ANNUAL INDUSTRY REPORT TO ASIC

For the Calendar Year 2021

Submitted, May 2022

1. PERFORMANCE AS A SUPERVISOR (8.1.5)

Following the election of Directors/ Office Bearers following the November 2021 AGM, the Code Administrative Committee elected by the Board for 2021-2022 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 ADDRESSED IN 2021/2022

- ***COVID19***

The pandemic continued to challenge industry throughout 2021, particularly due to the closure of resorts and borders and inability for timeshare members to travel to and use their resorts. Staffing continues to be particularly difficult with many regional resorts forced to close down or limit occupancy due to inability to source and retain casual housekeeping staff.

Sales activity by timeshare developers was significantly reduced in 2021 compared to pre-COVID figures and some companies retain a lack of confidence given the regulatory constraints and the investment required to rebuild operations.

- ***Opt-in and the impact that it would have on the industry and the timeshare owners***

Implementation of new requirements pursuant to Regulatory Guide 160 and ASIC Corporations (Time-sharing Schemes) Instrument 2017/272

- **Code of Ethics**

ATHOC continued to approach FASEA in 2021 to try and obtain guidance from FASEA as to the application of the Code for timeshare advisers, as opposed to the financial planning industry. ASIC will be aware that while FASEA sought submissions on Standard 3 of the Code in late 2021, no determination was made as to any amendment prior to its cessation on 31 December. ATHOC maintains that the current guidance is not appropriate or accurately reflects the legislative exemption provided to timeshare advisers which allows payment to advisers providing advice on timeshare products including the payment of commission based on sales volume.

- **RG146 Industry Training**

The industry was challenged in 2021 to locate a replacement training body to provide suitable RG146 training to timeshare advisers following the closure of the long-standing provider, One Step Further. Timeshare consultants are currently exempt from the educational obligations imposed on financial advisers however they must still undertake RG146 training including personal advice if personal advice is provided. Given the substantial changes to the training industry for financial advice, RG146 training no longer includes personal advice and it was necessary to work with a provider for a bespoke solution.

Monarch Institute is now providing the training necessary for the industry and ATHOC members continue to comply with the training requirements of RG146. ATHOC understands that RG146 remains under review.

- **Submissions**

ATHOC made several submissions to FASEA. 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. Legacy Schemes

This industry is still waiting for changes that were indicated would be applicable to Legacy Schemes/Resorts by ASIC. We understood the first stage was the amended RG160 which was effective December, 2020.

The past few years have been difficult on the many legacy schemes within Australia with negative publicity fueled by “exit companies” along with COVID and border closures. As owners age, legacy Resorts are becoming increasingly concerned about the long-term viability of their schemes.

Winding up Legacy Schemes

In the past few years the following Resorts have exercised early termination of the timeshare scheme and have sold the scheme asset (or are in the process of selling the asset):

Don Pancho Beach Resort, Bargara QLD- settlement and distribution to owners in 2020
Vacation Village Resort, Port Macquarie – settlement and distribution to owners in 2021
Pacific Palms Resort, Forster NSW – court application to appoint Trustee/Liquidator underway
Voyager Resort, Gold Coast – nearing completion of court process so property can be marketed

The following resorts have advised their members that they are considering or will be going to an EGM in 2022 to vote to wind-up their respective timeshare schemes and sell the property;

Korora Bay Resort, Coffs Harbour
Golden Shores, Labrador Gold Coast
Capri Waters Country Club, Mulwala, NSW
Ultiqua Village Resort – Port Macquarie

With the elimination of paper titles, it has become a little easier for the many hundreds or thousands of fractional titles to be amalgamated as there is no longer any need to produce each paper title issued, however, the process is still long and costly. The estimated legal fees are from $150,000 to $250,000 and additional Trustee/Liquidator fees from $50,000 to $100,000. Other costs include sales and marketing, real estate commissions, due diligence and building reports. While costs can be refunded from the sale proceeds of the asset, the timeshare members are required to cover the upfront costs of the winding up process including legal fees, trustee fees, liquidator fees and all marketing and sale fees. Delays in the process means that these funds can be borne by the members for a lengthy period.

