

adma

Australian Direct Marketing Association

DIRECT MARKETING
CODE OF PRACTICE

NOVEMBER 2001

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WHAT IS THE CODE?

- 1 The Code sets out specific standards of conduct for participants in the direct marketing industry in relation to consumers and serves as a benchmark in settling disputes between industry participants and consumers.
- 2 The requirements of the Code are based on common sense and are matters of fairness and honesty. The Code not only promotes fair trading but is intended to serve as a point of reference for organisations to ensure they comply with all applicable state and commonwealth laws.

WHY IS THE CODE NECESSARY?

- 3 Direct marketing is expanding rapidly. More consumers are choosing to purchase goods and services through direct response channels and more businesses are using these media to meet this increasing demand. Because they operate at a distance rather than face to face with consumers, direct marketing organisations place a greater emphasis on building consumer confidence and trust. This is especially true in respect of their handling of personal information such as name, address and other identifying information.
- 4 The future expansion of direct marketing depends on the players conducting their business in a fair, honest and ethical manner. Only by doing so can the reputation of the industry be enhanced so that consumer demand will continue to grow.

STATEMENT OF OBJECTIVES

- 5 The objectives of the Code are to:
 - 5.1 ensure consumers have access to the product and service information they need to make informed choices;
 - 5.2 minimise the risk of member organisations breaching the *Privacy Amendment (Private Sector) Act 2000*, *Trade Practices Act 1974* or state fair trading legislation;
 - 5.3 promote a culture among member organisations of conducting their businesses fairly, honestly, ethically and in accordance with best practices; and
 - 5.4 increase consumer confidence in doing business with ADMA members.

SCOPE OF THE CODE

- 6 The Code binds all ADMA members and all employees, agents, subcontractors and suppliers of ADMA members. Parts C and E of the Code are extended to apply not only to member organisations, but also to fundraisers and charities trying to generate donations.
- 7 An alleged breach of the Code by a member of ADMA, its employees, agents or subcontractors will be dealt with in accordance with the enforcement provisions of the Code.
- 8 If ADMA becomes aware of an alleged breach of the Code by a direct marketing organisation who is not a member, ADMA will bring the matter to the attention of the company concerned and seek compliance.
- 9 ADMA has periodically issued Guidelines in accordance with the Code and will issue further Guidelines from time to time.

CONFLICT WITH LEGISLATION

- 10 Where there is any conflict or inconsistency between the Code and any Commonwealth, State or Territory legislation, that legislation shall prevail to the extent of the conflict or inconsistency.

CITATION

- 11 This Code may be cited as the ADMA Code of Practice.

MARKETING CLAIMS

Misleading or deceptive conduct

- 1 A member organisation shall not make misleading or deceptive claims about an offer delivered through direct marketing whether by words, omission, illustration or any other means.

False claims

- 2 A member organisation shall not:
 - 2.1 make false or misleading claims with respect to the price or quality of goods or services;
 - 2.2 quote scientific or technical data in support of a claim, unless the data can be readily substantiated;
 - 2.3 use a false or misleading testimonial;
 - 2.4 advertise courses of instruction implying the promise of employment or remuneration where this cannot be guaranteed;
 - 2.5 promise outcomes where those outcomes have no safe scientific, medical or performance basis;
 - 2.6 overstate physical security risks; and
 - 2.7 describe goods or samples as “free” unless the goods or samples are supplied at no cost or no extra cost to the consumer other than actual postage/carriage when specified.

Market research claims

- 3 A member organisation must not represent that it is undertaking market research where the purpose for contacting the consumer is direct marketing.

Member Suppliers

- 4 All ADMA members will ensure their suppliers become familiar with the Code compliance obligations of the member.

INFORMATION AT TIME OF OFFER

- 5 Consumers must be provided with all information reasonably necessary for them to make an informed purchase decision.

- 6 The consumer must be given clear, unambiguous and easily accessible information of the material terms of the offer, including at least the following:

- 6.1 the name of the relevant organisation and a street address at which they can be contacted - a post office box, newspaper or magazine box number, facsimile or telephone number, or an electronic mail address will not suffice as a street address;
- 6.2 the total price of the goods or services, including any delivery charge and any other fee or charge to which the consumer would be liable under the contract unless otherwise authorised by the consumer;
- 6.3 the delivery arrangements;
- 6.4 all material restrictions, limitations or conditions to purchase; and
- 6.5 the period, if any, for which the contract solicitation remains valid.

INFORMATION AT THE TIME OF DELIVERY

- 7 No later than at the time of delivery, or in cases where delivery is to be effected in stages, the time of the first delivery, the consumer shall receive at least the following information in writing, in a clear and unambiguous style and in the same language as was used in the contract solicitation:

- 7.1 the name and contact details, including at least the street address, of the organisation where consumers can make inquiries or complaints, or can return goods or cancel contracts;
- 7.2 the payment arrangements, including any credit terms, or terms for payment by instalments, and a total cash price;
- 7.3 all restrictions, limitations or conditions of purchase;
- 7.4 any safety or care warnings required by any applicable law to accompany the goods or services and, where necessary, instructions for proper use; and
- 7.5 refund, cancellation and exchange rights and procedures.

- 8 In the case of services that, by their nature, can be delivered extremely quickly to the consumer, the information must be sent to the consumer within three days of the services commencing.¹

¹ This is to cover services that can be provided almost instantaneously, e.g. certain changes to telephony services, where a charging plan may be changed or implemented while the consumer is speaking to the operator. In these circumstances, the seller may provide the detailed written information as soon as possible and in any event within three days.

UNFAIR CONDUCT

- 9 An organisation must not engage in conduct which is unfair or “unconscionable.” For example, a consumer’s poor spoken or written English, or an obvious inability to understand the offer must not be exploited.

