

Chapter 1

Background to the inquiry

1.1 In Australia, timeshare schemes have been subject to regulation for twenty years. The regulatory environment relating to financial services has recently been reviewed and a new uniform compliance framework for the financial services industry implemented.

1.2 Until the introduction of the *Managed Investments Act* in 1998 timeshare schemes had been regulated as 'prescribed interests' under the Corporations Law. The legislation redefined 'prescribed interests' as 'managed investments', inserting a new set of compliance requirements into the Corporations Act. The implementation of the *Financial Services Reform Act 2001* brought a further wave of regulatory change for timeshare schemes, which became subject to licensing requirements as financial products.

1.3 Since the introduction of the new regime, representatives of the Australian timeshare industry have approached the Parliamentary Joint Committee on Corporations and Financial Services with concerns about the regulation of timeshare schemes. They have argued that regulation as an investment has made timeshare 'a square peg in a round hole', placing excessive constraints on the industry while, at the same time, confusing consumers about the true nature of the product.

1.4 The Committee meanwhile maintained a watching brief on Australian Securities and Investments Commission enforcement activities in relation to timeshare. Compared with the transition period to financial reform, there appears to have been a decline in these. Over the same period, the volume of timeshare sales has markedly increased. Taking these two things into account, the Committee determined that scheme operators and consumers may benefit from a timely review of the regulatory arrangements governing timeshare.

Conduct of the inquiry

1.5 On 8 December 2004 the Committee resolved to conduct an inquiry into the regulation of the timeshare industry to determine:

- the effectiveness of the current regulatory arrangements for the timeshare industry under the *Corporations Act 2001*, including:
 - whether the current regulatory arrangements are confusing to consumers and inhibit the development of industry;
 - whether the current regulatory arrangements place an undue compliance cost on industry;

- whether the current regulatory arrangements are effective in protecting consumers of timeshare products.
- advantages and disadvantages of possible models for reform of the regulatory arrangements applying to the timeshare industry, including:
 - self-regulation of the industry on a national basis;
 - alternatives to coverage under the *Corporations Act 2001*, either by separate Commonwealth legislation or state and territory legislation.

1.6 Details of the inquiry were placed on the Committee's website. It was also advertised in two national newspapers, the *Australian* and the *Australian Financial Review*, on 15 December 2004. Written submissions were invited from interested parties to be lodged by 18 February 2005. The Committee contacted a wide range of industry participants, peak bodies, experts and state and federal government agencies inviting them to participate in the inquiry.

1.7 Altogether 23 submissions were received. These are listed in **appendix 1**.

1.8 The Committee held three public hearings and visited two timeshare resorts. Details of these appear in **appendix 2**. Hansard records of the hearings are available at: www.apf.gov.au/hansard

Inquiry report

1.9 The report of the inquiry is presented in six chapters.

1.10 The first chapter, this one, sets out the details of the inquiry process and provides an outline of the Committee's report.

1.11 The second chapter describes the features of the regulatory regime governing timeshare schemes in Australia. It provides a legal and general definition of timeshare, and a profile of the timeshare industry, both international and local.

1.12 The third chapter tests the contention that timeshare is not properly regulated as a managed investment. It adopts a broad approach, looking first at the historical situation of the product within the managed investment regime, then at some reported advantages and disadvantages of the current regulation of timeshare. Finally, Australia's regulation of timeshare as a securities product is assessed in the international context, and conclusions are drawn about the merits of Commonwealth regulation of timeshare schemes.

1.13 The fourth chapter assesses evidence on the nature of timeshare to establish which alternative statutory approach might more effectively regulate the product. The relevant provisions in the *Trade Practices Act 1974* and the *Corporations Act 2001* are compared to establish the best fit by legal definition. The chapter arrives at the view that the *Corporations Act* provides the best framework for consumer protection but that a dedicated timeshare chapter could ensure that framework is appropriate for timeshare.

1.14 The fifth chapter sets out suggestions to address exceptional features of the timeshare product requiring dedicated regulation. A focus in the chapter is the relationship between market signals, marketing costs and the pricing of timeshare. The chapter takes the view that the dynamic between these may be conducive to inappropriate selling practices commonly associated with the industry, and may drive oligopolistic tendencies and uncompetitive market practices. Recommendations are made to deal directly with these problems. The chapter evaluates industry claims about excessive compliance requirements for licensing, disclosure, training and cooling-off periods in this context.

1.15 The final chapter, chapter six, addresses problems peculiar to fully sold schemes. These schemes are exempt from the full effect of the Corporations Act, but only if their managers do not participate in secondary sales of timeshare, which they must do to keep their resorts viable. As the smallest group within a comparatively small industry, the financial services requirements proved the most onerous for fully sold schemes. This chapter of the report aims to ameliorate their situation by recommending proposals to address title reclamation, resale and resort management issues.

