



Code Authority Annual Report

2001 - 2002



adma

direct marketing
code authority

**Direct Marketing Code Authority
of the Australian Direct Marketing Association**

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ADMA

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What is the ADMA Code Authority?

As the self-regulatory body for information based marketing, the Australian Direct Marketing Association requires honesty and fairness in customer dealings. To this end, the Association developed a Code of Practice in consultation with the Ministerial Council of Consumer Affairs (MCCA), the Australian Competition and Consumer Commission (ACCC) and consumer and business groups. An independent Code Authority was established to monitor compliance with this Code.

The Code aims to build consumer confidence by setting standards of best practice and ethical conduct that must be followed by all 500 corporate members of ADMA. Encompassing fair trading, telemarketing, e-commerce and privacy principles, the purpose of the Code is to promote the highest standards of business practice and encourage consumer confidence in making purchases at a distance.

The Code Authority is composed of equal numbers of industry and consumer representatives and is chaired by an individual from outside the direct marketing industry.

What does the Authority do?

As a backstop to its members' own internal complaints handling processes, ADMA, through the Code Authority, offers consumers recourse in cases where they have not been able to resolve their complaint directly with the organisation.

The Code Authority investigates unresolved consumer complaints about ADMA members and, in limited cases, non-member companies. Government agencies receiving complaints about members are able to refer them to ADMA for resolution.

While the Authority's remit only covers members of the Association, casework involving non-members is also undertaken and where a breach of the Code is identified, the non-member is informed and urged to voluntarily comply. Such cases may also be referred to other appropriate bodies for review.

Should the Authority find a breach of the Code of Practice by an ADMA member, it is authorised by the ACCC to impose a variety of sanctions. These include:

- Requiring a formal apology for the breach
- Requiring corrective advertising or the withdrawal of offending advertisements or statements
- Requiring correction of relevant records and personal information
- Recommending a refund or replacement of goods or services where appropriate
- Requiring the member to take specified remedial action to correct the breach and avoid reoccurrence
- Seeking a written undertaking from the member declaring the breach will not be repeated
- Recommending to the ADMA CEO that membership be revoked

Where a member demonstrates wilful non-compliance with the Code, the Authority can recommend that it be publicly expelled from the Association. It is understood that such action can inflict a serious financial penalty on the organisation in the marketplace.

The Authority may also make recommendations to the Association on possible changes to the Code.



Member Biographies

Chairman: John Wood

John Wood brings extensive consumer affairs experience to his position as Chair of ADMA's Code Authority. He has established his own consultancy specialising in complaint handling, Ombudsman schemes, consumer affairs and customer service charters.



Previously, John was the Deputy Commonwealth Ombudsman and managed the organisation's quality assurance, policy, public affairs and major project activities. He was a member of the Government's Task Force on Customer Service Charters and provided advice to agencies on internal complaint handling systems, service charters and client service practices. John also provided advice to a number of international delegations that were interested in Ombudsman duties or related developments.

From 1984 to 1994 John held the position of Director of the Federal Bureau of Consumer Affairs where he advised the Federal Government as well as establishing credibility and good working relations with Federal, State and Territories agencies, industry and the consumer movement.

More recently, John was a Member of the Consumer Protection Advisory Committee to Sydney's Olympic Games organisers. He is a former President of the Society of Consumer Affairs Professionals in Business (SOCAP) and a Council Member of the Australian Consumers' Association, and chairs the Consumer Advisory Panel to the Australian Securities and Investments Commission.

Industry Representative: Colm Lorigan

As an international business lawyer with over 15 years experience with American Express in Europe, the Pacific Rim and the USA, Colm Lorigan has an extensive legal and financial services background.



Colm manages all legal matters for American Express in Australia and New Zealand. Previously he designed and managed a legal compliance program for the company's international business in New York. He has acquired extensive and specialised knowledge of international and local laws on financial services regulation and sanctions.

He has managed legal issues in Eastern Europe, Russia, Italy, Switzerland, Austria and Germany, including major German competition-related litigation concerning the introduction of the American Express Membership Rewards program in Germany, the first card program of its kind in that country.

Previously, Colm was the Sole General Counsel in the Far East and managed legal affairs in 12 countries including the legal issues for the launch of American Express Cards in Taiwan and Indonesia. He also set up the company's first legal department in Australia.

Born in Ireland, Colm trained as a solicitor in England and began his legal career in London in the late 1970s working extensively on UK and European competition law. He holds an M.A. in Modern History from Oxford University, England.



Member Biographies

Industry Representative: Robert Tolmie

With over 20 years of experience in direct marketing, Rob Tolmie brings a vital industry perspective to his position on the Code Authority.