INCENTIVES

- 10 The terms and conditions under which incentives, including prizes, gifts, or other rewards are offered must be clearly stated, including:
- the manner of drawing or awarding a gift, prize or reward;
 - whether or not the provision of the gift, prize or reward is conditional on the consumer purchasing goods or services from the organisation.

Delivery of gifts, prizes or free items

- 11 Gifts, prizes or free items must be made available to the consumer in the period of time stated in the offer or, if no period of time is stated, within 30 days of the consumer becoming entitled to receive the gift, prize or reward.
- 12 If the gift, prize or reward is conditional on the consumer purchasing a good or service, and the organisation becomes unable to deliver the good or service, the organisation must still provide the consumer with the gift, prize or reward.

*Contests, lotteries or sweepstakes*²

- 13 An organisation that intends to conduct a lottery or contest must:
- 13.1 make available, at the point of entry, the rules governing the contest or lottery, including whether the consumer’s name and address will be retained;
- 13.2 ensure that judging takes place promptly and fairly and is certified by an independent auditor; and
- 13.3 make available the results of the contest or lottery to participating consumers who request them.

AVAILABILITY OF GOODS OR SERVICES

- 14 Unless the promotional material specifically warns of limited stocks, the organisation must not offer particular goods or services for sale until sufficient stock is available, or reasonably expected to be available, to meet the reasonably foreseeable demand.

DELIVERY

- 15 If the organisation has not specified a period for delivery then the goods or services must be delivered in a reasonable time from receipt of an order, such reasonable period of time not to exceed 30 days.

Delayed delivery

- 16 When an order cannot be delivered:
- within the time specified in the offer; or where no time is specified, within 30 days of receipt of an order, the organisation must promptly send to the consumer an initial notice acknowledging the order.

The notice must:

- state the date on which the order is expected to be delivered;
 - state the reason for the delay; and
 - offer the consumer the opportunity to cancel the order and receive a full refund of any money paid.
- 17 If the organisation is not able to deliver the goods or services by the date stated in the initial notice, the organisation must either:
- advise the consumer that it is unable to fulfil the order and refund the consumer any money paid; or
 - notify the consumer of the new expected delivery date (“the second notice”). This notification must be accompanied by a reply-paid or other cost free response mechanism and include an option for the consumer to cancel the order and receive a full refund of any money paid.
- 18 If the organisation is not able to deliver the goods or services by the date stated in the second notice, the procedure set out in the above clause 17 shall be repeated until the goods or services are delivered or the transaction has been cancelled and any moneys paid refunded.

² The conduct of contests, lotteries or sweepstakes is also governed by separate State and Territory laws. See also ADMA’s Guidelines for Chance Draw and Prize Competition Promotions.

PAYMENT

- 19** An organisation must not request or accept payment for goods or services if it:
- intends to supply goods or services materially different from the goods or services in respect of which payment is made; or
 - there are reasonable grounds, of which the organisation is aware or ought reasonably to be aware, for believing that it will not be able to supply the goods or services within the period specified by it or, if no period has been specified, within a reasonable time, such period of time not to exceed 30 days.

CANCELLATION AND REFUNDS

Cooling-off period of 7 days or more

- 20** Each contract an organisation makes with a consumer shall provide that the consumer has the right to cancel the contract:
- within a period of time that is not less than seven business days (this excludes weekends and public holidays); and
 - at any time before the goods or services are dispatched to the consumer.
- 21** The seven business day time period shall begin:
- 21.1 for goods, on the deemed or actual date of receipt of the goods by the consumer. The consumer will be deemed to have received the goods three business days after the goods were dispatched, unless the consumer can prove that they were received on a later date or the organisation can prove they were delivered at an earlier date.
- 21.2 for goods which are not complete or functional until the final instalment is delivered and which are distributed periodically, on receipt of the final instalment;
- 21.3 for distinct goods distributed periodically, such as magazines, on receipt of the first instalment of goods; or
- 21.4 for services, on the date the contract to supply the services is made.
- 22** The organisation must ensure that the consumer's right to cancel a contract during the cooling-off period is specifically mentioned or prominently displayed in any contractual documentation.

When the cooling-off period does not apply

- 23** The cooling off period need not apply to:
- 23.1 contracts for the supply of indivisible services where those services have started to be provided;
- 23.2 any portion of services which have already been performed under a contract for the supply of divisible services;
- 23.3 transactions concerning securities and other goods or services whose price is dependent on financial market fluctuations, which cannot be controlled by the organisation;
- 23.4 contracts for made-to-measure goods or clearly personalised goods;
- 23.5 contracts for goods which can be immediately copied, such as books, magazines, computer software, cassettes, videos and compact discs that are supplied with or without a wrapping or seal, unless the good's immediate wrapping or seal is unbroken;
- 23.6 contracts for personal health or hygiene goods where any wrappings or seals have been broken or tampered with; and
- 23.7 contracts for goods which by reason of their nature cannot be returned or are liable to deteriorate rapidly.

Method of cancelling a contract pursuant to rights during a cooling off period

- 24** Consumers who are entitled to cancel a contract with a direct marketing organisation by exercising their cancellation rights during a cooling-off period may cancel the contract by:
- in the case of goods, returning the goods in their original condition during the cooling-off period; or
 - in the case of services, advising the organisation during the cooling-off period of the cancellation of the contract for the supply of services.
- 25** For the purposes of clause 24, goods will be considered to be in their original condition despite their packaging or swing tags having been removed or tampered with.

26 An organisation is not responsible for the costs of returning goods under a contract cancelled in accordance with the cooling-off provisions.

Option to cancel a contract for continuing series of goods or services

27 A contract for the supply of a continuing series of goods or services must enable either party to cancel by giving reasonable notice.

28 When a party to a contract for a continuing series of goods or services cancels the contract, each party must satisfy any obligations outstanding at the time of cancellation.

