

Inquiry	Parliamentary Joint Committee on Corporations and Financial Services, Oversight of the Australian Securities and Investments Commission, the Takeovers Panel and the Corporations Legislation No. 1 of the 46th Parliament
Agency	Australian Securities and Investments Commission
Question No.	017
Reference	Spoken, 18 June 2021, Hansard page reference 46 & 47
Committee member	Mr Julian Hill MP

Question

Mr HILL: I want to turn to timeshare schemes and then to the context of an enforcement discussion. Timeshare schemes are complex financial products that trap people into contracts, in effect, that can exceed 60 years and cost over \$450,000. They're often sold in very high pressure sales environments where salespeople can coerce people into purchasing timeshare memberships. Timeshare salespeople, I understand, are regulated as financial advisers and they have an obligation under the Corporations Act to act in the best interests of their customers. What were the findings of ASIC's review of the quality of financial advice in time share?

CHAIR: Mr Hill, could you ask that question again?

Mr HILL: What were the findings of ASIC's review of the quality of financial advice in time share? I understand there was a review recently completed.

Ms Chester: Mr Hill, could you just cite the document that you're referring to, because then we might be able to help you as to whether this is something that Commissioner Press would love to answer or that I might love to answer. No, Commissioner Press is shaking her head. So can you please take me—

Mr HILL: I hope it's not the hospital pass.

Ms Chester: Oh, I've had some of those this week; don't worry. Perhaps—going back to the chair's point about procedural fairness—if you could cite the report and the document I might be able to help you.

Mr HILL: Sure. My advice is that in December 2020 ASIC reported that they'd undertaken a review of the quality of financial advice in the timeshare industry and 'found high levels of noncompliance with the best interests duty and related obligations in part 7.7A of the Corporations Act'. That quote was taken from a media release published by ASIC, on your website, on 11 December 2020.

Ms Press: I am aware of that.

Ms Chester: I think Commissioner Press is correct. We'll take that question on notice, but my understanding is that that work was not completed, because we had to defer some work related to time share when COVID interrupted our world last year. The reason I'm a little confused is that we did do a substantial piece of work. We published our updated regulatory guide on time-sharing schemes in December 2020, and that followed a substantial review that we did and that

we published. We incorporated those results into the guide, where we had reviewed. I think it did go to the quality of financial advice, but it was not a document that we released in 2020. I'll have to take the question on notice so I don't mislead the committee with my response.

Mr HILL: Sure. The extract that I've got here—and I think this is from your release—says: Specifically, we found inadequate inquiries into: (a) whether the consumer could afford the financial commitments, at the time the advice was given and for the period of membership; (b) the consumer's objectives, particularly their interest in saving money on their holiday accommodation costs; and (c) reasonably foreseeable changes to the consumer's circumstances and the ongoing appropriateness of the membership. It then refers to your targeted review, which does seem to imply you've actually done a piece of work.

Ms Chester: We have, but what we haven't done is update the guidance any further. We did do a substantial paper, and I thought it was towards the end of 2019. It was published, and we had findings of significant consumer detriment and harm and the issues that you're pointing to, Mr Hill. We then were planning on—

Mr VAN MANEN: It is report 642, for your assistance.

Ms Chester: What date was that?

Mr VAN MANEN: That was in December 2019.

Ms Chester: There we go. My memory serves me right. It was December 2019, my very first year at ASIC. So that's where I got a bit confused about the dates. Sorry, Mr Hill. That then informed work that we were planning to do to consult further on reg guidance and what regulatory policy changes might be required. We put out a draft on that, and then we had to hit the pause button with COVID. So we stand by those previous findings. The issue we now have, though—and I think I answered this fully at a Senate estimates hearing two weeks ago, so there will be transcript of this, Mr Hill, which would be very helpful, and we're happy to provide a copy of that to you—is that we then had to hit the pause button on what we were planning to do with respect to time share, because we could not find similar evidence, and there had been a delay because of what had happened with COVID and the suppression of the local tourism industry. So we've put the industry on notice. We have issued some changes to the guidance recently. We haven't gone further with respect to the cooling-off period, but we're monitoring that now and we'll make a determination, probably in September, as to whether or not industry's behaving and whether anything further is required.

