13 January 2017

Timesharing schemes

Submission to the Australian Securities and Investments Commission on Consultation Paper 272

ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

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INTRODUCTION

CHOICE welcomes the opportunity to provide comment on consultation paper 272: remaking ASIC class orders on timesharing schemes.

CHOICE's investigations of timeshare schemes have found that they are sold using aggressive and likely misleading tactics, that the current protections are not helping consumers and that the schemes themselves are extremely poor value.

CHOICE has only found one timeshare scheme that provides the information needed to calculate exactly how much members will pay for a week of accommodation. Prices are appalling. Consumers need to pay over $38,000 to become a member of some schemes and over $145,000 over the lifetime of scheme. For this, they will get very little.

The timeshare industry relies on a series of legislative exemptions and regulatory relief to conduct its business. These loopholes have allowed harmful business practices to thrive. ASIC notes that the nature of timesharing schemes is to produce lifestyle or recreational benefits – regulatory relief is provided because although members are acquiring a financial product they are not expecting a financial return. We believe the rational for relief is incorrect. Consumers aren't looking for a financial return when they purchase a timeshare but they are looking for quality and value for money. The nature of the relief given as well as the exemptions for timeshares in the Corporations Act 2001 mean that it is much harder for consumers to assess the quality of what they are purchasing and it results in many people paying high prices for a service that can be terrible value for money.

ASIC must lift standards in the timeshare sector and establish consumer protection mechanisms that will genuinely help the people targeted by timeshare schemes. This needs to be done by

- Providing consumers with clear information about timeshare scheme costs and contract length in a manner that lets them compare timeshares with other accommodation options.
- by stamping out the worst high-pressure sales tactics including misleading free holiday claims and now-or-never deals, and
- by curbing high-pressure sales environments by introducing an opt-in rather than an opt-out sales process.

1. Cooling off rights are not protecting consumers

Cooling off rights are not protecting consumers of timeshare schemes. Consumers who purchase a timeshare have a seven to ten day cooling off period. However, they are very unlikely to fully engage with the product in this period.

Many Australian timeshare services operate on a points-based system – it is extremely difficult for people to gauge the value of points until they book a holiday. As many people are targeted for timeshare schemes while already on holiday, it is unlikely that they would book another vacation so soon. In addition, it's unlikely that timeshare owners take a holiday in the first seven to ten days of signing up to the service, making it difficult to assess the quality of accommodation on offer.

The cooling off period ostensibly gives consumers time to review the product disclosure statement and then make a final decision on whether to stay in the contract, but the disclosure documents that CHOICE has seen fall well short of clearly explaining how the scheme works and don't give consumers any way of determining whether their money will be well spent. In addition, contracts are often signed when scheme members are already on holiday – hardly the best time to consider committing to a complicated and opaque contract.

There is now wide recognition that disclosure alone cannot protect consumers[1] and a growing body of evidence showing that cooling-off periods offer greater advantages to businesses instead of consumers as they increase trust in the sales process while taking advantage of consumer behavioural biases.[2]

Cooling off periods place the responsibility on the consumer to chase down the seller. In many cases a person who has been sold a product or service through an unsolicited sale is vulnerable, unlikely to complain and has signed on to receive something that wasn't fully explained or that they cannot completely understand in the limited timeframe that the sale occurred. Cooling off rights are particularly inadequate when combined with the difficulties consumers face with transparency about the length of a contract and with exiting a contract outside of the cooling off period.

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[1] For example, the Financial System Inquiry *Final Report* found that "Product disclosure plays an important part in establishing the contract between issuers and consumers. However, in itself, mandated disclosure is not sufficient to allow consumers to make informed financial decisions." http://fsi.gov.au/publications/final-report/chapter-4/

[2] See Harrison, Paul (2016), Headline findings, opt-in research http://consumeraction.org.au/wp-content/uploads/2016/11/Consumer-Action-Opt-Out-Research-Briefing-Nov-2016-1.pdf and http://consumeraction.org.au/wp-content/uploads/2016/11/161104-Headline-findings.pdf

Case study: cooling off rights and difficult to understand contracts
In May 2016 the Bullivants (Ian and Marjorie) got in touch with CHOICE after unsuccessfully trying to get out of a Classic Holiday Club contract they'd signed in April 2013 at a seminar in the Sydney suburb of Parramatta.

