an issue relevant to the timeshare industry, and because it would take considerable time and investment by the industry and Government to tailor training and education standards that are applicable to and appropriate for the

timeshare industry. Given the size of the timeshare industry compared to the financial services industry as a whole, this seems an inefficient and ineffective allocation of time and resources for minimal, if any, consumer benefit.

About ATHOC and the timeshare industry

The Australian Timeshare and Holiday Ownership Council

The Australian Timeshare and Holiday Ownership Council Limited (**ATHOC**) is a not-for-profit industry body established in 1994 to represent all interests involved in the Australian timeshare industry, and to work toward national industry best practice. ATHOC membership is open to all those directly or indirectly involved in timeshare and all members are dedicated to delivering the highest professional standards of service to existing and potential timeshare owners or members. ATHOC has over 50 members, representing approximately 75% of the timeshare industry, including Accor Vacation Club, Classic Holidays, ULTIQA Lifestyle and Wyndham Vacation Resorts Asia Pacific. ATHOC operates nationally with an elected board representing a range of membership categories covering resorts, timeshare owners, developers and promoters, marketers, exchange companies and organisations providing professional advice to the timeshare industry.

ATHOC aims to foster a high standard of ethics and adherence to industry best practice amongst its members and to maintain good standing with all stakeholders (by requiring its members to abide by a code of ethics and a code of practice), to continually promote the benefits of the industry and to protect the goodwill of both members and consumers, and to assist members to achieve growth and profitability.

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 fractional 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, ULTIQA Lifestyle and WorldMark South Pacific Club by Wyndham are points-based schemes.

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

In Australia, timeshare is sold (and marketed) as a lifestyle product, rather than an investment product. In particular, timeshare interests do not provide members with any returns and there is no expectation or representation that members will be able to sell their interests for a profit or for any particular price.

For the purposes of ASIC Regulatory Guide 146 (**RG146**), timeshare interests are a Tier 1 product and are also categorised as an interest in a managed investment scheme (although a number of title-based schemes are exempt from the managed investment scheme provisions of the *Corporations Act 2001* (Cth) (**Corporations Act**) in accordance with the relief principles discussed in ASIC Regulatory Guide 160 – Time-sharing Schemes (**RG160**)). Further, timeshare advisers generally provide personal advice, although 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 or about financial investments consumers may wish to make. Indeed, typically under their AFSL members of ATHOC are restricted to advise only about their own 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

The timeshare industry has a significant impact on the Australian economy. Overall, the direct output of the timeshare industry as measured by an Economic Impact Study 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). (AEC Group. 2012 Economic Impact Study)

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, there are more than 700 representatives currently engaged in promoting and selling timeshare in Australia, and these representatives provide financial product advice only in relation to timeshare.

Accordingly, given the significance of the timeshare industry’s contribution to the economy, it is important that the timeshare industry remains competitive and commercially viable and that the uniqueness of the timeshare industry be taken into account when considering the application of any proposed regulatory or policy changes to the financial services industry. As the timeshare industry encountered with the conflicted remuneration rules, policies that are appropriate for other financial products and the financial services industry are not relevant to timeshare, in light of the fact that timeshare is a lifestyle product and timeshare

representatives only sell a single product offered by a particular timeshare club. Indeed, as has happened on a number of occasions when legislation has been drafted for the whole of the financial services industry, timeshare finds itself as a square peg in a round hole.

Timeshare sales representatives

The remuneration of timeshare sales staff is primarily commission-based and remuneration related to the sale of interests in a timeshare scheme is exempt 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, superannuation and insurance, there is not an ongoing relationship between the particular sales representative and the consumer, rather the timeshare sales representative simply sells holidays credits or points to the consumer, which is a lifestyle product and not a financial investment product. The sales representative recommends the consumer acquire an interest in a particular timeshare scheme (if appropriate for the consumer based on their holiday needs, holiday preferences and holiday spend) and the consumer decides whether to proceed with the recommendation, purchase timeshare interests and become a member of the timeshare scheme.

As a result of this structure, timeshare, as with most sales-based roles, experiences a relatively high turn-over compared to representatives who provide advice on other financial products, such as investment products. ATHOC is concerned that, if the PJC model is adopted (and diploma or bachelor degree, professional year, registration exam and ongoing professional development requirements imposed) and applied to timeshare sales representatives then it will be difficult, if not impossible, to attract and retain suitably qualified sales staff which, in turn, will have a substantial and negative impact on the timeshare industry. In other words, the proposed increased education, training and ongoing requirements will operate as a barrier to entry to new sales representatives, and disqualify nearly all of the timeshare industry's existing sales representatives.

In particular, as timeshare sales representatives are commission-based sales personnel, imposing a requirement that representatives hold a diploma or bachelor level educational qualification, undertake a professional year and complete a registration exam, as contemplated by the PJC model, 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 diploma or bachelor degree relevant to timeshare, and nor is it likely a diploma or bachelor degree, registration exam or ongoing professional development requirements specific or relevant to timeshare will be developed. People will not undertake one to three years of full time study and complete a professional year in order to obtain a 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 diploma or bachelor degree, professional year, registration exam and ongoing professional development requirements proposed by the PJC model, 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 holidays, maintenance fees and exchange services. Indeed, if the proposed PJC changes are imposed on the timeshare industry it is highly probable that the timeshare industry in Australia would stagnate and eventually all new sales would cease due to the inability of the industry to attract new sales representatives.

