**NATIONAL ROADS AND MOTORISTS ASSOCIATION CTM APPLICATION 1568411**

**ACCC ASSESSMENT**

**The Application**

1. National Roads and Motorists Association’s (NRMA) certification trade mark is intended to assist consumers to make informed decisions about Home Support, Care Homes and Retirement Villages (Service Providers).
2. Service Providers that apply to use the certification trade mark (CTM) and attain a good to excellent customer engagement rating will be given an “Owl Rating” ranging from one owl (good levels of engagement) to three owls (excellent levels of engagement).



1. NRMA states that Service Providers will be rated on factors that drive high levels of customer engagement. The NRMA advises that these factors have been chosen because empirical evidence shows that customers who are fully engaged are more likely to be happy with the service they receive and recommend it to others as well as improving the financial performance of providers.
2. The rating will be determined by NRMA, assisted by Gallup Organisation Pty Ltd and COTA Australia Ltd. Further details about the rating process are provided in the CTM Rules.

**Consultation**

1. The ACCC publicly consulted with industry bodies, large aged care providers, resident associations, private health insurance companies, relevant government departments and consumer organisations.

*Submissions*

1. The ACCC received two public submissions (Residents of Retirement Villages Victoria and Western Australian Retirement Villages Residents Association Inc) and one confidential submission.
2. Parties primarily raised concerns that the Scheme may mislead consumers and cause them to make decisions based on incorrect assumptions. A summary of the main points raised in submissions is outlined below:
	* Making decisions about aged care providers are significant and cannot be compared to booking accommodation in a holiday resort.
	* People who require care are vulnerable, have complex needs which vary significantly and a rating system will not accurately provide consumers with the information they need.
	* Consumers may assume the rating relates to the quality of health care provided and therefore make inappropriate decisions.
	* The different services are rated in a very similar way when they are not comparable.
	* Consumers may assume that Service Providers who choose not to be rated have been unable to attain a rating, or that they offer a lower quality of service compared to those with a rating.
	* Facilities that cannot afford to be rated will be disadvantaged.
	* There will be confusion with accreditation schemes used in retirement villages.
3. Concern was also raised in relation to the rating methodology. In particular, there was concern that the Service Provider self-selects the consumers to be interviewed and this may be open to manipulation. Further, that dementia patients who make up over 50% of residents in aged care facilities, may be excluded from participating, or will not be taken into account in the rating process which may impact the accuracy of the results and therefore potentially mislead consumers.
4. Finally, concern was raised that the certification fee will be added to residents’ monthly maintenance fees, thereby adding to the financial burden of aged care residents.

*NRMA’s response to concerns*

1. NRMA responded to the concerns raised by parties. NRMA submitted that it has introduced the Owl Rating in response to strong member feedback that its members find it difficult to locate independent information from a consumer perspective about aged care and retirement living. NRMA also clarified that the Owl Rating is not an accreditation scheme and should not be confused with aged care regulation for quality and clinical standards but rather it is intended to operate alongside existing government or industry accreditation or certification schemes.
2. The NRMA confirmed that to be eligible to be rated, a Service Provider must also be governed by the *Commonwealth Aged Care Act 1997* and/or Retirement Living legislation in each respective State and Territory. The Service Provider must have an ABN for verification purposes and comply with all relevant government or appropriate industry accreditation or certification schemes.
3. As part of the application, a Service Provider must provide the Scheme Operator a list of at least 70% of consumers (including carers or decision makers) that use the service and their contact details.
4. NRMA and Gallup provided further detail about the requirement to provide details of at least 70% of consumers for the purpose of surveying them. NRMA advised that Gallup receives a full list of residents and their contact details at a particular village from NRMA. However, some consumers are not eligible to be surveyed (for example because the resident has requested to be marked as ‘Do Not Call’, the unit is unoccupied, or it has been indicated that the resident has a health condition that prevents them from responding to a survey and the resident does not have a decision maker who is able or willing to respond to the survey). Gallup then works with the available sample of residents that can be called. This needs to be at least 70% of the total population of the village to be statistically representative. Gallup then has interview quotas based on the size of the village. These quotas are calculated based on reaching an acceptable margin of error.
5. NRMA submits that Gallup’s methods are consistent with industry best practice and that the 70% threshold is rigorously applied. NRMA advised that several facilities have had difficulty meeting the minimum threshold of 70% of residents for interviews, which means they are ineligible to be rated.
6. NRMA submits that the fees for the Owl Rating process are intended to be set at a level that is accessible to most Service Providers and at present the fee for retirement villages with fewer than 99 units is $2900 excluding GST, and with more than 99 units is $3900 excluding GST and instalment payment plans are offered to Service Providers.
7. A link to NRMA’s response can be found on the Consultation home page.

**ACCC Assessment**

1. The ACCC was satisfied that the CTM Rules which seek to assist consumers to identify aged care services with a high degree of customer satisfaction are unlikely to be misleading or deceptive to consumers. The ACCC noted that the Owl Rating is not intended to provide accreditation for aged care providers but rather it is intended to indicate Service Providers that have attained a good to excellent customer engagement rating. Customer engagement can be used to measure customer loyalty and satisfaction with a service provider. NRMA’s “Living Well Navigator” website, where consumers may be able to search for Service Providers among other things, is designed to provide information to older Australians to assist them in making more informed choices.
2. Moreover, the ACCC noted that to be eligible to apply for an Owl Rating a Service Provider must also be compliant with relevant federal and state government legislation and regulations. In this context, the ACCC considered that consumers will understand what the Owl Rating is intended to represent.
3. The ACCC considered that the Rules are not to the detriment of the public. In this context, detriment to the public means ‘harm to the community in addition to the consumer protection concerns and competition concerns.[[1]](#footnote-1)
4. Broadly, CTMs are expected to provide public benefits by indicating to consumers that a product or service meets a particular standard. The ACCC considered that the CTM is likely to provide this benefit and any public detriment from the CTM requirement is likely to be limited.
5. The ACCC considered that the CTM Rules are unlikely to raise concerns regarding misleading and deceptive conduct, competition concerns or concerns under other aspects of the *Competition and Consumer Act 2010* and is therefore satisfied that the CTM Rules satisfy the criteria in section 175(2) of the *Trade Marks Act (1995).* The ACCC is also satisfied that the CTM Rules comply with section 173(2) of the *Trade Marks Act.*
6. Accordingly, on 20 April 2015, the ACCC issued a Final Assessment approving the CTM application lodged by the NRMA.
1. Section 175(2)(b)(i) of the *Trade Marks Act*. *Certification trade marks – the role of the ACCC* (2011) p 8. [↑](#footnote-ref-1)