They were led to believe at the seminar that they would be able to convert points from an Accor hotels scheme to Classic Holiday Club points, but upon reading the PDS it seemed the points weren't transferable after all.

Seven days was a very tight timeframe for the Bullivants, who run a farm in rural NSW, to properly review the paperwork and take action. Classic Holiday Club hadn't provided a fax number to send in the cancellation notice, only a PO Box. They scrambled to find the fax number and found their way to a neighbour's fax machine, getting in the cancellation notice just in time.

Shortly after, Classic Holiday Club contacted the Bullivants and stated emphatically that the Accor points could be transferred over. The couple agreed to a replacement contract based on this commitment by an eager salesperson and paid $6990 to buy into the Classic Holiday Club scheme.

When they tried to transfer points from Accor to Classic Holiday Club, Accor said it couldn't be done and the Bullivants ended up losing a year's worth of Accor points. They are now locked into a 20-year Classic Holiday Club membership with annual fees of about $200. The only reason they joined was to transfer the Accor points.

Their attempts to exit the contract have been repeatedly knocked back, and Classic Holiday Club has threatened to refer them to a debt collection agency to get its ongoing fees.

Recommendations

- Instead of a cooling-off period, ASIC should introduce stronger consumer protections against aggressive and high pressure sales tactics combined with an opt-in system that requires consumers to proactively contact the scheme to arrange purchase at least 48 hours after the sales pitch.
- Timeshare schemes are required to provide members with clear options to exit a scheme if the contract runs for more than five years. This must be clearly disclosed in the PDS.

2. Timeshare members need better information

Contract length is poorly disclosed

CHOICE has already raised concerns with ASIC about possibly unfair contract lengths for timeshare schemes. In some cases seen by CHOICE, contract terms relating to length were not transparent to the consumer and there was no clear and fair way for contracts to be cancelled outside of the limited cooling-off period at the beginning of the contract. For example, ULTIQA claimed to one customer that "there is no provision for cancellation of this Membership." The same consumer was informed that the contract would run until 2025. CHOICE has also received anonymous complaints from consumers that claim they were told by the timeshare scheme that their membership must continue to be paid by their dependents after death.

Even when contract length is disclosed, it can be unreasonably long and, if an average consumer's financial situation is taken into account, would either be an extremely poor investment or likely lead to financial harm for the average Australian. At minimum, contract length needs to be more clearly disclosed and not buried dozens of pages within a PDS.

Points and credits systems hide the true cost of timeshare schemes

Many Australian timeshare schemes require members to purchase points or credits that can then be traded for accommodation. CHOICE has found that points hide the poor value of timeshare schemes as they make it difficult for consumers to compare the value of the scheme against other holiday options.

Points schemes appear to be deliberately complex. For example, Ultiqa's scheme involves convoluted relationship between Usage Points, Accommodation Points, Permanent Points, Standard Points, Getaway Standard Points, Getaway Gold Points, Term Points, Platinum Points, Platinum Points II, Linked Points and Term Interests – all of which relate in some way or another to members booking hotel rooms or holiday apartments.

It's difficult to easily calculate how much a member will pay for a week of accommodation. CHOICE has only found one PDS that includes information about the value of points or credits and that provides examples of the number of credits needed to book accommodation. Looking closely at the costs, it's clear that if consumers were armed with information about what they would really receive in return for their timeshare scheme points, they would be very unlikely to become members. In addition, the value of points or credits can fluctuate dramatically at the discretion of the scheme, leaving members with significantly less value but the same high costs.

