

ATHOC submission on Exposure Draft on inserts for Treasury Laws Amendment (2024 Measures No. 1) Bill 2024: Quality of Advice Tranche 1

Background to ATHOC

- 1 The Australian Timeshare and Holiday Ownership Council (**ATHOC**) is the industry body for the timeshare industry. 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.
- 2 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.
- 3 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.
- 4 ATHOC's members include several AFS licensees, in particular responsible entities of timeshare schemes and sellers of timeshare.

Regulation of timeshare products and timeshare consultants

- 5 In Australia, timeshare schemes are regulated as managed investment schemes and interests in timeshare schemes are financial products, though timeshare is sold (and marketed) as a lifestyle product, rather than an investment product (and is not represented as offering a financial return). Indeed, ASIC mandates that product disclosure statements for timeshare schemes display a consumer warning on the front page which includes the statement that '*Timeshares are not an investment and you should not expect any financial return from a timeshare. You are buying an interest in a managed investment scheme for recreational use.*' In addition, the same statement must be given as part of a verbal warning issued to all consumers before they purchase an interest in a timeshare scheme.
- 6 The sale of timeshare products by responsible entities and other timeshare sellers who hold AFSLs is undertaken by timeshare sales personnel (**timeshare consultants**) who are representatives of an AFSL holder. The sale of timeshare products by timeshare consultants can involve:
 - (a) the provision of personal financial product 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; or

(b) the provision of general financial product advice, with such advice limited to promoting, and providing general information on, a particular timeshare club but not obtaining details of the consumer's holiday needs, preferences or anticipated spend or making a recommendation for the consumer to acquire a specific number of type of interests.

- 7 However, unlike financial advisers who provide financial advice to clients on investments, superannuation and insurance, there is not an ongoing relationship between the particular timeshare consultant and the timeshare purchaser, rather simply the sale of a lifestyle product. The timeshare consultant recommends the consumer acquire an interest in a particular timeshare scheme and the consumer decides whether to purchase timeshare interests and become a member of the timeshare scheme.
- 8 That is, the nature of the relationship between a timeshare consultant and consumer is fundamentally different to the nature of the relationship between a financial adviser and client.
- 9 The relationship between a client and a financial adviser is one of trust and confidence with the client heavily reliant on the financial adviser to assist the client to achieve their goals and objectives and the client often lacking the knowledge and expertise to determine if the financial adviser is competent and is acting in the client's interests. The extensive modifications to the legislative framework regulating financial advice, which commenced with the FOFA reforms, has sought to address this imbalance and increase the standard of financial advice and improve consumer confidence in financial advisers. Conversely, the relationship between a timeshare consultant and client is not one of trust and confidence and is better described and understood by consumers as a marketing or sale presentation. A consumer would not assume or expect that a timeshare consultant would be providing investment advice or planning advice given the product they are acquiring, the clear notice they are provided that timeshare is not an investment (as mandated by ASIC) and the limited scope of what advice is provided is clearly explained within the Financial Services Guide.
- 10 Where personal advice is provided as a result of the timeshare consultant taking into consideration the consumer's holiday objectives and needs when making recommendations, those timeshare consultants give consumers a statement of advice, which details any recommendation to purchase (or not purchase) membership in the timeshare scheme along with a summary of the reasons underlying the recommendation, and are required to comply with the best interests duty. Timeshare consultants who provide personal advice are also required to comply with the Code of Ethics by virtue of being 'relevant providers' under the Corporations Act, even though the Code of Ethics is tailored to, and designed, for financial advisers.
- 11 However, in recognition of timeshare's nature as a lifestyle product, the timeshare industry has obtained a number of exemptions from requirements applying to other types of managed investment schemes or applying to financial advisers who provide advice on other types of financial products. These include an exemption from the ban on conflicted remuneration under Subdivision C of Division 4 of Part 7.7A of the *Corporations Act 2001* (Cth) (**Corporations Act**). The exemption is granted pursuant to section 963B(1)(e) and regulation 7.7A.12C of the *Corporations Regulations 2001* (**Corporations Regulations**) whereby monetary benefits given for advice that relates to an interest in a timeshare scheme are not considered to be conflicted remuneration (**Exemption**) and timeshare consultants are therefore permitted to be paid commissions on sales of timeshare products.
- 12 The Exemption granted for timeshare products from the ban on conflicted remuneration recognised that:

- (a) timeshare products are lifestyle products, as they are not designed to generate a return on investment for consumers (and as noted above, this is emphasised by both a warning statement on the front cover of the PDS as well as via a verbal warning issued by the timeshare consultant) but are more closely aligned with other lifestyle or leisure products sold within retail environments;
- (b) while defined as a managed investment scheme under the Corporations Act, timeshare products are inherently different compared to the financial products which financial advisers typically advise their clients on and are not designed to provide a return or form part of a financial plan;
- (c) timeshare consultants 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 to meet a consumer's holiday needs and objectives;
- (d) timeshare interests are not distributed through dealer groups or advisers, but are sold directly through sales offices by representatives of the issuer or a related entity; and
- (e) timeshare interests are in-house products and not provided by a financial product manufacturer.

Submission – continuation of the Exemption from the conflicted remuneration ban

- 13 On behalf of its AFS licensee members and their timeshare consultants, ATHOC makes the following submission on the Exposure Draft on inserts for Treasury Laws Amendment (2024 Measures No. 1) Bill 2024: Quality of Advice Tranche 1 (**Exposure Draft**), in particular, in relation to Part 4 of Schedule 1 of the Exposure Draft.
- 14 ATHOC acknowledges that Part 4 of Schedule 1 of the Exposure Draft proposes the removal of some exemptions from the ban on conflicted remuneration under section 963B(1) of the Corporations Act but not the removal of the Exemption, given the Exemption is contained in the Corporations Regulations and the Exposure Draft proposes to amend the Corporations Act.
- 15 However, ATHOC is concerned that the Exposure Draft may be followed by proposed amendments to the Corporations Regulations to remove conflicted remuneration exemptions contained in the Corporations Regulations including the Exemption and submits that the rationale and factors which supported the grant of the Exemption from the conflicted remuneration ban for timeshare, as articulated at paragraph 12, continue to be applicable and justify the continuation of the Exemption. ATHOC also considers retention of the Exemption is consistent with the Financial Services Royal Commission recommendation – as timeshare products are not 'like' other managed investment or other financial products and should not be regulated as 'like' products. Timeshare products are unique and should be regulated as such.