Payment of refunds

29 Where a consumer is entitled to a refund, an organisation must refund moneys within seven business days of the organisation receiving the returned goods or notice of the cancellation of the contract from the consumer.

30 The organisation has a choice whether it makes a refund by way of money or by making a credit adjustment to the consumer's credit card where:

- a consumer claims a refund as a result of a contract cancelled during the cooling off period, or as a result of goods being defective or not fit for the purpose for which they were intended³; and
- the consumer paid the organisation by using that credit card.

MINORS

31 An organisation must have appropriate procedures in place to limit the sale of restricted goods or services to children.⁴

32 For the purpose of clause 31, the definition of 'minor' in any restricting legislation is to apply.

UNORDERED GOODS OR SERVICES

33 Consumers who have been supplied unordered goods or services shall not have to pay for those goods or services.

34 Subject to clause 33, consumers who have received unordered goods shall become the owner of the goods:

- 30 days after advising the organisation that the goods

- were not ordered and of an address where the goods can be collected; or
- 90 days after the receiving the goods, whichever is the sooner, unless the organisation takes possession of the goods before this time has expired.

35 During the time period referred to in clause 34, the organisation may contact the consumer to make reasonable arrangements for taking possession of the unordered goods.

36 Organisations are entitled to take possession of goods in the following circumstances:

- the goods were received by the consumer in circumstances where the consumer knew, or might reasonably be expected to have known, that the goods were not intended for the consumer; or
- during the time period referred to in clause 34, the consumer unreasonably refused to permit the organisation to take possession of the goods.

SUBSTITUTED GOODS OR SERVICES

37 An organisation that cannot supply exactly the same good or service as specified by a consumer may supply a substitute good or service of a similar kind, quality and price provided that the possibility of this occurring has been clearly indicated at the time of offer.

38 If an organisation supplies substitute goods or services to those ordered they must be of a similar kind, quality and price and the organisation must clearly inform the consumer of:

- their right to cancel the contract and return the goods or cancel the services; and
- the time period within which the consumer may cancel the contract, which time period shall not be less than the cooling-off period.

39 When a contract for a substituted good is cancelled, the organisation is responsible for the costs of returning the goods. The organisation must promptly reimburse the consumer in respect of any reasonable costs incurred by the consumer in returning the goods.

RESPONDING TO A COMPLAINT

40 Organisations must have in place procedures for dealing with complaints from consumers. Such procedures must comply with the Australian Standard for Complaints Handling AS 4269 (available from Standards Australia).

³ The Trade Practices Act implies into all contracts for sale of goods or services various warranties. In relation to goods, these are that the goods are of merchantable quality (ie are not defective) and are fit for any purpose of which the consumer has been made known prior to purchase. In relation to services, these are that the services will be provided with due care and skill. Breach of these conditions entitle the consumer to cancel the contract and claim a refund.

⁴ For additional information about appropriate standards for marketing to children, members should refer to ADMA's "Guidelines for Marketing to Children".

IDENTIFICATION INFORMATION

- 1 At the earliest possible opportunity in an outbound telemarketing call, an organisation must ensure that the following information is provided to the consumer and repeated if the consumer at any time requests:
 - 1.1 the name of the person making the telephone call;
 - 1.2 where a service bureau is making the call, the name of the organisation on whose behalf the call is being made; and
 - 1.3 the purpose of the telephone call.
- 2 When making an outbound telemarketing call, organisations must not block the transmission of the calling line identity to any calling number display or any calling name display of a consumer who receives the telephone call.⁵
- 3 Where technically feasible, organisations should ensure that when outbound calls are made from within the organisation, the number which is transmitted or displayed on receiver terminals is a telephone number which is suitable for return telephone contact by an individual.
- 4 Bureaux which carry on telemarketing on behalf of other organisations should inform the people they call of the telephone number of the organisation on whose behalf they are calling to enable those people to contact the organisation.
- 5 An organisation that makes telemarketing calls must ensure that its name, address and telephone number are listed in a telephone directory or, if a new listing, its telephone number is available through a directory assistance service.

INFORMATION TO BE PROVIDED ON REQUEST

- 6 A telemarketer must ensure that the following information is provided to consumers who request such information:
 - 6.1 the telemarketer's name and contact details, including a telephone number and street address;
 - 6.2 the name of the person who is responsible for handling consumer inquiries which the telemarketer receives;

6.3 further details concerning the goods or services being offered; and

6.4 details of the source from which the telemarketer obtained the consumer's personal information.

- 7 A telemarketer who is not able to provide the information at the time of the request will ensure that the consumer is provided with the information in a reasonable period after the request is made.

GUISE OF RESEARCH

- 8 Where the purpose of the call is to sell a good or service, telemarketers must not represent that they are undertaking market research.

ACCEPTABLE CALLING CONDUCT

- 9 If it appears that a consumer has been interrupted at an inconvenient time by a telephone call, the telemarketer must promptly offer to call the consumer back and inquire as to when would be a more convenient time to do so.
- 10 A telemarketer must provide the consumer with a clear opportunity to accept or decline the organisation's offer.

PERMITTED CALLING TIMES

- 11 An organisation must ensure that all telephone calls to a consumer are made between the hours of 8am and 9pm⁶ and are not made on the following public holidays:
 - Christmas Day;
 - Good Friday; and
 - Easter Sunday.
- 12 If the consumer has previously agreed to receive a telemarketing call from the organisation outside of these hours or on these public holidays then the organisation may make such a call to that consumer.

LINE DISCONNECTION TIMES

- 13 A telemarketer must ensure that the consumer's telephone line is released within five seconds of the consumer hanging up or otherwise indicating that he or she requires the telemarketer to release the telephone line.

CALLING FREQUENCY

- 14 A telemarketer must not contact a consumer more than once in any 30 day period for the same or similar campaign without that consumer's prior consent.

