



**AUSTRALIAN TIMESHARE**  
HOLIDAY OWNERSHIP COUNCIL

**ANNUAL INDUSTRY REPORT TO ASIC**

**For the Calendar Year 2020**

**Submitted, May 2021**

## **1. PERFORMANCE AS A SUPERVISOR (8.1.5)**

Following the election of Directors/ Office Bearers following the September 2020 AGM, the Code Administrative Committee elected by the Board for 2020-2021 are:

- Enzo Daquino (Independent Chair)
- Ramy Filo – Classic Holidays
- Donna Borthwick (Alternate Board Director- Wyndham Destinations)
- Brett Becker – RCI (to replace any member who has a conflict of interest)

ATHOC can discipline Members who breach ATHOC's Constitution, Code of Practice or the ATHOC Agreement.

ATHOC has undertaken investigations in relation to consumer issues raised, and also regarding public feedback.

The Board of ATHOC is committed to undertaking disciplinary action as necessary.

## **2. SUMMARY OF MAJOR ISSUES BEING ADDRESSED**

- **COVID19**
- ***Opt-in and the impact that it would have on the industry and the timeshare owners***
- ***Consultation Paper 272 ("CP 272"):***

ATHOC notes that the revised RG160 and ASIC Instrument (Time-sharing Schemes) was finally released in December 2020. Companies are currently working towards implementing the changes within the timelines given and identifying the challenges imposed by these changes.

- **FASEA Code of Ethics**

ATHOC have been working closely with FASEA to try and obtain guidance from FASEA as to the application of the Code for timeshare advisers, as opposed to the financial planning industry. We do not believe that current guidance is appropriate or accurately reflects the legislative exemption provided to timeshare advisers which allows payment of commission based on sales volume. The guidance issued by FASEA indicates that timeshare consultants may be in breach of standard 3 of the Code if they are remunerated in this manner. ATHOC member companies undertaking current sales have advised ATHOC that notification of a potential breach was given to ASIC in early 2020. (ATHOC notes this report is based on the 2020 year and ATHOC is aware that changes to FASEA and the creation of a single disciplinary body have been announced by government.)

- **RG146 Industry Training**

We understand that RG146 remains under review. Timeshare consultants are currently exempt from the educational obligations imposed on financial advisers. Consultation did take place throughout 2020 with PWC on behalf of ASIC, however no feedback on review has been received from ASIC to date.

We note that ASIC has recently advised that the review of RG146 has been put on hold.

ATHOC members will continue to comply with the training requirements imposed by RG146.

- **Submissions**

ATHOC made several submissions to Treasury and ASIC on behalf of the industry this year regarding various proposed legislative changes that could impact the industry and its members.

## **OTHER ISSUES ADDRESSED OR CONSIDERED**

### **1. Clubs Winding up - the Difficulty and Cost Associated**

ATHOC did provide this example in its report last year but note that unless there is a change in the process for winding up, the problem will continue to disadvantage owners. We have also previously provided the process for winding up in New Zealand below as an example that could be put in place in Australia.

Example:

Don Pancho Beach Resort held an EGM in May 2017 and voted to sell the property and windup the timeshare scheme.

The court process commenced shortly thereafter and included a number of conditions, including public advertising for members with no contact details, issuing documents to all title holders. Ensuring that all paper titles were returned and if not, keeping of adequate proof of efforts to contact.

Trustees were appointed in June 2017 to sell the property. The property went on the market late 2018 and unfortunately the sale process took longer as there were no interested parties on the close of the Expression of Interest. The Resort did eventually sell in June 2019 and settled in September 2019 for a price slightly higher than the valuation.

Trustees were discharged on 12<sup>th</sup> December 2019 and Liquidators were appointed on 12<sup>th</sup> December 2019. The final distribution to members was made in December, 2020.

This has been a very expensive, complex and lengthy process which in turn disadvantages all owners as all costs are removed prior to a payment to owners.

- **Process for Winding Up Club in New Zealand**

Once a meeting of members has agreed by Special Resolution at an EGM to wind the Club up, there is an objection period of 28 days of which all owners can have their say. The High Court can then cancel the Unit Plan without the need to obtain all paper titles. There is no legal need to appoint Trustees or liquidators as a solicitor can manage the distribution of funds.

The Club must show proof of the process you have taken to try to find all owners, which could include skip tracing through collection agencies and public notice advertising.

Should the Club not be able to contact an owner, their distribution will go to unclaimed monies if they are entitled to a distribution when outstanding levies have been deducted.

A much quicker process resulting in the saving of substantial money that is disbursed to owners.

### **2. Timeshare Exit Companies**

ATHOC has concerns with some timeshare "Exit Companies" now operating in Australia who appear to be charging vulnerable consumers a significant fee with a promise to get them out of their timeshare ownership.

As ASIC is aware, an 'exit' from a legacy scheme can only be achieved by the owner transferring their timeshare (being, for a title-based scheme, the owner's tenant-in-common interest in the property and share or interest in the company and, for a member-controlled club, the owner's share or interest in the company or unit in the unit trust) to another person and, due to restrictions in the scheme constitution and the structure of the same, there is no ability to cancel or buyback a timeshare interest in a legacy scheme.

### **Exit Company Process**

The owners must sign documentation that they will not make any contact with their timeshare company and have previously been advised not to pay their annual levies.

The Exit Company does not check whether consumers have been in contact with their scheme's internal dispute resolution scheme, nor advise them that a free and independent complaint service is available via AFCA. Instead, the Exit Company in its capacity as a representative of the consumer has made contact with AFCA in the attempt to utilise this free external dispute process for and on behalf of the consumer, in return for the fee they have been paid by the consumer.