In short, there is no guarantee that the money paid upfront to enter a timeshare scheme, the annual fees, or the cost of additional points will have an equivalent value in holiday accommodations. Calculations based on case studies we have reviewed suggest just the opposite.

Example one: Wyndham timeshare 2016
The Wyndham timeshare scheme Product Disclosure Statement from September 2016 states that membership runs for either 40 years or for the life of the club, which is 29 February 2080.[3]

For the length of membership, members will automatically receive the same number of standard vacation credits each year. This also applies for premier vacation credits. Standard credits expire in one year, premier credits expire in two. The minimum amount of credits any member must have is either 12,000 standard credits or 6,000 premier credits per year. The price of vacation credits is determined by the scheme and is paid once at the beginning of membership. Currently, standard credits are worth $3.11 per credit.

The scheme also charges an annual levy that increases each year by 5% or the Consumer Price Index, whichever is higher. Establishment, housekeeping, additional service and ad hoc special fees may also apply.

If a consumer became a member of the scheme in 2016, the minimum they would have paid is:

Establishment fee	$159
Annual fee (based on holding 12,000 standard credits)	$892.89
Cost of 12,000 standard credits at $3.110 per credit	$37,320
Total paid for 2016	**$38,371.89**

[3] Worldmark South Pacific Club by Wyndham, (September 2016), Product Disclosure Statement.

Assuming the member signs up for the minimum of 40 years and that the price the minimum they would pay in annual fees would be $107,861.05 over the life of their membership to Wyndham.[4] In total, the 40 year membership would cost a minimum $145,320.05.[5]

The value delivered for this price is questionable. Based on the examples in the 2016 PDS, consumers using Wyndham points would likely be paying well above market rates for accommodation.

In the PDS, the cost of a one bedroom apartment at the Wyndham Vacation Resorts Asia Pacific Seven Mile Beach location ranges from 1,550 to 13,550 vacation credits depending on the time of year. It is extremely difficult, almost deliberately so, to determine the value of a vacation credit each year as members need to consider the one off payment for credits plus the annual levy. Averaging out the total minimum cost of the membership over 40 years, we can come to some sense of the value of a credit.[6] This would then make the Seven Mile Beach location cost between $469 a week in low season to $4,102.26 a week in high season. A deluxe one bedroom apartment at the Seven Mile Beach location can also be booked directly through the Wyndham Vacation Resorts Asia Pacific site, currently at the rate of $240 a night or $1,680 for a week.[7]

Similarly, the PDS refers to the Wyndham Dunsborough venue which costs between 2,800 to 17,900 vacation credits for a week in a studio apartment, depending on the time of year. This would cost roughly $847 a week in low season to $5,419 in high season. A quick search for accommodation in Dunsborough found that consumers could purchase a week of accommodation for two in the region, last minute and in high season, for between $504 to $2,570.[8]

This case clearly shows how points obscure the true value of a timeshare scheme. Consumers need more clear information upfront to help them recognise the total cost of the scheme.

Example two: Worldmark dramatic changes in point value

In one case that ended up in the NSW Consumer, Trader and Tenancy Tribunal (now the NSW Civil and Administrative Tribunal), a woman used 14,000 credit points through the Worldmark

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[4] The annual cost of $892.89 increasing at the minimum 5% per year, which comes to a total of $107,861.05 over the 40 years.
[5] Total annual fees plus one off credits cost plus one off establishment fee.
[6] !45,320.05 divided by the 40 years, divided by the 12,000 credits delivered each year means that each credit is worth approximately $0.30.
[7] Checked by CHOICE on 11 January 2017. Screenshot available if required.
[8] CHOICE booking.com search conducted on 11 January 2017 for Dunsborough for the week of 12 February to 19 February 2017 for 2 Adults. Screenshot available if required.

South Pacific Club to buy what was supposed to be a room with ocean views in Fiji for a week.[9] The room she and her family ended up in had no ocean views and was cockroach-infested.