Mr HILL: Is that, in effect, the answer to my next question, which is about what you are actually doing to address 'high levels of noncompliance' with financial advice laws in the timeshare industry? Is there anything else you'd add to that?

Ms Chester: I think Commissioner Press is now interested in saying something here, which excites me extraordinarily. So, Commissioner Press, over to you in sunny Melbourne.

Ms Press: I am aware of the report that you're referring to now. We are doing investigations into some of that noncompliance, but, given the active investigations, it would be inappropriate to talk to you about what we're doing in that space.

Mr HILL: Okay. That's good to hear. Has ASIC ever taken legal action against a timeshare provider for breach of financial advice laws—ever? My understanding is no, but I'm happy to be corrected.

Mr Longo: I'll take that on notice.

Ms Press: My understanding is no, but I would need to take that on notice to be absolutely sure.

Mr HILL: No-one's aware of any, but we'll just run a line under it. Is there any reason it appears that ASIC's never taken any legal action against a timeshare provider for breaches of financial advice laws?

Ms Chester: We'll take that question on notice.

Mr HILL: It's not meant to be a trick question. I'm just curious. I don't understand your enforcement model.

Ms Chester: Time share has been around for a very long period of time, as you know, because we've got the major legacy problem of people who have been in these—

Mr HILL: So has ASIC.

Ms Chester: I'm aware of that—so we would need to go back and trawl through many documents and talk to the relevant staff to be able to fully answer that question. But we do have an enforcement action in train now, so there we go: history's changed.

Mr HILL: Maybe more than one. I heard a plural, but is it a plural or a singular, Ms Press? Ms Press: I think it's a singular. I could be incorrect.

Mr HILL: If you could advise whether it's one or more, or how many, that would be helpful. Ms Chester: It is in the public domain, though. We've made that public before: that there is an investigation underway. And—I just got a message from staff—it's 'investigation', without a final 's'.

Mr HILL: Sure. In May this year—so only a month ago—the consumer group Choice wrote a 'super complaint' to ASIC, alleging at least eight industry-wide breaches of the law and alleging that the industry regularly breaches financial advice laws. The particular scenario I've had put to me is whether a timeshare salesperson can be acting in the best interests of customers if they sell people into a timeshare product that can last over 60 years and cost \$450,000.

Ms Chester: You're right that we received from Choice their 'super complaint' on time share, and we did welcome that. A lot of the evidence that they pointed to was informed by the document that Mr van Manen helpfully reminded me of; it was released in December 2019. We did have an issue with some of the dated information that they had—that is, a lot of it was still pre COVID—but, as industry now knows from REP 642, Timeshare: consumer's experiences, we are currently investigating one major timeshare operator in relation to its advice and sales practices, and we expect to be file proceedings in the court in the next few months. Stakeholders are aware, so the deterrence effect is already alive and well. They are aware of the investigation but not of the identity of the firm involved.

Mr HILL: Is it fair for Australian consumers—and, no doubt, the legions of people listening at home to this hearing—to be concerned about the behaviour of some timeshare sales operators? Is that a reasonable conclusion for consumers to draw at this point, given the work you've done today?

Ms Chester: I think that's the only reasonable conclusion that can be drawn. With the guidance we put out a couple of months ago, we have heightened the limbo bar this year already for timeshare operators. We have a Damocles sword above the industry now. We have an investigation underway, and we've made it very clear to them that, if they don't clean up their act, we will go back and look at the reg policy settings and decide whether or not we go to a deferred sales model with a cooling-off period.

Mr HILL: Thank you. If you can provide any additional information, given the general interest in the topic—I say that in a genuine spirit—that would be helpful.

Ms Chester: We'd be happy to organise a briefing for you, as well, Mr Hill.

Mr HILL: The pointy end of the questions I'm asking is about the points based schemes that are being sold to consumers today. I understand that the issues about regulating legacy schemes are a little more complex, given the state-Commonwealth issues.

Ms Chester: That's right. You can't undo that noodle bowl and make those people whole. It's become a very illiquid market for these people to try to exit. All we can do is really try to address it in a forward-looking way.

Answer:

ASIC Report 642 *Timeshare: Consumers' experiences* ([REP 642](#)) released on 6 December 2019 presents key findings from qualitative research that explores consumers' experiences with timeshare from the initial approach and sale through to membership use and the exit process.

