

Gilbert Jewel

From: Mayrhofer, Tania
Sent: Tuesday, 9 September 2003 5:43 PM
To: Gilbert Jewel
Cc: Gyaneshwar Neera; Chenoweth Stephanie
Subject: FW: ADMA Application for Authorisation of Direct Marketing Code

Hi Jewel,

I received this email from the Office of the Federal Privacy Commission today in relation to the ADMA application for revocation and substitution.

Would you mind attaching the email below and the attachment to the public register and TRIM please.

thanks very much,
Tania

Tania Mayrhofer

ACCC - (02) 6243 1070

-----Original Message-----

From: Julia Clapin [mailto:JuliaClapin@privacy.gov.au]
Sent: Tuesday, 9 September 2003 11:55 AM
To: Mayrhofer, Tania
Cc: Paul Armstrong; Timothy Pilgrim
Subject: ADMA Application for Authorisation of Direct Marketing Code

Dear Tania,

As discussed at the videoconference of 22 August 2003, please find the further information for consideration in the ACCC's decision on the application for revocation and substitution lodged by the Australian Direct Marketing Association.

Change in status of the National Privacy Principles

The Direct Marketing Code of Practice ('the Code') reproduces the text of the National Privacy Principles in Section E of the Code. Since the Code was last authorised by the ACCC the status of the principles in Section E of the Code has changed.

In 1998, the slightly different 'Principles for the Fair Handling of Personal Information' formed part of a voluntary, self-regulatory privacy scheme for the Australian private sector. Those principles were incorporated into the Code.

On 21 December 2001, the *Privacy Amendment (Private Sector) Act 2000 (Cth)* came into effect, enacting these principles, with some amendment, as the National Privacy Principles (NPPs). This Act, in amending the *Privacy Act 1988 (Cth)* ('the Act'), requires organisations to comply with the NPPs.

The NPPs are available at <http://www.privacy.gov.au/publications/npps01.html>.

The *Guidelines to the National Privacy Principles* are available at <http://www.privacy.gov.au/business/guidelines/index.html#3.2>

More information on the status of the NPPs is available on our website at <http://www.privacy.gov.au/act/index.html#business> and

10/09/2003

http://www.privacy.gov.au/publications/IS1_01.html

This change in status of the NPPs is not reflected in the current version of the Code, which reproduces the text of the principles as if they were part of ADMA's code of practice. In the OFPC's view, if ADMA wishes to include the NPPs they should be clearly distinguished from the Code. They should be set out as an appendix to the Code with a clear statement that they are legislative obligations in the Act, with which organisations must comply.

The Code currently includes a provision at Clause D.32 that 'Business-to-consumer electronic commerce should be conducted in accordance with the consumer data protection principles outlined in Part E of the Code'. This statement is potentially misleading as the NPPs apply to *all* information handling acts and practices of organisations as they relate to personal information. The Code should make this clear.

Interaction of NPPs and other provisions in the Code

As noted above, organisations must comply with the NPPs. There are some provisions in the Code, which differ from the obligations contained in the NPPs in ways that may cause some confusion or contradiction. In the time available, we have not been able to undertake a comprehensive analysis of the Code provisions and the NPPs, but a couple of examples to illustrate this point are:

- Clause C. 1: under the heading 'Identification Information' – this clause sets out the information that telemarketers must provide when contacting an individual, including: the name of the person making the call; and the name of the organisation on whose behalf the call is made and the purpose of the call
 - Under NPP 1.3, when an organisation is collecting personal information it must take reasonable steps to make an individual aware of a range of matters including: the identity of the organisation collecting the information and how to contact it; the purposes for which the information is collected, the organisations to which that information will usually be disclosed; and the fact that individual can gain access to their information
 - The NPP 1.3 obligations include matters that are not covered by clause C.1. The wording of the clause, however, could be misinterpreted as covering all that would be required under NPP 1.3.
- Clause C.6: under the heading 'Information to be provided on request' – the contact details of the telemarketer and other information are to be provided on request
 - NPP 5 requires an organisation to be open about its information handling practices, to have a policy on information handling and to provide more information about its personal data management on request
 - Clause C.6 could be read as listing all of the information that needs to be provided on request, unlike the broader scope of the obligations in NPP 5
 - In addition, under NPP 1.3 it is not necessary for an individual to make a specific request in order to be notified of a collecting organisation's contact details.

Complaints handling process for privacy complaints

Under the Act, the Privacy Commissioner is responsible for handling complaints about alleged breaches of the NPPs, see: http://www.privacy.gov.au/privacy_rights/complaints/index.html and http://www.privacy.gov.au/publications/IS13_01.html .

The Code sets out a complaints handling process, which refers to complaints being handled by the Code Adjudicator, a body set up by ADMA. The Code does not state that complaints about privacy can be dealt with by the Privacy Commissioner.

The Office is concerned if the Code represents, or may be seen as representing, the Code Adjudicator as the only body able to deal with complaints about privacy. The Privacy Commissioner's role in complaints handling on privacy matters should be clearly stated and explained within the Code.

Additional information

As requested at our videoconference, the following additional information is also provided:

- In 2000 the OFPC conducted research on community attitudes to privacy. This research included questions on the community's perceptions about unsolicited marketing material, and whether businesses should seek consent before using personal information for marketing purposes. The research report is available at <http://www.privacy.gov.au/publications/rcommunity.html>
- Statistics on enquiries and complaints relating to direct marketing from 21 December 2000 to 12 June 2003 are set out in the table below. (A copy of the table is also included the attached document)

<<2003-09 Enquiries & complaints Stats Re Direct Marketing for ACCC jc.doc>>

Phone enquires regarding Direct Marketing*

21/12/00-20/12/01

- year preceding commencement of private sector provisions 21/12/01 – 20/12/02
- year following commencement of private sector provisions 21/12/02 – 12/06/03
- year following commencement of small business coverage to date

Total Calls 183 1053 514

Calls from individuals 122 (67%) 730 (69%) 381 (74%)

Written enquires regarding Direct Marketing*

Total Enquiries n/a 117 79

Enquiries from individuals n/a 84 (72%) 60 (76%)

Complaints regarding Direct Marketing*

Total Complaints n/a 83 15

Complaints resolved following action by respondent: 41(2)(a) adequately dealt with n/a 8 (10%) 4 (27%)

*Including spam and use of information from public registers.

If you have any further queries, or require any further clarification, please do not hesitate to contact me.

Regards,
Julia

Julia Clapin
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Office of the Federal Privacy Commission

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10/09/2003

For information on the 25th International Conference of Data Protection & Privacy Commissioners in Sydney September 2003: www.privacyconference2003.org
<<http://www.privacyconference2003.org/>>

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Enquiries and Complaints Relating to Direct Marketing

Phone enquires regarding Direct Marketing*			
	21/12/00-20/12/01 • year preceding commencement of private sector provisions	21/12/01 – 20/12/02 • year following commencement of private sector provisions	21/12/02 – 12/06/03 • year following commencement of small business coverage to date
Total Calls	183	1053	514
Calls from individuals	122 (67%)	730 (69%)	381 (74%)
Written enquires regarding Direct Marketing*			
Total Enquiries	n/a	117	79
Enquiries from individuals	n/a	84 (72%)	60 (76%)
Complaints regarding Direct Marketing*			
Total Complaints	n/a	83	15
Complaints resolved following action by respondent: 41(2)(a) adequately dealt with	n/a	8 (10%)	4 (27%)

*Including spam and use of information from public registers.