

The Secretary
Health, Communities, Disability Services and
Domestic and Family Violence Protection
Committee
Parliament House
George Street
BRISBANE QLD 4000
health@parliament.qld.gov.au



Monday 26 November 2018

Dear Sir/Madam

***SUBMISSION ON HEALTH AND OTHER
LEGISLATION AMENDMENT BILL 2018***

We are respectively the President and Secretary of *The Domain Residents Association Inc* (“DRA”) and are authorised by the DRA Executive Committee to make this submission on its behalf to your Committee.

The DRA represents the 488 residents living at Aveo The Domain Country Club (“The Domain”) at 74 Wardoo Street, Ashmore within the City of the Gold Coast. In the 19 hectares comprising the village there are three levels of tenure for the residents here, viz. freehold (195 units/villas), leasehold (138 units/villas) and assisted living (53 apartments), a total of 386 residences. However, approximately 49 of the freehold properties are owned by Aveo which leases them to residents, generally on a 99-year lease. The operator of The Domain is Australian Retirement Homes (No 2) Pty Ltd, a related company within the publicly-listed Aveo Group.

The DRA supports in their entirety the provisions in the Bill to the extent that they amend the *Retirement Villages Act 1999*. Those provisions will bring certainty to those of our residents (or their estates) who have been waiting some considerable time for their appropriate payout entitlements. It is our view, however, that, welcome though these proposed amendments are, there is scope for yet more improvements to the legislation.

It may assist the Committee if we addressed these issues *seriatim*:

Section 63A(6)(a)

The siting of residences is something over which residents have no control but, as is the case in The Domain, the operator has persistently ignored repeated requests by the DRA and the affected residents to have appropriate access to the properties waiting to be sold. We consider that a “reasonable excuse” should not be available to a village operator whose “benign neglect” of a marketing opportunity renders it practically impossible for the subject residence to be marketed effectively or sold. Moreover the Aveo contracts invariably prohibit the granting of any mortgages or any other encumbrances (even in the case of “freehold” titles) except under the most stringent of conditions. Given the age of most retirement village residents would it not be more efficacious to insert “wilful or deliberate” before “act or omission”?

It is the present practice of Aveo’s Sales office representatives in The Domain to require residents wishing to sell physically to vacate their residence to allow reinstatement and guarantee vacant possession. But all too often the resident has insufficient funds either to pay the entry fee for an high-care facility or even a lower-cost residence and, at the same time, be expected to rent another property for the duration of the reinstatement and continuing until the subject property is sold with no access to their “equity”. Accordingly the DRA would support and encourage any legislative prohibition on a requirement by an operator that vacant possession be required before the sales process can even start.

Section 63A(6)(c)

Approximately 60% of The Domain’s residents are on a full or part pension. They simply do not have the resources to match those of Aveo in taking Tribunal or higher judicial proceedings in support of their rights. Accordingly there should be a limit imposed on the operator’s (financial) capacity to draw out matters by endless appeals to the point that they “*are finally dealt with*”.

Section 63C(2)

In recent times, specifically since April 2015, Aveo has introduced a suite of new contracts, some known as “**Aveo Way**”, which were marketed as an attempt to provide certainty to residents as to their obligations on termination to reinstate the subject property. An “Aveo Way Membership Fee” of \$1,500.00 per annum, increased by 2½% per annum with no time limit was introduced and applied to all new contracts for the next two years or more. Subsequently the cap was set at 10 years and applied retrospectively to all such contracts. Two other contracts are now also on offer, viz. “**Aveo Essentials**”, with a Deferred Management Fee of 35% accruing over 5 years, and a guaranteed sale within 12 months from departure; and “**Aveo Certainty**” with a DMF also of 35% but

accruing within 3 years and offering a guaranteed sale within 6 months after departure. Membership of the former has a nil cost but the latter an annual fee of \$2,000.00 per annum with no cap. The DRA believes that **any** such open-ended financial commitment required of elderly residents is fee gouging and should be prohibited.

Similarly the long-standing Aveo contractual provisions effectively converting what, in general commercial practice, would be regarded as the landlord's obligation to maintain, repair, replace and reinstate landlord's fixtures to be the responsibility of the resident should also be prohibited. In urging this, the DRA is mindful of the emphasis a strong Court of Appeal in the **Jomal** decision (cited as [2009] QCA 326) placed on the primacy of contractual acceptance of terms that, in the ordinary commercial world, might be seen as unduly favouring the party with the disproportionately greater bargaining power.

The DRA would like to see enacted a provision whereby residents wishing to transfer to another residence within the village where they currently reside should not, as at present, be forced to pay the full purchase price of the right to reside in the new residence while, at the same time, they are unable to access their "equity" in their present residence. On the DRA's anecdotal evidence, many residents in The Domain wish to transition from a higher-priced independent living unit – whether freehold or leasehold – to a lower-priced assisted living studio apartment but lack the capital sufficient to purchase the latter without having sold the right to reside in the former.

The DRA would welcome a legislative prohibition on a "double-dipping" whereby, if a resident were able to transfer to a lower-priced (or even a higher-priced) residence, they would not be hit with having to pay the exit fee on the original residence but should be able to enjoy a "contra" arrangement with the same operator.

The DRA would also see as desirable the right of any resident to appoint their own real estate agent without being contractually bound, as at present in the case of all leaseholders and those occupying an Aveo-owned residence in a Body Corporate within The Domain, having to appoint an Aveo-related company as the exclusive selling agent.

In The Domain we have the anomalous situation where a leasehold resident occupying an Aveo-owned residence in a Body corporate part of the village is paying considerably more per month – upwards of \$150.00 – in mandatory fees than an equivalent resident in a leasehold part of the village is paying. Despite repeated requests of Aveo as to the precise reason for this discrepancy, Aveo to

date has not been forthcoming. It appears to the DRA that a leaseholder occupying an Aveo-owned freehold residence is paying Aveo's Sinking Fund contributions. We regard this as unwarranted and unacceptable and would like to see the legislation amended to prohibit this practice.

Section 63D(3)

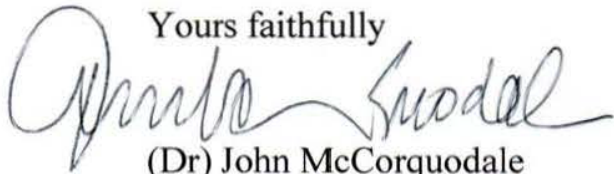
It is not clear who bears the cost of the valuation and should be made explicit rather than left implicit. Moreover the valuer should be at arm's length from each party, such that the DRA would welcome the addition after "*valuer*" of "*not related, directly or indirectly, to the operator*".

Section 171A(2)(a)

"*Unlikely*" is somewhat indeterminate. The DRA would like to see inserted before "*unlikely*" the addition of "*having made all reasonable and genuine efforts to sell the unit*".

The DRA respectfully submits the foregoing for your Committee's consideration and is able to give oral additions or observations to the Committee if it so wishes.

Yours faithfully



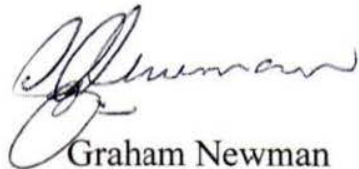
(Dr) John McCorquodale

DRA President



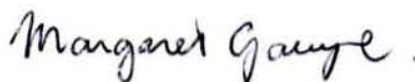
Ms Lynette Shorthouse

DRA Secretary



Graham Newman

DRA Treasurer



Margaret Gampe

DRA Committee member