A qualitative methodological approach was used for the research, including 50 in-depth interviews exploring consumer experiences with the purchase and use of, and exit (or attempted exit) from, timeshare memberships in Australia. This large qualitative sample size was chosen to ensure that a range of sub-groups could be represented in the research in such numbers as to ensure confidence in the findings. A sample of this size also ensured that a broad range of consumer experiences could be canvassed.

The qualitative research involved an external research provider conducting in-depth interviews with consumers who had all received personal financial advice to advice to purchase a timeshare membership from one of the five main timeshare operators in Australia.

While all research has constraints and limitations, the objective of this research was to understand consumers' experiences, and a qualitative research design was the appropriate research methodology. Only qualitative research can provide an in-depth understanding of the motivations, behaviour and experiences of consumers. While broadly indicative, qualitative research is not intended to statistically represent the experiences of all consumers who have bought, used or exited timeshare memberships. Also, the data collected in this research was self-reported and therefore, like all self-reported data (e.g. surveys and interviews), it represents the subjective accounts of the participants. These accounts can be affected by memory constraints and natural behavioural biases. Further information about the research methodology is set out in detail in REP 642.

The key findings from the research were that, while some research participants were satisfied with their timeshare membership, there was a high level of discontent overall. Many research participants felt that they were not getting the expected value from their membership and that they had experienced financial stress because of unexpected changes to membership fees, or in some cases, to their personal circumstances.

ASIC File Reviews

ASIC conducted a file review of 20 pieces of timeshare advice provided in the course of timeshare sales in 2018-19. The purpose of this review was to help inform our work on updating the regulatory settings for timeshare.

The results of this work were reported as follows in REP 642:

“We found high levels of non-compliance with the best interests duty and related obligations. Specifically, we found:

- a) an imbalance of information—purported benefits were promoted without equal or appropriate prominence to risks, such as illiquidity, ongoing fees, long-term contracts, required booking periods and availability of accommodation;
- b) inadequate inquiries to determine whether the client could afford the financial commitments, at the time the advice was given and for the period of membership;
- c) inadequate inquiries into client objectives, particularly their interest in saving money on their holiday accommodation costs;
- d) inadequate inquiries into reasonably foreseeable changes to clients' circumstances and the ongoing appropriateness of the timeshare membership; and
- e) documentation showing a template advice process.” (ASIC REP 642, p6)

Following this review, we have commenced a formal investigation into one of the timeshare operators and enforcement action is being considered as part of this ongoing investigation.

Previous ASIC action

ASIC has previously taken regulatory actions in response to misconduct in relation to points-based time-sharing schemes, including in relation to misleading and deceptive conduct and unconscionable conduct in sales processes, improving disclosure to consumers and addressing responsible lending failures and unfair contract terms.

ASIC has issued the following media releases about these actions. The two media releases from 2002 are attached to this response as they are no longer available on ASIC's website. To assist the members of the Committee, Trendwest Resorts South Pacific Limited (referred to in the 2002 media releases) is now known as Wyndham Resorts South Pacific Limited.

- [18-253MR](#) *ULTIQA Lifestyle timeshare lender fined for responsible lending failures*

- [17-050MR](#) *Former Wyndham Vacation Resorts consultant jailed for defrauding clients*
- [17-218MR](#) *Former Wyndham Vacation Resorts consultant permanently banned*
- [16-418MR](#) *Timeshare operator to revise disclosure and sales practices following ASIC surveillance*
- [16-084MR](#) *Wyndham Vacation Resorts Consultant charged with defrauding clients*
- *02/400MR Timeshare seller gives undertakings (attached)*
- *02/420MR Timeshare seller gives undertakings to the Federal Court (attached)*

MEDIA RELEASE



ASIC

Australian Securities &
Investments Commission

Monday 4 November 2002

02/400

TIMESHARE SELLER GIVES UNDERTAKINGS

The Australian Securities and Investments Commission (ASIC) has applied to the Federal Court, Brisbane, and obtained undertakings from Trendwest Resorts South Pacific Limited (Trendwest).

Trendwest, Australia's largest timeshare provider, is the responsible entity for a timeshare scheme known as the Worldmark South Pacific Club. Trendwest encourages people to attend sales presentations and purchase holiday credits with offers of free holidays.