In the late 1970s, Rob saw the potential of mail order and began a mail order photo processing company in Southport, Queensland. He founded National Photographic Marketing which became the largest mail order photo company in Australia. The company is internationally recognised as one of the most advanced operations of its type and is a leader in the fields of software design, production automation and marketing. In early 2000, Rob founded a new company called Digital Photoworks Limited, a direct marketing photographic company specialising in the e-commerce area.

Active in direct marketing circles, Rob is a past chairman of the ADMA Board of Directors and was also its Treasurer for two years. In addition, he was instrumental in the formation of the Queensland Branch of ADMA. The recipient of the 1992 Australian Direct Marketer of the Year award, Rob currently serves on the Direct Marketing Advisory Board of Monash University. He is also a member of the ADMA Board of Directors.

Consumer Representative: Robin Brown

Robin Brown brings over 15 years of experience in consumer and business regulatory affairs to ADMA's Code Authority with considerable experience in dispute resolution.



He spent 10 years as the chair and chief executive of Australia's national consumer body, the Australian Federation of Consumer Organisations. He also spent five years as an associate member of the board of the Australian Telecommunications Authority (AUSTEL) and oversaw its privacy study.

Robin has been involved in the establishment of industry-specific dispute handling mechanisms in the banking, life insurance, health insurance and telecommunications sectors, including four years as a member of the Life Insurance Industry Complaints Panel. He was a member of the inaugural Banking Industry Ombudsman Council.

In addition, Robin worked as a consumer affairs consultant on such issues as reforms to the insurance industry. He has been involved in efforts to advance consumer protection in developing countries including working as a consultant to the United Nations Development Program on consumer protection in Egypt.

Robin holds a degree in Psychology and Zoology from the Australian National University where he has also undertaken the Public Policy Program to Masters level.

Consumer Representative: Bill Dee

A consultant who specialises in the areas of compliance, dispute management and consumer affairs, Bill Dee has extensive experience in industry codes and self-regulation.



In over 20 years at the Australian Competition and Consumer Commission, Bill gained wide experience in the area of legal compliance. He was one of the founders of the Australian Standard on Compliance Programs and was also particularly active in codes of conduct and other self-regulatory initiatives and disputes management.

Bill drafted the ACCC's Guide on Codes and various industry codes. He assisted in convening a forum on codes in Sydney in 1998 and reviewed self-regulation in the therapeutic goods industry.

For his work in developing innovative self-regulatory industry practices to strengthen the competitiveness of the Australian economy and to protect consumers, Bill was presented with an Australia Day Award by the Commonwealth Government in 1998.

Chairman's Report

At the conclusion of my third year as Chairman, I am pleased to be able to report that ADMA's Code Authority has now reached a significant level of maturity and can be compared favourably with self-regulatory and complaints-handling organisations in kindred industry sectors.



Code Authority
Chairman,
John Wood

Significant Developments

There can be no doubt that the most significant development in the year under review was the implementation of the Privacy Amendment (Private Sector) Act in December 2001. It is hardly surprising, therefore, that the work of the Authority has reflected heightened awareness among consumers of their rights in relation to protection of personal privacy.

In reviewing three years of complaints dealt with by the Authority, the movement from an even balance between privacy-related and fair trading to a predominance of privacy-related complaints is clear. As the new legislation only came into effect half-way through the year under review, it is too early to be definitive; however it does appear as though most ADMA members have adjusted to the new privacy regime remarkably well. The Government, the Office of the Federal Privacy Commissioner as well as business are to be congratulated on the smooth transition.

As the table above demonstrates, the total number of complaints considered by the Code Authority has remained relatively stable in the past two years increasing from 46 in 2000-2001 to 49 in 2001-2002. Of that total, however, the number relating directly to ADMA members has risen from 25 in the first year, to 27 in the second, to 37 in the third.

As the Authority's work is directed primarily towards ADMA members, it is pleasing that complaints are being targeted appropriately. This reflects the increasingly close relationship between ADMA and the State Fair Trading Departments, which is a development the Authority will continue to encourage.

Year	Complaints Against Members	Total Complaints
1999-2000	25	33
2000-2001	27	46
2001-2002	37	49



Chairman's Report

Opt-Out Requests Ignored

An indication of the Authority's maturity is its ability to identify systemic issues arising from the complaints it handles. As consumers have exercised their right to opt-out from being contacted by direct marketers, there has not been a uniform corresponding growth in awareness among ADMA members that failure to comply with such requests can lead to a breach of the Code.

The most noteworthy feature of the complaints considered in the year under review was the increase in complaints about companies failing to heed consumers requests to have their names included on the company's in-house suppression lists. These complaints amounted to a quarter of all those dealt with by the Authority in 2001-2002. (See Casework page 9)

While it is true that the Authority is the backbone of the self-regulatory system for direct marketing, our work will be undermined if persistent and systemic problems continue to be left unaddressed. In relation to privacy matters the new legislation specifically provides for a review of the private sector provisions, so ADMA needs to pay particular heed to potential problem areas.

