

at home and business, want to opt out, it seems quite ridiculous to have to maintain such a large list, rather than the much smaller list of those who actually find the practice acceptable.

The ideal way to run an opt-out system is something I explored in detail in my 1992 submissions to the AUSTEL Privacy Inquiry.

Ideally, there should be no publishing or release of numbers at all. Instead, telemarketers (or any marketer for some other form of do-not-contact list) should submit their numbers for scrutiny and have the list operator respond with a Yes / No for each number. This is easy to do with database files, submitted via the Net, and it can also be done with trivially easy programming for one number at a time queries for both telemarketer staff using a browser manually, and for telemarketer software doing real-time checks on numbers just before making calls.

The privacy problems of releasing numbers linked to names and/or addresses are completely insurmountable - but this is what ADMA wants ACCC approval for. Virtually no person who values their privacy can tolerate such linked data being distributed in ways they cannot control - and there is no way at all that ADMA can prevent their list falling into the hands of untrustworthy people. Privacy is not a luxury, it is a right and for people who are trying to keep themselves safe from abusers, or in the case of public figures just trying to keep themselves safely and sanely out of the public gaze, it is an essential of life. For instance, it is impossible to imagine Bob Hawke giving his name, address and phone numbers to ADMA.

The US system works primarily by distributing numbers. This avoids most of the privacy problems of linking them to other personal details, but it does raise some problems. For instance, if a stalker was seeking the phone number of their victim, and they know the area code they live in or have moved to, and they have a good idea of when that person changes their number and so gains a new one, then they can monitor the changes to the opt-out list within an area code in that period of time and arrive at a relatively short list of numbers, one of which will be their victim's. This is especially true since geographic location is typically indicated by all but the last four digits. This abuse of the system is largely impossible with the preferred approach of operating it on an enquiry basis.

Ideally, a telemarketing regulatory approach would cover calls to businesses, schools, community organisations, homes and government departments.

Ideally there would be no exceptions for charities, political parties etc.

The US system has its limitations, but for an opt-out system, it is fundamentally the right approach - hard, government regulation, real penalties for each violation, government control of the opt-out database and no publishing of any information at all in relation to the opted-out numbers.

If the ACCC approves ADMA's proposals for telemarketing in any way at all, then it will be giving official approval for a self-regulatory scheme which is opposed by most or all Australian advocates, and which is utterly deficient in principle and in detail from the US scheme. So the ACCC would be giving its imprimatur to a sham of a so-called "regulatory" system when it should be supporting the protection of Australian homes and businesses along lines at least as substantial as those now enacted in the United States.

ADMA's suitability for running a self-regulatory scheme

ADMA represents some Australian direct-marketing companies and charities. While for reasons of revenue and credibility, it seeks to increase its membership and to claim that it already has a very large and complete coverage of direct marketers, ADMA's limited membership is in fact all that the organisation represents.

Even if a self-regulatory regime were considered suitable for telemarketing, or for other aspects of direct marketing, there are several sets of reasons to question ADMA's suitability for the task. Some of these are general problems inherent in such self-regulation and others are particular to ADMA.

ADMA's membership

In October 1998, ADMA had 370 members, of which 28 were listed as being involved in telemarketing.

<http://www.firstpr.com.au/issues/tm/adma-members.html>

The following analysis is based on ADMA's site <http://www.adma.com.au> on 9 September 2003.

The main page of ADMA's sites claims that it represents "over 500 member organisations.". However the membership list, as shown by searching for all categories in all states, has 443 members. After removing a handful of members of the same name which are evidently state-based divisions of the one company, or two branches of the one company at the same location, ADMA's membership stands at 436. (One of these is "New Zealand Post International". Another is "CW Agencies Inc VANCOUVER BC" - and Google finds no pages in the .au domain which mention "CW Agencies".)

Some members are evidently suppliers of goods and services to direct marketers, rather than marketers or list providers themselves, such as printers, envelope manufacturers and legal and staff recruitment firms. These firms have no marketing activities so their membership involves no regulatory restrictions on their business activities.

A text file with all members is an attachment to this submission **ADMA-members-2003-09-09.txt** Those members which appear in the "Telemarketing Services" (27) and "Lists" (22) categories are flagged with T and L respectively. While not every "telemarketing" company would be involved in outbound telemarketing, quite a number of ADMA members in addition to those listed as "Telemarketing Services" would also be engaged in outbound telemarketing, for their own sales, but not as a "service" for other clients.

It is impossible from ADMA's site to estimate the percentage of members involved in outbound telemarketing. The 27 of 443 represents 6% and gives a very approximate idea of the proportion of ADMA members who are engaged in outbound telemarketing.

ADMA's Industry Coverage

As was pointed out by many advocates in 1999, ADMA's coverage of companies (and charities) involved in outbound telemarketing falls demonstrably below the substantial coverage needed for ACCC approval of a Code. The ACCC seemed to accept this during our discussions, but nonetheless approved the Code.

Before trying to quantitatively estimate ADMA's coverage of outbound telemarketing, some definitions and clarifications are in order.