⁵ When the outbound call is made by a service bureau on behalf of another organisation, calling line identity blocking may be used provided that the consumer is given a telephone number for the organisation. Guidelines for organisations using CND information have been developed by the Australian Communications Industry Forum in consultation with ADMA.

⁶ Some States have placed further restrictions on calling hours. Organisations should consult the relevant regulation in the States into which they are calling.

TRANSPARENT AND EFFECTIVE PROTECTION

- 1 Consumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.

FAIR BUSINESS, ADVERTISING AND MARKETING PRACTICES

- 2 An organisation engaged in electronic commerce should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices.
- 3 An organisation must not make any representation, or omission, or engage in any practice that is likely to be deceptive, misleading, fraudulent or unfair.
- 4 An organisation selling, promoting or marketing goods or services to consumers should not engage in practices that are likely to cause unreasonable risk of harm to consumers.
- 5 Whenever organisations make information available about themselves or the goods or services they provide, they should present such information in a clear, conspicuous, accurate and easily accessible manner.
- 6 An organisation should comply with any representations they make regarding policies or practices relating to their transactions with consumers.
- 7 An organisation should take into account the global nature of electronic commerce and, wherever possible, should consider the various regulatory characteristics of the markets they target.
- 8 An organisation should not exploit the special characteristics of electronic commerce to hide their true identity or location, or to avoid compliance with consumer protection standards and/or enforcement mechanisms.
- 9 An organisation should not use unfair contract terms.
- 10 Advertising and marketing should be clearly identifiable as such.
- 11 Advertising and marketing should identify the business on whose behalf the marketing or advertising is being conducted where failure to do so would be deceptive.

- 12 An organisation should be able to substantiate any express or implied representations as long as the representations are maintained, and for a reasonable time thereafter.
- 13 An organisation should develop and implement effective and easy-to-use procedures that allow consumers to choose whether or not they wish to receive unsolicited commercial e-mail messages.
- 14 Where consumers have indicated that they do not want to receive unsolicited commercial e-mail messages, such choice should be respected.
- 15 In a number of countries, unsolicited commercial e-mail is subject to specific legal or self-regulatory requirements.
- 16 An organisation should take special care in advertising or marketing that is targeted to children, the seriously ill, and others who may not have the capacity to fully understand the information with which they are presented.

ONLINE DISCLOSURES

Information about the business

- 17 An organisation engaged in electronic commerce with consumers should provide accurate, clear and easily accessible information about themselves sufficient to allow, at a minimum:
 - 17.1 Identification of the business - including the legal name of the business and the name under which the business trades; the principal geographic address for the business; e-mail address or other electronic means of contact, or telephone number; and, where applicable, an address for registration purposes and any relevant government registration or license number;
 - 17.2 Prompt, easy and effective consumer communication with the business;
 - 17.3 Appropriate and effective resolution of disputes;
 - 17.4 Service of legal process; and
 - 17.5 Location of the business and its principals by law enforcement and regulatory officials.
- 18 Where an organisation publicises its membership in ADMA it should provide consumers with appropriate contact details and an easy method of verifying that membership and of accessing the Code of Practice.

Information about goods or services

- 19 An organisation engaged in electronic commerce with consumers should provide accurate and easily accessible information describing the goods or services offered; sufficient to enable consumers to make an informed decision about whether to enter into the transaction and in a manner that makes it possible for consumer to maintain an adequate record of such information.

Information about the transaction

- 20 An organisation engaged in electronic commerce should provide sufficient information about the terms, conditions and costs associated with a transaction to enable consumers to make an informed decision about whether to enter into the transaction.
- 21 Such information should be clear, accurate, easily accessible and provided in a manner that give consumers an adequate opportunity for review before entering into the transaction.
- 22 Where more than one language is available to conduct a transaction, an organisation should make available in those same languages all information necessary for consumers to make an informed decision about the transaction.
- 23 An organisation should provide consumers with a clear and full text of the relevant terms and conditions of the transaction in a manner that makes it possible for consumers to access and maintain an adequate record of such information.
- 24 Where applicable and appropriate given the transaction, such information should include the following:
- 24.1 an itemisation of total costs collected and/or imposed by the business;
 - 24.2 notice of the existence of routinely applicable costs to the consumer that are not collected and/or imposed by the business;
 - 24.3 terms of delivery or performance;
 - 24.4 terms, conditions and methods of payment;
 - 24.5 restrictions, limitations or conditions of purchase, such as parental/guardian approval requirements, geographic or time restrictions;
 - 24.6 instructions for proper use including safety and health care warnings;
 - 24.7 information relating to available after-sales service;
 - 24.8 details of conditions related to withdrawal, termination, return, exchange, cancellation and/or refund policy information; and

24.9 available warranties and guarantees.

- 25 All information that refers to costs should indicate the applicable currency.

CONFIRMATION PROCESS

- 26 To avoid ambiguity concerning the consumer's intent to make a purchase, the consumer should be able, before concluding the purchase, to identify precisely the goods or services he or she wishes to purchase; identify and correct any errors or modify the order; express an informed and deliberate consent to the purchase; and retain a complete and accurate record of the transaction.
- 27 The consumer should be able to cancel the transaction before concluding the purchase.

PAYMENT

- 28 Consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.
- 29 Limitations of liability for unauthorised or fraudulent use of payment systems, and charge back mechanisms offer powerful tools to enhance consumer confidence and their development and use should be encouraged in the context of the electronic commerce.

DISPUTE RESOLUTION AND REDRESS

Applicable Law and Jurisdiction

- 30 Business-to-consumer cross-border transactions, whether carried out electronically or otherwise, are subject to the existing framework on applicable law and jurisdiction.

Alternative dispute resolution and redress

- 31 Consumers should be provided meaningful access to fair and timely alternative dispute resolution and redress without undue cost or burden.

PRIVACY

- 32 Business-to-consumer electronic commerce should be conducted in accordance with the consumer data protection principles outlined in Part E of this Code.

