



Royal Institute for Deaf and Blind Children

**Submission to**

**Australian Competition and Consumer Commission**

**from the**

**Royal Institute for Deaf and Blind Children**

With respect to the application by the Australian Direct Marketing Association for revocation of authorisation A40077 and its replacement by substitute authorization A90876.

**Royal Institute for Deaf and Blind Children (RIDBC)**

RIDBC is a large charitable organization based in Sydney, providing educational services for deaf children and blind children. RIDBC's children's services are principally provided in NSW but are increasingly being provided Australia wide. Its professional development services have long had considerable national and international focus.

Currently there are 680 deaf or blind children involved in ongoing educational programs. In addition, during 2005, screening or diagnostic services have been provided to approximately 3,000 further children, and 140 teachers and therapists were enrolled in higher degree studies at RIDBC's Renwick College.

In 2005, RIDBC's operating expenditure on the direct provision of services is expected to be \$17.1 million. Government funding for those services is expected to be \$8.1 million, leaving a shortfall of \$9 million. Most of this shortfall is expected to be made up by a fundraising surplus of \$7.6 million.

For RIDBC, the key to financial viability is its fundraising program. Of the \$7.6 million surplus generated by fundraising activities in 2005, around \$2 million, or 26% of it, will come from RIDBC's telemarketed lottery sales program.

It is the ongoing viability of this lottery program and the children's services it funds that is the motivation for this submission.

It is also of some note that the RIDBC telemarketing program is a significant employer of people. The program employs around 75 people occupying 45 full time equivalent positions.

## **ADMA Code of Practice**

RIDBC is highly supportive of the proposed ADMA Code of Practice with the exception of one point which we believe to be discriminatory against charitable fundraisers operating in NSW and ambiguous in its impact on charities operating elsewhere.

We are also concerned that the tone of the ACCC material accompanying the consultation appears to suggest that the only public benefit issues involved are those that relate directly to upfront consumer protection matters immediately related to transactions occurring via direct marketing.

We acknowledge that these consumer protection issues are important, but there are other public benefit issues as well.

Australian society has evolved to a point where it places a heavy responsibility for the delivery of health, social, educational, artistic and other services on the voluntary sector. This situation is broadly acknowledged by the community, the government and the voluntary sector as being highly desirable. It is part of the "Australian Way".

A fundamental element in the survival of the voluntary sector is its capacity to generate revenue directly from the community to support its endeavours.

Governments simply do not provide sufficient financial support to the sector to enable it to continue without seeking direct community support. In fact, the present Australian Government has made much of its wish to see an increase in the role played by philanthropy in support of voluntary sector programs.

The popular image of fundraising being a series of high profile events, lots of cake stalls and the odd chook raffle is a myth. For much of the charity sector, direct marketing for donations or lottery sales produces the bulk of fundraising revenue. Proposals which are being assessed for their public benefit impacts, need also to be viewed from the perspective their impact on these direct marketing activities and the services they fund.

Direct marketing approaches for philanthropic support are not universally welcomed by Australian households. Table 19 in the recently released report of the Prime Minister's Community Business Partnership, Research on Philanthropy in Australia, provides tangible evidence of this. However Table 18 of the same report presents a picture that suggests these approaches are quite effective.

It is an unfortunate reality that when it comes to recruiting new supporters, most charities find that there is an inverse relationship between the cost effectiveness of the methods used and the public's expressed preference as to how they would like to be approached.

The research referred to above did not directly explore the contribution made to voluntary sector fundraising by direct marketing activities, but it is clear that the contribution amounts to considerably more than a billion dollars. We submit that in assessing the public benefit associated with the proposed new ADMA Code, the ACCC needs to take into account the diminished level of social programs that will flow from any decreased access to direct marketing opportunities by the charitable sector.

### **Specific concern**

As indicated above, FIA is supportive of the proposed replacement Code of Practice with the exception of one point.

Our concern is with Section D, Fair Conduct Relevant to Telemarketing, Clause 20, which outlines the permitted times and days when telemarketers are allowed to call consumers at their homes.

The Code specifies that consumers are not to be called at their homes after 8pm daily, or at all on Sundays or on certain public holidays. The nominated public holidays are greater than those in the current Code and we have no disagreement with that. However, in the proposed code, the latest time at which calls are permitted to be made has been reduced from 9pm to 8pm. We understand that this has been done to reflect recent changes in the Fair Trading Laws in NSW and Victoria. (As an aside, most charities report that insofar as there is any negativity towards their telephone approaches, it is more frequent in the period 6pm to 7.30 pm than in the 8pm to 9pm time slot.)

In 2004, both the NSW and Victorian Governments introduced changes to their Fair Trading legislation to update their regulation of telemarketing. This included specification of permitted calling hours. However in both states the relevant Acts establish a transaction value threshold below which the Act does not apply. The threshold value is \$100. This threshold has the effect of excluding most charitable fundraising activities from coverage by the Acts. It is important to recognize that these are very recent decisions by government, not some long standing provisions that have been rendered out of date by the passing of time.

In the Clause 20 of Section D of the proposed ADMA code, an exception to required adherence to the prescribed hours is provided through the words at the end of the clause "unless permitted by Federal or State Legislation". We understand that this wording has been included to take account of the exclusions from the NSW and Victorian laws discussed above. Whilst we applaud the intent, we believe that the wording is somewhat ambiguous and the exception would be better expressed more clearly.

Of more significance however, is that in addition to the value threshold, the NSW Fair Trading Act also specifically excludes activities that are fundraising appeals as defined in the NSW Charitable Fundraising Act.

These activities are regulated by the NSW Charitable Fundraising Act and its Regulations. In turn, the NSW Charitable Fundraising Regulations 2003 require that organizations in NSW, fundraising through telemarketing must comply with the ADMA Code of Practice as it relates to Telemarketing. For NSW charities, this effectively eliminates the exemptions provided by the NSW and Victorian Acts and ambiguously provided for in the proposed ADMA Code.

The effect of this is such that the ADMA code provides a competitive disadvantage for NSW based charities as compared to charities in other states.

In its introduction to this consultative process, under the heading "Assessment of public benefit and anti competitive detriment", the ACCC observes that,

- the loss of/or inability to obtain ADMA membership is unlikely to significantly impede a direct marketer's ability to enter the market or compete within the industry;

and later

- it is not likely that burdens placed on organizations to comply with the ADMA Code would result in any anti-competitive detriment.

On both counts these observations are wrong. NSW based charitable organizations using telemarketing for fundraising appeals would be significantly impeded as opposed to their competition in other states, a disadvantage that was not existent or envisaged at the time the NSW Charitable Regulations were framed.

### **Recommendation**

The ACCC indicates that it does not have the authority to make changes to the Draft Code. The Royal Institute for Deaf and Blind Children recommends that ADMA be requested to further amend its draft code to take account of the issue raised in this submission. On all other matters related to the draft Code, ADMA has the full support of the Royal Institute for Deaf and Blind Children.

### **Contact Details**

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