Bold claims are often made by telemarketers and by ADMA about the value of goods and services transacted through "telemarketing" - but this term includes "inbound" telemarketing as well as "outbound". Inbound telemarketing has no obvious privacy or unwanted telecommunications problems. There are some pretty straightforward consumer protection issues, but these are not important in the debate about ADMA receiving ACCC approval as the government mandated industry body to self-regulate outbound telemarketing in Australia.

As a very approximate insight into the telemarketing problem, here is a list of the details of some of the telemarketing calls I received in 2000 and 2001. I have not kept complete records, and sometimes I simply hung up without finding out anything about the caller. (I now get fewer calls, after having the two major CD-ROM vendors remove my name from their products. These are listed, so that other people can do the same, at the start of my page <http://www.firstpr.com.au/issues/tm/>) My number had a basic "business" listing in the White Pages, as well as its residential listing, but there was no Yellow Pages listing. I never give my name or number in situations which might lead to telemarketing. This is a lower level of calls than some people get, for instance in suburbs such as Camberwell which is wealthier than mine. These do not include the persistent and at times truly bizarre repeat callers such as "Calder Windows" who were a problem in earlier years.

These calls took place after ADMA's Code was established. They include some in the period after January 2001 when Desktop Marketing removed my number from their system. I did *not* register with ADMA's do-not-call list. I sometimes simply hung up, but usually instructed them never to call me again.

Apparent caller (details may be incomplete or garbled)	Notes
Small business fax paper newsletter	
Diabetes Australia	2000-02-03 they have called me multiple times before. Spoke to supervisor - she understands why I am pissed off - "I don't blame you." They call their way through their list (essentially the White Pages) every 2 to 3 months. Will take my number off the computer. I will not be called again.
Golden Sampler	Selling a "discount card" to local businesses.
Laser Tan Services	
Yooralla Society	
Niagara Therapy	SUGger - pretended to be doing survey on "pain therapy".
Hardcourt Financial Services	
Rothwells Negative Gearing	
Variety Club	

Deaf Blind Association	Caller's first day on the job - had no control over their list.
Lost Dogs Home	(I kept separate notes on their multiple calls but can't find them now.)
Some health club	
Taxation Examiner Newsletter	
New Life Roof Inspection	
Association for the Blind	
Diabetes Australia	Different supervisor this time. Agreed she wouldn't want this done to her. Gave me managers name to write to.
Telstra	Trying to tell me about prices I am already aware of. (I have Telstra for phone and local calls, but not long distance.)
Red Cross	
Melbourne Lions Club	
Network Planning	Supposedly not selling anything - no-doubt an invitation to a "free seminar".
Telstra	Checking I was happy with their service and then launched into marketing spiel.
??	Asked caller if he would do this to his friends. He said he would.
Lions Club	
Fund-raising department of Austin Hospital	
Police Bluelight Handbook	Do I want to advertise?
Australian Wine Collectors	Call began with a ringing tone.
Greenwich Solutions	Told me it was a "courtesy call".
Home Pride Service - roof restoration	
Diabetes Australia	40 people in the Eltham call centre, working for 4 hours per shift. Repeat offender despite multiple promises and apologies with supervisors. Haven't heard from them since I sent some letters to their management.
Madison Investing (Bangkok)	Twice in one day.

Victorian Quality Roofing Co.	
Stanford Lions Darebin Centre	
Deaf Family's school St Kilda	Claimed to have got my number "from Telstra" - but probably got it from Desktop Marketing's CD-ROM
Fund-raising department Austin Hospital	Again.
Rotary Club of Preston Children's Appeal	
Kidney Foundation	
Deaf Blind Association	
RSPCA	
Orange Telecommunications	
Bodywork Gym	"Boss told me to call some local businesses."
Bodywork Gym	Again, despite me telling them never to call again.
Network Planning - home owners	
MS Society	
Some homeware company	
ANZ bank marketing	I have an ANZ credit card. This was on an Optus line which I hardly ever have a phone plugged into, which I never give the number of, but which was listed in the White Pages.
Holiday Concepts	
Myers Cleaning Services	
Ray White Real Estate	
Dust Busters Australia	
Melbourne Lions Club	
Discount card scheme	\$90 or so for a discount card to local businesses - proceeds supposedly to a well respected community radio station. I wrote to the station and complained - they replied they licensed their name to this company and were desperate for the funds.

Firefighting Union	
Australian Fire Prevention	
Preston Rotary Club	
Holiday Club	
Myer Cleaning Services	Repeat offender.

These 56+ calls, some of them from repeat offenders, is not a complete record of the telemarketing calls I have received. However, it is *highly representative* of the calls which a home - and in some cases a small business with no Yellow Pages entry - would receive. (I cancelled my business listing in the White Pages to reduce the telemarketing problem.)

Apart from Telstra and the ANZ bank, both of whom I am a customer, **none of these calls seem to have come from ADMA members.**

ADMA's claim of adequate coverage of outbound telemarketing is of no practical importance to me. It is impossible to imagine that my experience of telemarketing is so different from the general experience of all Australians that ADMA really does have significant coverage of outbound telemarketers, and for some unknown reason, my experience does not reflect this.