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

ATHOC notes below the process that is undertaken within New Zealand for winding up similar schemes which is a much quicker process, resulting in substantial savings which benefits all owners in the scheme.

Once a meeting of owners has agreed by Special Resolution at an EGM to wind the Club up, there is an objection period of 28 days during which all owners can have their say. The High Court can then cancel the Unit Plan (community plan) without the need to obtain all paper titles. There is no requirement to appoint a trustees or liquidator as a solicitor can manage the distribution of funds in accordance with the trust or constitution.

The Club must show proof of the process it has 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, any distribution will be treated as unclaimed monies and held by the government.

Delinquent owners

As mentioned in previous reports, ATHOC has had many discussions with ASIC on the issue of finding delinquent owners within legacy schemes and the ability to transfer the ownership to the resort entity/developer if necessary. While paper titles have been eliminated, the Magistrates court in Queensland has not processed any sheriff auctions over the past 3 years due to significant changes to the Uniform Civil Procedures Rules which were finalised on 18 March 2022 and impacts the ability to hold auctions. The main issue being that the Bailiff is no longer considered an officer of the Court, and so previous indemnities within the UCPR as to the value of auction assets no longer exist, and the Court must now be satisfied with evidence of value of all assets the subject of the auction.

Currently legacy schemes are currently waiting on further Court guidance on the scheme asset's value and how this is evidenced. Once this is clarified, marketing and sale of the asset can proceed.

These hold-ups are putting additional financial pressure on timeshare resorts' (and owners') budgets and levies and a resolution is needed as soon as possible.

2. Timeshare Exit Companies

ATHOC continues to have concerns that timeshare "Exit Companies" are still operating in Australia and who appear to be taking advantage of vulnerable consumers, charging them with significant fees to participate in alleged class actions or to assist them to exit a scheme.

The majority of schemes have internal dispute schemes and memberships with AFCA which should be the first points of contact for these consumers and exit processes may be possible in the event of genuine hardship. These services can be accessed without cost to the consumer.

However, 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.

3. Resale of product

The resale of 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 2021 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 2021 calendar year there were no disputes 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 and Amalgamation with AAoA

A membership amalgamation has taken place with the Accommodation Association of Australia (AAoA) effective 18 October 2021. ATHOC board remains in place and will focus on all regulatory and industry specific concerns, acting in the capacity as a timeshare committee for AAoA. AAoA will provide the secretariat for the Board and service all ATHOC members, including collection of all membership fees.

This amalgamation will allow ATHOC's members to be part of a much larger organisation providing increased support services specific to the hospitality industry.

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 01/01/2021 to 31/12/2021

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

Three key issues identified within the complaints received by members this year are set out below. It is noted that the majority of these complaints appear to be directly Covid-19 related given the lockdowns, border closure, resort closures, challenges on travel throughout the year and financial difficulties:

- Availability (or access to) accommodation
- Annual Levies (having to pay levies despite restrictions on use)
- 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 substantially from the 2021 calendar year.

Number of complaints	**405**
Number Resolved Internally	**377**
Number Resolved within 1 month	**346**
Number Resolved 1-2 months	**40**
Number Resolved 2-3 months	**10**
Number Resolved in 3+ months	**3**
Number Referred Elsewhere	**20**

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* (and *Regulatory Guide 271* which came into effect 5 October 2021).

APPENDIX 2 – Disputes lodged with AFCA 2021 calendar year

The below information has been provided directly by AFCA to ATHOC. In the calendar year to 31 December 2021, AFCA:

1. Received 66 timeshare complaints.
2. Accepted 66 timeshare complaints.
3. Closed 62 timeshare complaints.

The outcomes of the closed complaints are as follows:

Resolved by FF	29	47%
Negotiation/Conciliation	9	14%
Outside Rules	19	31%
Discontinued	5	8%
Decision in Favour of Complainant	0	0%
Total	62	100%