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18 February 2005

The Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Suite SG.64
Parliament House
Canberra ACT 2600

Dear Sir or Madam,

This submission is offered for consideration by the Committee, in its inquiry into Regulation of the Time Share Industry.

Mechanisms for informing members of the industry in a timely manner, of the Joint Committee inquiry, have been less than satisfactory. Port Pacific Resort did not become aware of the inquiry until 6 weeks after the inquiry was announced and at the height of the holiday season.

The depth of this submission is tempered by time constraints. However, the Board of Directors places great import on the issue of regulation, the protection of its constituent members – the consumers and co-owners of the Resort – and the ongoing independence of the Resort. The Board comprises solely of co-owner/members of the Resort.

The Parliamentary Joint Committee is invited to visit Port Pacific Resort during the course of its inquiry. A number of other Timeshare Resorts exist within the region or within 1.5 hours drive and we would be pleased to make our conference facilities available as a base for the Committee.

I can be contacted most times on the numbers below. Our Manager, Mr. Clive Constance can be contacted as indicated by the details at the head of this submission.

Yours faithfully,

(original signed by)

A.G. Walton
Chairperson
Paradise Timeshare Club Limited

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Enclosure: Submission

Submission by Paradise Timeshare Club Limited
to the
Parliamentary Joint Committee on Corporations and Financial Services
Inquiry into Regulation of the Time Share Industry

Background

Port Pacific Resort is located in the heart of Port Macquarie, NSW. It commenced business 20 years ago and is regarded as one of the premier family timeshare resorts in Australia. It has 33 one-bedroom, 42 two-bedroom and 4 three-bedroom fully self-contained apartments with full Resort facilities, except for licensed restaurant/bar. It maintains a fleet of powered and non-powered watercraft at a nearby boating facility and has a rapidly expanding conference segment.

The Resort employs over 50 fulltime, part time and casual staff, the vast majority of whom have been working at the Resort for at least 5 – 12 years with a number having worked here for 15 – 20 years. Indeed, Port Pacific Resort has been a significant and stable contributor to the local economy.

Approximately 25% of all guests are non-timeshare visitors - the ratio grows to approximately 65% during the peak season. That market segment is growing as more members place their timeshare in the rental pool. The Resort competes openly with all other accommodation venues for tourism and conference market share. No guest, whether they are timeshare owners or normal tariff-paying guests are subjected to timeshare sales or marketing advances whilst at the Resort. Approximately 85% of guests return to the Resort regularly simply because of the premier location and high standards of cleanliness and hospitality.

Paradise Timeshare Club Limited is the registered corporation behind the Resort. Control of that entity was wrested from developers and original Board by the members/timeshare co-owners a few years after the Resort opened for business. The Resort is fully subscribed with over 4,000 owner shares issued. Members are fiercely proud of the Resort's standards and independence. In 2004 the Constitution of the Company was amended to limit the maximum shareholding of any person or entity to 5%. The move was taken in response to growing acquisitions of shares by corporations involved in selling, reselling, and marketing and managing timeshare assets.

The Timeshare industry is witnessing increasing incidents where the control of Boards is passing to co-owners who represent developers, resellers and/or management companies. They do not represent the grass root "Mum and Dad" co-owners who thought that they were investing in a carefree annual holiday for the rest of their lives, with minimal annual costs. In many instances, corporations are progressively acquiring shares and then manoeuvring to gain positions on Boards. It is questionable whether such strategies are in the interest of ordinary co-owners or simply part of a broader strategy to gain management control of a stable of Resorts. In many instances anecdotal evidence suggests that co-owners have been faced with higher levies after corporations have gained control of local Boards.

Significant mistrust and confusion is evident at the grass roots level of the industry. The scope and complexity of regulatory edicts is becoming untenable for what is essentially a small family oriented business. The cost of compliance is also increasing. Our co-owners come from all over the world and they rely on their Resort to look after their interests. We now find ourselves having to go through costly legal and administrative processes to minimise the opportunities of another corporation gaining control of the Resort through the back door. Other parties over whom we have no control are now advertising our Resort throughout the world.

