

**JOINT COMMITTEE ON  
CORPORATIONS AND FINANCIAL  
SERVICES**

**Inquiry Into Time Share**

**SUBMISSION NO:** 2

**SUBMISSION BY:** Minister for Tourism, Fair  
Trading and Wine Industry  
Development  
GPO Box 1141  
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**DATE:** 09.02.05

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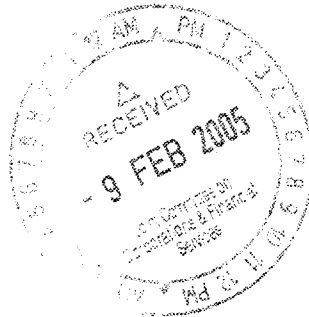
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**Hon Margaret Keech MP**  
Member for Albert



**Queensland  
Government**

Minister for  
**Tourism, Fair Trading and  
Wine Industry Development**

- 7 FEB 2005

Ms Sarah Bachelard  
Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
Parliament House  
CANBERRA ACT 2600

Dear Ms Bachelard

Thank you for your letter of 15 December 2004 regarding an inquiry into the time share industry.

While the Department of Tourism, Fair Trading and Wine Industry Development administers legislation relating to real property sales and real property management, the Australian Securities and Investment Commission is responsible for consumer complaints relating to time share.

As part of my portfolio responsibilities, I have responsibility for body corporate and community management (BCCM) policy including administration of the *Body Corporate and Community Management Act 1997* (the BCCM Act). A time share may be registered as a community titles scheme in Queensland and thus fall under the provisions of the BCCM Act. The interaction between time shares and the BCCM Act is an issue for some BCCM stakeholders. Please find attached a submission to the time share inquiry in which this interaction and some of the issues it raises are explained in more detail. If further information is required, the contact officer is Mr Chris Irons of my Department's Policy Coordination Unit, on telephone (07) 3225 2730 or via email at [chris.irons@dtftwid.qld.gov.au](mailto:chris.irons@dtftwid.qld.gov.au).

Thank you for the opportunity to comment on this matter.

Yours sincerely

**Margaret Keech MP**  
Minister for Tourism, Fair Trading  
and Wine Industry Development  
Member for Albert

Enclosure

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**SUBMISSION TO THE PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS  
AND FINANCIAL SERVICES:**

**Regulation of the Time Share industry in Australia**

**Submission from: Department of Tourism, Fair Trading and Wine Industry  
Development, Queensland**

**BACKGROUND:**

Involvement with timeshare

The Minister for Tourism, Fair Trading and Wine Industry Development (TFTWID) has among her portfolio responsibilities responsibility for body corporate and community management (BCCM) issues. 'BCCM' is also referred to by the descriptor 'strata titles' or 'community living' in other contexts and jurisdictions.

The BCCM industry comprises high-rise apartments, duplexes, villas, townhouses and commercial parks and shopping centres. Under the *Body Corporate and Community Management Act 1997* (the BCCM Act), a community titles scheme comprised of common property and individual lots can be registered which leads to the formation of a body corporate. The owners of each lot automatically become members of the body corporate, which is responsible for financial and administrative management of the scheme.

A timeshare scheme which is a titles-based scheme may be registered in Queensland as a community titles scheme and thus fall within the coverage of the BCCM Act. Timeshare owners in a community titles scheme generally own the lot of a certain number of weeks in the year, with the potential for up to 52 owners for each lot, each owning one or more week of the lot. There is no reliable data on the number of timeshare schemes covered by the BCCM Act but anecdotal evidence suggests the number is small.

Timeshare and dispute resolution

Under the BCCM Act, the Office of the Commissioner for Body Corporate and Community Management (Commissioner's Office) is established. The Commissioner's Office has two main roles: provision of information and education to BCCM stakeholders; and provision of a dispute resolution service for BCCM disputes. The dispute resolution service is quasi-judicial in nature. In the majority of cases, disputes are resolved by adjudication by departmental officers.

Dispute resolution applications lodged in 2002/03, concerning a particular timeshare scheme in Queensland, have raised issues about the jurisdictional coverage for timeshare schemes and also whether the provisions of the BCCM Act are appropriate for timeshares.

In regard to **jurisdictional issues**, queries were raised firstly within the Commissioner's Office, and later by parties to the disputes, as to whether the Commissioner's Office had jurisdiction to determined disputes relating to a timeshare scheme because timeshare schemes are governed by the *Corporations Act 2001*.

In confirming that the Commissioner's Office did have jurisdiction, notwithstanding the coverage of the Corporations Act, the following was noted:

- Section 33 of the BCCM Act (which commenced on 13 July 1997) expressly states that the Corporations Act does not apply to a body corporate created under the BCCM Act for a community titles scheme. As this provision existed prior to the *Corporations Act 2001*, pursuant to section 5F(4) of the Corporations Act it is understood that section 33 of the BCCM Act continues to exclude the operation of the Corporations Act in relation to bodies corporate established under the BCCM Act;
- It would appear that the Corporations Act regulates a community titles scheme that is a timeshare scheme, whereas the BCCM Act relates primarily to the body corporate for the community titles scheme which is automatically created when the scheme is registered;
- The particular scheme that was the subject of the disputes had been granted an exemption from complying with the Corporations Act. It is understood that it may be common for titles-based timeshare schemes to be granted exemptions after full sale occurs; and
- The nature of the issues in dispute was clearly related to the provisions of the BCCM Act.