ASIC commenced an investigation into Trendwest after receiving complaints from people who owned holiday credits, and consumers who have attended Trendwest seminars.

Trendwest has provided the following undertakings to the Federal Court, until final hearing of the matter:

- it will provide a prospectus to each attendee or attending couple at the time of registration at the sales presentation; and
- it will not represent to attendees or attending couples that they are able to sell holiday credits through Century 21 Real Estate in Australia.

ASIC is seeking injunctions against Trendwest, restraining it from engaging in certain representations and conduct in the sale of holiday credits in the timeshare scheme, which ASIC allege are either false or misleading.

The Federal Court has set the matter down for an interlocutory hearing for injunctive relief on 20 November 2002.

For further information contact:

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MEDIA RELEASE



ASIC

Australian Securities &
Investments Commission

Thursday 21 November 2002

02/420

TIMESHARE SELLER PROVIDES UNDERTAKINGS TO THE FEDERAL COURT

Trendwest Resorts South Pacific Ltd, Australia's largest time share provider, yesterday gave undertakings to the Federal Court.

The undertakings arise from an ASIC investigation into Trendwest after it received complaints from consumers who purchased holiday credits from Trendwest, and other people who had attended Trendwest seminars.

ASIC began proceedings in the Federal Court, alleging that Trendwest was engaged in misleading and deceptive conduct, and unconscionable conduct, in relation to its sales practices.

'These undertakings should send a clear message to operators in the time share industry that ASIC will not tolerate sales practices that do not comply with the law. ASIC requires industry participants to provide potential investors with all the information they need to make an informed investment decision', said ASIC's Executive Director Consumer Protection, Mr Peter Kell.

Trendwest is the responsible entity for a time share scheme known as the Worldmark South Pacific Club. Trendwest sells holiday credits in the Club, which may be redeemed for holiday accommodation at various holiday destinations in Australia and overseas. As part of its marketing strategy, Trendwest encourages people to attend sales presentations in Brisbane, Sydney and Melbourne with the offer of free holidays.

ASIC was concerned about the conduct of Trendwest and its sales representatives at these presentations.

On 28 October 2002, ASIC filed an application in the Federal Court seeking interim and final orders against Trendwest. Following discussions with ASIC, Trendwest has provided a number of undertakings to the Court.

In relation to the managed investment timeshare scheme, WorldMark South Pacific Club, Trendwest has undertaken to provide a prospectus to each individual or couple attending the sales presentation at the time of registration, and to not make the following representations to consumers:

- the purchase of Holiday Credits is a good financial investment;
- over time, the resale price of Holiday Credits in a secondary market will remain stable or increase relative to their acquisition price;
- a strong market exists for the secondary sale of Holiday Credits; and

- consumers may sell Holiday Credits through Century 21 Real Estate in Australia.

In addition, as from 20 December 2002, Trendwest has agreed to:

- provide each purchaser of Holiday Credits a separate cooling-off statement, which is acknowledged by the purchaser; and
- require that each securities representative orally disclose commissions he or she receives as a result of recommending the purchase of Holiday Credits.

The Court ordered, by consent, that Trendwest pay ASIC's costs.

Trendwest has also entered into a Terms of Settlement with ASIC in relation to its prior conduct, agreeing to send a letter to the following people, inviting them to contact Trendwest if they believe they may have been adversely affected or influenced by Trendwest's sales practices;

- all persons on the Trendwest complaints register whose complaints relate to the sales process (except those who are no longer members, those who have had their money refunded, and those whose complaint is not related to the sales process).

Trendwest has further agreed to place advertisements in national and metropolitan newspapers, inviting affected persons to write to them.

Trendwest has agreed to review all responses received within 90 days of the publication of the advertisements and letters. If there are reasonable grounds to conclude that any purchase of Holiday Credits may have been made as a result of a conduct issue, Trendwest has agreed to negotiate with the purchaser to resolve the complaint.

In circumstances where the complaint cannot be resolved, Trendwest must advise the complainant of his or her right of recourse to the Financial Industry Complaints Service (FICS). If requested by the complainant, Trendwest must refer any unresolved matters to FICS for deliberation and resolution.

Trendwest is required to provide a report to ASIC of the outcome of the reviews, at six monthly intervals, for a period of 18 months.

For further information contact:

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