

Partner Lisa Lennon  
Contact Lauren Eade  
T +61 2 9263 4369  
leade@gtlaw.com.au  
Our ref LML:LFE:1019982



L A W Y E R S

**Sydney**

2 Park Street Sydney NSW 2000 Australia  
GPO Box 3810 Sydney NSW 2001  
T +61 2 9263 4000 F +61 2 9263 4111  
[www.gtlaw.com.au](http://www.gtlaw.com.au)

**24 October 2014**

**By email**

Gina D'Ettorre  
Assistant Director | Adjudication Branch  
Australian Competition and Consumer Commission  
Level 35 360 Elizabeth Street Melbourne 3000

By email: [Gina.D'Ettorre@accc.gov.au](mailto:Gina.D'Ettorre@accc.gov.au)

Dear Gina

**National Roads and Motorists Association Limited Certification Trade Mark Application No 15684411**

We refer to the submissions received in response to the public consultation on the above application.

National Roads and Motorists' Association Ltd (**NRMA**) has reviewed each of the submissions and consider the Model Rules address the concerns raised. We make the following comments and observations about some concerns raised in the submissions.

Where relevant, we have also included references to ACCC's corresponding questions for ease of reference. Other bracketed references are references to sections of the rules.

**1. Owl Ratings will increase consumer choice and competition and are very different to Government mandated regulation (ACCC Q7)**

NRMA has introduced the Owl Ratings in response to strong Member feedback that they find it difficult to find independent information presented from a consumer perspective, that is helpful in making decisions about aged care and retirement living. The Owl Ratings rate services on Customer Engagement and provide an opportunity for operators to differentiate their services on what is most valued by consumers. This actually increases competition between providers by giving consumers additional information on which to base their decision. This is very different to mandatory Government regulation applying to all operators which can make decision-making harder for consumers because all operators are treated the same.

This is about the customer experience with a service and is determined by the customer's perspective rather than the provider or Government. The Owl Ratings are not an accreditation scheme and should not be confused with aged care regulation for quality and clinical standards. Customer engagement measures what it is an operator does that consistently delights their customers. The rules governing the Owl Ratings Scheme make it clear that the Owl Ratings are rating customer engagement and are different to government accreditation systems (see for example 2.1). Only Providers who are already accredited under or delivering services in accordance with the relevant government or industry accreditation or certification schemes are eligible to apply to be rated (see 6.2). The Owl Ratings operate alongside the existing government or industry accreditation or certification schemes, not as a replacement for those schemes. The Owl Ratings Scheme does not purport to rate the quality of health and care provided by a Provider.

It is not necessary for the Owl Rating Scheme to apply to all Providers in the aged care sector for it to operate as an effective decision-making aid for prospective users of a service. A good Owl Rating will

certainly provide a Provider with a competitive advantage in the marketplace, but that is desirable for consumers and prospective consumers and in any case is how every certification mark operates. Providers who do not obtain an Official Rating of one Owl or higher will not receive a rating under the scheme – it is intended to rate excellent Providers only.

## 2. Expertise and integrity

NRMA has partnered with Gallup, the global research company as the scheme administrator and scientific expert. The Owl Rating survey uses the Gallup Customer Engagement questions, which has been validated over a decade with more than 11 million respondents globally. This ensures the independence and evidence base attached to the survey.

COTA Australia is also a partner with NRMA and Gallup in the Owl Ratings. COTA is one of Australia's largest and most influential consumer organisations and very involved in Government aged care reforms advocating on a wide range of policy issues affecting the everyday lives of older Australians. COTA's CEO, Ian Yates has been actively involved with NRMA in the design of the Owl Ratings.

NRMA has consulted with experts in the industry including Aged and Community Services NSW.ACT and a number of providers who have advised NRMA in developing aspects of the Owl Ratings. These people include Illana Halliday, CEO Aged and Community Services NSW.ACT, Elena Katrakis, CEO Carers NSW, Andrew Giles, previous CEO, Retirement Villages Association, Mary Wood, Executive Officer Retirement Living Council of the Property Council of Australia and Brendan Moore, Policy Officer, Alzheimer's Australia NSW.

NRMA acknowledges there are many industry and consumer groups including the Residents of Retirement Villages Victoria Inc. and the Western Australian Retirement Villages Residents Association Inc. NRMA has consulted with the National Retirement Village Residents Association, through its President Terry MacDonald. However we understand Terry has recently stood down from his position.

## 3. The survey questions and the appropriateness of them for retirement villages, home care and residential care (ACCC Q2).

Additional driver questions have been developed for each of the three service types (retirement villages, home care and residential care). Over time, as the Australian sample grows, the responses to these questions will enable Gallup to determine what the operator does that consistently drives high levels of customer engagement. The additional driver questions have been developed in consultation with Gallup and COTA and the implementation of them and any necessary adjustments is in accordance with Gallup's usual specialised statistical methodology.