Notwithstanding that the disputes clearly fell under the jurisdiction of the Commissioner's Office, the dispute highlighted some confusion on the part of the parties as to the competing roles of state and federal legislation in relation to their timeshare scheme, along with some difficulty in obtaining clear consumer-targeted information about the Corporations Act in relation to timeshares.

**Operational issues** concerning of the BCCM Act in respect of timeshares arose from these disputes due to situations where owners "own" weeks of a lot in a timeshare as co-owners of the lot. This is distinct from situations where a company or trustee is the registered owner of the lot and those with an interest in the lot have an interest in the company or trust. Currently the BCCM Act does not distinguish between timeshare owners and any other types of co-owners. This can raise the following issues:

- Where there are co-owners of a lot, only one vote at general meetings can be cast for a lot. This means that up to 52 owners must resolve amongst themselves how votes for the lot will be cast. One scheme has chosen to ignore the legislative voting provisions and have all co-owners able to vote on a proportional basis (that is, the number of votes an owner can cast relates to the number of weeks they own);
- The BCCM Act prevents more than one co-owner from being on the body corporate committee – the administrative arm of the body corporate – unless there are insufficient members to constitute a committee. Again, this scheme has chosen not to follow these provisions; and
- The BCCM Act provides that there must only be one address for service for a lot – for the issuing of body corporate notices such as meeting and levy notices. However issues have arisen as to whether all co-owners should receive notice and if so whether this should be the responsibility of the body corporate or a decision within the co-ownership of the lot.

## DTFTWID review of BCCM issues

In July 2004, TFTWID released for public consultation the "Body Corporate and Community Management Into the 21<sup>st</sup> Century" Discussion Paper. The Discussion Paper sought views from BCCM stakeholders about emerging issues in the BCCM industry. One of the issues canvassed was the relationship between timeshares and community titles schemes. A number of submissions were received from individuals and industry groups concerning this particular issue. Those submissions are repeated below:

- There should be a dedicated Timeshare Regulation Module. Under the BCCM Act, there are four Regulation Modules, each devoted to a particular type of scheme (Standard, Accommodation, Small Schemes and Commercial);
- ASIC may be able to offer class order relief for schemes operating under such a module;
- BCCM Act does not contain enough clarity on voting entitlements in timeshares and there should be a collegiate system of voting;
- Timeshare owners should be treated as shareholders of individual lots, not as co-owners;
- There should be regulation of timeshares at the Commonwealth level; and
- The BCCM Act should contain a specific section or chapter on timeshares.

DTFTWID is currently considering submissions and is developing policy responses to these issues.

## **RESPONSES TO SPECIFIC TERMS OF REFERENCE**

### Whether the current regulatory arrangements for the timeshare industry are confusing to consumers and inhibit the development of the industry

Many responses to the BCCM Discussion Paper pointed to consumer confusion about their rights and responsibilities under the BCCM Act and relevant Regulation Module. Submissions also highlighted that such confusion invariably contributed to escalation of disputes into a formal dispute resolution application, which can stymie effective management within a scheme and inhibit the ability of bodies corporate to make sound decisions for and on behalf of all owners in that scheme.

These responses were of a general nature and did not specifically mention confusion concerning timeshares. Nevertheless, for those BCCM stakeholders who are owners in a timeshare which is also registered as a community titles scheme, these responses indicate a general lack of clarity about the current regulatory arrangements under which their schemes operate. Similarly, as highlighted above, there can be confusion as to the applicability of the Corporations Act in regard to the regulation of the scheme.

In general, the nature of "consumer confusion" indicated in submissions can be categorised as follows:

- Uncertainty over individual rights, for example, the right to make improvements and renovations and under what circumstances approval from the body corporate is needed;
- Uncertainty concerning the body corporate's right to make decisions affecting all owners;

- Confusion about options available to individuals and the body corporate to remedy problems with contractors to the body corporate such as managers, letting agents and caretakers; and
- Confusion about correct conduct of meetings, recording of minutes and receipt and tally of votes.

It can be reasonably assumed that for those lot owners who are covered by both timeshare and BCCM regulatory frameworks, confusion about rights and responsibilities would be considerably higher. This is apparent from the previous dispute resolution applications involving a timeshare scheme.

Submissions to the Discussion Paper make an overwhelming case for increased attention to be given to information and education as a way of overcoming confusion. In particular, information and education prior to purchase which provides a clear description to the prospective purchaser of what responsibilities they can be expect to have after purchase.

#### Self-regulation of the industry on a national basis

DTFTWID has no comment on this issue other than to note some industry support for self-regulation.