While the changes proposed by the PJC model are intended to improve the quality of advice provided by advisers to further reduce risks for retail investors, we do not consider the proposed changes will improve the quality of advice given by timeshare sales representatives. Further, the concerns of government and the community with the quality of financial advice provided to retail clients, which is the impetus behind the proposed PJC model, are not applicable or warranted

with respect to the lifestyle products offered by the timeshare industry (as evidenced by the Government's exclusion of timeshare from the ban on conflicted remuneration).

In granting an exemption from the ban on conflicted remuneration as part of the FoFA reforms, the Federal Government 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 Committee² and the Parliamentary Joint Committee³, in recommending that the timeshare industry be excluded from the ban on conflicted remuneration, made reference to and relied on the following:

- (a) timeshare offers a lifestyle product and not a personal financial investment;
- (b) timeshare sales 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;
- (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.

ATHOC submits that a similar approach should be taken in respect of the application to the timeshare industry of the financial adviser requirements proposed by the PJC model. That is, the PJC model should take into account and recognise that timeshare, as a lifestyle product, is different from other financial products and therefore timeshare representatives should not be subject to the same education, training and professional development requirements as the PJC model proposes for financial advisers.

Further, given timeshare sales representatives only provide advice on whether a particular timeshare product is suitable for the holiday needs of a consumer, the educational, training and ongoing development a timeshare sales representative requires to provide this service and discharge the best interests duty and other

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.

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.

Consumers who attend a sales presentation by a timeshare sales representative are not anticipating receiving financial advice about ways to secure their financial future. They are anticipating a sales presentation about a particular holiday product and ways they can holiday now and into the future. Depending on a variety of factors, they may be weighing up buying a holiday home, Winnebago, caravan or ad hoc purchase of hotel rooms. None of these alternatives involves a financial intermediary regulated by ASIC. Whilst timeshare products can be reasonably sophisticated, they nevertheless involve the purchase of a lifestyle product and never involve advice about financial investment.

The current training regime

The timeshare industry is willing to work with any Registered Training Organisation (**RTO**) that the Government deems appropriate. Currently, ATHOC uses One Step Further Pty Ltd (RTO 31215) (**One Step Further**) as its training provider for timeshare sales representatives. Griffith University was the original provider of the then PS 146 program to the industry, however the cost to continue this program was fast becoming prohibitive to the industry's needs, and they were unable to offer an online option. Therefore, One Step Further offered an alternate product that was contextualised to suit the needs of the industry and was approved by the ASIC training register supervisory body at the time, LASA.

One Step Further 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 and which has been an approved provider on the ASIC training register for the past 7 years.

Through its experience with One Step Further the timeshare industry is accustomed to working with an RTO:

- for the RG146 THOEP training program;
- for the provision of training to timeshare sales representatives to satisfy the current requirements of RG146;
- for the development of course material approved under Audit as per the standards for VET training at a national level; and
- for training covering not only the generalist knowledge areas currently listed in RG146, but also the specialist knowledge areas for managed investments schemes currently listed in RG146 and additional specialist knowledge for timeshare – all of which meets the current educational level requirements for Tier 1 products pursuant to RG146.

In addition, each timeshare organisation provides further specialist training on its own timeshare product and also tests sales representatives regularly to ensure their knowledge of the product and compliance requirements is up to date and accurate.

The amount of time it takes a person to complete the training program and meet the RG146 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, compliance reviews conducted by ATHOC and ongoing compliance training provided by the timeshare clubs.

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 sales representatives 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.

Recommendation

In summary, ATHOC considers that, while the proposed new diploma or bachelor degree, professional year, registration exam and ongoing professional development requirements proposed under the PJC model may be relevant for investment and risk management products, they are not applicable for a lifestyle product, such as timeshare, and that timeshare should be specifically excluded from the proposed PJC model.

Accordingly, for the reasons outlined above (and explained in further detail in the submissions below), ATHOC strongly recommends that the Government **excludes timeshare sales representatives and the timeshare industry from the proposed PJC model and that the education, knowledge and skill requirements currently applying under RG 146 continue to apply to timeshare sales representatives.** In particular, ATHOC is of the view that the proposed PJC model will have a major detrimental effect on the timeshare industry, possibly even causing the loss of hundreds of jobs, its ability to attract and retain staff to undertake sales and marketing activities, and its financial contributions to the Australian economy.

