Submission to the ACCC review of the Lifemark Villages Scheme Certified Trademark application

In a sense this proposed scheme is analogous to the concept of **<u>extended warranties</u>**. Consumers generally may not know they are already covered by consumer guarantees (Government Accreditation procedures). Much of the marketing surrounding the Lifemark Village Scheme can be viewed in a similar way. Of equal concern, the scheme appointed independent certifier markets the scheme as ‘developed by industry’ & ‘destiny through self-regulation’.

It does not appear that a whole-of-industry consultation has taken place, nor should it be inferred that all stakeholders are behind this business venture. Furthermore, contrary to what appears to be the scheme owners intended perception, there is no current provision under law for operators within the Aged Care industry to self-regulate.

Fundamentally, the consumers of aged care services (residents and families) are very likely to believe that, as with extended warranties, if they don’t purchase or remain with a service provider operating under this scheme, they may have reduced consumer protection. That is of great concern particularly many of these consumers are at a vulnerable stage of life and are very often of limited means.

The primary concerns raised in detail below address:

- Loss of Consumer protection
- Misleading information and marketing
- Impacts on Competition

1. **Misleasding – self regulation is not occurring**

From the Scheme rules:

2.3 The Scheme Owner has established the Lifemark Village Scheme to provide a minimum set of requirements that it expects retirement Villages and Village Owners and/or Operators to fulfil.
The Scheme is a successful example of <u>an industry</u> setting an appropriate minimum level of service for its operators

Government, via the parliament, sets the <u>minimum level of service</u> for operators. The approval of this CTM and scheme is very likely to lead consumers to believe the industry has taken control of this function.

According to the Grant Thornton report on behalf of the Retirement Villages Association (January 2011), total Australian retirement villages approximate1, 850. Given no evidence has been provided to the contrary, it is highly questionable to lead consumers to believe <u>the entire industry</u> has been consulted, or at the very least, a majority have agreed on what should constitute an appropriate minimum level of service.

The inference is the industry has set its own minimum standards when the scheme owner states that it, itself, has in fact established the scheme to provide a minimum set of requirements it expects village owners and operators to fulfil.

In addition, the concept of misleading information extends to the Scheme's marketing that **the industry** has launched this programme. The inference is that all village owners and operators are involved in this scheme and programme. From the PCA/ RLCA website:

"The retirement living industry has launched a new accreditation scheme that provides a professional quality assurance framework for villages, using the most rigorous standards."

That's not correct and should be challenged. As an initiative of the PCA/ RLCA, some stakeholders in the industry may be taking part in the scheme.

2. Impacting Competition

Currently the Australian Government via the Australian Aged Care Quality Agency conducts the accreditation process for the aged care industry. A level playing field of uniform, accountable and transparent consumer protection is in place. Under the proposed scheme, rules may be altered at the discretion of the Scheme Owner. In the event the village owner elects not to accept the new rule/s:

….failure to do so may result in cessation of the Certification process for the Applicant Villages, or Village Owner and/or Operator or withdrawal of Certification for Certified Villages or Certified Village Owners and/or Operators.

In effect, despite the provision of a dispute resolution process which is unlikely to have a bearing on the scheme owner's right to change the scheme rules as it sees fit, a withdrawn certification can have a devastating perception in the market place or, pressure an owner or operator to remain in the scheme & accept the ongoing costs of new rule compliance for fear of such consequence.

It is a conflict of interest and an impact on competition for The Property Council of Australia via its subsidiary, The Retirement Living Council to administer a certification scheme & Registered CTM which can require village owners and operators to implement physical changes to their facilities, the result of which could introduce an opportunity to benefit members of the PCA.

3. A Nil Increase to Consumer Protection, despite Perception

Despite the appearance of increased consumer protection by this CTM, the reality is that due to the increase in compliance costs which must be passed on to residents and/or families, greater pressure will be exerted on consumers' budgets. Most vulnerable are those existing elderly residents within these villages whom will now be exposed to further expense despite the fact the village owner or operator fulfils or exceeds its obligations under existing Australian law via three yearly government administered accreditation.