ATHOC's concerns regarding this practice have been raised directly with ASIC in November 2018 but were advised by ASIC, that this was not within their jurisdiction. ATHOC once again raises the potential consumer harm and breaches of the consumer protection provisions of the Corporations Act and ASIC Act (particularly those related to misleading and deceptive conduct).

### **3. Legacy Schemes**

As mentioned in previous reports, ATHOC has had many discussions with ASIC on the issue of finding delinquent owners. These issues are still ongoing with the impact being shown in the above example regarding the sale of Don Pancho Resort. Recovery of the delinquent owner Certificate of Title is a problem in all states except Queensland and Western Australia. In particular, in NSW we face the following issues;

- Substituted service is costly and difficult as many of the debtors are not contactable despite skip tracing efforts
- If delinquent member is found, the Sheriff will seize the title, however, the debt has to be at least \$10k and the value going to auction must also be at least \$10k (limited resale market)
- Must use a licenced Valuer to value the fractional interest
- Must use Crowns Solicitors office for transfers

Some NSW Resorts are carrying delinquent debtors at an average 10% so a resolve to this issue is crucial to the ongoing viability of these Resorts.

### **4. Splitting of Shares and Titles**

This is ongoing with some Legacy Schemes. Whilst Resorts can forfeit a share they cannot own shares in their own timeshare club. They also have no power to recover the Certificate of Title (except in Queensland and Western Australia) which in most timeshare schemes is tied to the share.

## **5. Resale of product**

Specifically, traditional sold-out legacy schemes - does remain an issue with constant discussion on how this situation can be improved for the benefit of consumers.

### **3. COMPLAINTS REFERRED TO ATHOC**

#### **3.1 Complaints from Members against other Members**

Under the Code of Practice, written complaints by Members against other Members must be referred to the Board.

- During the 2020 year, no formal complaints were received from Members about Members.

#### **3.2 Complaints from consumers/owners against Members**

ATHOC members undertaking sales to consumers must maintain a membership with AFCA. All operators with an AFSL, and those who have applied to ASIC for relief from having a licence and able to sell less than 5% of its interests must be a member of an external complaints body.

Any consumer complaints received by ATHOC are initially referred to the relevant Members Internal dispute resolution Scheme for review, and if the result is unsatisfactory, the consumer can escalate their complaint to AFCA as applicable.

ATHOC requires Members annually to provide a list of all complaints they have received.

Should a complaint be received by a consumer (or member) advising a breach of the ATHOC Code of Practice, it is then considered by the Code Administrative Committee.

In the 2020 calendar year there has been 1 dispute dealt with by the Code Administrative Committee.

If ATHOC determines that any complaints are not appropriately resolved by Members, ATHOC will escalate the complaint to the relevant regulatory body in that State or directly to AFCA dependant on the circumstances of the complaint.

The office of ATHOC continues to work with State and Federal Regulatory bodies as necessary in providing information and assistance to consumers.

Consumers are referred to ATHOC by these bodies to verify membership of the organisation, information about ATHOC'S Code of Practice and Ethics and follow-through with any matters relating to Members.

ATHOC also reports any inappropriate activity by non-member companies.

ATHOC will continue to require that all members complete their annual Membership compliance obligations and provide their complaints log annually to ATHOC.

**4. Change in ATHOC Membership**

- Vacation Village Resort did not renew its membership as the members voted to wind up the club. The Club has sold and will settle on 15 July, 2021.
- ULTIQA did not renew their ATHOC membership for 2020-2021

**Appendixes**

**Appendix 1**

Lists the number of complaints received by members and the time frame that they are dealt with.

**Appendix 2**

Lists the number of complaints received by AFCA and their determinations.

**APPENDIX 1**

**Australian Timeshare & Holiday Ownership Council Ltd**

**Complaints Report 01/01/2020 to 31/12/2020**

The log below is collated from the complaints reporting provided by ATHOC Members.

Three key issues identified apart from complaints process this year, although a little distorted due to COVID 19 are:

- Availability
- Annual Levies (having to pay due to restrictions)
- Hardship or change of circumstances

Approximately 184,000 families own timeshare in Australia, with around 1 million Australians involved in timeshare, either directly or indirectly.

We note that the complaints have decreased from the 2019 Calendar year.

<b>Number of complaints</b>	<b>548</b>
<b>Number Resolved Internally</b>	<b>519</b>
<b>Number Resolved within 1 month</b>	<b>313</b>
<b>Number Resolved 1-2 months</b>	<b>90</b>
<b>Number Resolved 2-3 months</b>	<b>9</b>
<b>Number Resolved in 3+ months</b>	<b>43</b>
<b>Number Referred Elsewhere</b>	<b>25</b>

**Note:** The above period relates to the time within which the file is closed/remediation made – it does not relate to the date on which the final determination was given by the Member to the consumer. All ATHOC members are aware of the regulatory timeframe within which they must review and respond to all complaints and the guidance provided by ASIC in *Regulatory Guide 165 Licensing: Internal and external dispute resolution*.

**APPENDIX 2 – Disputes Registered with AFCA and provided by AFCA for the 2020 calendar year**

1. We received 54 timeshare complaints.
2. We accepted 33 timeshare complaints.
3. We closed 54 timeshare complaints.
4. The outcomes of the closed complaints were:

Resolved by FF	23	43%
Negotiation	13	24%
Outside Rules	6	11%
Conciliation	6	11%
Discontinued	5	9%
Decision in Favour of Complainant	1	2%
<b>Total</b>	<b>54</b>	