Submissions⁴

Feedback sought – the PJC model	
PJC question	Our response
<p>Question 1.1</p> <p>What impact would the introduction of the PJC model have on the structure of the financial advice industry?</p>	<p>The introduction of the PJC model will have a significant adverse impact on the timeshare industry. In particular, as timeshare sales representatives are primarily commission based sales personnel, imposing a requirement that representatives hold a diploma or bachelor degree 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 diploma or bachelor degree relevant to timeshare, and nor is it likely a diploma or bachelor degree specifically relevant to timeshare will be developed. People will not undertake one to three years of full-time study plus a professional year in order to obtain a sales position nor undertake such a high level of study and ongoing development for such a boutique industry as timeshare.</p> <p>Timeshare schemes are managed investment schemes regulated under the Corporations Act and timeshare scheme interests are Tier 1 products. However, unlike other Tier 1 financial products (such as life insurance, shares, superannuation and other managed investment schemes), timeshare is a lifestyle product, is not an investment or risk management product and is not intended to generate a return for the timeshare owner. The PJC model, if adopted for the timeshare industry, would require a professional association be established for timeshare which is approved by the Professional Standards Council (PSC), is a 'member' of the Financial Professionals Education Council (FPEC), and administers ongoing professional development pursuant to requirements approved by the PSC and developed in conjunction with the FPEC.</p> <p>Although the timeshare industry is, in its own right, a significant industry, timeshare industry participants who are 'financial services providers' represent only a very small proportion of the overall Australian financial services industry. We note a key goal of the PJC model is to achieve a degree of standardisation across the financial services industry via the imposition of educational qualification, professional year, registration exam and ongoing professional development standards which are consistent for all Tier 1 product advisers.</p>

⁴ **Please Note:** ATHOC's submissions to each question relate to the **timeshare industry only** and ATHOC does not make general submissions on behalf of all financial product advisers.

PJC question	Our response
	<p>However, ATHOC submits that timeshare, as a lifestyle product, is vastly different from other Tier 1 products as is the relationship between a timeshare sales representative and the client (namely the sale of a lifestyle product) and the relationship between financial advisers and their clients (being an ongoing relationship of trust with client relying on the financial adviser to assist the client achieve their financial goals).</p> <p>We do not consider that the FPEC could develop professional year and registration exam, and assist with developing ongoing professional development, requirements which will be relevant or suitable for timeshare sales representatives and be consistent, or achieve a level of standardisation, with the requirements applying to advisers who advise on other Tier 1 products.</p> <p>A timeshare sales representative is a sales-based position and, unlike financial advisers or financial planners, is not seen as a profession. Accordingly, it is unlikely timeshare sales representatives will join a timeshare professional association and, if an association was formed, it would likely need to be funded and operated by ATHOC or its members. Further, any timeshare professional association would be one of many professional associations representing various segments of the financial services industry and, given timeshare is such a fundamentally different product to other Tier 1 products, we expect any timeshare professional association would have limited, if any, success in facilitating the FPEC developing or facilitate professional year, registration exam and ongoing professional development requirements for the timeshare industry.</p> <p>If the timeshare industry is unable to attract new representatives, as a result of the proposed educational qualification, professional year, registration exam and ongoing professional development requirements proposed by the PJC model, it will have significant 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 holidays, which includes money spent in those holiday locations, maintenance fees and exchange services.</p>
<p>Question 1.2</p> <p>What are the practical implications of the PJC model applying to advisers from all sizes and types of firms?</p>	<p>As mentioned at question 1.1, timeshare, as a lifestyle product, is vastly different from other Tier 1 products which are investment and risk management products ultimately designed to assist consumers achieve their financial goals. Further, the relationship between a timeshare sales representative and a timeshare consumer is purely a sales relationship as the timeshare sales representative recommends the consumer acquire an interest in a particular timeshare scheme (if appropriate for the consumer based on their holiday needs, holiday preferences and holiday spend), and the consumer decides whether to proceed with the recommendation, purchase a timeshare interest and become a member of the</p>

PJC question	Our response
	<p>timeshare scheme.</p> <p>In contrast, the relationship between financial advisers and their clients is an ongoing relationship where the client relies on the financial adviser's experience and expertise to assist the client achieve their financial goals.</p> <p>Accordingly, there is no need for timeshare sales representatives to complete either a diploma or a bachelor degree (and there is no diploma or bachelor degree relevant for timeshare), professional year, registration exam and ongoing professional development to obtain a commission-based sales position. Further, a timeshare sales representative does not require, and a timeshare consumer would not expect them to have, the level of education, training and ongoing development proposed by the PJC model to promote and sell a lifestyle product.</p> <p>Additionally, we do not believe that professional year, registration exam and ongoing professional development requirements could be developed which would be applicable and relevant for timeshare and also consistent or 'standardised' with the financial services industry generally.</p> <p>Consequently, we recommend that the timeshare industry and timeshare sales representatives be excluded from the PJC model which is proposed to apply to financial advisers.</p>
<p>Question 1.3</p> <p>Are the lines of responsibility clear under the PJC model?</p>	<p>If, contrary to our recommendation, the PJC model was applied to timeshare, we submit the PJC model would be ineffective as relates to the timeshare industry. This is because the FPEC would be responsible for standard setting for the financial advice industry generally and we do not believe there would be the appetite, time or resources to develop a tailored professional year and registration exam, and assist with developing an ongoing professional development program, for the timeshare industry.</p> <p>We recommend the role of the FPEC in developing or approving professional year, registration and ongoing professional development standards and the responsibility of the professional associations in applying or setting these requirements be more clearly delineated, including the expected process for developing these requirements.</p> <p>We expect this process will take considerable time, especially if there is no current professional association (such as timeshare) or the professional association does not currently have, for example, ongoing professional development requirements.</p> <p>Further, to be successful, the PJC model will require ASIC, FPEC, PSC and professional associations to work co-operatively, efficiently and effectively together. We have reservations on how successfully this can be achieved, particularly in the early years post-implementation.</p>