Another approach to gauging industry coverage is to find companies in the Yellow Pages who advertise telemarketing services. This is only a small subset of those companies and charities who make such calls, so even if ADMA or some other organisation can demonstrate high coverage of such telemarketing services companies, that would in no way show they have coverage over the main source of the calls.

Here are the companies listed in the Yellow Pages, under Telemarketing, for Victoria, on 9 September 2003:

Access Training

407/ 107 Beach St Port Melbourne VIC 3207

Active Contact

208 York St South Melbourne VIC 3205

Advance Marketing Enterprises Pty Ltd

209 Bulleen Rd Bulleen VIC 3105

All Encompassing Business Solutions

Melbourne Elsternwick VIC 3185

Appeals Office

Level 1 191 Glenferrie Rd Malvern VIC 3144

Apple Telemarketing

4th Floor 11 Queens Rd Melbourne VIC 3000

Catalyst Recruitment Systems Ltd

421- 437 Grieve Pde Altona North VIC 3025

Connect International Voice Mail Call Forwarding And Custom Answering
L23, 390 St Kilda Rd Melbourne VIC 3000

Connected There

Contact Management Associates (Vic) Pty Ltd
94 Tope St South Melbourne VIC 3205

Data Connection Pty Ltd
238 Normanby Rd South Melbourne VIC 3205

Datapurify
Level 2, 6- 10 Chapel St Prahran VIC 3181

D S Marketing

DTS Group
Cheltenham VIC 3192

First Approach Marketing
PO Box 212 Foster VIC 3960

Focus On Australia Pty Ltd
Box Hill North VIC 3129

Golden Local Sample
Essendon North VIC 3041

Hands on Promotions
Boronia VIC 3155

Insight Contact Centre Services

K. A. P. Advisors & Telemarketing
45 Alma Rd St Kilda VIC 3182

Kelly
Collins Melbourne VIC 3000

Link Communications Corporation
Level 8 , 600 St Kilda Rd Melbourne VIC 3004
Take Advantage of Link's Extensive Call Centre Experience

ADMA Member

Laffite Services
PO Box 411 Seaford VIC 3198

Mailcare Systems Pty Ltd
18 Edgecombe Crt Moorabbin VIC 3189

Marketcom Pty Ltd

Marketing Skill Pty Ltd AKA Phone Skill
6 Ambleside Cl Mt Eliza VIC 3930

MLA Telemarketing

Suite 11/ 2 Chamwood Crs St Kilda VIC 3182

Nautilus Marketing Services

104 Dover St Richmond VIC 3121

Outbound Services Pty Ltd

32 Harris Rd Donvale VIC 3111

PartnerCall

Phone Direct.

Level 2, 6- 10 Chapel St Windsor VIC 3181

Phoneline Marketing

Pracom

Profile Telemarketing

Traralgon VIC 3844

Realscape Technologies Pty Ltd

Level D 42 Upper Heidelberg Rd Ivanhoe VIC 3079

ResponseAbility Telemarketing Consultants

Unit 52/ 4 Sydney St Prahran VIC 3181

SRG Data Sell

Port Melbourne VIC 3207

We Are A Unique, Integrated Relationship Communications Agency

Sirius Telecommunications

Level 8, 616 St. Kilda Rd Melbourne VIC 3004

Stellar Call Centres Pty Ltd

PO Box 4238 Richmond VIC 3121

ADMA Member

Salmat

Melbourne VIC 3000

ADMA Member

Simon Richards Group

65 Fennel St Port Melbourne VIC 3207

Sirius Telecommunications

Level 1, 341 Queen St Melbourne VIC 3000

ADMA Member

Skilled Engineering Ltd

850 Whitehorse Rd Box Hill VIC 3128

Smart Health Australia

2a Carlisle Ave Balaclava VIC 3183

ADMA Member

Tele Personnel

Suite 3 899 Whitehorse Rd Box Hill VIC 3128

Teleconnect Aust Pty Ltd

24 91 Tulip St Sandringham VIC 3191

Telephone Power Pty Ltd

48 Lake Ave Ocean Grove VIC 3226

Unity4 Teleservices Pty Ltd

U.C.M.S. Contact 360

80 Dorcas St South Melbourne VIC 3205

Vocon Pacific

After removing duplicates, 50 telemarketing companies listed for Victoria. 5 are ADMA members. Many of the non-member companies listed here are clearly active telemarketers. (Chris Connolly repeated this exercise in NSW with similar results.)

Although I have not researched it specifically, it is clear that there are a number of major list brokers who are not ADMA members, such as:

- Accountable List Brokers Pty Ltd <http://www.listbroker.com.au> hundreds of lists, including one of over 12 million homes, with phone numbers: "Australian Direct Responders".
- Dependable Database Data <http://www.australiaondisc.com.au> .. This company seems to be the second major vendor, after ADMA Member Desktop Marketing (<http://www.dtms.com.au>), of CD-ROMs of White-Pages entries for outbound telemarketing. Their "Australia on Disc" contains 6.9 million residential listings with extensive sorting facilities, including by location.

