

Ref: TRACKIT 55310

27 February 2015

David Hatfield

Director, Adjudication Branch

Australian Competition and Consumer Commission

Dear Mr Hatfield

Thank you for your letter of 12 December 2014 to Amanda Caldwell, at Spruce & Ferguson Lawyers, who applied for an Australian Certification Trade Mark (CTM) on behalf of Lifemark Village Pty Ltd on 13 February 2014. I received your letter and the 5 submissions made in relation to the CTM on 23 December 2014, and write in response. I understand from Ms Caldwell that you kindly agreed to extend the initial deadline set because of the intervening holiday period and the impossibility of meeting the deadline due to staff leave.

I manage a very small team (3 staff) with many diverse responsibilities to members, so I have attempted to address all the key questions raised in private submissions and by the ACCC. If you need more details, I am happy to meet with you or your staff to discuss any further questions. I have also attached an overview document prepared for stakeholders with an interest in Lifemark, which give a lot of contextual information and facts about the scheme that may be helpful in understanding its objectives and scope.

By way of clarification as to my involvement in preparing this response, I manage the contract between Lifemark Pty Ltd (the Scheme Owner) and the British Standards Institution, or BSI (the specialist firm engaged by the Scheme Owner to perform certification services for retirement communities that apply for Lifemark accreditation).

I work for the Retirement Living Council, which is a division of the Property Council of Australia and represents the largest owners of retirement communities in Australia (membership list attached at Appendix A). The Property Council of Australia is a not-for-profit industry body that represent the interests of owners and investors in property, including commercial and not-for-profit retirement village owner operators.

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Response to the submissions

Mr Scott Lie

Mr Lie's letter is based on a fundamental misconception of the legal and accreditation requirements relating to retirement communities. Retirement communities (also known as retirement villages or independent living units) are not aged care services or residential aged care, and hence are not regulated by the Australian Parliament. None of the federal laws applying to residential aged care service providers apply to retirement village owners. Nor does the Australian Aged Care Quality Agency have jurisdiction over them. Hence Lifemark is not duplicating, usurping or otherwise attempting to mislead any consumers about accreditation processes as Mr Lie asserts. Retirement villages are regulated by the States and Territories only. No State or Territory Governments either accredit or require retirement villages to be accredited.

Ms Joan Pickard and Don Brown

Ms Pickard and Mr Brown ask in relation to para 6.18 of the Scheme Rules (*"The certification process requires the Village and Village Owner and/or Operator to pay annual fees"*) how the Lifemark fees are allocated and budgeted for internally. This is not information that the Scheme Owner is privy to or required to collect in order to administer Lifemark in good faith. Nor would it be possible for the Scheme Owner to collect, as there are different budget practices across the industry. The regulation of what can be charged to residents is also different under each of the State and Territory Retirement Village Acts. Lifemark has no effect or influence on the law governing the budgeting of expenses incurred by operators.

In regard to Ms Pickard and Mr Brown's query about why Standard 2.1.2 does not list the range of matters that should be disclosed to residents – this is because the law governs disclosure, not Lifemark. What matters are required to be disclosed is different in every jurisdiction, and frequently revised. Lifemark is not intended or purporting to change or to codify the law – its purpose is to help operators to comply with their legal obligations through identification of good practice, and to introduce industry standards that go above and beyond legal obligations in many cases.

Mr Robert Harvie

Mr Harvie's submission is largely composed of subjective assertions about the motivation of the Scheme Owners in introducing Lifemark, none of which is relevant to the CTM

application, most of which are factually incorrect, and at odds with the experience of those residents who strongly support accreditation. The only question I am able to identify from Mr Harvie's submission relates to the veracity of BSI.

As the ACCC is probably aware, BSI is a JAZ-ANZ accredited conformity assessment body. (JAS-ANZ is the government-appointed accreditation body responsible for providing accreditation of conformity assessment bodies in the field of certification and inspection, including certification for industries required by Australian governments to be accredited). BSI audits dozens of schemes for many consumer-facing entities including Woolworths and McDonalds. Formed in 1901, BSI was the world's first National Standards Body and a founding member of the International Organization for Standardization (ISO). In short, it is an independent professional organisation that specialises in accreditation.

Mr Mugford

Mr Mugford asks for details of what are considered to be minimal operational and service requirements. The State and Territory Acts contain the legal requirements, i.e. what operators must comply with, which by definition serve as the minimal standards. Lifemark applies additional standards in many instances, through the application of more specific criteria, high evidentiary standards, and a requirement for operators to satisfy matters that the law doesn't address in order for operators to be successfully accredited (e.g. *Standard 1.1.2 – Residents shall be encouraged to participate in activities that enhance physical, social and mental wellbeing*).

Many forms of continuous improvement fall within the 26 Standards as documented in detail in the published information. In response to Mr Mugford's further question about whether residents will have a say in determining the criteria against which villages are judged, the National Retirement Village Residents Association was consulted when the Standards were being drafted in early 2013. In addition, a resident's representative will be invited to be part of a technical committee that will shortly be established by Lifemark, to review the currency and suitability of the Scheme Standards after they have been in place for 2 years (mid-end 2015).