PJC question	Our response

Feedback sought - current regulatory framework

PJC question	Our response
<p>Question 2.1</p> <p>What are the practical implications of this overlapping of responsibilities? Would this shift have flow-on implications for other provisions in the Corporations Act, or any other parts of the licensing regime?</p>	<p>As mentioned at question 1.3 above, the PJC model will require the various bodies to work co-operatively together and we have reservations as to how effective this model will be in practice. Further, the FPEC will be required to develop the professional year, develop a registration exam and work with professional associations in developing ongoing professional development requirements. In fulfilling this role, we believe the FPEC will need to tailor these requirements for different sectors of the financial services industry and we consider, if our recommendation to exempt timeshare from the PJC model is not adopted, any requirements for the timeshare industry will be considerably different from those applying to financial advisers in relation to other Tier 1 products. It will be a challenging process for the FPEC to manage the competing demands of various professional associations in developing the various requirements, particularly as all parties will be working towards the same deadline or implementation date.</p>
<p>Question 2.2</p> <p>Should licensees maintain a legal obligation to ensure advisers meet relevant training and competency standards?</p>	<p>We believe licensees should maintain the current obligation to ensure their representatives are adequately trained, and competent, to provide the applicable financial services. However, we do not consider it necessary for licensees to have a specific legal obligation to ensure their representatives have passed the registration exam or met their ongoing professional development requirements (given, under the PJC model, the FPEC will be responsible for confirming whether a representative has passed the registration exam and the relevant professional association will be responsible for advising if a representative has ceased to meet their ongoing professional development obligations).</p>

Feedback sought – education and training standards of financial advisers

PJC question

Our response

Question 3.1

How would the PJC model interact with existing regulatory regimes for specific types of advisers, for example stockbrokers and tax advisers?

Timeshare representatives are currently required to meet the education, knowledge and skill requirements applying to Tier 1 products as set out in RG146. As explained at pages 5 and 6 of our submission, this is currently achieved by an RTO, One Step Further (a registered training organisation and ASIC authorised assessor) training timeshare advisers for those timeshare clubs involved in timeshare sales and those timeshare advisers then delivering the RTO's RG146 compliant training program to the timeshare sales representatives.

The RTO's training program covers the generic knowledge areas currently listed in RG146, the specialist knowledge areas for managed investments currently listed in RG146 and additional specialist knowledge for timeshare, as well as the skill requirements in RG146 (as timeshare sales representatives provide personal advice).

ATHOC believes the existing training regime applying to timeshare sales representatives already provides the requisite knowledge and skills required for these representatives to provide appropriate and accurate advice to consumers on whether a particular timeshare product is suitable for the consumer, based on their holiday needs and intended expenditure in light of the accommodation available in the timeshare scheme, the initial membership costs and annual levies.

Further, as timeshare representatives only provide advice in relation to timeshare products and obtain information from the consumer solely for this purpose, and do not consider (and would not be expected by a consumer to consider) the consumer's financial goals more broadly, we do not believe the PJC model is appropriate for the timeshare industry.

Also, consumers would not expect their timeshare sales representative (as a salesperson) to have the same level of education, training and ongoing professional development obligations as a financial adviser.

Question 3.2

Is holding a relevant Bachelor Degree the appropriate minimum education requirement? What is a "relevant" Bachelor Degree? Would this requirement limit the ability of other degree-qualified individuals to become financial advisers?

A diploma or bachelor degree is not an appropriate minimum education requirement for a timeshare sales representative. This is because there is no diploma or bachelor degree relevant to timeshare, nor is it likely a diploma or bachelor degree specific or relevant to timeshare will be developed.

People do not undertake one to three years of full-time study in order to obtain a timeshare sales position or undertake such a high level of study for a boutique industry such as timeshare.