Gallup uses the 11 Customer Engagement questions mostly in B2C businesses across a wide range of industry sectors. Gallup's experience also includes health and aged care organisations in the US. They have worked with NRMA and COTA to develop the additional driver questions for each service type. These will always be tested in a pilot before implementing and we expect them to change over time as experience shows which questions actually contribute most to driving high levels of customer engagement. Ratings are weighted to each category of service (see 4.1) and are intended to give comparable results across the categories.

Carers and/or decision-makers may complete a modified version of the survey, where residents cannot complete it themselves (see 3.3), for example where residents suffer from dementia. The Provider will be aware of any issues affecting the residents' ability to complete a survey as a result of

the provision of day to day care to that resident, and is required to nominate a decision maker for the resident in that case (see 3.3).

#### **4. Implementing the Owl Ratings in Residential Care (ACCC Q1)**

NRMA understands and appreciate the challenges of implementing the Owl Ratings in residential care and other settings where there may be vulnerable people. That is NRMA is concentrating initially on implementing the Owl Ratings in retirement living and home care. NRMA has made provision for the survey to be completed either by a person receiving a service or their nominated carer or decision-maker. In all cases where people cannot give informed and capable consent to participate in the survey, consent from a nominated carer or decision-maker is obtained.

NRMA has received considerable interest from aged care providers, including those in residential care, who recognise that as Government policy changes to consumer directed care, there is an important place for a service like the Owl Ratings because it enables them to market and differentiate their services to consumers on customer engagement.

#### **5. Survey sample and implementation (ACCC questions Q3 and Q4)**

As the Rules make clear, the sample size for the survey is determined by the Scheme Administrator (presently Gallup) as noted in 3.3 of the Rules. Gallup currently requires Providers to provide details (including decision-makers where appropriate) for at least 70% of the total residents of the village before the ratings process can commence, from which Gallup determines the survey respondents. It is not possible for a Provider to skew the Owl Ratings process by selectively nominating the residents to be surveyed. Other than identifying residents for the survey, the Provider is not able to participate in the survey. The Scheme Administrator provides a ratings scorecard and Official Rating to the Provider (see 3.3), not the actual survey response details unless the person surveyed agrees otherwise.

Customers receive a letter from the provider explaining the Owl Ratings and inviting them to participate in the survey. They are given an opportunity to opt out if they do not wish to participate. The opt out provision overcomes the inherent bias from an opt in process. Where a resident is not able to participate because of a cognitive or other health reason, there is a provision to obtain consent from a nominated carer or decision-maker to complete the survey from their perspective.

Fees for the Owl Rating process are to cover the costs of the process and are paid by Providers, not residents. Fees are intended to be set at a level accessible to most Providers and at present for retirement villages with fewer than 99 units is \$2900 ex GST, and for retirement villages with more than 99 units is \$3900 ex GST, inclusive of the rating process and initial 2 year rating period. Instalment payment terms are offered to Providers.

#### **6. Further questions – ACCC**

In addition to the matters above, we provide the following responses to the ACCC's additional queries (using your numbering).

##### **Q.2 What are the criteria for adjusting the set of questions, and how might this be done?**

NRMA, Gallup and COTA are progressively implementing the Owl Ratings commencing with retirement villages. Prior to implementation, a pilot is conducted with a small number of willing providers to test processes and assumptions and also to assess feedback on the questions.

The CE11 questions form the core of the questionnaire, which have been validated globally by Gallup with over 11 million respondents. Gallup will analyse the responses to the additional driver questions

to ascertain which questions correlate as highly as the CE 11 questions with high levels of customer engagement.

**Q.5 What might constitute a serious compliance issue?**

In the event there is a serious compliance issue with a regulated provider such as a sanction under the Commonwealth Aged Care Act, after investigating this with the relevant Government agency, NRMA may suspend the rating. However, the Owl Ratings are not an accreditation system and therefore these two schemes are measuring different things. The Owl Ratings measure customer engagement and the customer's perspective on a service.

**Q.6 When is government accreditation, certification or relevant industry certification not relevant?**

This could arise where a provider is not regulated as an Approved Provider under the Commonwealth Aged Care Act yet is able to deliver services by a brokerage agreement with an Approved Provider. The Model Rules used the term "if relevant" to recognise that there are different types of Government regulation applying to the aged care and retirement village industry and each needs to be interpreted as relevant.

**Q.8 Please provide details of the relevant industry accreditation and certification schemes.**

Commonwealth funded aged care, including residential care and home support is regulated under the Commonwealth Aged Care Act.

There are also building certification regulations imposed by Commonwealth Governments and usually administered by State and Local Governments. These govern the building standards for design and construction of buildings.

Retirement villages are regulated differently in each State under consumer protection law, usually referred to as the Retirement Villages Act. There are two voluntary industry based accreditation schemes operating:

- i) Life Mark operated by the Retirement Living Council (part of the Property Council of Australia) and
- ii) Quality Innovation Performance (QIP) operated by LASA Queensland

Please let us know if you have any questions in relation to the above.

Yours faithfully  
**Gilbert + Tobin**

**Lisa Lennon**  
Partner  
T +61 2 9263 4190  
llennon@gtlaw.com.au

**Lauren Eade**  
Lawyer  
T +61 2 9263 4369  
leade@gtlaw.com.au