1 COLLECTION

- 1.1 An organisation must not collect personal information unless the information is necessary for one or more of its functions or activities.
- 1.2 An organisation must collect personal information only by lawful and fair means and not in an unreasonably intrusive way.
- 1.3 At or before the time (or, if that is not practicable, as soon as practicable after) an organisation collects personal information about an individual from the individual, the organisation must take reasonable steps to ensure that the individual is aware of:
- the identity of the organisation and how to contact it; and
 - the fact that he or she is able to gain access to the information; and
 - the purposes for which the information is collected; and
 - the organisations (or the types of organisations) to which the organisation usually discloses information of that kind; and
 - any law that requires the particular information to be collected; and
 - the main consequences (if any) for the individual if all or part of the information is not provided.
- 1.4 If it is reasonable and practicable to do so, an organisation must collect personal information about an individual only from that individual.
- 1.5 If an organisation collects personal information about an individual from someone else, it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in subclause 1.3 except to the extent that making the individual aware of the matters would pose a serious threat to the life or health of any individual.

2 USE AND DISCLOSURE

- 2.1 An organisation must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless:
- both of the following apply:
 - the secondary purpose is related to the primary purpose of collection and, if the personal information is sensitive information, directly related to the primary purpose of collection;

- the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose; or
- the individual has consented to the use or disclosure; or
 - if the information is not sensitive information and the use of the information is for the secondary purpose of direct marketing:
 - it is impracticable for the organisation to seek the individual's consent before that particular use; and
 - the organisation will not charge the individual for giving effect to a request by the individual to the organisation not to receive direct marketing communications; and
 - the individual has not made a request to the organisation not to receive direct marketing communications; and
 - in each direct marketing communication with the individual, the organisation draws to the individual's attention, or prominently displays a notice, that he or she may express a wish not to receive any further direct marketing communications; and
 - each written direct marketing communication by the organisation with the individual (up to and including the communication that involves the use) sets out the organisation's business address and telephone number and, if the communication with the individual is made by fax, telex or other electronic means, a number or address at which the organisation can be directly contacted electronically; or
 - if the information is health information and the use or disclosure is necessary for research, or the compilation or analysis of statistics, relevant to public health or public safety:
 - it is impracticable for the organisation to seek the individual's consent before the use or disclosure; and
 - the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph; and

- (iii) in the case of disclosure—the organisation reasonably believes that the recipient of the health information will not disclose the health information, or personal information derived from the health information; or
- (e) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent:
 - (i) a serious and imminent threat to an individual's life, health or safety; or
 - (ii) a serious threat to public health or public safety; or
- (f) the organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
- (g) the use or disclosure is required or authorised by or under law; or
- (h) the organisation reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of an enforcement body:
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;
 - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
 - (iii) the protection of the public revenue;
 - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;
 - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

Note 1: It is not intended to deter organisations from lawfully co-operating with agencies performing law enforcement functions in the performance of their functions.

Note 2: Subclause 2.1 does not override any existing legal obligations not to disclose personal information. Nothing in subclause 2.1 requires an organisation to disclose personal information; an organisation is always entitled not to disclose personal information in the absence of a legal obligation to disclose it.

Note 3: An organisation is also subject to the requirements of National Privacy Principle 9 if it transfers personal information to a person in a foreign country.

- 2.2 If an organisation uses or discloses personal information under paragraph 2.1(h), it must make a written note of the use or disclosure.
- 2.3 Subclause 2.1 operates in relation to personal information that an organisation that is a body corporate has collected from a related body corporate as if the organisation's primary purpose of collection of the information were the primary purpose for which the related body corporate collected the information.
- 2.4 Despite subclause 2.1, an organisation that provides a health service to an individual may disclose health information about the individual to a person who is responsible for the individual if:
 - (a) the individual:
 - (i) is physically or legally incapable of giving consent to the disclosure; or
 - (ii) physically cannot communicate consent to the disclosure; and
 - (b) a natural person (the carer) providing the health service for the organisation is satisfied that either:
 - (i) the disclosure is necessary to provide appropriate care or treatment of the individual; or
 - (ii) the disclosure is made for compassionate reasons; and
 - (c) the disclosure is not contrary to any wish:
 - (i) expressed by the individual before the individual became unable to give or communicate consent; and
 - (ii) of which the carer is aware, or of which the carer could reasonably be expected to be aware; and
 - (d) the disclosure is limited to the extent reasonable and necessary for a purpose mentioned in paragraph (b).
- 2.5 For the purposes of subclause 2.4, a person is responsible for an individual if the person is:
 - (a) a parent of the individual; or
 - (b) a child or sibling of the individual and at least 18 years old; or

- (c) a spouse or de facto spouse of the individual; or
- (d) a relative of the individual, at least 18 years old and a member of the individual's household; or
- (e) a guardian of the individual; or
- (f) exercising an enduring power of attorney granted by the individual that is exercisable in relation to decisions about the individual's health; or
- (g) a person who has an intimate personal relationship with the individual; or
- (h) a person nominated by the individual to be contacted in case of emergency.

2.6 In subclause 2.5:

child of an individual includes an adopted child, a step-child and a foster-child, of the individual.

parent of an individual includes a step-parent, adoptive parent and a foster-parent, of the individual.

relative of an individual means a grandparent, grandchild, uncle, aunt, nephew or niece, of the individual.

sibling of an individual includes a half-brother, half-sister, adoptive brother, adoptive sister, step-brother, step-sister, foster-brother and foster-sister, of the individual.

3 DATA QUALITY

An organisation must take reasonable steps to make sure that the personal information it collects, uses or discloses is accurate, complete and up-to-date.

4 DATA SECURITY

- 4.1 An organisation must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure.
- 4.2 An organisation must take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose for which the information may be used or disclosed under National Privacy Principle 2.