PJC question	Our response
<p>Question 3.3</p> <p>What are the practical implications of requiring advisers to hold a relevant Bachelor Degree?</p>	<p>If the timeshare industry is unable to attract new representatives, as a result of requiring timeshare sales representatives to hold a diploma or bachelor degree as proposed by the PJC model, it will have a significant 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 holidays, maintenance fees and exchange services.</p>
<p>Question 3.4</p> <p>What are the practical implications of requiring new advisers to undertake a structured professional year at the outset of their careers as financial advisers, as a way to develop on-the-job skills?</p>	<p>Imposing a requirement for timeshare sales representatives to undertake a professional year will create a significant barrier to entry for new timeshare sales representatives and will make it difficult, if not impossible, to attract new sales staff which will have a substantial and negative impact on the timeshare industry.</p> <p>Timeshare representatives are sales staff and remunerated primarily on a commission only basis (as remuneration related to the sale of interests in a timeshare scheme is exempt from the ban on conflicting remuneration which is imposed under the FOFA reforms). Consequently, as with most sales-based roles, timeshare schemes experience a relatively high turnover of timeshare sales representatives, particularly compared to financial advisers who provide advice on other Tier 1 products such as investment or insurance products.</p> <p>Potential timeshare sales representatives will not undertake a professional year to obtain a sales position. Further, timeshare consumers will not expect their timeshare sales representative to have undertaken a professional year nor will imposing such a requirement improve the quality of the advice given by timeshare representatives.</p> <p>In addition, given the boutique and concentrated nature of the timeshare industry, it is unlikely the FPEC will have the resources or incentive to develop a professional year curriculum relevant for timeshare.</p>

Feedback sought – structure and role of a standard-setting body

PJC question	Our response
<p>Question 4.1</p> <p>What are the practical implications of FPEC</p>	<p>We do not consider the FPEC will be an appropriate independent standard-setting body for the</p>

PJC question	Our response
<p>performing this role? For example:</p> <ul style="list-style-type: none"> (a) how would FPEC interact with regulators and government agencies, such as ASIC, and education bodies? (b) would FPEC need to be supported by legislation in order to perform its role? (c) is the recommended FPEC membership appropriate? 	<p>timeshare industry.</p> <p>The FPEC will perform this standard-setting role for the entire Australian financial advice industry, of which timeshare represents only a very small proportion. Conversely, we expect the timeshare industry would require a disproportionate allocation of the FPEC's time and resources in developing professional year and registration exam requirements and working to develop ongoing professional development requirements which are relevant for the timeshare industry, given timeshare, as a lifestyle product, is fundamentally different to all other Tier 1 products and financial advisers for which the FPEC will 'set standards'.</p> <p>For example, while there will be bachelor level core subjects which are applicable to all investment and risk management financial products, it is unlikely all these core subjects will be relevant for timeshare or, if relevant, that a timeshare sales representative will need a bachelor degree level of understanding to sell and promote a lifestyle product to consumers.</p> <p>As indicated at question 1.3 above, we consider the PJC model relies on various bodies, being the FPEC, PSE, professional associations and ASIC, to work efficiently, cooperatively and effectively together, both in establishing the regime proposed by the PJC and operating that regime moving forward. We query whether these bodies, as separate organisations, will be able to achieve the level of cooperation required to successfully implement and operate the PJC model. If the PJC model fails to function efficiently and effectively as a result of a number of bodies having separate but related responsibilities we are concerned that licensees and their representatives will bear the administrative burden and time and financial cost of such inefficiencies.</p> <p>We note it is proposed for each professional association to be a member of the FPEC. We understand there is potential for a large number of approved professional associations (particularly as professional associations will essentially be mandatory under the PJC model) given the variety of sub-sectors in the financial advice industry. We are concerned the FPEC will be unworkable and inefficient if there are an excessive number of committee members.</p>

PJC question	Our response
<p>Question 4.2</p> <p>Are there alternative arrangements that would be more appropriate or effective?</p>	<p>We recommend that the timeshare industry and timeshare sales representatives be excluded from the PJC model.</p> <p>Currently, timeshare representatives must meet the education, knowledge and skill requirements for Tier 1 products set out in RG146 and we believe these requirements are appropriate for persons who promote and sell a lifestyle product.</p> <p>ATHOC is the industry body for the timeshare industry and represents the majority of the timeshare schemes and clubs in Australia. In particular, in accordance with their AFSL conditions, timeshare schemes who are ATHOC members have the benefit of a shorter cooling-off period applying to sales of interests to timeshare consumers. Accordingly, all timeshare schemes involved in new sales are members of ATHOC and are required to comply with ATHOC's code of practice and code of ethics, which include requirements for acceptable conduct and practices in the sale of timeshare. ATHOC members must also ensure that their representatives comply with ATHOC's code of ethics and code of practice.</p>