Another approach to estimating the number of companies involved in telemarketing is to consider the membership of the ATA - **Australian Teleservices Association** (previously the Australian Telemarketing Association) <http://www.ata.asn.au> . This association is discussed further below. The membership includes both individual and a number of corporate categories, so it is impossible from the membership number alone to gauge the number of organisations involved in telemarketing. The ATA seems to be primarily concerned with inbound calls for many purposes other than sales - but their Code of Conduct applies specifically to outbound calls. So the ATA covers many call centre activities beyond direct marketing. The membership is not publicly available.

On 21 August 2003, in response to my emailed enquiry, Michael Meredith, Executive Director of the Australian Teleservices Association, wrote to me:

1. The ATA has over 1,800 members across Australia.
2. We have local representation in all the states in Australia.
3. We believe that through our membership that we cover approximately 75% of the Contact Centre Industry.
4. Whilst I do not have any specific numbers on the percentage of ATA members who conduct outbound calls only, I have seen two independent research papers that quote 5% and 3% respectively of the Contact Centre industry undertake outbound call only. 26% only inbound and

71% a mixture of inbound and outbound calls.

Even allowing for:

- ADMA's membership being more involved in telemarketing than the 27 formally listed members indicates.
- The ATA's 1,800 strong membership being only partly companies.
- Uncertainties about the above estimates of 3 to 5% purely outbound and 71% partly outbound.

it is reasonable to conclude that the ATA's representation of outbound telemarketers greatly exceeds ADMA's.

This does not mean that the ATA or any other organisation is a suitable industry self-regulator, but it does show that ADMA is definitely not a tenable organisation to receive ACCC approval for this role.

ATA - Australian Teleservices Association

The Australian Teleservices Association, whose membership and telemarketing coverage is discussed in the previous section, is a second and larger organisation which seeks to represent telemarketers in Australia.

Neither ADMA or the ATA seem to refer to each other whatsoever in their web sites.

As each organisation is surely well aware of the other, the only possible conclusion is that these two organisations are involved in a "turf war" for membership and credibility - credibility amongst industry members and also presumably with government agencies such as the ACCC.

The ATA has its own Code of Practice, regarding primarily outbound telemarketing:

http://www.ata.asn.au/about_code_1.htm

ATA Code of Practice

A commitment to Professionalism, Best Practice and Ethical Behaviour

The Australian Teleservices Association Ltd (ATA) is a not for profit organisation founded in 1990 to represent and serve the call centre industry in the delivery of teleservices.

The ATA is committed to meeting the needs of our members, as well as protecting the rights of consumers and businesses who consume the teleservices provided by our members.

The ATA advocates adherence to the highest standards of professionalism and ethical behaviour for all call centre operations.

These standards, when conscientiously adopted and practised on a call-by-call basis, help assure the long term satisfaction of our members, their employees and their customers.

Through professional programs and activities in support of the Code, the ATA seeks to educate members, the public and governments at all levels concerning the desired behaviour for both inbound and outbound delivery of teleservices. The Code of Practice is also designed to assist any business, consumer or legal entity seeking to objectively measure the integrity and professional performance of a teleservice program. The Code of Practice has been developed to assist professional reputable call centre which have specific goals to achieve in an efficient and effective manner through high quality performance, with the public interest in mind.

This Code of Practice has been developed as a guide to the call centre industry, the business community and consumers to describe what is expected of an ethical and professional teleservices operation and to assist in the enhancement of professionalism within the industry

Call centres and teleservices operations are required to operate in accordance with all applicable Federal, State and local laws and acts, specific industry codes, business codes and regulations, the Privacy Act and this ATA Code of Practice.

1. Proper Identification

All contact with the customer should begin with the name of the company for whom the contact is being made or taken and the name of the Teleprofessional making the call, eg 'The Australian Teleservices Association, this is Rachelle'.

2. Purpose of Call

A teleservices representative will promptly disclose the primary reason for the call as soon as practical into the conversation.

3. Contact Details

Either as part of the offer or as part of documentation confirming the sale, information must be given to the customer which provides a method for contacting the organisation making the offer by address and telephone number so that anyone with any enquiry or complaint can follow-up.

4. Skill Development

Prior to making or receiving customer contact, all teleprofessionals must receive adequate training. Appropriate supervision is to be provided.

5. Honesty

All offers must be stated clearly and honestly so that the parties know exactly what they have committed to and what they will be getting in return. All claims which are untrue, misleading, deceptive, fraudulent or unjustly disparaging of competitors are deemed by the ATA to be unprofessional, dishonest and are considered to be a breach of this code.

6. Hours of Operation

Outbound Calls Daily

Weekdays

Outbound calls to either consumers or business' shall not be placed during hours that might be considered unreasonable; ie. before 8am or after 9pm (local time at the called party's location). Any expectations must be with the expressed consent of the called party.

