



AUSTRALIAN TIMESHARE
HOLIDAY OWNERSHIP COUNCIL

ANNUAL INDUSTRY REPORT TO ASIC

For the Calendar Year 2019

Submitted, April 2020

1. PERFORMANCE AS A SUPERVISOR (8.1.5)

Following the election of Directors/ Office Bearers following the September 2019 AGM, the Code Administrative Committee elected by the Board for 2019 are:

- Enzo Daquino (Independent Chair)
- Stephanie Kewming – Korora Bay Resort
- Donna Borthwick (Alternate Board Director- Wyndham Destinations)

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

- ***Consultation Paper 272 ("CP 272"):***

ASIC released Consultation Paper 272 in November 2016 setting out ASIC's proposals regarding relief and obligations for regulated timeshare products under the managed investment, AFS licensing and product disclosure provisions of the Corporations Act. This review was triggered by the then pending expiry or 'sunseting' of the existing legislative instruments ASIC had issued providing conditional relief for timeshare schemes.

ASIC's original time frame for releasing its new legislative instrument and updated guidance (in the form of a re-issued Regulatory Guide 160) (**RG 160**) was March 2017. However, in March 2017, ASIC remade the existing legislative instruments (which had the effect of extending the existing relief) on the basis ASIC needed to consult further on its new proposals.

ATHOC engaged with, and made numerous submissions to, ASIC during 2017 and 2018 on ASIC's new proposals. This process culminated in ASIC's media release of 22 August 2018 outlining its key policy changes regarding the regulation of timeshare.

ATHOC understood, from both ASIC's media release and our discussions with ASIC, that this represented ASIC's guidance on timeshare moving forward, and that ASIC would expediently work towards finalising the required legislative instrument and revised RG 160.

However, in 2019, ASIC advised they were re-considering the imposition of an opt-in regime for the sale of timeshare products (instead of extending the cooling-off regime). ATHOC has made extensive submissions to ASIC arguing against the imposition of, and justification for, an opt-in regime or the need for any public consultation.

In December 2019, ASIC released Report 642 summarising the key findings of a limited consumer experience research which ASIC commissioned Heartward Strategic to undertake as well as summarising the findings from ASIC's targeted review of a small sample of timeshare advice. Further, Report 642 stated that an updated version of RG 160 will be released early

2020. ASIC also commissioned Taylor Fry to prepare a report for the purpose of understanding the financial value of timeshare membership for consumers.

ATHOC and its Members are still awaiting the issue of the revised RG160.

- **Compliance Monitoring Body**

Substantial time and money was spent throughout 2019 in the setup of the Australian Timeshare Compliance Body (ATCB). This has now been dissolved following a decision by Government for the compliance bodies not to proceed. This decision will save the industry in the vicinity of \$800,000 per annum in ongoing costs.

- **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 way in which timeshare advisers provide advice. Despite government providing a carve-out to the conflicted remuneration prohibition under the Corporations Act 2001, the application of the Code has the potential consequence of every timeshare adviser being in breach of the Code as they are paid by way of commissions. ATHOC member companies undertaking current sales advised ATHOC that they would issue a breach notice to ASIC as a result of the potential breach of the FASEA Code effective from 1 January 2020.

- **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 or its members.

- **RG146 Industry Training**

ATHOC has followed up ASIC regarding replacement training for the RG146 given the exemption from more formal training. No decision or consultation has yet taken place.

OTHER ISSUES ADDRESSED OR CONSIDERED

1. Clubs Winding up - the Difficulty and Cost Associated

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 12th December 2019.

Liquidators were appointed on 12th December 2019 and have indicated it may take 6- 12 weeks - to wind up the timeshare scheme and disburse proceeds to members, that hasn't occurred to date.

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 is able to 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 operating now in Australia and which appear to be charging vulnerable consumers a significant fee with a promise to get them out of their timeshare ownership.

The owners must sign documentation that they will not make any contact with their timeshare company and are also advised not to pay their levies.

The Exit Timeshare company does not inform consumers that a free external dispute resolution is available, however in its capacity as a representative of the consumer contacts AFCA and utilises the external dispute process for and on behalf of the consumer, in return for the fee paid.

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 have also raised these concerns directly with AFCA.

3. Sold Out 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

4. Splitting of Shares and Titles

This is ongoing with some sold out Schemes.

5. Resale of product

specifically traditional sold out timeshare 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 2019 year, no formal complaints were received from Members about regarding Members.

3.2 Complaints from consumers/owners against Members

ATHOC members undertaking sales to consumers must maintain a membership with AFCA. It should be noted that there was an error in the ATHOC report last year where it advised that all members of ATHOC must be a member of an external complaints body. 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 2019 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

Don Pancho Resort did not renew its membership given the property was on the market.

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 01/01/2019 to 31/12/2019

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

Three key issues identified apart from complaints relating to specific on-site resort issues are:

- Financial – hardship or change of circumstances
- Availability or ability to use benefits
- Misunderstanding of benefits or product terms of use

Approximately 180,000 people own timeshare in Australia, with around 1 million Australians involved in timeshare, either directly or indirectly.

Approximately 200,000+ sales presentations were given throughout the calendar year.

We note that the complaints have decreased from the 2018 Calendar year.

Number of complaints	665
Number Resolved Internally	609
Number Resolved within 1 month	498
Number Resolved 1-2 months	75
Number Resolved 2-3 months	35
Number Resolved in 3+ months	58
Number Referred Elsewhere	45

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 throughout 2019

1. AFCA received 98 timeshare complaints.
2. AFCA accepted 81 timeshare complaints.
3. AFCA closed 105 timeshare complaints.

Negotiation	39	37%
Resolved by FF	31	30%
Conciliation	11	10%
Discontinued	10	10%
Outside Rules	8	8%
Preliminary Assessment in Favour of complainant	3	3%
Decision in Favour of complainant	2	2%
Preliminary Assessment in Favour of FF	1	1%
Total	105	