Feedback sought - registration

PJC question	Our response
<p>Question 5.1</p> <p>What are the practical implications of requiring individuals to be registered in order to provide financial advice?</p>	<p>Currently, a timeshare sales representative must be RG146 compliant prior to selling timeshare to consumers. Further, timeshare schemes which hold an AFSL authorising the provision of personal advice are subject to the requirement to include their timeshare sales representatives on ASIC’s register of financial advisers (Register). Currently, licensees must include an adviser’s details on the Register within 30 business days of their appointment.</p> <p>We consider the current requirements for a timeshare sales representative to be RG146 compliant prior to providing advice to consumers and for the licensee to record the representative’s details on the Register within 30 business days of their appointment to be sufficient.</p> <p>Our concern with requiring the licensee to notify a representative’s appointment on the Register prior to them advising clients is that potentially creates an inefficient process for licensees. Timeshare licensees generally, for efficiency purposes, notify representative appointments on the Register on a monthly basis (to ensure the 30 business day period is met). Conversely, the PJC model will effectively require each adviser’s appointment to be notified on that day (typically being the day they satisfy the RG146 requirements) in order for the timeshare sales representatives to deal with consumers. Apart from the administrative inefficiency (and associated cost) the proposal for individuals to be registered prior to providing advice may also pose practical difficulties, such as if the Register is unavailable for a period of time.</p> <p>Also, imposing a requirement for a timeshare sales representative to be recorded on the Register prior to advising clients does not provide any additional benefit for timeshare consumers. The relationship or transaction between a timeshare sales representative and a timeshare consumer is the sale of a lifestyle product and is not an ongoing relationship, as with financial advisers and clients. Accordingly, it is unlikely a timeshare consumer will peruse the Register prior, or subsequent, to dealing with the timeshare sales representative given they are viewed by the consumer as a sales person and not a financial adviser.</p>
<p>Question 5.2</p> <p>Should it be the role of professional associations to notify ASIC that all requirements have been met for an adviser’s registration, and of factors which affect their subsequent fitness for registration?</p>	<p>Given we propose that the PJC model should not apply to the timeshare industry and timeshare sales representatives and consequently, if our recommendation is adopted, the requirement for timeshare sales representatives to be a member of a professional association will not apply, we consider the timeshare licensee should remain responsible for notifying a timeshare sales representative’s</p>

PJC question	Our response
<p>Question 5.3</p> <p>What are the practical implications of having these criteria listed on a public adviser register?</p>	<p>appointment on the Register along with the details of their training courses and qualifications.</p> <p>If our recommendation to exclude timeshare from the PJC model is adopted, the additional information listed in the PJC consultation paper will not apply to timeshare (other than the proposal to disclose ASIC 'censures' in addition to enforceable undertakings and banning or disqualification orders). If the PJC model and the additional information requirements were to apply to timeshare, we note there would be various entities (i.e. the licensee, professional association and ASIC) responsible for including information about an adviser on the Register. Having three bodies with responsibility for updating the Register increases the risk for errors and oversights which, in conjunction with the proposal for an adviser to be registered on the Register before advising clients, may adversely impact an adviser's ability to perform their role.</p> <p>As noted above, any ASIC enforceable undertakings, banning orders or disqualification orders against an adviser are required to be disclosed on the Register. If there is further disciplinary or other 'formal' action which ASIC can take against an adviser, then ATHOC considers it appropriate for this information to also be included on the Register.</p>
<p>Question 5.4</p> <p>Are there alternative or additional criteria that should be listed on the Register?</p>	<p>In respect of timeshare sales representatives, we consider the information currently required to be included on the Register is sufficient. If our recommendation to exempt timeshare from the PJC model is adopted, there will be no requirement for timeshare representatives to be members of a professional body, nor to hold a bachelor degree, pass a registration exam or undertake ongoing professional development. Accordingly, it would not be necessary for the Register to include this information for timeshare sales representatives, nor do we consider it this information would be useful for timeshare consumers, as they would not expect a timeshare representative, as a sales person, to be subject to this level of education, training and ongoing professional development.</p>

PJC question	Our response
<p>Question 5.5</p> <p>What are the practical implications of having professional associations perform this role? For example, are professional associations sufficiently resourced and how would they interact with ASIC in relation to these requirements? Does this approach dilute the responsibility of licensees?</p>	<p>As ASIC is responsible for banning orders, disqualification of advisers and the issuance of enforceable undertakings and other ASIC censures we consider ASIC is best placed to include this information about an adviser on the Register (as is currently the case), as opposed to the licensee or, under the PJC model, a professional association. Similarly, as the licensee is responsible for including the adviser's details, including their qualifications and professional memberships, on the Register upon their appointment we believe the licensee is best placed to include any additional information about training professional year, registration exam and ongoing professional development (upon receiving such details and confirmation from the relevant body or the adviser).</p> <p>In the context of disciplinary action against by a financial adviser by a professional association, or the suspension or revocation of the adviser's membership, we submit, though not applicable to the timeshare industry if our recommendation is adopted, the professional association should provide this information to ASIC and ASIC be responsible for updating the Register.</p> <p>We are concerned for the ongoing integrity of the Register if there are multiple parties (i.e. licensees, ASIC and professional associations) with the ability to, and responsibility for, updating the Register. We submit that a better approach is for the licensee to be responsible for including an adviser's details on the Register once appointed and ASIC responsible for updating the Register to disclose any enforcement action or disciplinary action by a professional association or revocation of professional membership (with the professional association to advise ASIC of such activity).</p>
<p>Question 5.6</p> <p>Is legislative protection of the titles 'financial adviser' and 'financial planner' necessary?</p>	<p>ATHOC supports the legislative protection of 'financial adviser' and 'financial planner'. Timeshare sales representatives would not be characterised as 'financial advisers' or 'financial planners' and we consider bringing forward legislation to protect these titles could operate in conjunction with excluding timeshare sales representatives from the PJC model (on the basis they are not 'financial advisers' or 'financial planners'). If our recommendation to exempt timeshare from the PJC model is adopted, we feel this distinction (of not referring to a timeshare sales representative as a 'financial adviser' or 'financial planner') would also assist timeshare consumers in their understanding that the type of advice received from a timeshare sales representative, and the level of training and education of a timeshare sales representative, is different from other financial product advisers.</p>

Feedback sought - exam

PJC question

Our response

Question 6.1

Do you consider a registration exam should be a component of a framework to improve professional standards? Should the exam apply to both existing and new advisers?

