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To: [LSIC](#)
Subject: Submission to Victorian Parliamentary Enquiry into Retirement Housing Sector
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Attachments: [Submission to the Victorian Parliamentary Enquiry into the Retirement Housing Sector.docx](#)

To Whom It May Concern,

Please find attached my submission to the Victorian Parliamentary Enquiry into the Retirement Housing Sector.

My mother resides in a retirement village and both she and I have had serious concerns about many aspects of the administrative practices within her village. We welcome most sincerely this enquiry and look forward to its commencement.

Thank you very much for accepting my submission.

Yours sincerely,

Soozah Clark

Submission to Victorian Parliament Enquiry into Retirement Housing Sector.

Writer: Susan Margaret Clark [REDACTED], [REDACTED]
[REDACTED].)

To Whom It May Concern,

My now 94 year old mother lives in an Independent Living Unit (ILU) in a privately managed Retirement Village in suburban [REDACTED], Melbourne. She has lived in this village for almost 10 years and is in very good health. Both she and I, as her proxy, have served at different times, on the Owners Corporation Committee (OCC), so we have some detailed knowledge of village matters.

While my mother's personal circumstances are satisfactory, several serious issues exist in relation to the management of the village. Although her health is good, my mother is gradually becoming less able and less willing to involve herself in village matters especially in relation to conflict with the Manager. And this goes directly to the heart of the issues in the Retirement Village area. **Residents, as they age, become increasingly vulnerable to unscrupulous behaviour on the part of managers because they are less and less able or inclined to stand up for their rights.**

Issues of Serious Concern

- 1 **Irregularities relating to the appointment of the Manager.** For years now the Manager has insisted that it has followed correct procedures in regard to its appointment as Manager of the village but there is serious concern that correct procedures have, in fact, NOT been followed and that the Manager is, in fact, NOT legally appointed. There has been NO valid contract of appointment since 2008. This situation must call into question the validity of all documents signed by the so-called manager since 2008, including all service agreements.

- 2 **Recent changes to methods by which IL units and land are held by incoming residents. The Aveo Way.**

Without reference to the Owners Corporation (OC), the Manager has changed the way in which incoming residents hold their units and land. Previously ILU residents held freehold title to their units. Now the Manager has introduced a new system, entitled "**The Aveo Way**" by which units are leased, not held freehold. Under this new system some ILUs have been purchased from outgoing residents or their families by the manager and then leased to incoming residents. However in other cases, it seems that incoming residents pay the agreed price to the outgoing resident or their family, but instead of getting a freehold title the new resident gets a lease and the title moves into the hands of the Manager. **Therefore, in these cases, the Manager is effectively gaining the freehold title without itself exchanging any money.** I cannot believe that this is legal.

In this way the Manager will, over time, accumulate title over more and more of the ILUs and thus any power held by the OCC will decline. Thus residents left still holding freehold titles over their units will have less and less power or influence over decisions and actions taken in the village. Over time, this will create a very unenviable situation for those residents who still hold freehold titles. Due to the onerous imposition of the Deferred Management Fee (see below), most residents are not in a financial position to sell and buy elsewhere if they are unsatisfied or unhappy at the village. I believe this is leading to a situation in which many residents are feeling trapped in the village as they cannot afford to remove themselves from an unsatisfactory situation.

There are clear intentions on the part of the Manager to develop or change the site. This is indicated in the documents (Service Agreements), which are signed by incoming lessees who are required to agree that they will have no power to prevent or protest about any changes or developments made to the village by the manager in the future, including the sale of parts of village land which is designated Common Property and, as such, rightfully belongs to ILU owners through the Owners Corporation, and not to the so-called manager.

3 Fees

3a Previous structures for monthly fees.

Although these structures have been replaced by new ones under the new arrangement of The Aveo Way, I believe it is instructive to look at the ways in which the old fee structures worked. Incoming ILU residents signed up for their particular level of monthly fees when they came into the village. They were not informed about the fees being paid by existing residents and so were usually very surprised to discover that they were paying much higher monthly fees than those paid by residents who entered the village previously. The fees ranged from about \$250 per month to \$450 per month depending on the date of entry. There was no difference in the level of service provided so residents were paying very different sums of money for the same level of service.