If consumers cannot opt-out of receiving further direct marketing solicitations, the legislators will be justified in giving this aspect of the privacy legislation close attention in the forthcoming review. However, one of the advantages of self regulation is the ability to be flexible and respond quickly to changing circumstances.

If ADMA responds effectively and in a timely manner to address the failure to meet consumer requests in relation to suppression lists Australia may be able to avoid the trend overseas towards legislation to enforce preference schemes.

The Authority notes with approbation that ADMA has taken up the Code Authority's recommendation that failure to respond to a request for name removal within 30 days will result in a breach of the Code, but has also recommended that the same provisions be included in the Model Direct Marketing Code which will be reviewed by Fair Trading Ministers in 2003.

Other Recommendations

The Authority has asked the ADMA Board to consider three other matters. They are referred to in more detail in the 'Example Decision' section of this Report.

The Authority has asked ADMA to amend its Code to require members, first, to respond to complaints within 14 days and, second, to keep accurate and up-to-date records of complaints received. Consumers must be able to have their complaints addressed and in a reasonable time if self-regulation is to operate successfully. The Authority believes that these changes are necessary to reinforce the first line of complaints handling which is at the member level.

The third recommendation was for ADMA to produce a 'Checklist of Principles and Procedure' to improve complaint handling. The Authority believes that such a simple document will assist companies in training their complaint handling staff and hopefully increase customer service by reducing the number of complaints which have to be passed on to the Authority. I am pleased to report that ADMA has responded positively and hope to comment on the publication and dissemination of the Checklist in the Annual Report for 2002-2003.

Appreciation

Finally, I would like to thank my fellow Code Authority members Robin Brown, Bill Dee, Robert Tolmie and Colm Lorigan for their work and advice over the year. Thanks are also due to the ADMA Secretariat particularly Jodie Sangster and Belinda Meli whose tireless efforts make our work so much easier.



John Wood
Code Authority Chairman



Report of the Members of the Code Authority

During the financial year 2001-2002, the Authority met quarterly to discuss Code related issues and consider consumer complaints. Having been in existence for two years and become well-established, the Authority considered it was timely to take additional steps to promote awareness of its work as a reliable and transparent avenue for complaint resolution.

- The Authority's third annual report is being published and distributed in greater proximity to the year under review,
- ADMA is publishing regular articles in its two-monthly major member publication UPDATE contributed by Code Authority Consumer Representative Member, Bill Dee, the first of which is reproduced overleaf.
- Information on the Authority is posted on ADMA's website and the Authority's web page is immediately accessible from the ADMA home page. Posting links from the ACCC and departments of fair trading is being investigated.
- An article on the Code Authority was published in the Society of Consumer Affairs Professionals (SOCAP) publication 'Consumer Directions' in September 2001.
- ADMA launched an advertising campaign early in 2002 to promote the Code Compliant symbol.



Bill Dee

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THIS IS THE FIRST OF A SERIES OF ARTICLES designed to provide feedback to ADMA members on the deliberations of the Code Authority. It is designed to provide feedback on the type of complaints the authority receives and some suggestions on how the authority behaves such complaints can be dealt with.

1. One of the issues which constantly comes before the authority is complaints from consumers where they have been asked to be taken off mailing lists but still receive material after such a request has been made. The authority understands that because of the direct mailing process it is not possible in some instances to prevent material going to people that have indicated a wish that they do not want to receive material. In these circumstances, the authority considers that it would be good practice to ensure that people requesting to be taken off lists receive an acknowledgement of their request, that it will be acted upon, and because of production constraints they will receive "x" number of mail-outs before it will stop.
2. Another problem that has come to the authority's attention is that although companies have some system in place they still get complaints. The authority believes this can be due to lack of ongoing monitoring of the system. Again a good practice for companies to adopt would be to regularly monitor their compliance systems, ie. having compliance staff check to see that people who have requested to be taken off a list have in fact had their request acted upon.

Written by Bill Dee,
Consumer Representative
ADMA Code Authority

Feedback from the Code Authority

Samples of the Code Authority articles which appear in ADMA's Update newsletter

Casework - 1 July 2001 to 30 June 2002

Consumer Complaints

During the financial year, the Code Authority considered 49 written complaints from consumers. It undertook follow-up action with organisations concerned in a number of cases (see Example Decisions).

Of the 37 complaints against members, 34 were resolved, but in three of these cases the consumer did not confirm that the issue had been settled to their satisfaction. The Authority has listed these cases as "Matter Closed".

Figure 1 shows the number of complaints made against individual member companies.