Weekends

Customer Contact Centres should be particularly sensitive to any inconveniences caused during weekend calling. It is recommended that Saturday calling begin no earlier than 10am local time and no earlier than noon local time no Sundays.

Public and Religious Holidays

No unsolicited calls should be initiated on major national holidays such as Christmas Day and New Year's Day. When determining whether to call on any other holiday or other especially recognised days, any inconveniences caused by the call must be considered beforehand.

In Bound Calls

There is no restriction on inbound calls as it is the decision of the customer to make the call at time convenient to them.

7. Call Preference Scheme

The ATA has established a "Call Preference Scheme" for the purpose of capturing the details of those who elect not to be contacted by telephone. It is expected that those companies who conduct outbound telemarketing will regularly "cleanse" their database from the Call Preference Scheme.

In addition to the ATA scheme each company is to maintain its own listing of those customers who have expressed a desire not be contacted by telephone and to develop a written policy implementing this "Call Preference Scheme" list keeping processes.

These Procedures are to Include:

- How Teleprofessionals will capture "Call Preference Scheme" requests.
- How and when these details will be loaded into the database.
- How the "Call Preference Scheme" data will be forwarded to the person or company maintaining the Scheme.
- How the accuracy of the database will be maintained.

"Call Preference Scheme" Lists must be maintained indefinitely and cannot be sold, or in anyway shared (except with a subsidiary of affiliate company), without the customer' expressed consent. Any employee engaged in any aspect of the process must be fully trained in the above mentioned procedures. Service agencies must make sure their clients fully understand and agree to follow the procedures for maintaining to data.

8. Automatic Dialing Apparatus Regulations

The ATA recommends Automatic Diallers are only to be used in conjunction with a compiled and quality managed database. Pre-recorded or artificial message machines are not to be used for any outbound sales or marketing function, including lead generation or qualification, appointment making, market research of fundraising. Companies need to manage resource levels in connection with the dialling apparatus to ensure customers are not left holding lines for longer than necessary (less than a minute) before speaking with a live operator.

9. Facsimile and E-mail Regulations

The ATA does not support the transmission of unsolicited advertisements to e-mail and fax equipment. If however, the contacted party has an established business relationship with the intended recipient, then expressed prior consent is assumed until a "Telephone Preference Scheme" ie. "Do not send information request is received.

Each facsimile must have either a header or a footer that clearly states the caller's name, telephone number and the date and time of transmission.

It is noted that in some cases (ie business to business) a relationship may not exist, although the transmitter of the e-mail or fax will still need to be aware that the recipient would not object to receipt of the communication. The same will apply to marketers utilising lists of prospective clients who have previously expressed a desire to receive additional information about a generic area.

10. List Usage

Untargeted calling is not in the best interest of consumers, businesses or the Telemarketing industry. Calls should always be targeted to people or companies who are likely to have a use for the particular product or service being offered. The ATA does not condone random or sequential number calling that has no concern for the offer

applicability to the call recipient. The only exception to this is legitimate market research, where random sampling techniques are required to assure the validity of a particular study.

11. Monitoring and Taping

The ATA strongly supports monitoring as a tool for assuring the quality of call and improving staff performance through ongoing training and development. It provides a means for employers to observe and evaluate the performance of the teleprofessional and the contact centre program and to provide immediate feedback on both. It also provides a means to protect the consumers and customers against unethical practices by individual teleprofessionals. It also protects the employer's rights to supervise and regulate the quality of work being performed.

Monitoring of calls for the purpose of assessment or quality measurement does not require the consent of all parties to the call, providing that the call is not recorded.

The taping of part or all of the conversation is often used as an objective call verification tool to help clarify specific details of the call and answer questions. In this case, the teleprofessional must ask the called party for their permission to tape record the conversation before proceeding. If the called party does not consent, taping must not proceed beyond that point. It is recognised however that the need to obtain permission to tape a call can be waived in special work environment such as emergency services call centres.

It is important that the following guidelines for monitoring in the work place are set up:

- All job applicants must be made aware of the company's monitoring policy before accepting the job. This can be stated in the job application.
- A written monitoring policy that addresses all issues of concern to an employee should be provided upon employment and additional copies should be placed clearly in employee work areas. This policy should include how and why monitoring is done and how soon after the calls are monitored a review will take place. (As a rule, feedback to the employee in a timely manner.)
- The ATA strongly supports the position that monitoring work related calls is not a violation of anyone's "personal privacy." ATA members have a legitimate need to assess the quality of the calls to and from their customers. By the same token, the ATA advocates the employee's rights to privacy during personal conversations.

I will not critique this Code, since telemarketing should be regulated by the government, not telemarketers themselves. It doesn't seem to be significantly better than ADMA's, and has the same problems of explicitly allowing a pernicious misuse of people's telephone services for intrusive marketing, pretty much any time of the day and most days of the year.