It was only the second holiday she'd taken using points, yet she'd already paid $18,000 to the club. Worldmark calculated the cash value of the points used for the Fiji trip, which included the room and two airfares, at $2662. The woman who brought the case to the tribunal thought the package was worth around $12,000 based on the number of points she used.

This underscores the fact that timeshare scheme providers can value the points however they want and change that value at any time. When the woman joined the club she bought 6000 credit points for $12,300, or $2.05 per point. When she redeemed points for the Fiji trip they were worth $0.19 each according to Worldmark's calculations, which the tribunal accepted.

Consumers need comparable and clear information

CHOICE strongly supports ASIC’s proposal to incorporate modifications to the enhanced fee disclosure requirements to provide consumers with clearer information about timeshare scheme costs.[10] Currently, consumers are not easily able to assess the value of the scheme against alternatives, such as accommodation through hotels or holiday rentals. Consumers are also not given clear, prominent information about the length of the membership.

Recommendation

CHOICE recommends that timeshare product disclosure statements include prominent information on the front page to help consumers assess the true value of a scheme. Rather than present information about the annual cost for accommodation over a ten year period, it would be better to show the information as an annual cost and a total cost over the minimum length of the membership to help draw attention to the extremely long contract length that members face. The information required is:

- The total minimum cost for the first year of membership.
- The total minimum amount a member would pay for the minimum length of their membership.

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[9] Guriguis v Worldmark South Pacific Club (General) [2011] NSWCCTTT 2888 (7 July 2011).
[10] Section B7 of the Consultation Paper.

- An example of the annual costs a member would be paying on average for one week of accommodation.
- All other fees and costs members will face, including how interest or price rises will affect costs over time.

Ideally, no scheme would use a point based system to allocate value to members. This kind of system obfuscates the real value of the scheme. However, if a timeshare scheme chooses to allocate credits or points to members it must also be required to prominently disclose on the front page of a PDS. This will help potential members assess the value of the scheme and make proper comparisons with other accommodation offers. CHOICE recommends that the following information is provided:

- The current dollar value for one credit or point.
- The minimum amount of credits or points that a member needs to purchase each year, expressed in both points and the total amount required to be paid.
- The average credits or points required for a one week holiday for two people and the total amount a member will need to spend on points to obtain this benefit.

3. Sales practices exacerbate consumer harm

Timeshare schemes continue to be sold through high-pressure and inappropriate sales tactics. CHOICE is also concerned about the quality of financial advice provided to potential scheme members. Each person appears to get the same advice – to become a member of the timeshare scheme – with little or no consideration of individual needs and circumstances.

Hawking and misleading sales practices

CHOICE has received reports that timeshare operators are advertising their services through misleading and likely unconscionable practices. Consumers report being given a scratch card by a promoter they encounter on the street or at a major tourist attraction. The scratch card almost always reveals that the consumer has won a “free holiday”. At this point, it’s revealed that the consumer will need to sit through a sales presentation to receive this holiday. It is unclear if any consumer has received this “free holiday” without signing up to an expensive and lengthy timeshare contract, though there is some anecdotal evidence that any holiday is contingent on attending another seminar in the holiday location.

Consumers report that salespeople provide children with scratch cards to target parents and that, if they attend the sales pitch, are told that timeshare deals must be signed on the day.

The claims of a free holiday are a lure to get people to attend a long, high-pressure sales pitch for a timeshare scheme.

Statements that someone has won a free holiday appear to be misleading or deceptive conduct, as defined in section 12DA of the Australian Securities and Investments Commission Act 2001. Promotions which claim to offer a free service or prize have been found to amount to unconscionable conduct, especially when combined with high-pressure sales tactics. We see parallels between the sales tactics used by timeshare schemes and issues that came up in ACCC vs Lux distributors case where a company used a promise of a free vacuum service to get into homes and then aggressively sell vacuums.[11] The courts found that this was unconscionable conduct.

CHOICE urges ASIC to investigate the sales practices of the timeshare sector to determine if misleading or deceptive conduct is occurring. ASIC needs to restrict hawking practices in the industry and prevent practices that are clearly harmful to consumers.

