

Parliamentary Joint Committee on Corporations and Financial Services
Response to Question on Notice
Timeshare

Question

1. Can ASIC provide copies of two research project reports, including all questions asked and findings made, conducted by ASIC in regard to the timeshare industry with reference to both research projects examining:

(a) understanding the consumer experience with timeshare; and

(b) understanding the financial benefits which can be received from owning a timeshare product.

1(a) Research report – understanding the consumer experience with timeshare schemes (“Timeshare Consumer Research”)

ASIC provides two copies of the Timeshare Consumer Research which describes the research methodology, including the questions asked, and findings made.

One copy of the Timeshare Consumer Research contains redactions of information that may be personal information within the meaning of section 6 of the Privacy Act 1998 (**Redacted Timeshare Consumer Research**). The other copy does not contain redactions ().

Unredacted Timeshare Consumer Research

The Unredacted Timeshare Consumer Research includes case studies about individual participant experiences that may include information which constitutes personal information within the meaning of section 6 of the Privacy Act 1988. While steps were taken to de-identify case studies in the Unredacted Timeshare Consumer Research, it may still provide sufficient information to identify individuals. ASIC has not consulted with affected persons to obtain their views of any potential harm that may be caused to them as a result of disclosing the Unredacted Timeshare Consumer Research, or sought to gain their consent for the case studies to be made publicly available, before providing the Unredacted Timeshare Consumer Research to the Senator and Parliament. Therefore,

Summary of Unredacted Timeshare Consumer Research

ASIC intends to release a summary of the Unredacted Timeshare Consumer Research by the end of November 2019. ASIC intends to include four case studies in this summary report. ASIC will soon be attempting to gain consent from the four affected persons, whose case studies are intended to be included in the summary report.

Redacted Timeshare Consumer Research

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ASIC has provided the Redacted Timeshare Consumer Research and requests that if the Senator or Parliament are minded to publish the research, this version be published.

1(b) Research report – understanding the financial benefits (“Financial Value of Timeshare Membership Research”).

ASIC provides a copy of the Financial Value of Timeshare Membership Research which contains a description of the research methodology and research findings.

The Financial Value of Timeshare Research was undertaken for internal purposes to contribute to ASIC’s broader inquiries, aimed at improving our understanding of timeshare schemes and the potential benefits and risks for consumers of timeshare products. As such, the research is intended to be informative rather than conclusive and forms only part of the fact-base ASIC will use to refine its policy settings. ASIC does not currently intend to release the report or a summary of the report publicly.

2. Can ASIC advise in each case who conducted each survey and at what cost to the taxpayer?

Research	Who conducted research	Cost to taxpayer
Timeshare Consumer Research	Heartward Pty Ltd ACN: 630 452 532	\$71,850*
Financial Value of Timeshare Research	Taylor Fry Pty Ltd ACN: 087 047 809	\$45,454*

*These figures exclude GST. ASIC receives GST credits.

3. Was the timeshare industry consulted in regard to both those project reports, before ASIC conducted them?

ASIC did not consult with the timeshare industry or any other party, other than the researchers, to formulate the research methodologies. However, ASIC did speak to the timeshare industry prior to undertaking the research projects.

In April 2019, ASIC spoke with and sent emails to each of the licensees involved in the research projects. The nature of this correspondence was to introduce the research and to inform the licensees of the type of information that would be requested from them to undertake the research, such as a list of clients who had been provided advice to purchase a timeshare scheme. For some timeshare schemes involved in the Financial Value of Timeshare Membership Research, price information was publicly available but where it was not it was requested from Timeshare operators.

4. Will those reports be made available to the industry for their input and feedback?

ASIC intends to release publicly a summary of the Unredacted Timeshare Consumer Research by the end of November 2019. ASIC is considering if and how this summary should be shared with industry prior to its public release. As explained in

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response to question 1, ASIC does not intend to release a copy of the Financial Value of Timeshare Research publicly.

5. Of ASIC personnel involved in the commissioning of those reports and subsequent analysis, how many of those staff have actual timeshare industry experience or intimate industry knowledge of how the timeshare industry works?

The ASIC personnel involved in commissioning the research projects have a range of skill sets. The core project team consisted of one consumer researcher, a lawyer and three people with direct financial advice experience. Whilst none of these people have actual timeshare industry experience, combined they are experienced in undertaking consumer research, researching financial products and assessing the quality of financial advice on broad range of financial products. The project team have been considering timeshare financial advice issues since August 2018 and have worked closely with other ASIC teams who have a range of specialities including managed investments, credit and behavioural science.

6. In regard to the updating of RG-160, of the ASIC staff involved, how many have timeshare industry expertise or knowledge? Have any of them ever worked in the timeshare industry?

Staff involved in the update of RG 160 have had experience in regulation of time-share schemes since the introduction of the *Managed Investments Act*. Their experience includes undertaking surveillance of the operators of time-share schemes, dealing with complaints about time-share schemes, consideration of applications from the time-share industry for relief from and modification to the *Corporations Act* and liaison and engagement with the members of the time-share industry. The review of RG 160 has involved staff from a number of different teams within ASIC across a range of specialities including managed investments, financial advice, credit, legal skills and behavioural science. None of the staff currently working on the update of RG 160 have worked in the timeshare industry.