Here are some points I hope the ACCC will consider when evaluating the success of ADMA's Code so far and ADMA's suitability as a government-authorised industry self-regulator, for any aspect of direct marketing whatsoever:

- Why, after four years of operation as an ACCC approved self-regulatory Code of Practice, does Australia's primary telemarketing representative organisation make *no* reference to ADMA's code at all?
- Why does the ATA persist with its own Code, rather than accede to the government-mandated "Code Authority" of ADMA?
- Why does the ATA have its own complaints procedure, encouraging consumers to write to it, rather than to ADMA, the Privacy Commissioner or the ACCC?
https://www.ata.asn.au/info_complaints.htm :

Complaints

The ATA is committed to the promotion of a professional and ethical call centre industry. To assist in this the ATA has established a complaints resolution program to assist those who have experienced difficulties.

It is recommended that in the first instance that you approach the other party in order to seek a resolution as many organisations already have a stringent complaint-handling program in place. Should you find that after doing this you are unable to obtain a satisfactory resolution please forward the relevant details to the address below. The ATA will then undertake to raise any concerns and issues on your behalf.

Email: austele@ata.asn.au

Post: PO Box 129
St Leonards NSW 2065.

Please ensure you include all relevant information together with your contact details.

- Why does ADMA not mention the ATA in its site, or have it as a member?
- It is my clear impression, from the reply I received from the ATA's Executive Director ([above](#)) on 21 August that my email to him the day before was the first he had heard of ADMA's application for further ACCC approval of their Code. Assuming that this is the case, why hadn't the ACCC already alerted the ATA? Why didn't ADMA alert the ATA?

It is easy to get the impression that part of ADMA's aim in seeking ACCC approval for its Code as part of its sparring for status and membership. ADMA's failure to mention its new Code authorisation application to the ATA seems impossible to reconcile with the notion that ADMA is anywhere near trustworthy and resourceful enough to be granted express government mandate for what should, by rights, be a government responsibility: regulation of

direct marketing and protection of the privacy of all Australians.

Problems with self-regulation in general and ADMA in particular

There are substantial potential advantages in a self-regulatory regime for a given industry. In general, the shorter the feedback paths and the more knowledgeable the regulator, the sooner problems will be corrected. This is assuming that the regulatory body has a genuine desire and the ability to regulate the industry to protect consumers. However, since self-regulatory bodies are *industry* bodies they are beholden to their industry members. (To the point that the organisation or its directors could be sued if it failed to properly represent the interests of its members.) Theoretically they have a formal and social contract with the government and society to protect the interests of consumers, but in fact, their entire existence and funding depends upon the willingness of industry participants to support the body.

There is always a tension, or potential tension, between business and customer. (Not all the problems are businesses taking advantage of customers - there are also a handful of unreasonable and at times criminally fraudulent customers who, given the chance, will take advantage of businesses.)

There are industries where most of the participants take a genuine pride in providing an excellent service for customers, and who are keen to maintain standards and work to avoid over-pricing, anticompetitive conduct etc. which are potential problems in any type of commerce. The ideal industry in this respect is one which makes no demands on customers, potential customers, society in general or the environment other than the fees it requires for its goods and services. Such an industry, with a well respected industry body with excellent coverage of participants, is a good candidate for the sort of "co-regulatory" or "self-regulatory" arrangement ADMA was granted in 1999. Such an industry can be profitable and overall beneficial to customers and society in general, provided that customers are prepared to pay the fees the participants are happy with. Then, other than potential disputes about pricing, there is no conflict whatsoever between the industry going about its business, and the public benefit.

But direct marketing, in the form of unsolicited contacts to thousands, hundreds of thousands or millions of people, by mail, and especially by telephone, is a completely different situation.

No-one gets a telephone service so that they can be interrupted and subjected to distraction and manipulation by telemarketers.

No-one maintains a postal address with the desire that they will get junk mail.

The key characteristic of direct mail and telemarketing especially is that in general (unless the seller has a list of prospects of people who are 100% happy about being contacted, which is never the case in practice) this business practice of intrusive mail or telephone communication places a significant and completely unjustifiable burden on individuals all over the country. Virtually everyone with a postal address or a telephone is forced to share this burden, time and again, over and over, from the same marketers many times and from many marketers just once. There is no possible moral or economic justification for this imposition. There are no benefits whatsoever for consumers in finding out about, or purchasing goods and services (or making donations) over other non-intrusive methods of advertising and purchasing / donating.

Via email, the post, telephone calls and any new methods of point-to-point communication which become available, outbound direct-marketing places a *massive* burden on society in general, and a frequently intolerable burden on millions of citizens.

Because direct marketers can never even closely approach their ideal - a list of people who have never heard of them, but who will be happy to be contacted and who will very often accept their offer - outbound direct marketing (except on an opt-in basis) *always* imposes a huge, unfair, distressing, expensive and destructive burden on virtually all adults in Australia.

This is not a clearly defined "industry". Outbound direct-marketing is a pernicious business practice adopted by a few full-time operators and occasionally by a larger number of ordinary businesses.

Outbound direct marketers *cannot do business* without continually and repeatedly burdening thousands or millions of people at home, and at their workplaces (thereby burdening all businesses with extra costs which damage national competitiveness and which must be paid for by consumers in the end).