5 OPENNESS

- 5.1 An organisation must set out in a document clearly expressed policies on its management of personal information. The organisation must make the document available to anyone who asks for it.
- 5.2 On request by a person, an organisation must take reasonable steps to let the person know, generally, what sort of personal information it holds, for what purposes, and how it collects, holds, uses and discloses that information.

6 ACCESS AND CORRECTION

- 6.1 If an organisation holds personal information about an individual, it must provide the individual with access to the information on request by the individual, except to the extent that:
 - (a) in the case of personal information other than health information—providing access would pose a serious and imminent threat to the life or health of any individual; or
 - (b) in the case of health information—providing access would pose a serious threat to the life or health of any individual; or
 - (c) providing access would have an unreasonable impact upon the privacy of other individuals; or
 - (d) the request for access is frivolous or vexatious; or
 - (e) the information relates to existing or anticipated legal proceedings between the organisation and the individual, and the information would not be accessible by the process of discovery in those proceedings; or
 - (f) providing access would reveal the intentions of the organisation in relation to negotiations with the individual in such a way as to prejudice those negotiations; or
 - (g) providing access would be unlawful; or
 - (h) denying access is required or authorised by or under law; or
 - (i) providing access would be likely to prejudice an investigation of possible unlawful activity; or
 - (j) providing access would be likely to prejudice:
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law; or

- (ii) the enforcement of laws relating to the confiscation of the proceeds of crime; or
 - (iii) the protection of the public revenue; or
 - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct; or
 - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of its orders;
 - by or on behalf of an enforcement body; or
 - (k) an enforcement body performing a lawful security function asks the organisation not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia.
- 6.2 However, where providing access would reveal evaluative information generated within the organisation in connection with a commercially sensitive decision-making process, the organisation may give the individual an explanation for the commercially sensitive decision rather than direct access to the information.
- Note: An organisation breaches subclause 6.1 if it relies on subclause 6.2 to give an individual an explanation for a commercially sensitive decision in circumstances where subclause 6.2 does not apply.*
- 6.3 If the organisation is not required to provide the individual with access to the information because of one or more of paragraphs 6.1(a) to (k) (inclusive), the organisation must, if reasonable, consider whether the use of mutually agreed intermediaries would allow sufficient access to meet the needs of both parties.
- 6.4 If an organisation charges for providing access to personal information, those charges:
- (a) must not be excessive; and
 - (b) must not apply to lodging a request for access.
- 6.5 If an organisation holds personal information about an individual and the individual is able to establish that the information is not accurate, complete and up-to-date, the organisation must take reasonable steps to correct the information so that it is accurate, complete and up-to-date.

- 6.6 If the individual and the organisation disagree about whether the information is accurate, complete and up-to-date, and the individual asks the organisation to associate with the information a statement claiming that the information is not accurate, complete or up-to-date, the organisation must take reasonable steps to do so.
- 6.7 An organisation must provide reasons for denial of access or a refusal to correct personal information.

7 IDENTIFIERS

- 7.1 An organisation must not adopt as its own identifier of an individual an identifier of the individual that has been assigned by:
- (a) an agency; or
 - (b) an agent of an agency acting in its capacity as agent; or
 - (c) a contracted service provider for a Commonwealth contract acting in its capacity as contracted service provider for that contract.
- 7.1A However, subclause 7.1 does not apply to the adoption by a prescribed organisation of a prescribed identifier in prescribed circumstances.
- Note: There are prerequisites that must be satisfied before those matters are prescribed: see subsection 100(2) [of the Act].*
- 7.2 An organisation must not use or disclose an identifier assigned to an individual by an agency, or by an agent or contracted service provider mentioned in subclause 7.1, unless:
- (a) the use or disclosure is necessary for the organisation to fulfil its obligations to the agency; or
 - (b) one or more of paragraphs 2.1(e) to 2.1(h) (inclusive) apply to the use or disclosure; or
 - (c) the use or disclosure is by a prescribed organisation of a prescribed identifier in prescribed circumstances.
- Note: There are prerequisites that must be satisfied before the matters mentioned in paragraph (c) are prescribed: see subsection 100(2) [of the Act].*
- 7.3 In this clause: identifier includes a number assigned by an organisation to an individual to identify uniquely the individual for the purposes of the organisation's operations. However, an individual's name or ABN (as defined in the New Tax System (Australian Business Number) Act 1999) is not an identifier.

8 ANONYMITY

Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering transactions with an organisation.

9 TRANSBORDER DATA FLOWS

An organisation in Australia or an external Territory may transfer personal information about an individual to someone (other than the organisation or the individual) who is in a foreign country only if:

- (a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the National Privacy Principles; or
- (b) the individual consents to the transfer; or
- (c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of pre-contractual measures taken in response to the individual's request; or
- (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party; or
- (e) all of the following apply:
 - (i) the transfer is for the benefit of the individual;
 - (ii) it is impracticable to obtain the consent of the individual to that transfer;
 - (iii) if it were practicable to obtain such consent, the individual would be likely to give it; or
- (f) the organisation has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the National Privacy Principles.

10 SENSITIVE INFORMATION

10.1 An organisation must not collect sensitive information about an individual unless:

- (a) the individual has consented; or
- (b) the collection is required by law; or
- (c) the collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual, where the individual whom the information concerns:
 - (i) is physically or legally incapable of giving consent to the collection; or

- (ii) physically cannot communicate consent to the collection; or
- (d) if the information is collected in the course of the activities of a non-profit organisation-the following conditions are satisfied:
 - (i) the information relates solely to the members of the organisation or to individuals who have regular contact with it in connection with its activities;
 - (ii) at or before the time of collecting the information, the organisation undertakes to the individual whom the information concerns that the organisation will not disclose the information without the individual's consent; or
- (e) the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

10.2 Despite subclause 10.1, an organisation may collect health information about an individual if:

- (a) the information is necessary to provide a health service to the individual; and
- (b) the information is collected:
 - (i) as required by law (other than this Act); or
 - (ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation.