7. RG-160 was due be released two and half years ago. Why has it been delayed? When will it be released?

In November 2016 ASIC released Consultation Paper 272 Remaking ASIC Class Orders on time-sharing schemes (CP 272) because the relief provided to operators of time-sharing schemes was going to sunset or cease on 1 April 2017 and 1 October 2017. As outlined at that time, ASIC's previous substantive review of and public consultation on the policy settings in relation to time-sharing schemes occurred in 2006. Therefore, ASIC decided to consult in CP 272 on whether the policy settings remained appropriate.

Submissions to CP 272 closed on 12 January 2017. ASIC received 8 responses with widely divergent feedback from industry and consumer representatives. As a result, and in line with the timing stated in CP 272, we released a new legislative instrument, ASIC Corporations (Time-sharing Schemes) Instrument 2017/272 (Time-sharing Schemes Instrument), on 21 March 2017, which has essentially continued the existing relief.

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ASIC issued *Report 522 Response to submissions on CP 272 Remaking ASIC Class Orders on time-sharing schemes* (REP 522) on 12 April 2017 in which we stated we would take a two phased approach to the review of the policy, with phase one being to issue the Time-sharing Schemes Instrument and phase two being to implement more substantive changes to the current policy settings after further consultation on the feedback received in response to CP 272.

After the release of REP 522, ASIC commenced consultation with respondents to CP 272. This consultation included holding a roundtable with both industry and consumer representatives and ongoing engagement between July and December 2017 with industry to clarify aspects of the proposals and obtain information to assist ASIC's consideration of proposed changes to the policy settings.

On 21 December 2017 ASIC updated industry and consumer representatives that a range of proposed amendments had been considered and approved internally and ASIC was seeking meetings to go through the proposed amendments that included a proposal to extend the existing cooling-off (opt-out) period by an additional seven days. The Office of Best Practice Regulation (OBPR) notified ASIC at this time that a Regulatory Impact Statement (RIS) would be required. At that time we indicated that we were aiming to have the revised policy issued by mid-2018.

Between January 2018 and April 2018 ASIC undertook further consultation with industry, including ATHOC members and representatives of their linked credit providers, to further develop a number of the proposed changes. These meetings included detailed discussion of the proposed policy changes to ensure industry was appropriately consulted on the final nature of significant changes to cooling-off, fees and costs disclosure, hardship arrangements and subject to finance arrangements. Feedback from industry was taken into consideration.

We have continued to provide updates and request information from industry by email and telephone over the course of our work, including an update on our website on 22 August 2018 on the progress of our review in which we stated that we would release the changes to the policy settings as soon as possible.

ASIC met with consumer groups in February 2018 to update them on the proposed amendments and seek feedback. ASIC has from time-to-time provided updates to these groups.

During the second half of 2018 members of the team working on this project were diverted to respond to issues arising from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. However, we continued to progress the various materials including the Regulatory Impact Statement (RIS), with a view to releasing the revised proposals by the end of 2018.

ASIC also sought legal advice from the Australian Government Solicitor (AGS) on whether our proposed approach to hardship arrangements would result in an acquisition of property otherwise than on just terms under s51 (xxxii) of the Constitution of Australia. We received the final advice from AGS on 27 June 2019.

OBPR advised ASIC in July 2019 that the RIS on the proposed changes to the policy could be certified under the Final Assessment process.

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Between August 2018 and June 2019 ASIC undertook a review of financial advice provided on timeshare and between March 2019 and July 2019 ASIC commissioned two research reports. While this work did not delay our work on the revised policy settings, the results of the advice review and the research projects have given ASIC reason to give further consideration to the proposed changes to the policy settings that continue the cooling-off (opt-out) arrangements.

Our approach remains subject to our internal approval processes which we are aiming to complete before the end of 2019.

8. In the last 24 months, how many times has ASIC met with CHOICE representatives? Who from CHOICE attended those meetings be they in person or via teleconference calls?

CHOICE was one of the consumer representative bodies that provided submissions in response to CP 272 and ASIC has met with them to discuss their submission and the progress of our work on time-share over time. We provide the following information on meetings with CHOICE specifically about time-share or on other meetings with CHOICE that may have included discussions on time-share.

Since October 2017, ASIC has met with CHOICE three times to specifically discuss the progress of our work on time-share. [REDACTED]

[REDACTED]

ASIC's Consumer Advisory Panel (CAP) comprises representatives from consumer and investor groups and meets three times per year to discuss a broad range of consumer and investor issues. Choice is represented on CAP [REDACTED]

[REDACTED]

ASIC's meetings with Choice have assisted ASIC's understanding of potential consumer harms in respect of time-share and provide an alternate view to those expressed by industry in our consideration of our policy settings.

As an interested stakeholder, CHOICE are generally kept informed of ASIC's inquiries through meetings held with them specifically and their involvement in our Consumer Advisor Panel but CHOICE had no involvement in the nature or direction of the research activities undertaken. Their views have been considered in the formulation of our proposed amendments to RG 160 through our consultation on RG 160.

[REDACTED]

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[REDACTED]