Since outbound direct-marketing offers no benefits to consumers over non-intrusive methods, and since it always imposes unacceptable costs on the public in general, the only proper form of regulation is to ban it except for those who make an explicitly, fully informed and unpressured decision to accept outbound direct-marketing communications.

Direct mail *can* have some benefits over telemarketing and ordinary advertising. Unlike advertising, it can include product samples, or more detailed and personalised product information than is possible via the Net, print media advertising or radio or TV. Unlike telemarketing, the recipient's attention is given to the material when they choose to go to their letterbox, and at any time afterwards. But direct mail clutters up mailboxes and wastes paper and transport resources.

I think that direct mail could probably remain a viable business practice on a carefully managed opt-in basis. But it is impossible to imagine this for outbound telemarketing. Since becoming involved in this issue in late 1991, I have never seen any evidence that anyone at all actively wants to be subjected to sales and fundraising calls on their home, work or mobile phones.

Both direct-mail and outbound telemarketing have a huge negative impact on society, primarily on people who have no interest whatsoever in the product or charity, and who have no way of defending themselves. This is the sort of problem we create governments to solve.

Successful regulation of direct mail to properly protect consumers and businesses who are targeted would lead to greatly reduced direct mail activity, significantly lower revenues, but greater profit margins on this smaller revenue base, since mailouts would go to people who want them. (Alternatively, if it is assumed that competition has the effect of driving prices down to the limit set by a viable, lower, profit margin, then benefits flow to consumers in the form of lower costs.)

Successful regulation of outbound telemarketing would result in cessation of all outbound sales and funds-raising calls except to the very small number of people who have knowingly and explicitly consented to receiving them. Outbound calls would be vastly reduced, say to 0.1% of current activity. Efficiency could be higher, depending on the costs of maintaining a properly regulated "industry" which ensured calls were only made to those who genuinely want to receive them. The current huge number of scatter-gun calls, which burdens practically every adult and every business in the country, would cease.

Direct marketing on the regulated basis just described would be like any other legitimate, accepted "industry" or business practice - it would not burden anyone except those who wanted to be burdened by its activities.

The problem for the public is that the great majority of outbound telemarketing - and to a somewhat lesser extent direct mail - activity is directed at people who don't want it, and who can't individually protect themselves from it.

The only economic reason this extraordinarily costly, unfair, overkill of intrusive communications persists is because in a small proportion of cases, it happens to reach someone who is in the mood to buy or donate or who can be talked into doing so. Ideally, all consumers and businesses would refuse to do any business with anyone who approached them in an intrusive manner. Unfortunately, a small proportion of people *are* susceptible to intrusive marketing and *do* part with their money. These careless / impressionable purchasers and donors are at least as culpable as the marketers themselves for the burdens everyone suffers from intrusive marketing, since the fund it *entirely*. (There are also non-economic reasons behind outbound direct marketing. Firstly there is the instinctual hunting and gathering thrill of spear-like targeting or mass-netting income-generating customers, rather than just opening a shop and waiting for them to walk in. Secondly, many businesses, for ill-considered reasons, have brief forays into outbound telemarketing and direct mail because vendors of lists, especially CD-ROMs of home and business contact details, are able to convince them it would be acceptable and profitable to engage in these aggressive, "take action rather than wait and hope" intrusive marketing approaches.)

An industry which naturally happily co-exists with its customers and the wider public, and for which there is one clearly respected body which has sufficient coverage, is a good candidate for some level of self- or co-regulation.

Even if telemarketing and direct mail were such "industries", there would be systemic problems with self- or correlation:

- From the point of view of a customer or other member of the public, their perception of their bad experience with the business or business practice does not necessarily lead them straight to the appropriate self-regulatory body. For instance, if outbound telemarketing calls were self-regulated (or government regulated) as if they were a primarily a marketing matter, then a person who has a problem with repeated non-fax calls to a fax number (from voice telemarketers) sees the problem as a telecommunications matter, and has no reason to consider the telemarketing regulatory framework - since such calls are indistinguishable to them from malicious or accidental calls or technical failures.
- In any self-regulatory arrangement, the aggrieved party has to first determine the domain of their problem - from a range of government spheres and a much larger array of interlocking and at times overlapping self-regulatory arrangements. This is an initial problem, and in some cases an ongoing problem if the person's actual experience is deemed to involves more than one regulatory domain.
- Similarly due to the poor correspondence of the various self-regulatory domains to the actual experience of people, there are problems of overlap and turf-wars between the domains, and also the pattern of one domain insisting the problem belongs to another. For instance, if a person is repeatedly called by their bank (actually someone claiming to be from their bank - the recipient has no way of knowing for sure who is calling), is this a matter for the banking industry self-regulatory body, or does it belong to the direct-marketing domain?

Modern life is complex, so regulatory arrangements tend to be complex too. The advantage of self-regulatory schemes is the potential for faster, more knowledgeable, "closer" feedback and problem resolution. But there are real disadvantages because of the difficulty of

discovering and negotiating a complex, diffuse and poorly co-ordinated mish-mash of regulatory arrangements. This is bad enough for someone like me who is a telecommunications consultant. The problems are far worse for the elderly, those with poor English skills and those who lack the patience or the general knowledge to successfully discover and navigate the maze of frameworks, laws and regulatory bodies. Similarly, the maze raises problems for these regulatory bodies themselves.