10.3 Despite subclause 10.1, an organisation may collect health information about an individual if:

- (a) the collection is necessary for any of the following purposes:
 - (i) research relevant to public health or public safety;
 - (ii) the compilation or analysis of statistics relevant to public health or public safety;
 - (iii) the management, funding or monitoring of a health service; and
- (b) that purpose cannot be served by the collection of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained; and
- (c) it is impracticable for the organisation to seek the individual's consent to the collection; and

- (d) the information is collected:
- (i) as required by law (other than this Act); or
 - (ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation; or
 - (iii) in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph.

10.4 If an organisation collects health information about an individual in accordance with subclause 10.3, the organisation must take reasonable steps to permanently de-identify the information before the organisation discloses it.

10.5 In this clause:
 non-profit organisation means a non-profit organisation that has only racial, ethnic, political, religious, philosophical, professional, trade, or trade union aims.

An organisation must use the Do Not Mail/Do Not Call and Email Preference services of ADMA when conducting a direct marketing campaign in order to remove the name of any consumer, other than a current customer, who has requested that they not receive direct marketing offers. For the purposes of this clause a “current consumer” is any consumer who has made a purchase within the last six months or during a normal selling cycle.

An organisation must remove a consumer’s name from all internal marketing lists or lists for transfer to a third party at the request of the consumer.

An organisation must inform a consumer, on request, of the source of the individual’s personal information.

ADMA will offer the following Do Not Mail/Do Not Call/Email Preference Service (e-MPS) protocol and direct marketers agree to act in accordance with that protocol to the extent that it relates to them:

- (a) consumers will be offered the opportunity to inform ADMA via postage-paid reply mail and ADMA’s web site that they do not wish to receive marketing communications from ADMA members (a 1-800 number will provide information on how to register for the service);
- (b) consumers may register for the Email Preference Service (e-MPS) through a special web site www.e-mps.org
- (c) ADMA will register the name of consumers exercising this preference (Do Not Mail/Call service/Email Preference Service);
- (d) the registry will be made available by ADMA to members electronically or on a computer disk;
- (e) within a reasonable time from the date on which the member receives the Do Not Mail/Call/e-MPS registry, the member must use it to suppress the names of these consumers, unless they happen to be current customers of the member;
- (f) ADMA members who utilise unsolicited e-mail to market goods or services to consumers must use the e-MPS service to remove from their marketing list the names of consumers who have registered not to receive such offers.

- 1 The scope of ADMA's enforcement procedures is limited to alleged breaches of the Code and does not include mediation of consumer complaints, which do not involve an alleged breach of the Code and would normally be dealt with by a member's internal complaints handling process. Consumer complaints involving an alleged breach of the Code, which are not resolved under a member's internal complaints handling process, must be referred by the member to ADMA as a consumer complaint under this Part G.

COMPLAINT RECEIVED BY ADMA

- 2 Any person who considers that an organisation has breached a provision of the Code may lodge a complaint with ADMA, addressed as follows:

Code Compliance Officer
Australian Direct Marketing Association
P.O. Box 464
Kings Cross
New South Wales 1340

- 3 The complainant should set out the following details:
 - 3.1 his or her name and contact details;
 - 3.2 the name and, if known, the contact details of the member;
 - 3.3 a brief outline of the complaint; and
 - 3.4 if the complainant has previously made a complaint to the member, a brief outline of how that complaint was dealt with by the member.

RESPONDING TO COMPLAINTS RELATED TO ALLEGED BREACH OF THE CODE

No breach of the Code

- 4 If, after assessing a complaint, the Code compliance officer does not consider there has been a breach of the Code, the Code compliance officer shall write to the complainant informing him or her that:
based on the information provided by the complainant, there does not appear to be a breach of the Code;
 - if new information becomes available, the complainant may request that ADMA review the complaint again;
 - the complainant may request a review of the decision of the Code compliance officer by the Code Authority; and

- the response of ADMA does not preclude the complainant from pursuing other forms of redress such as lodging his or her complaint with a government regulatory authority.

- 5 Upon receiving a request for a review of a decision that the complaint does not involve a breach of the Code, the Code compliance officer must refer the matter to the Code Authority for its review in accordance with clause 10.

Potential breach of Code by non-members

- 6 Where the Code compliance officer considers that an organisation who is not a member of ADMA may have breached the Code, the Code compliance officer may write to the non-member informing them of the existence of the Code and request compliance. The compliance officer may forward the complaint to the appropriate regulatory authority for further action.

Potential breach of the Code by member

- 7 Where the Code compliance officer considers that an ADMA member may have breached the Code, the officer shall write to the ADMA member outlining the particulars of the alleged misconduct and requesting a written response to the allegations within 14 days.
- 8 If within 14 days the ADMA member provides clear evidence of acting in compliance with the Code or independently resolves the complaint, the Code compliance officer will take no further action and advise the complainant in writing why no further action will be taken, offering the complainant the option of requesting that the Code Authority review the complaint.
- 9 If the ADMA member disputes the complaint they must show evidence of steps undertaken in the matter to comply with the Code. If the member is not able to demonstrate compliance within a reasonable period of time, the Code compliance officer shall refer the complaint to the Code Authority for its consideration in accordance with clause 10.
- 10 Upon reviewing the complaint, the Code Authority may:
 - direct the Code compliance officer to investigate the complaint further and report the results of such investigation to the Code Authority;
 - cause the Code compliance officer to send a notice to the ADMA member inviting the organisation to attend a hearing regarding the alleged breach of the Code by the organisation. The notice should stipulate the place, the day and hour of the hearing and offer the ADMA member the opportunity to attend the hearings by way of telephone conference; or
 - resolve not to further pursue the alleged breach.