If it were the case that part or all of the scheme rules introduced new or innovative safe guards not covered by the Quality Agency's existing accreditation process, clearly there could be a boost to consumer protection and certification would clearly and rightfully offer a competitive advantage to villages accredited by the scheme.
It should not go unsaid, however that the Australian Aged Care Quality Agency's accreditation process exceeds the standards set by this proposed CTM (44 Expected Outcomes compared to 26 under the Lifemark Village CTM). Many of the CTM's accreditation standards are very similar to those listed by the Quality Agency.

Examples for comparison:

<u>Surveillance</u>

The Quality Agency: 1 per year (unannounced)
The Scheme Owner: At 18 months (announced)

<u>Continual Improvement</u>

The Quality Agency: Required & stated
The Scheme Owner: Required & stated

<u>Resident Lifestyle</u>

The Quality Agency: Choice & decision making
The Scheme Owner: Residents' involvement in decision making

4. Impacting competition: Increasing costs - a barrier to new entrants

Duplication of accreditation processes can have a significant impact on the prospects of new operators entering the aged care sector. The PCA has published a goal (No. 5) to deliver *market-making opportunities* as a service to its members. Whilst this concept in itself is perfectly acceptable, it can't be regarded in the interest of the consumer when the cost/benefit notion means an increase in expense for operators (both existing and potential) which are passed on to elderly consumers, in return for little improvement to safety, quality of life, quality of care or standard of living.

Whilst the CTM owner (PCA/ Retirement Living Council) may not be in direct competition with villages owners or operators some of their members may be. In comparison, the Quality Agency is not affiliated with any private sector organisation in a representative or advocacy sense.

Furthermore and with particular regard to the promotion by the CTM owner that its accreditation scheme is independent, it is hard to reconcile this notion given:

1. The PCA/ RLC (via its Lifemark Village Scheme) <u>**writes the rules**</u> to the scheme
2. The Lifemark Village Scheme <u>**appoints the exclusive certifier**</u> – an ICB (who may assign the role to other certifiers)

3. The Scheme appointed ICB **identifies required areas of improvement** required of a village owner/ operator
4. The PCA represents a membership of **individuals and organisations who can fix the problems** resulting from a breach/ non-compliance of the rules

In comparison, the Australian Government accreditation process is far closer to the genuine concept of independence, transparency & the protection of free-market forces given:

1. The Parliament of Australia write the rules (any person may comment on or challenge the rules via the parliamentary process) & it is transparent
2. The Quality Agency appoints an independent assessment team
3. The Village Owner or Operator must fix the problems resulting from a breach/ non-compliance of the rules which occurs without the possibility of connection or recommendation from the Parliament, the Quality Agency or the assessment team

Given the PCA's goal (No.5) to deliver its members' market-making opportunities, it is misleading for the Scheme to promote itself as independent.

Conclusion

It's of great concern that a large, membership based organisation, primarily representative of property sector stakeholders, seeks to achieve approval of a registered Certification Trademark, which, once granted, gives it considerable & greater power and influence, perceived or otherwise, over consumers within the Aged Care sector.

Members of the Property Council of Australia may stand to benefit from the requirements imposed by this scheme. It is anti-competitive for a single organisation to be in charge of rules, the compliance of which may be remedied by its very own members.

Due to the marketing power of the PCA, there exists a substantial possibility consumers of aged care services, both families and residents, will form the view the registered Lifemark Village CTM represents a higher level of safety and protection & may in fact lead such consumers to believe the government's Quality Agency accreditation has been superseded or even replaced by this CTM.

The registration of this CTM should not be approved primarily on the basis that the scheme owner stands to substantially gain market influence & power for the benefit of its members with a corresponding impact on consumer protection. A concentration of service providers led by the PCA/ RLCA in a scheme imposing rules without future limit or public oversight is not in the public interest.

Yours sincerely

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