Australian timeshare regulation: when will the changes stop

- The Australian timeshare industry is already heavily regulated, however with new regulations pending everyone is wondering when the changes and mounting regulation will stop.
- How is industry supposed to be maintained or grow with continually changing regulations and the uncertainty that comes with anticipated regulation?
- Continually increasing disclosure requirements and consumer protection measures indicate to consumers that there are problems existing in the industry with the products or the schemes.

Classification issues

The timeshare industry in Australia is primality regulated under the Corporations Act 2001. This is because timeshare is defined as a "managed investment scheme" which is a type of financial or investment product.

Classifying timeshare as an "investment product" is contentious as timeshare schemes are actually a "lifestyle product". Timeshare interests are not sold as financial investments designed to generate a financial return but rather as lifestyle products giving the consumer the right to book a certain number of years' worth of holidays in the future based on today's accommodation rates.

The current classification as an "investment product" has led to mounting regulation which causes confusion and substantial costs of compliance for operators.

Many of changes and new regulations areas a result of the classification of timeshare as an "investment product" based on the other types of schemes that fall under that definition.

The World Tourism Organization now rates timeshare as the fastest growing segment of the world tourism and leisure industry. However the intention to further regulate the industry makes timeshare business in Australia more difficult and unattractive to both consumers and operators.

The mountain of regulation

Following is a summary of some of the existing regulatory changes to the timeshare industry since its conception:

- Timeshare schemes are regulated by the Australian Securities and Investments Commission (**ASIC**), as financial products. ASIC issued its first policy statement on timeshare schemes, Policy Statement 66, in 1993. The statement set out the types of schemes subject to regulation and provided exemptions from certain aspects of their regulation as 'prescribed interests'.

- In 1994 the Australian Timeshare and Holiday Ownership Council was formed to improve the image of the industry. It developed an industry code of practice and provided training and dispute resolution services.

- Corporate law reforms were undertaken in the late 1990s aimed to:
    - raise industry standards; and
    - provide more protection to consumers.

- In 2000 ASIC issued Policy Statement 160: Time-Sharing Schemes after the introduction of the MIA. It sets out both concessions and additional requirements ASIC has determined for the industry. This Policy Statement has been superseded by Regulatory Guides in 2007, 2008 and 2012 that contain similar but revised content.

- ASIC have issued various other class orders providing exemptions from certain provisions, or modifying or clarifying the operation of certain provisions, of the Corporations Act.

- The implementation of the Financial Services Reform Act 2001 (**FSR Act**) brought further regulatory change for timeshare schemes, which became subject to licensing requirements as financial products. Under the amendments introduced by the FSR Act any promoter involved in the advertising, marketing, selling or promoting of interests in a managed investment scheme is operating a financial service business and must hold an Australian Financial Services licence for the type of product sold by the business.

Pipeline regulation

The following future review and regulation of the Australian timeshare industry has been announced:

- As a result of a number of legislative instruments expiring and also other updates required by ASIC, ASIC issued consultation paper 272 in late 2016. ASIC is now in the process of implementing changes for the policy settings for regulating timeshare schemes. These changes will include (i) extensions of the cooling off periods; (ii) increased disclosure obligations in relation to fees, costs and key features of the scheme; (iii) the inclusion of a prominent warning and summary statement in Public Disclosure Statements; (iv) limiting shortfall payments for forfeiting membership in the scheme as a result of financial hardship; (v) requiring operators of points-based schemes to conduct annual audits of points; and (vi) requiring audit of the trust account annually.
- The Australian Government banned most commissions for financial advisers as part of the Future of Financial Advice reforms in 2010, but granted numerous exemptions including for the timeshare industry. The Government at that time recognised that timeshare schemes are a significantly different product to other financial products and that was the reason such exemption was granted. On 1 August 2019 the Australian Government announced that in response to the final report of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* in 2022 it will review the exemptions to the ban on conflicted remuneration which would include a review of commissions payable for timeshare sales. The Treasurer and ASIC have confirmed the government would review whether it’s appropriate for timeshare companies to continue paying commissions to sales staff. The review will occur as part of the review of measures to improve the quality of financial advice.

Likely outcomes

The Australian Timeshare and Holiday Ownership Council has published the Australian Timeshare Industry Statistics on its website. It states that:

> "There were approximately 178,000 owners of timeshare in Australia in 2016. Approximately 70% of owners surveyed indicated they were either very satisfied or satisfied with their timeshare purchase …
>
> There were a total of 99 timeshare resorts in Australia in December 2016 and 5,425 timeshare resorts worldwide …
>
> In 2017 the industry which contributed more than $692.5M annually directly into the Australian economy."

With satisfied consumers, an underdeveloped industry and great contributions to the Australian economy, it is surprising that the Australian Government will not give the industry an opportunity to develop and prosper.

The present approach in Australia to timeshare places unnecessary restrictions and high compliance costs on the industry which restricts existing operators from growing and means reluctance from new operators to enter the market.

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