3b Previous arrangements for the Deferred Management Fee.

In addition to the monthly fees there was also a Deferred Management Fee (DMF). When my mother entered the village nearly 10 years ago, the formula to arrive at the DMF which was payable when a unit sold, was 3% of the price paid by the new, incoming resident, per year for a maximum of 10 years, leading to a cap of 30% of the price paid by the new resident. This fee was paid by the outgoing resident or their family to the manager in addition to the regular, monthly fees paid by the resident.

Prior to the new "Aveo Way" arrangements, and without reference to the OCC, this had changed to an arrangement in which the outgoing resident paid 6% per year for a maximum of 5 years, thus reaching the cap of 30% in half of the time taken under the arrangements in my mother's case. Thus the manager was able to collect large amounts of money within a much shorter time. I believe that this is **unconscionable conduct** on the part of the Manager. Very little of these monies was invested back into the village. The manager has clearly stated in meetings that the DMFs are profit. The manager seems to have far too much power to act independently of the OCC.

4 False Claims by the manager that it has control over the driveway which is actually Common Property and under the control of the OC.

This village has only one driveway which acts as both entry and exit. This driveway gives access to the village from [REDACTED]. Originally the driveway was under the control of the OC as it was "Common Ground", as seen clearly on village maps. At some time previous to 2006, the driveway was leased to the Manager by the then Chairman and Secretary of the Owners Corporation Committee. However, this agreement was made void by the Owners Corporation Act in 2006, which voided all previous agreements of this and other types. At that time instruction was given that, to be legally binding, all such agreements had to be renegotiated. This was never done and so the control over the driveway remains legally with the OC. However, the Manager has continued to claim that the driveway is under their control which is clearly not the case. Control

over the driveway is extremely important as it gives control over access to and from the entire village.

5 Irregular activity on behalf of the Manager in not allowing the OC access to its own bank account.

There has been serious concern about the OCC having access to its own money held in the bank account. For many years the Manager did not create a bank account specifically for the OC funds, and monies were held in pooled bank accounts. Finally, in 2014 the manager claimed to have opened a separate OC bank account but has consistently refused to provide verification of it. The manager continues to collect into the manager's bank account all monies owed to the OC and then claims to transfer into the "OC account" the amount it judges to be due to the OC. The manager supplies to the OCC a monthly Income and Expenditure Statement purporting to show transactions into and out of the "OC account". Because the manager refuses to supply to the OCC either Bank Statements or primary evidence such as contracts, invoices, bills, receipts etc., the OCC is unable to verify such transactions and thus has no effective control over them.

There is evidence to suggest that the manager pays to contractors amounts significantly less than the amounts it charges to the "OC account".

The OCC believes that the above situation is illegal, but has little success in arguing this case with the manager.

6. Irregular Accounting practices.

My mother regularly pays her monthly fees on time. Yet she equally regularly receives her account showing that she is either 2 or (more often) 3 months in arrears. Frequent and repeated complaints about this over a period of years have resulted in no change. Apart from the obvious reasons to object to this situation (ie that it is just plain wrong) there are 2 main concerns. The first is that incorrect financial information of this or any other type is confusing for older people. Elderly residents should be able to have confidence that their accounts are in order. Secondly, it is possible that the manager is using these accounts to incorrectly show that they are owed money, thus making their financial situation appear more robust than it actually is.

These concerns are just a few of those that have come to light over the 10 years that my mother has been a resident at this village.

I do my best to look after her interests but it seems that there are many areas which need serious attention so that ageing residents in Victoria's retirement villages can lead peaceful lives without the feeling that they are being financially abused by managers who, despite statements to the contrary, clearly do not have residents' best interests at the centre of their policies and actions.

I hope that this submission is helpful.

Soozah Clark

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