Effectiveness of the Current Regulatory Arrangements

The Resort is a member of ATHOC and contributes approximately \$8,690 per year in membership fees. The Board of Directors has often questioned the real value that is derived from that membership, other than it permits “exempt” status and perhaps fulfils regulatory requirements of access to a dispute resolution process. However, despite the increasing length of its being, ATHOC is still not able to deliver any of the day-to-day operational, industrial relations and business support that is received from other national bodies such as the Hotels Motels and Accommodation Association (HMAA). ATHOC does not have the dedicated resources or inherent industry knowledge bank that should be demanded of a national regulatory body.

The breadth of compliance issues not only falls under the umbrella of the Corporations Act 2001 and national Taxation laws. Various and varying State Government statutes covering issues such as Fair Trading, Body Corporate Management and Titles also add to the confusion of compliance. ASIC and Governments appear to have been pontificating for years over the matter of regulation yet ATHOC is still only recognised as an interim authority. There are no clear strategies aimed at simplifying regulations to achieve the same in the short term.

There is a perception, real or otherwise, that ATHOC and its agenda is dominated by developers, and/or the owners/directors/employees of timeshare exchange, marketing, holiday retail and resort management companies – i.e. a perception that members and new consumers, have little or no control of the regulatory body and the Resorts or consumers have no effective representation.

However, the Board of Directors has also agreed that recent statements of intent by ATHOC represent a potential refocusing of the national regulatory body. A decision to withdraw membership from that body has been deferred for up to one year.

The number of concerns being informally relayed to the Board by its owner constituents in recent years appears to be growing in frequency. The industry and its offerings are becoming very complex and dominated by companies that potentially may never have invested capital resources in a resort. Indeed, everyone seems to be making money out of timeshare resorts except for the resorts and their owners.

The situation is best highlighted by the fact that weeks of timeshare at Port Pacific Resort were originally sold 18 - 20 years ago by developers and marketing companies for somewhat grand sums. Today licensed resellers resell the same shares for as little as 10% of their original value or as high as twice their original value depending on the marketing tactics and the target market e.g. local or overseas.

Regulations prevent the Resort from offering advice to buyers or sellers. Marketing companies or resellers are not obliged to show a product to the consumer – a video and glossy brochure with the lure of a free “bonus” is the norm. Substantial blocks of timeshare have been sold sight unseen, to consumers intrastate, interstate and

overseas. The same is happening today. Yet, the nature of the industry and the prevailing regulations dump the consequences of poor industry practices and standards back into the lap of the Resorts, which are owned by the consumers. It is the Resort that is incorrectly accused by the consumer of misrepresentation or misleading claims, despite the fact that regulations prohibit Port Pacific Resort from being a party to any resale. It is the Resort that is accused of failing to help the consumer when regulations prevent the Resort from doing so.

During the past few years several new overseas owners, mainly from New Zealand, arrived for their first visit to Port Pacific Resort. Whilst they thoroughly enjoyed the quality of the Resort and its services, all sense of fulfilment was lost when they discovered that they had paid up to 5 times the prevailing market value of their timeshare. The Resort has worn the brunt of the failure of consumer protection when it, the Resort, is not even permitted to be a party to the transaction until "the deal is done". The marketing and resale companies make the profits but rarely witness or experience the personal distress that is a constant consequence of their practices. Too often it is clear that consumers have been given, or have been allowed to develop, unrealistic expectations of an investment that is highly unlikely to ever show a capital gain, but will definitely incur annual levies and charges. The lifetime cost of purchasing timeshare is most likely never discussed.

The Board feels that much angst associated with reselling and consumer grievances could be eliminated if regulations were amended to remove onerous and costly conditions to gain a timeshare resale licence. Flexibility in regulations is required depending on the situation of the resort. For instance, Port Pacific Resort is fully subscribed (all shares sold) and is controlled by its co-owners. At any point in time the Resort has several owners who wish to sell their week of time. Similarly it has several owners who want to buy additional time or other guests who express unsolicited interest to buy timeshare. However, regulations and high licence costs preclude the Resort from introducing buyers to sellers, acting as a resale agent or providing general advice of market trends and price structures. The Resort is better placed to show the product and should also be in a better position to screen potential vulnerable buyers. Consumers would be able to view a fully functioning resort and receive uncluttered advice concerning timeshare, before committing to a purchasing decision. We want our owners to be content with their decision and enjoy the wonderful facilities that are available. The last thing the Resort wants or needs is an unhappy or distressed owner. Whilst it is nice to have dispute resolution processes available, it is too late as far as the Resort and the consumer are concerned. The dispute is often the result of poor regulations and misleading practices by third parties e.g. marketing and resale companies.