A registration exam is not an appropriate minimum education requirement for a timeshare sales representative and should not apply to either new or existing timeshare sales representatives.

Timeshare representatives are sales staff and remunerated primarily on a commission only basis (as remuneration related to the sale of interests in a timeshare scheme is exempt from the ban on conflicting remuneration introduced under the FOFA reforms). Consequently, as with most sales-based roles, timeshare schemes experience a relatively high turnover of timeshare sales representatives, particularly compared to financial advisers who provide advice on other Tier 1 products such as investment or insurance products.

Potential timeshare sales representatives will not complete a registration exam (and associated professional year) to obtain a sales position. Further, timeshare consumers will not expect their timeshare sales representative to have completed a registration exam (and professional year) nor will imposing such a requirement improve the quality of the advice given by timeshare sales representatives.

Imposing a requirement for timeshare sales representatives to complete a registration exam will create a significant barrier to entry for new timeshare sales representatives and will make it difficult, if not impossible, to attract new sales staff which will have a substantial and negative impact on the timeshare industry.

Question 6.2

What are the practical implications of the use of a registration exam?

It is unlikely the FPEC will have the resources or incentive to develop a registration exam which is relevant and appropriate for timeshare, which will be necessary given the unique nature of the timeshare compared to other Tier 1 products.

Further, as discussed at question 6.1, potential (and existing) timeshare sales representatives will not complete a registration exam (and associated professional year) to obtain (or maintain) a sales position.

Question 6.3

What content should be covered in the exam?

ATHOC does not consider a registration exam should apply to timeshare sales representatives.

Question 6.4

PJC question	Our response
<p>Is FPEC the appropriate body to set the exam? Who should be responsible for invigilating the exam? Who should be responsible for marking the exams?</p>	<p>If a registration exam requirement was imposed for timeshare sales representatives, we consider FPEC would be the appropriate body to set the exam. The applicable professional association would be an appropriate body to supervise and mark the exams, with an FPEC representative present at exams and the FPEC performing a moderator role to ensure consistency of marking.</p>

Feedback sought – ongoing professional development

PJC question	Our response
<p>Question 7.1</p> <p>What are the practical implications of the proposed ongoing professional development requirements?</p>	<p>Given the unique nature of timeshare products compared to other Tier 1 products, it is unlikely any timeshare professional association (if established, which we consider unlikely) would be able to work with the FPEC to successfully develop ongoing professional development standards which achieve a level of cross-industry standardisation with the standards of other professional associations.</p> <p>Timeshare representatives are sales staff and remunerated on a commission only basis. Consequently, as with most sales-based roles, timeshare schemes experience a relatively high turnover of timeshare sales representatives, particularly compared to financial advisers who provide advice on other Tier 1 products such as investment or insurance products.</p> <p>If an ongoing development program imposed significant ongoing study or development, potential timeshare sales representatives are unlikely to complete such requirements in order to maintain a sales position. Further, timeshare schemes already provide their timeshare sales representatives with ongoing training in discharge of their obligation to ensure representatives are adequately trained, and competent, to provide financial services. ATHOC does not consider formalising an ongoing professional development program is necessary for timeshare sales representatives.</p>
<p>Question 7.2</p> <p>Are professional associations well-placed to administer ongoing professional development requirements?</p>	<p>Yes, provided the FPEC establishes a framework to ensure a level of cross-industry standardisation is achieved or, alternatively, approves each association’s ongoing professional development program.</p>

Feedback sought – professional and ethical standards

PJC question

Our response

Question 8.1

What are the practical implications of having each professional association create its own code of ethics? For example, what are the implications of having multiple codes as opposed to a single code?

While ethics and ethical behaviour apply equally and consistently to all segments of the financial advice industry, we consider a separate code of ethics for each professional association is appropriate. This will enable each association to tailor the code of ethics for their members (for example, include scenarios illustrating common ethical dilemmas faced by those members) and the PSC will be responsible for approving an association's code of ethics and ensuring consistency between the codes of the various professional associations.

Question 8.2

What are the practical implications of requiring that a code of ethics be approved by the PSC? Are there alternative approaches that would be more appropriate or effective?

For the timeshare industry, the key practical implication is there is no professional association and it is unlikely a professional association will be established for timeshare sales representatives. This is because being a timeshare sales representative is a sales-based position and, unlike financial advisers or financial planners, is not seen as a profession. As a sales role, there is a high turnover of timeshare sales representatives. Accordingly, it is unlikely timeshare sales representatives, particularly new entrants, will join a professional association in order to obtain or maintain a sales position. ATHOC, as the industry body for timeshare (though not a professional association), has a code of ethics which is binding on its members. Members are also expected to ensure their timeshare sales representatives comply with ATHOC's code of ethics. As ATHOC is an industry, and not a professional standards, body we do not consider it appropriate for the PSC to approve ATHOC's code of ethics.