There are arguments for and against self-regulation. But it is clear that self-regulation can only be successful when the representative body has good coverage, and when the mainstream of the industry naturally and happily does business in a way which does not burden society in general or cause problems for customers.

But direct-mail and outbound telemarketing are striking examples of the opposite conditions. These business practices, in their current scatter-gun form, are inherently a serious and often intolerable burden on society. These business practices are inherently of little or no value to customers over non-intrusive alternatives.

These facts make it impossible for any industry body to successfully self-regulate the "industry" - really the pernicious business practice - to the point where it no longer burdens society and where it does not take unfair advantage of its few remaining customers. This is because any such successful outcome would have the effect of significantly reducing (direct mail) or almost entirely eliminating (outbound telemarketing) the current "industry" - the current business practices - which provide the membership and funding for the industry body.

An honest and proportionate account of the impact outbound telemarketing has on Australians would be a massive, deafening, roar of millions of people cursing, characterising the telemarketers with vile invective, and demanding government action to halt this abuse.

Of necessity this submission contains a polite, concise and incomplete account of the problems caused by outbound telemarketing. However it is instructive and not at all unfair to draw an analogy between a telemarketing industry body protecting consumers from telemarketing and giving foxes guarding chickens.

But even if, by some bizarre distortion, outbound telemarketing was deemed to be an industry or business practice in which consumers really could be protected by a self regulatory body, there are several reasons why ADMA in 2003 cannot be that body:

1. Its coverage of outbound telemarketing - both of dedicated telemarketers and of businesses (and charities) who for their own purposes conduct outbound telemarketing - is *far* below that which the ACCC requires. It is both low in absolute terms and it is lower than another teleservices (previously "telemarketing) industry body: the ATA.
2. ADMA has repeatedly displayed its hostility towards privacy and consumer benefits. It also displays its contempt for the ATA by failing to mention the ATA on its site, and apparently by failing to inform it of the current application to the ACCC. (This is not to say that the ATA is any more genuinely interested in consumer privacy.)

ADMA's application for ACCC accreditation was opposed largely or entirely, and often with great passion and in substantial detail, by a wide range of privacy and consumer advocates in 1999. The ACCC listened to and apparently accepted all the advocates' critiques - and then granted ADMA the approval it requested.

Now, after four years, we can see how ineffectual ADMA and its so-called "Code Authority" has been at actually protecting Australians from the flood of outbound telemarketing calls.

While the ACCC's 1999 decision might be seen as an act of faith - in self-regulation generally and in ADMA's character and capabilities specifically - there is no basis in 2003 for continuing to give ACCC-approval for this failed experiment.

The ACCC must have criteria for refusing approval for codes of practice. There must be cases where the arguments are so clear that approval is refused. Its hard to imagine a clearer set of circumstances than ADMA's for refusing to approve a code of conduct.

In 1999, the advocate's concerns were directed to what we believed *would* happen. We predicted it would be a sham, of no real benefit to consumers, with many significant costs.

The last four years of sham consumer protection with no substantial protections proves that the advocates were right, and that the ACCC's 1999 faith in self-regulation of outbound telemarketing - and in ADMA - was ill-judged.

The US *hard* regulation of outbound telemarketing - in a country renowned for letting corporations do as they please (largely due to the dependence of both parties on corporate funding) invites some observations:

- Firstly, that the problem is so bad, and industry "self-regulation" so ineffective that even a Republican US government was moved to act decisively.
- That this would probably never have happened if the parties to be regulated were big corporations - who provide most of the funding to the political parties and so who have disproportionate influence and lobbying power. (For instance, such regulation of the drug industry is inconceivable in the USA - a friend who reports on the health industry there tells me that the number of drug industry full-time lobbyists in Washington DC outnumber the combined numbers of senators and congressmen.)
- Therefore, that major corporations are generally not involved in outbound telemarketing. This makes sense, since outbound telemarketing is perhaps the surest way of destroying the public perception of a company or product.
- Therefore, that most participants in the direct marketing industry are small companies (too small for their political donations to stop this legislative regulatory response). In many cases, the main source of outbound telemarketing calls - in the USA and probably Australia - results from those at the moral bottom of the business food chain: operators who have no scruples and whose business principles are no better than those of spammers.

Shortcomings of the Code and its "Authority"

The criticisms of the "Code Authority" in this section would be pointers to improvements for the future *if* it is thought worthwhile for ADMA to continue to have a role in regulating direct-mail. But there are many arguments against ADMA having any government-mandated consumer protection responsibilities. The point about these shortcomings is that it demonstrates failings which are attributable to:

- The entire concept of ACCC-approved industry self-regulatory bodies in circumstances such as this, where the "industry" (rather the pernicious business practice) would almost cease to exist if consumers really were protected.