Regulations, such as the Corporations Act, also prevent Resorts from buying back timeshare from a willing owner, rather than having to resell it. That is because timeshare and a company share are synonymous – shares must be extinguished when they are bought back. However, unlike a normal share, time cannot be extinguished even if a share is. It is strongly recommended that the various Acts be examined with a view to allow fully subscribed Resorts to buy back but not extinguish shares. The option would be retained to resell such shares at another time or use the time on the open holiday market. Income from such markets would contribute to the overall income of the Resort and hence benefit all owners by alleviating pressure on annual cost increases.

Another area of concern is the continual changing of timeshare principles and selling practices. In essence we are now seeing the emergence of complex new marketing ploys simply for the purpose of recycling the same products. Once owners could either use their week of time at their resort, exchange it for a week at another resort or place the week in the rental pool. Now owners can convert their time to points, can top up their points for an additional fee, can transfer their Title Deed in exchange for points or hand over control of their proxy unwittingly in a complex web of confusing marketing practices.

One no longer needs to own timeshare to enjoy the benefits of timeshare or holiday ownership. The differentiation between timeshare, holiday ownership and packaged vacations is becoming blurred. Yet the Timeshare Resorts have little or no choice but to accept the terms and conditions dictated by the various marketing and exchange companies. In the end, the traditional timeshare owner is faced with ever increasing annual costs through exchange fees and Resort levies, and increasing complexity in products, but with much reduced opportunities to exchange their time in a conventional sense.

Advantages and Disadvantages of possible Models for Reform

It is believed that insufficient knowledge of the ever-changing timeshare industry is available to politicians, statutory authorities and regulators to make informed decisions about possible models in the short term. The current model has been in limbo for many years and it is not working.

It is important that the Committee attempts to distinguish the difference between the various parties in the Timeshare Industry. Failure to do so will result in the wrong parties being burdened by more red tape and costs, namely the independent Resorts and their co-owners. Regulation and associated regulatory bodies have failed to arrest confusion, have failed to reduce undue compliance costs and have failed to effectively protect consumers in the longer term.

Regulation should be standardised across the country, along the lines achieved by the Corporations Act 2001. Our owners live in all states of Australia and overseas. The level of protection should not be determined by the State or country of residence but rather by industry wide principles and practices.

The intent of regulation should also reflect the true nature of timeshare, namely a lifestyle purchase that incurs an initial capital outlay and annual levies, but is highly unlikely to ever return a capital gain. Promoters, developers and marketing companies have failed to eliminate the notions of investment and perceptions of capital gain that continue to influence purchasing decisions. Resorts that participate in such activities are normally still under the control of developers and marketing companies.

Fully subscribed Resorts should be able to buy, accept, retain and resell its "time" shares with less of the onerous and costly conditions imposed by current regulations. The Resort is often confronted with situations whereby a share is simply offered back to the Resort at no cost because of deaths, marriage breakdowns or debt. Regrettably, legal advice suggests that under the Corporations Act, if the offer is accepted the share would have to be extinguished. One must ask the question, why?

Consideration should also be given to reviewing and eliminating onerous regulations and costly processes for recovery of debts. If Resorts do not hold the original copy of a Deed of Title, it is virtually impossible to recover debts or title from a delinquent owner who wishes to simply vanish from the timeshare landscape. In such instances, Resorts and co-owners also need regulatory protection and ease of recovery from within. It is believed that local governments can more easily gain title and recover outstanding rates from delinquent ratepayers, than a timeshare resort can in a similar situation with its co-owners.

In summary, the present regulatory regime of the Timeshare Industry contributes significantly to continuing confusion, complexity and costs that inevitably are borne by the Resorts and their co-owners. Announcement of the inquiry is most welcomed, albeit overdue. It is hoped that the members of the Parliamentary Joint Committee gain a better understanding of the differentiation between the various parties. That understanding will determine whether future models for regulation target the right parties and practices, and successfully enforce simple but cost effective industry ethics and procedures. Consumers, co-owners and their Resorts need protection.

The Parliamentary Joint Committee is invited to visit and utilise the conference and other facilities at Port Pacific Resort during the course of its inquiry. The Resort would provide an ideal central base if access is required to other Timeshare Resorts and related businesses within the region.

(Authorised and Original signed by)

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18 February 2005

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