

**JOINT COMMITTEE ON  
CORPORATIONS AND FINANCIAL  
SERVICES**

**Inquiry into Timeshare**

**SUBMISSION NO:** 5

**SUBMISSION BY:** Consumer Credit Legal Service  
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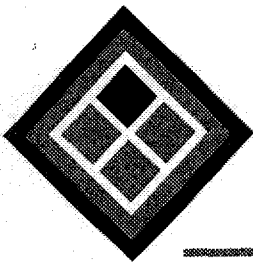
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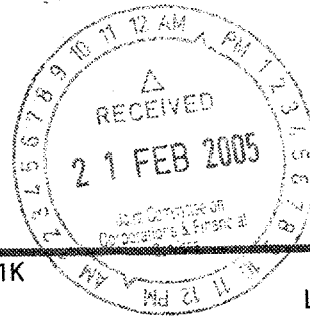
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18<sup>th</sup> February 2005

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

Dear Sir/Madam,

**Submission – Inquiry into the regulation of the timeshare industry**

We refer to the above Parliamentary Inquiry, and wish to make the following submission.

**Our Stakeholder Interest**

The Consumer Credit Legal Service (**CCLS**) acts on behalf of clients in legal matters specifically associated with credit-related matters in Victoria. Since the early 1990s, CCLS has handled a series of cases specifically involving the activities of members of the timeshare industry. A large number of these cases is still active, with the resolution of some of these not expected for a number of years yet. CCLS has accepted instructions from clients as recently as October 2004 regarding timeshares that were established in the late 1980s and early 1990s. In most situations, these cases involved the marketing practices of timeshare vendors as well as the credit-related problems arising from timeshare vendors' linked finance schemes.

**Our Submission**

We are most concerned generally about the efficacy of self-regulation in providing genuine benefits to consumers, and specifically about the Committee's consideration of self-regulation within the timeshare industry in place of the current arrangements.

While businesses may have a commercial incentive to be seen to be promoting and upholding consumer rights, such incentive is plainly lacking in the provision of truly rigorous standards of regulation and dispute resolution.

We submit that self-regulation results in those traders that want to be good corporate citizens complying with the voluntary code, and rogue traders failing to comply. This tends to leave consumers without any effective, enforceable rights under a self-regulatory scheme. Accordingly, self-regulation can give consumers a false sense of security regarding their rights.

Much of the litigation and client advice work that CCLS undertakes in relation to timeshares has, as its origins, arrangements that were in place during a period prior to the current regulatory regime.

The nature of timeshare arrangements is that consumers are able to acquire a modified property interest for a fraction of the price of a full property acquisition. For example, for less than \$10,000, it is possible to acquire a timeshare unit/period in a property where the full acquisition of that property would extend to 20 or 30 times the timeshare unit cost. In this regard, consumers often perceive this as a method of cheaply acquiring property rights. Often, the same socio-economic group which are attracted by this possibility are ill-able to afford to purchase the timeshare unit outright, and will access debt finance for the acquisition. This debt finance has, in the past, been provided by a finance company which has a link to the timeshare property. This link may take the form of a common shareholding or ownership, agreed commission structures, or on the basis of "preferred finance service provider".

We also submit that based on our case files, the same socio-economic group that consider timeshare to be an attractive option for acquisition are more likely than not to be unable to understand the legal rights and obligations which attach to timeshare units, let alone the corporate and trust structures which enable the timeshares to exist.

The above issues are of less concern when a strong regulatory structure is in place, and this can be used when consumers find themselves in a position where they are unable to protect themselves, or when they are unsure about their rights and responsibilities.

Regulation of this industry has been vital to consumer protection. Anecdotally it appears that there was some improvement in conduct once timeshare was treated as a financial product under the Managed Investments Act. Consumers benefited further once the Financial Services Regulation Act covered the selling of timeshare. It is often the case now, that consumers' disputes can be resolved once they access independent advice or representation.

However, there are still some limitations with the current regime. As seen in all compliance based consumer protection regimes, the consumer's capacity to argue misrepresentation can be reduced by inappropriately documented disclosure. It is therefore important that under the current regulation, the regulator maintains scrutiny of documentation, sales staff training and redress mechanisms.

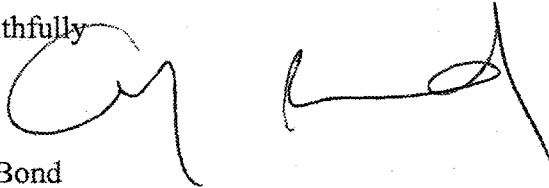
We are also aware that there are some problems being experienced in relation to unregulated time-share activity, particularly in the administration of the rental of timeshare units, for example, the control that timeshare managers have over renting out of units, and whether the timeshare unit maintains its value.

Our service has first hand experience of the problems arising from the timeshare industry prior to regulation, and we believe that the current regulation should not be turned back.

Financial Services Regulation Act has a range of benefits for consumers of timeshare – including regulator scrutiny of timeshare vendors and compulsory membership of an approved dispute scheme. Given the number of our clients who were involved in Court action, we can see how vital accessible dispute resolution is for consumers.

In conclusion, we submit that regulation of the timeshare industry has had benefits for consumers. Any weakening of this regulation is likely to lead to the types of cases our service took on in the last decade. Self-regulation of an industry that has, in the past, proved problematic for consumers would, of course, be most unwise – and have high risks for consumers.

Yours faithfully

A handwritten signature in black ink, appearing to be 'C Bond', written over a horizontal line.

Carolyn Bond  
Manager