Hearing before the Authority

- 11 Prior to or at the Code Authority hearing, the member may make written submissions to the Code Authority. Prior to the Code Authority hearing, the member must be given a reasonable opportunity to inspect any documents which the Code Authority proposes to have regard to in reaching its decision on the allegations.
- 12 At the Code Authority hearing, the member shall be given a reasonable opportunity to present its case. The member may make verbal submissions in relation to the allegations. The member may appear in person or may be represented by some other person. The Code Authority may, at its discretion, invite a complainant to participate in the Code Authority's hearings through written and/or verbal submissions.
- 13 Within 14 days of the conclusion of the Code Authority hearing, the chief executive officer shall send the member a notice containing the decision of the Code Authority. If the decision affirms the allegations, then the notice shall also include any remedial action and/or sanctions the Code Authority considers appropriate. The Code Authority must advise the complainant in writing of the decision of the Code Authority in relation to his or her complaint and provide a statement of any reasons the Code Authority has for making that decision.
- 14 The member will have 14 days from receipt of the decision of the Code Authority to take the necessary steps to comply with the decision.
- 15 If within 14 days from receipt of the decision of the Code Authority the member is unable to demonstrate compliance with the decision, the CEO will call a special meeting of the Board of Directors to consider removing the member from the Association, subject to the recommendation of the Code Authority.
- 16 If ADMA records indicate that the member has breached the Code on two or more occasions in the preceding 12 months, the Code Authority may recommend to the CEO that ADMA membership be revoked.
- 17 If the member withdraws from ADMA membership at any point during the consideration of a complaint against the member, the Code Authority will treat the complaint as a complaint against a non-member and may forward it to the appropriate regulatory authority for further action.

Sanctions for Breach

- 18 Where the Code Authority finds that a member has been in breach of the Code it may, subject to paragraph 19, impose such sanctions as it considers appropriate including, without limiting the generality of its powers:

- requiring a formal apology for breach;
 - requiring corrective advertising or the withdrawal of offending advertisements or statements;
 - requiring the correction or deletion of relevant records and personal information;
 - recommending refund or replacement of goods or services where appropriate;
 - requiring the member to take specified remedial action to correct the breach and avoid re-occurrence;
 - seeking a written undertaking from the member that the breach will not be repeated;
 - recommending to the CEO that membership be revoked.
- 19 The Code Authority will not have the power to:
 - order the payment of money, the transfer of property (including goods) or the delivery of goods;
 - suspend or cancel membership of a member; or
 - issue any public admonition of a member.

The sanctions described in this paragraph may be imposed by the ADMA Board of Directors.

Charges

- 20 No fees or charges will be levied by ADMA with respect to the enforcement procedures under this Part G. Complainants must bear their own costs with respect to making a complaint under this Code.

Publication of Enforcement Action

- 21 ADMA will publish in its Annual Report:
 - the number of the complaints received by the Code compliance officer during that year;
 - the number of breaches established by the Code compliance officer and Code Authority during that year;
 - an analysis of the enforcement action taken during that year;
 - a statistical analysis of complaints by company.

REVIEW

- 1 The Code shall be subject to independent review on a regular basis, with the review body (not being the Code Authority) to consist of an independent chair and equal number of industry and consumer/community representatives.
- 2 In conducting its review, the review body should, where appropriate, consult with groups affected by the Code.
- 3 The review shall be presented to the Board.

AMENDMENT

- 4 The Board may at any time resolve to amend the Code.
- 5 Once an amendment of the Code has been made by the Board, the Board will ensure that:
 - each member of ADMA promptly receives notice of the amendment; and
 - the amendment is adequately publicised so that consumers and organisations who are not members of ADMA may be made aware of the amendment.

- 1 References to singular include the plural and vice versa.
- 2 The Code is to be interpreted in accordance with its objectives. It is not to be read literally if that would produce a result clearly contrary to those objectives.
- 3 Unless otherwise indicated, in the Code these words have the following meanings:
 - 3.1 “ACCC” means the Australian Competition and Consumer Commission
 - 3.2 “ADMA” means
 Australian Direct
 Marketing Association Limited
 (ACN 002 909 800) of
 Suite 1, level 5, 100 William Street,
 East Sydney, New South Wales 2011;
 - 3.3 “Board” means the Board of Directors of ADMA;
 - 3.4 “Code” means the ADMA Code of Practice as amended from time to time in accordance with Part G of the Code;
 - 3.5 “Code Authority” is the authority established by the ADMA, consisting of:
 - 3.5.1 an independent Chairperson;
 - 3.5.2 two consumer representatives, being persons with special competence in consumer and industry matters; and
 - 3.5.3 two industry representatives, being persons of good character and repute in the direct marketing industry.
 - 3.6 “consumer” includes current and prospective customers.
 - 3.7 “direct marketer” means any individual or organisation who engages in direct marketing and includes a telemarketer. An employee, director or agent of a direct marketer shall also be considered a “direct marketer” for the purposes of the Code;

“direct marketing” means the marketing of goods or services or the seeking of donations through means of communication at a distance where:

 - consumers are invited to respond using a means of communication at a distance; and
 - it is intended that the goods or services be supplied under a contract negotiated through means of communication at a distance.
 - 3.8 “fundraiser” means a person, company, partnership or organisation which solicits donations from the public using a means of distance communication;
 - 3.9 “member” means an organisation, a telemarketer or a fundraiser who is a member of ADMA
 - 3.10 “model code” means the direct marketing model code of practice endorsed by the Ministerial Council of Consumer Affairs in November 1997 and any amendment or replacement of that code.
 - 3.11 “telemarketer” means any individual or organisation who engages in telemarketing.
 - 3.12 “telemarketing” means all activities that relate directly or indirectly to direct marketing and which involve the use of a telephone, facsimile machine, or other consumer equipment connected to a telecommunications network to contact a consumer.