Action on this matter should be prioritised. Concerns about harmful sales practices in this sector have been raised for more than a decade. In 2005, a Parliamentary Joint Committee on Corporations and Financial Services recommended that the Corporations Act be expanded to include special provisions against pressure selling at timeshare seminars and full refunds for those who fall victim to it. It also recommended anti-hawking measures that would restrict unsolicited contact aimed at steering people toward a sales seminar and require hawkers to disclose that the scratch cards are about getting people to the seminar; and a prohibition on now or never offers at timeshare seminars.[12]

Recommendation

- That ASIC conduct an investigation into sales practices used by timeshare schemes. Based on this, action should be taken against schemes using misleading claims.
- ASIC's regulatory guidance on timeshare sales should clearly outline what sales practices are unacceptable, lures of 'free holidays' and now-or-never deals.

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[11] See Australian Competition and Consumer Commission v Lux Distributors pty ltd [2013] fcafc 90

[12] See Parliamentary Joint Committee on Corporations and Financial Services (2005), *Timeshare: The Price of Leisure,* http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Completed_inquiries/2004-07/timeshare/report/index

Personal financial advice provided to timeshare members

As part of some timeshare sales processes, consumers are given personal financial advice. We are concerned that the Statements of Advice provided to these consumers is of poor quality, carbon-copied for each person attending a high-pressure sales pitch and fails to consider personal circumstances, particularly the financial impact due to the length of the contract.

We believe financial advisers telling people to enter a 99-year long contract with high fees for holidays (which can be substandard), may be breaching the best interests duty. Any financial advice provided to a future member of a timeshare scheme must consider the length of membership and total costs likely to be incurred when recommending any purchase.

Recommendations

- ASIC audits the personal financial advice provided as part of the sales of timeshare schemes to determine if advisers are compliant with the Corporations Act 2001, specifically the requirement to provide advice in the best interests of the client.
- ASIC provides clear guidance about the need to consider length of membership and total costs of the scheme as part of any financial advice provided.

4. Comment on current regulatory relief

Property valuation exemptions

Current regulatory relief exempts timesharing schemes from the requirement that scheme property be valued at regular intervals. This relief is provided on the basis that regular valuation of the scheme property is not generally relevant to the needs of members or the management of the time-sharing scheme.

CHOICE broadly agrees with this exemption if schemes are not promoted as a means to financial gain. However, while the financial value of a property is less important to timeshare consumers, the quality and upkeep of available properties is incredibly important. CHOICE has seen anecdotal evidence as well as received comments from timeshare customers indicating that the properties on offer are often of lesser quality than scheme members were led to expect.

ASIC should consider measures that would see timeshare owners and potential owners being given clearer information about the quality and upkeep of properties.

Loose leaf price list exemption

CHOICE generally supports the exemption that allows timeshare schemes to provide prices separately rather than have them within a constitution. However, the assumption behind this relief is incorrect. ASIC assumes that the price paid by a person acquiring an interest in a timeshare scheme will not affect the value of other members' interests, in contrast to many managed funds. However, the number of members greatly affects experience and use of a timeshare scheme, particularly the availability of properties for a holiday.

Other than general suggestions about the need to book properties as early as possible, timeshare schemes do not provide specific information about the number of members in relation to the number of available properties. CHOICE has received numerous reports about issues with property availability, with some members told that they need to book many months in advance to secure a holiday in a peak time (generally during school holidays).

If people knew about the availability challenges prior to purchase, it is unlikely that they would have become a scheme member. Greater protections are needed to inform consumers about the impact that the number of sales of the scheme will have on their use of properties. Timeshare scheme members should, at minimum, be told how many sales have been made or could be made with current capacity and how this may affect their use and experience of a timeshare scheme.

While some timeshare scheme operators make a general commitment to balancing the number of properties available with the number of scheme members, there is no transparency around this issue and scheme members are left to trust that the operators are operating in good faith in the regard.