Question 8.3

Is the PSC the appropriate body to drive improvements in professional standards in this industry? Are there alternative arrangements that would be more appropriate or effective?

As the timeshare industry does not have, and is unlikely in the foreseeable future to have, a professional association ATHOC does not comment on this question.

Question 8.4

What are the practical implications of having the PSC perform this role? For example, how would the PSC

As the timeshare industry does not have, and is unlikely in the foreseeable future to have, a

PJC question	Our response
interact with ASIC?	professional association ATHOC does not comment on this question.
<p>Question 8.5</p> <p>What are the practical implications of requiring professional associations to hold a PSC-approved scheme?</p>	As the timeshare industry does not have, and is unlikely in the foreseeable future to have, a professional association ATHOC does not comment on this question.
<p>Question 8.6</p> <p>Is it appropriate that liability in relation to financial advice/services be limited at this time? Is limitation of liability a necessary element for the operation of the PJC model?</p>	As the timeshare industry does not have, and is unlikely in the foreseeable future to have, a professional association ATHOC does not comment on this question.
<p>Question 8.7</p> <p>What are the practical implications of capping liability? For example, what changes to Commonwealth and/or state and territory legislation would be required?</p>	As the timeshare industry does not have, and is unlikely in the foreseeable future to have, a professional association ATHOC does not comment on this question.
<p>Question 8.8</p> <p>Would an alternative arrangement, under which a scheme's approval would not limit liability, be practicable?</p>	As the timeshare industry does not have, and is unlikely in the foreseeable future to have, a professional association ATHOC does not comment on this question.
<p>Question 8.9</p> <p>What are the practical implications of mandating membership of a professional association? Are there implications arising from the increased responsibility on professional associations rather than on the licensee?</p>	Refer to question 8.2 above.

Feedback sought – other issues for consideration

PJC question	Our response
<p>Question 9.1</p> <p>How could the PJC model interact with the existing Tier 2 adviser training and competency requirements?</p>	<p>ATHOC does not comment on this question as it is not relevant to the time-share industry.</p>
<p>Question 9.2</p> <p>Do you consider FPEC to be the best entity to determine transitional arrangements for existing advisers and advisers wishing to move within the industry?</p>	<p>Yes, we believe the FPEC will be the best entity to determine the transitional arrangements, given the standard setting role it is proposed to fulfil under the PJC model.</p>
<p>Question 9.3</p> <p>Do you consider Recognised Prior Learning a suitable transitional arrangement for existing advisers?</p>	<p>Yes.</p>
<p>Question 9.4</p> <p>What is an appropriate timeframe over which existing advisers should transition to the new system?</p>	<p>As mentioned above, we submit that the timeshare industry and timeshare sales representatives should be excluded from the PJC model and therefore timeshare shares representatives will not need to transition to the new system.</p> <p>However, subject to our comment at question 9.6, we consider the four year time frame proposed in the PJC report to be suitable, with the time frame commencing from provisional registration (which we expect would not occur until May 2016 at the earliest resulting in the cut-off date for full registration being 1 March 2020).</p>

PJC question	Our response
<p>Question 9.5</p> <p>Are there any alternative transitional arrangements that would be more appropriate or effective, for either new or existing advisers?</p>	<p>ATHOC submits that the existing training regime applying to timeshare sales representatives already provides the requisite knowledge and skills required for these representatives to provide appropriate and accurate advice to consumers on whether a particular timeshare product is suitable for the consumer, based on their holiday needs and intended expenditure in light of the accommodation available in the timeshare scheme, the initial membership costs and annual levies.</p> <p>Further, as timeshare representatives only provide advice in relation to timeshare products and obtain information from the consumer solely for this purpose, and do not consider (and would not be expected by a consumer to consider) the consumer’s financial goals more broadly, we do not believe the PJC model is appropriate for the timeshare industry.</p> <p>These current arrangements should apply to the timeshare industry as an alternative to the PJC model.</p>
<p>Question 9.6</p> <p>Are there any particular elements of the PJC model that present timing challenges</p>	<p>If, contrary to our recommendation, the PJC model is applied to timeshare a particular element of the PJC model which may present a timing challenge is the requirement for the timeshare industry to establish a professional association, given such association does not exist and is not appropriate for timeshare sales representatives given the sales nature of their role.</p> <p>Also, for the PJC model to be successful, the FEPC, PJC, ASIC and professional associations will need to work co-operatively given their overlapping roles. The implementation of the PJC model should make provision for the development and implementation of the process and protocols by which these entities will interact, upon their responsibilities being clearly defined.</p>
<p>Question 9.7</p> <p>What timing or phasing would most effectively balance the recognised need to raise standards and competency in the short-term against practicalities of implementing a new model to raise standards of new and existing advisers over the longer term?</p>	<p>Refer to question 9.4 above.</p>