Fig 1. Complaints reviewed by the Authority by Member Company

Member	Number of Complaints	% of total complaints
Chubb Home Security	1	2.7
Diners Club	1	2.7
Doubleday Australia	4	10.8
Four Seasons	3	8.1
GE Finance	1	2.7
Geospend	2	5.4
Harlequin	1	2.7
International Master Publishers	2	5.4
IQPC	1	2.7
Magnamail	5	13.5
National Photos	1	2.7
Pacific Micromarketing	2	5.4
RA Jenkins	2	5.4
Reader's Digest	3	8.1
RNR International Marketing	1	2.7
Seton Australia Pty Ltd	1	2.7
The List Bank	1	2.7
Time Life	1	2.7
Top Gear	1	2.7
Trendwest	1	2.7
Viking Office Products	2	5.4
Total Cases	37*	100

*Does not include complaints against non-members

Note: The above figures should be read in the following context: that the figures for each member company will be affected by the size of the company, the nature of its business and the volume of personalised customer communications. Figures are also affected by subjective factors such as the prominence of the ADMA Code Compliant symbol on the company's customer material.

Casework - 1 July 2001 to 30 June 2002

Types of Complaint

The table below shows the distribution of complaints by consumers against both members and non-members. The Authority dealt with some non-member complaints but directed most to the appropriate State Fair Trading Departments.

Figure 2 shows the distribution of the various complaints received this fiscal year.



Fig 2. Cases considered by the Authority 2000/2001

Total number of cases = 49

Complaints (as described by consumer)	Number	% of Total (approx)
Contact list		
Request for personal details removal	5	10.2
Source of personal details	2	4.0
Not heeding DNM/C	13	26.5
List acquisition	1	2.0
Unsolicited email	1	2.0
Delivery / payment		
Undelivered goods	4	8.2
Payment demand for unordered goods	3	6.1
Unordered goods	1	2.0
Refunds		
Charged for cancelled order/goods returned	5	10.2
Failure to refund	3	6.1
Marketing Content		
Possible scams	4	8.2
Misleading advertising	2	4.0
Inappropriate marketing	3	6.1
Customer service / business practice		
Unsatisfactory customer service	1	2.0
Inappropriate database practices	1	2.0
Total Complaint	49*	100

Sample Decisions

Checklist to Improve Complaint Handling

Successful resolution of complaints against a direct mail house provide a good example of the Code Authority's mediation role. In a first for the Authority, a representative of a member company, Magnamail, was invited to a meeting of the Authority to discuss issues around a complaint.

It was stressed to the company that the invitation did not arise from a breach or alleged breach of the Code but represented an opportunity to resolve a particularly difficult complaint and discuss complaint handling procedures generally. The specific complaint related to an attempt by a consumer to have her mother's name removed from Magnamail's mailing lists, but at the same time, the mother was placing new orders that were reinstating her on the company's database.

This example raised two issues. First, there was the problem of the company taking instructions from a relative or spouse of a customer. Second, there was the issue of internal procedures that delete a consumer's details on request but do not have them flagged to ensure they are not reinstated via a subsequent externally acquired list.

Following satisfactory resolution of this specific case:

1. The Authority has asked ADMA to draft a Checklist of Principles and Procedures to assist organisations to more effectively handle customer complaints, and
2. The Authority has written to the Australian Council for the Ageing seeking its advice on the best way to handle issues involving elderly consumers.

Lack of Response Not Good Enough

The Authority has expressed its concern about GE Capital Finance's inability to respond to consumer complaints due to inadequate record keeping.

Although the original complaint concerned the source of personal information, the company failed to respond to the consumer and had to be reminded by the Authority that, under Section E of the ADMA Code of Practice, complainants must be provided with the source of personal information used to contact them on request.

In addition to the lack of response to this particular consumer, the Authority was concerned that the company's inadequate complaint recording procedures could result in an inability to identify systemic issues should they arise.

As a result of this example and other similar cases, the Authority had recommended that the ADMA Code of Practice be amended to require members to:

1. Respond to complaints within 14 days, and
2. Keep accurate and up-to-date records of complaints received.



Useful information

Do Not Mail/Call registration

To have your name and telephone number (or those of a deceased person) removed from marketing lists used by ADMA members, register your contact details on the ADMA website at www.adma.com.au or write (no postage required) to:

ADMA
PO Box 464
KINGS CROSS NSW 1340

How to lodge a complaint

Consumers who have been unable to resolve a complaint directly with an ADMA member organisation should send details, including any supporting documentation, to:

ADMA Code Authority
PO Box 464
KINGS CROSS NSW 1340

Code of Practice

You can download a copy of the Code of Practice from the ADMA website at
<http://www.adma.com.au/information/codeOfPractice.htm>

All other inquiries should be directed to ADMA.

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