National LGBTI Health Alliance

The Alliance "recommends that there is either an additional category of performance or an additional standard under each category that address the needs of diverse people and communities in order for the Certification Trademark to address all the needs of retirement communities." The Scheme Owner is happy to commit to references to diversity being

considered as part of the 2 year review of the Scheme Standards, as discussed above. We believe it would be inappropriate to withhold awarding a CTM on the basis that the current reference to diversity does not extend to sexual diversity.

Responding to queries by the ACCC

Below are responses to each of the ACCC's questions, using the same numbering system.

1. The Lifemark Village Scheme was the first priority of the new Retirement Living Council when it was formed at the end of 2012. The Council contains representatives from 19 Australian retirement living operators, both small and the largest for-profit and not-for-profit companies. All Council members were consulted regularly during the development of Lifemark Standards and Rules, and on the engagement of BSI Australia (then NCS International) to independently manage the scheme. A list of Council members is at Attachment A.

Through the wider Property Council membership structure, retirement living committees in six different jurisdictions (ACT, NSW, QLD, SA, VIC, WA) were also consulted throughout the development of Lifemark and encouraged to provide feedback at regular monthly meetings. These committees consist of the wider body of Property Council retirement living members and related service providers, with committees consisting of 12 to 20 representatives. The Property Council is the largest industry body for retirement community operators, representing more owners than any other peak body. Consultation was also had with the Australian Retirement Village Residents Association (then-President Mr Terry Macdonald).

2. Examples of standards that exceed the law are:

1.1.1 - A process shall be in place to ensure a range of activities relevant to residents

1.1.2 - Residents shall be encouraged to participate in activities that enhance physical, social and mental wellbeing

1.4.1 - A system is in place to monitor service delivery and resident satisfaction

2.2.1 - All residents shall be provided with an orientation program

There are many other examples too. There are existing rights enshrined in legislation which operate to guarantee the resident receives a 'basic' level of quality in the village: for example, there is a requirement for 'transparency' in village

spending in most of the Retirement Village Acts. Anti-discrimination and criminal law prevent egregious behaviour within villages, and property laws entitle people to quiet enjoyment of their accommodation. However, all these are very basic rights protections. The Lifemark Standards increase the quality of the experience of residents in areas where the law is silent, by measuring efforts that are geared towards creating a happy, inclusive village.

3. While the formal dispute resolution processes created under the Scheme Rules haven't been invoked to date, a subcommittee of the Retirement Living Council meets regularly to hear feedback received from operators on the efficacy of the auditing process, any feedback on the Standards, the take-up of Lifemark by operators, and to discuss any problems that arise. The Council also regularly solicits information from members and non-members through general committee structures, publications and events on any aspects of Lifemark.

There is no formal mechanism currently for hearing disputes about "any other issue relating to the CTM". We are happy to add an additional dispute resolution procedure into the scheme's rules at the first scheduled technical review of the scheme in 2015 (see point 6 below for more information on the technical review), ensuring the procedure is broad enough to encompass the TMA requirements.

4. A formal procedure for dispute resolution is set out in the Lifemark Village Scheme's rules. Rule 7.16 sets out the formal appeals procedure, which states:

*f) The Review Committee will carry out investigations as are required, including assessment of information supplied by the appellant and, **within a reasonable time**, decide by majority vote whether or not to reverse the original decision.*

g) Notification of the decision of the Review Committee shall be given to the appellant by the CEO within 14 days of the Review Committee decision.

We understand that "reasonable" is a term commonly used in legal and administrative processes to indicate a commitment to expeditious resolution. However, we are happy to propose to the technical committee that 60 days be inserted as clear guidance to what "a reasonable time" is for investigations to be completed.

5. The Lifemark subcommittee will consider all issues that arise from feedback and customer complaints. It is envisaged that in most circumstances, complaints provided to the Scheme Owner will be notified to the certifying organisation. However discretion is reserved for circumstances where the person making the complaint about the certifying organisation does not want it passed on, but wants action taken instead by the Scheme Owner through the contractual review process.
6. The technical committee will meet by end 2015 to review the Rules and Standards and determine if modifications are required to reflect the evolving retirement village sector and resident expectations. This committee will consist of industry representatives and resident representatives. If it is agreed that the Rules and Standards require modification, those changes will be submitted to the ACCC. The Scheme Owner will modify all references to changes to Rules and Standards to add the words "subject to ACCC approval", as recommended.
7. We will undertake a review of the wording in the Rules and Standards documents to ensure all references to NCS International are removed, as recommended, and consistency of references to Lifemark.
8. The former ARVA accreditation scheme had a completely different set of standards and no more audits have been done or able to be applied for since early 2013. Accreditation given under AVRA (awarded for 3 years) is valid until it expires. BSI has been provided with the contact information of all villages accredited under AVRA, and is able to answer all questions about status of operator's accreditation and the transition requirements to Lifemark.

I hope the contents of this letter answer all the points raised. If you would like further clarification or information on any aspect of Lifemark or the CTM application, please feel free to contact me on 02 6276 3606 or mwood@propertyoz.com.au.

Kind regards,

Mary Wood

Executive Director,

Retirement Living Council